**STANDARD PROCUREMENT DOCUMENT**

**Request for Proposals**

**Plant**

**Design, Supply and Installation**

**(Two-Stage Request for Proposals, after Initial Selection)**



**OCTOBER, 2017**

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**Revisions**

**October 2017**

This revision dated October 2017 incorporates new provisions on beneficial ownership and Direct Payment.

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**January 2017**

This revision dated January, 2017 includes a template for notification of intention to award a contract. A few editorial enhancements have also been made.

**Preface**

This Standard Procurement Document (SPD) Request for Proposals (RFPs) for Plant   
(Design, Supply, and Installation) has been prepared by the World Bank (Bank). This SPD derives from the Master Document for Procurement of Plant Design, Supply, and Installation and has been aligned with the provisions of the Bank’s *Procurement Regulations for IPF Borrowers*, *July, 2016* as amended from time to time.

This SPD shall be used for the procurement of Plant (Design, Supply, and Installation) through international competitive procurement, after Initial Selection, for a two stage Request for Proposals (RFP) selection method.

This SPD applies to projects funded by International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA) where the Legal Agreement makes reference to the *Procurement Regulations for IPF Borrowers*.

To obtain further information on procurement under World Bank funded projects or for question regarding the use of this SPD, contact:

Chief Procurement Officer

Standards, Procurement and Financial Management Department

The World Bank

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Washington, D.C. 20433 U.S.A.

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Standard Procurement Document

**Summary**

**Specific Procurement Notice**

**Specific Procurement Notice - Request for Proposal (RFP) to Initially Selected Proposers**

This SPD covers a two stage process following the Initial Selection of Proposers. The Instructions to Proposers (ITPs) describe the provisions that apply to both stages. The stages are:

Stage 1: Request for First Stage Proposals (Technical) (single envelope);

Stage 2: Request for Second Stage Proposals (Technical and Financial) (two envelope).

**PART 1 – REQUEST FOR PROPOSAL PROCEDURES**

**Section I - Instructions to Proposers (ITP)**

This Section provides relevant information to help Proposers prepare their Proposals. It is based on a two stage procurement process. Information is also provided on the submission, opening, and evaluation of Proposals and on the award of Contracts. **Section I contains provisions that are to be used without modification.**

**Section II - Proposal Data Sheet (PDS)**

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

**Section III - Evaluation and Qualification Criteria**

This Section specifies the methodology that will be used to determine the Most Advantageous Proposal. The Most Advantageous Proposal is the Proposal of the Proposer that meets the Qualification Criteria, and whose Proposal has been determined to be:

1. substantially responsive to the RFP; and
2. the best evaluated Proposal i.e. the highest scoring Proposal, in the combined technical and financial evaluation.

**Section IV - Proposal Forms**

This Section contains the forms which are to be completed by the Proposer and submitted as part of the Proposal.

**Section V - Eligible Countries**

This Section contains information regarding eligible countries.

**Section VI - Fraud and Corruption**

This section includes the Fraud and Corruption provisions which apply to this Request for Proposal process.

**PART 2 – EMPLOYER’S REQUIREMENTS**

**Section VII - Employer’s Requirements**

This Section contains the business functions and performance Requirements, that describe the Plant and Installation Services to be procured including Implementation Schedule, as well as Background and Informational Materials.

**PART 3 – CONDITIONS OF CONTRACT AND CONTRACT FORMS**

**Section VIII - General Conditions of Contract (GCC)**

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

**Section IX - Particular Conditions of Contract (PCC)**

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

**Section X - Contract Forms**

This Section contains the Letter of Acceptance, Contract Agreement and other relevant forms.

**Notice of Request for Proposals**

**Stage 1 Template**

**Request for First Stage Proposals**

**Plant**

**(Design, Supply, and Installation)**

**(After Initial Selection)**

**Employer:** *[insert the name of the Employer’s agency]*

**Project:***[insert name of project]*

**Contract title:** *[insert the name of the contract]*

**Country:** *[insert country where RFP is issued]*

**Loan No. /Credit No. / Grant No.:** *[insert reference number for loan/credit/grant]*

**RFP No:** *[insert RFP reference number from Procurement Plan]*

**Issued on:** *[insert date when RFP is issued to the market]*

To: *[Proposer’s name and address]*

Dear Ladies and/or Gentlemen,

1. The *[insert name of Borrower/Beneficiary/Recipient] [has received/has applied for/intends to apply for]* financing from the World Bank toward the cost of the [*insert name of project or grant*], and intends to apply part of the proceeds toward payments under the contract [[1]](#footnote-1)for [*insert title of contract*][[2]](#footnote-2). *[Insert if applicable: “*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, except for those payments, which the contract provides to be made through letter of credit*.”*]
2. The *[insert name of implementing agency]* now invites sealed Proposals from the following initially selected eligible Applicants for *[insert brief description of Plant required, installation period, location, etc.]*[[3]](#footnote-3).

*[Insert names of initially selected Applicants]*

1. The procurement will be conducted through international competitive procurement using Request for Proposals (RFP) as specified in the World Bank’s “[Procurement](http://www.worldbank.org/html/opr/procure/guidelin.html) Regulations for IPF Borrowers” *[insert date of applicable Procurement Regulations edition as per legal agreement]* (“Procurement Regulations”), and is open to all initially selected eligible Proposers.
2. Initially selected eligible Proposers may obtain further information from *[insert name of implementing agency, insert name and e-mail of officer in charge]* and inspect the RFP Document during office hours *[insert office hours if applicable i.e. 0900 to 1700 hours]* at the address given below *[state address at the end of this RFP]* [[4]](#footnote-4).
3. The RFP Document in [*insert name of language*] may be purchased by initially selected eligible Proposers upon the submission of a written application to the address below and upon payment of a nonrefundable fee[[5]](#footnote-5) of [*insert amount in Borrower’s currency or in a convertible currency*]. The method of payment will be [*insert method of payment*].[[6]](#footnote-6) The document will be sent by [*insert delivery procedure*].[[7]](#footnote-7)
4. A two-stage RFP process will be used which will proceed as follows:

(a) The First Stage process will consist of submission of a technical Proposal, without any reference to prices. Following the evaluation of First Stage Proposals, a Proposer that has submitted a sufficiently responsive Technical Proposal may be invited to attend a clarification meeting(s), during which the Proposer’s Proposal will be reviewed. Any required Proposal-specific changes, additions, deletions and other adjustments will be noted and recorded in a memorandum, or, if amendments are of a general nature, will be promulgated via an addendum to the RFP Documents. Following the clarification meetings, Proposers may not be invited to submit Second Stage Proposals, if their First Stage proposals contain departures from the requirements to the extent that it cannot be expected to be responsive through the second stage RFP process. All other suitably qualified and eligible Proposers shall receive invitations to submit Second Stage Proposals.

(b) The Second Stage process will consist of submission and evaluation of: (i), the updated technical part incorporating all changes required as recorded in the proposer-specific memorandum, and/or as necessary to reflect any Addenda to the RFP documents issued subsequent to the first stage; and (ii), the financial part.

1. First Stage Proposals must be delivered to the address below *[state address at the end of this RFP]*[[8]](#footnote-8) on or before *[insert time and date].* Electronic Procurement will *[will not]* be permitted. Late Proposals will be rejected. Proposals will be publicly opened in the presence of the Proposers’ designated representatives and anyone who chooses to attend at the address below *[state address at the end of this RFP]* on *[insert time and date]*.
2. [*Insert* *this paragraph if applicable in accordance with the Procurement Plan*: “Attention is drawn to the Procurement Regulations requiring the Borrower to disclose information on the successful Proposer’s beneficial ownership, as part of the Contract Award Notice, using the Beneficial Ownership Disclosure Form as included in the RFP document.”]
3. The address (es) referred to above is (are): *[insert detailed address (es)]*

*[Insert name of office]*

*[Insert name of officer and title]*

*[Insert postal address and/or street address, postal code, city and country]*

*[Insert telephone number, country and city codes]*

*[Insert facsimile number, country and city codes]*

*[Insert email address]*

*[Insert web site address]*

**Notice of Request for Proposals**

**Stage 2 Template**

**Request for Second Stage Proposals**

**Plant**

**(Design, Supply, and Installation)**

**(After Stage 1, First Stage RFPs)**

**Employer:** *[insert the name of the Employer’s agency]*

**Project:***[insert name of project]*

**Contract title:** *[insert the name of the contract]*

**Country:** *[insert country where RFP is issued]*

**Loan No. /Credit No. / Grant No.:** *[insert reference number for loan/credit/grant]*

**RFP No:** *[insert RFP reference number from Procurement Plan]*

**Issued on:** *[insert date when RFP is issued to the market]*

To: *[Proposer’s name and address]*

Dear Ladies and/or Gentlemen,

1. We hereby inform you that you are invited to submit a sealed Second Stage Proposal for the execution and completion of the Contract cited above for which you submitted a First Stage Proposal on *[insert:* ***date of submission of First Stage Proposal****]*, that was reviewed *[if applicable, add* ***“and discussed during the clarification meeting(s) held on*** *{insert:* ***date(s****)}]* and has been found sufficiently technically responsive to the requirements of the first stage.
2. Your Second Stage Proposal should include an updated technical Proposal *[if appropriate, replace by or add:* ***“and/or accepted and updated alternative technical Proposal(s)”****]* reflecting (a), any addenda to the RFP Documents issued to all Proposers invited to the second stage together with the invitation or subsequently, as well as (b), the memorandum, if any, specific to your Proposal and titled “Changes Required Pursuant to First Stage Evaluation.” Addendum and/or memorandum, if applicable, are listed at the end of, and are included with, this invitation. The Second Stage Proposal should also include the Financial Parts such as, Proposal price, price schedules, Proposal security, etc., as detailed in the RFP Documents. The technical and financial parts of the Second Stage proposals shall be submitted in two separate envelopes
3. The Proposal shall be submitted no later than *[insert:* ***time, date and address for Second Stage Proposal submission****]*.[[9]](#footnote-9) Electronic Procurement will *[will not]* be permitted. Late Proposals will be rejected. The Technical Part will be publicly opened in the presence of the Proposers’ designated representatives and anyone who chooses to attend at the address below *[state address at the end of this RFP]* on *[insert time and date]*.
4. The financial part shall be opened in public unless Best and Final Offer (BAFO) or negotiations apply in which case the Financial Parts will not be opened in public and will be opened in the presence of a probity auditor appointed by the Employer.
5. All Proposals must be accompanied by a *[insert “Proposal Security” or “Proposal-Securing Declaration,” as appropriate]* of *[insert amount and currency in case of a Proposal Security[[10]](#footnote-10).]*
6. Please confirm receipt of this letter immediately in writing by electronic mail or fax. If you do not intend to submit proposal, we would appreciate being so notified in writing at your earliest opportunity.

Yours truly,

*[Authorized* ***signature]***

*[Insert:* ***name and title****]*

*[Insert:* ***Employer’s name****]*

ENCLOSURE(S): *[if appropriate, insert:*

1. *Addendum No. [insert: number of the addendum] to the RFP documents*

*and/or*

1. *Memorandum for* *[name of Proposer as taken from the top of this invitation] of Changes Required Pursuant to First Stage Evaluation*

*or state: There are no enclosures*

**Request for Proposals**

**Plant**

**Design, Supply and Installation**

**(Two-Stage RFP, after First Stage RFP)**

**Procurement of:**

***[****insert identification of the ICT]* **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Employer:** *[insert the name of the Employer’s agency]*

**Project:***[insert name of project]*

**Contract title:** *[insert the name of the contract]*

**Country:** *[insert country where RFP is issued]*

**Loan No. /Credit No. / Grant No.:** *[insert reference number for loan/credit/grant]*

**RFP No:** *[insert RFP reference number from Procurement Plan]*

**Issued on:** *[insert date when RFP is issued to the market]*

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PART 1 – Request for Proposal Procedures

Section I - Instructions to Proposers (ITP)

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# Section I - Instructions to Proposers

A. General

|  |  |
| --- | --- |
| 1. Scope of Proposal | * 1. The Employer, as specified in the PDS, issues this Request for Proposals (RFP) Document for the Design, Supply and Installation of Plant as specified in Section VII, Employer’s Requirements. The name, identification and number of lots (contracts) of this RFP are specified **in the PDS.** |
|  | * 1. Unless otherwise stated, throughout this RFP Document definitions and interpretations shall be as prescribed in the Section VIII, General Conditions of Contract. |
|  | * 1. Throughout this RFP Document:      1. the term “in writing” means communicated in written form (e.g. by mail, e-mail, fax, including if specified **in the PDS**, distributed or received through the electronic-procurement system used by the Employer) with proof of receipt;      2. if the context so requires, “singular” means “plural” and vice versa; and      3. “Day” means calendar day, unless otherwise specified as “Business Day”. A Business Day is any day that is an official working day of the Borrower. It excludes the Borrower’s official public holidays. |
| 1. Source of Funds | * 1. The Borrower or Recipient (hereinafter called “Borrower”) indicated **in the PDS** has applied for or received 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 PDS** toward the project named **in the PDS**. The Borrower intends to apply a portion of the funds to eligible payments under the contract(s) for which this RFP Document is issued.   2. Payments by the Bank will be made only at the request of the Borrower and upon approval by the Bank in accordance with the terms and conditions of the Loan (or other financing) Agreement between the Borrower and the Bank (hereinafter called the Loan Agreement), and will be subject in all respects to the terms and conditions of that Loan (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 equipment, materials or any other goods, 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). |
| 1. Fraud and Corruption | * 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. |
|  | * 1. In further pursuance of this policy, Proposers shall permit and shall cause their agents (where declared or not), subcontractors, subconsultants, service providers, suppliers, and their 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. |
| 1. Eligible Proposers | * 1. A Proposer may be a firm that is a private entity, a state-owned enterprise or institution subject to ITP 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 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 RFP process and, in the event the JV is awarded the Contract, during contract execution. Unless specified **in the PDS**, there is no limit on the number of members in a JV. |
|  | * 1. A Proposer shall not have a conflict of interest. Any Proposer found to have a conflict of interest shall be disqualified. A Proposer may be considered to have a conflict of interest for the purpose of this RFP process, if the Proposer:      1. directly or indirectly controls, is controlled by or is under common control with another Proposer; or      2. receives or has received any direct or indirect subsidy from another Proposer; or      3. has the same legal representative as another Proposer; or      4. has a relationship with another Proposer, directly or through common third parties, that puts it in a position to influence the Proposal of another Proposer, or influence the decisions of the Employer regarding this RFP process; or      5. any of its affiliates participates as a consultant in the preparation of the design or technical specifications of the Plant that are the subject of the Proposal; or      6. or any of its affiliates has been hired (or is proposed to be hired) by the Employer or Borrower as Project Manager for the Contract implementation; or      7. 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 **PDS ITP 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      8. 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 RFP Document or specifications of the Contract, and/or the Proposal 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 RFP process and execution of the Contract. |
|  | * 1. A firm that is a Proposer(either individually or as a JV member) shall not participate in more than one Proposal as a Proposer or as a JV member, except for permitted alternative Proposals. Such participation shall result in the disqualification of all Proposals in which the firm is involved. However, this does not limit the participation of a Proposer as a subcontractor in another Proposal or of a firm as a subcontractor in more than one Proposal. |
|  | * 1. A Proposer may have the nationality of any country, subject to the restrictions pursuant to ITP 4.8. A Proposer shall be deemed to have the nationality of a country if the Proposer 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 sub-contractors or sub-consultants for any part of the Contract including related Services. |
|  | * 1. A Proposer 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 WBG’s Sanctions Framework as described in Section VI paragraph 2.2 d., shall be ineligible to be initially selected for, prequalified for, bid for, submit proposal 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 PDS. |
|  | * 1. Proposers 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. |
|  | * 1. A Proposer shall not be under suspension from submitting proposals by the Employer as the result of the operation of a Bid Securing Declaration or Proposal–Securing Declaration. |
|  | * 1. 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 procurement is 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 ITP 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. |
|  | * 1. A Proposer shall provide such documentary evidence of eligibility satisfactory to the Employer, as the Employer shall reasonably request. |
|  | * 1. 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. |
| 1. Eligible Goods and Services | * 1. The Plant and Installation Services to be supplied under the Contract and financed by the Bank may have their origin in any country in accordance with Section V, Eligible Countries. |
|  | * 1. For purposes of ITP 5.1 above, “origin” means the place where the Plant, or component parts thereof are mined, grown, produced or manufactured, and from which the services are provided. Plant components are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that is substantially in its basic characteristics or in purpose or utility from its components. |

B. Contents of RFP Document

|  |  |
| --- | --- |
| 1. Sections of RFP Document | * 1. The RFP Document consists of Parts 1, 2, and 3, which include all the sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITP 8: |
|  | **PART 1 Request for Proposal Procedures**  Section I - Instructions to Proposers (ITP)  Section II - Proposal Data Sheet (**PDS**)  Section III - Evaluation and Qualification Criteria  Section IV - Proposal Forms  Section V - Eligible Countries  Section VI - Fraud and Corruption  **PART 2 Employer’s Requirements**  Section VII - Employer’s Requirements  **PART 3 Contract**  Section VIII - General Conditions of Contract  Section IX - Particular Conditions of Contract  Section X - Contract Forms   * 1. The Specific Procurement Notice, Notice of Request for Proposals (RFP) issued by the Employer is not part of this RFP Document.   2. Unless obtained directly from the Employer, the Employer is not responsible for the completeness of the document, responses to requests for clarification, the Minutes of the pre-Proposal meeting (if any), or Addenda to the RFP Document in accordance with ITP 8. In case of any contradiction, documents obtained directly from the Employer shall prevail.   3. The Proposer is expected to examine all instructions, forms, terms, and specifications in the RFP Document and to furnish with its Proposal all information or documentation as is required by the RFP Document. |
| 1. Clarification of RFP Document, Site Visit, Pre-Proposal Meeting | * 1. A Proposer requiring any clarification of the RFP Document shall contact the Employer in writing at the Employer’s address specified **in the PDS** or raise its enquiries during the pre-Proposal meeting if provided for in accordance with ITP 7.4. The Employer will respond to any request for clarification, provided that such request is received prior to the deadline for submission of Proposals within a period specified **in the PDS.** The Employer shall forward copies of its response to all Proposers who have acquired the RFP Document in accordance with ITP 6.3, including a description of the inquiry but without identifying its source. If so specified **in the PDS**, the Employer shall also promptly publish its response at the web page identified **in the PDS**. Should the Employer deem it necessary to amend the RFP Document as a result of a request for clarification, it shall do so following the procedure under ITP 8 and ITP 27.1 |
|  | * 1. The Proposer is advised to visit and examine the site where the Plant is to be installed and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the Proposal and entering into a contract. The costs of visiting the site shall be at the Proposer’s own expense.   2. The Proposer 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 Proposer, 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.   3. The Proposer’s designated representative is invited to attend a pre-Proposal meeting and/or a site visit, if provided for **in the PDS**. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage. Nonattendance at the pre-Proposal meeting will not be a cause for disqualification of a Proposer.   4. The Proposer is requested to submit any questions in writing, to reach the Employer not later than one week before the meeting.   5. Minutes of the pre-Proposal meeting, including the text of the questions raised without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Proposers who have acquired the RFP Document in accordance with ITP 6.3. Any modification to the RFP Document that may become necessary as a result of the pre-Proposal meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to ITP 8 and not through the minutes of the pre-Proposal meeting. |
| 1. Amendment of RFP Document | * 1. At any time prior to the deadline for submission of Proposals, the Employer may amend the RFP Document by issuing addenda.   2. Any addendum issued shall be part of the RFP Document and shall be communicated in writing to all who have obtained the RFP Document from the Employer in accordance with ITP 6.3. The Employer shall also promptly publish the addendum on the Employer’s web page in accordance with ITP 7.1.   3. To give prospective Proposers reasonable time in which to take an addendum into account in preparing their Proposals, the Employer may, at its discretion, extend the deadline for the submission of Proposals, pursuant to ITP 19.2 and ITP 36.2. |
| 1. Cost of Proposals | * 1. The Proposer shall bear all costs associated with the preparation and submission of its Proposal, and the Employer will in no case be responsible or liable for those costs. |
| 1. Contacting the Employer | * 1. From the time of Proposal opening to the time of Contract award, if any Proposer wishes to contact the Employer on any matter related to the Proposal, it should do so in writing. |
|  | * 1. If a Proposer tries to directly influence the Employer or otherwise interfere in the Proposal evaluation process and the Contract award decision, its Proposal may be rejected. |
| 1. Language of Proposals | * 1. Unless otherwise specified **in the PDS**, the Proposal prepared by the Proposer and all correspondence and documents related to the Proposal exchanged by the Proposer and the Employer shall be written in the English Language, or, **if the PDS** so provides, in either one of two languages specified there. Any printed literature furnished by the Proposer as part of its Proposal may be in a language not specified **in the PDS,** as long as such literature is accompanied by a translation of its pertinent passages into the language of the Proposal, in which case, for purposes of interpretation of the Proposal, the translation shall govern. |

C. Preparation of First Stage Technical Proposals

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| 1. Documents Comprising the Proposal | * 1. The First Stage technical proposal submitted by the Proposer shall comprise the following: |
|  | 1. Letter of First Stage Proposal; |
|  | 1. alternative technical proposals in accordance with ITP 13; |
|  | 1. written confirmation authorizing the signatory of the Proposal to commit the Proposer, in accordance with ITP 17.2; |
|  | 1. documentary evidence established in accordance with ITP 14 that the Plant and Installation Services offered by the Proposer in its Proposal or in any alternative Proposal are eligible; |
|  | 1. documentary evidence that the proposer continues to be eligible and qualified to perform the contract if its Proposal is accepted; |
|  | 1. documentary evidence in accordance with ITP 15 that the Plant and Installation Services offered by the Proposer conform to the RFP Document; |
|  | 1. Proposers shall give details of all departures in their First Stage Technical- Proposal with respect to the contractual terms and conditions and/or to the required technical features specified in the performance and/or functional requirements, that they would like the Employer to consider during the evaluation of First Stage Technical Proposals and any Clarification Meeting(s) with the Proposer, pursuant to ITP 23 through ITP 26; |
|  | 1. in the case of a technical proposal submitted by a JV, JV agreement, or letter of intent to enter into a JV including a draft agreement, indicating at least the parts of the Plant to be executed by the respective partners; |
|  | 1. list of subcontractors, in accordance with ITP 15.5; and |
|  | 1. any other document required in the PDS. |
| 1. Alternative Technical Proposals | * 1. Proposers shall note that they are permitted to propose technical alternatives with their First Stage technical proposals in addition to or in lieu of the requirements specified in the RFP Documents, provided they can document that the proposed technical alternatives are to the benefit of the Employer, that they fulfill the principal objectives of the contract, and that they meet the basic performance and technical criteria specified in the RFP Documents.   2. Any alternative technical proposal submitted by Proposers as part of their First Stage technical proposal will be the subject of clarification with the Proposer, pursuant to ITP 26. |
| 1. Documents Establishing the Eligibility of the Plant | * 1. To establish the eligibility of the Plant and Installation Services in accordance with ITP 5, Proposers shall provide documentary evidence consisting of a statement on the country of origin of the Plant and Installation Services offered. |
| 1. Documents Establishing Conformity of the Plant and Installation Services | * 1. Pursuant to ITP 12.1 (f), the Proposer shall furnish, as part of its Proposal documents establishing the conformity to the RFP Documents of the Plant that the Proposer proposes to design, supply and install under the Contract.   2. The documentary evidence of the conformity of the Plant and Installation Services with the RFP documents may be in the form of literature, drawings and data, and shall include:   (a) detailed description of the essential technical and performance characteristics of the Plant and Installation Services, including the functional guarantees of the proposed Plant and Installation Services, in response to the Performance and/or Functional Requirements. The functional guarantees of the proposed Plant and Installation Services shall be stated in the applicable form in Section IV Proposal Forms;  (b) a list giving full particulars, including available sources, of all spare parts, special tools, etc., necessary for the proper and continuing functioning of the Plant for the period named **in the PDS,** following completion of Plant and Installation Services in accordance with provisions of contract; and  (c) Adequate evidence demonstrating the substantial responsiveness of the Plant and Installation Services to the Performance and/or Functional Requirements. Proposers shall note that standards for workmanship, materials and equipment designated by the Employer in the RFP Document are intended to be descriptive (establishing standards of quality and performance) only and not restrictive. The Proposer may substitute alternative standards, in its technical proposal, provided that it demonstrates to the Employer’s satisfaction that the substitutions are substantially equivalent or superior to the standards designated in the Performance / Functional requirements.   * 1. References to brand names or model numbers or national or proprietary standards designated by the Employer in the RFP Documents are intended to be descriptive and not restrictive. The Proposer may substitute alternative brand/model names or standards in its Proposal, provided that it demonstrates to the Employer’s satisfaction that the use of the substitute(s) will result in the Plant being able to perform substantially equivalent to or better than that specified in the Employer’s Requirements~~.~~   2. For their Second Stage Combined Technical and Financial Proposals, the invited Proposers are expected to offer the same brands, models, Subcontractors and other material provisions as proposed in the First Stage Technical Proposal, unless changes are explicitly permitted or required in the Proposer-specific memorandum entitled “Changes Required Pursuant to First Stage Evaluation” pursuant to ITP 26.7, or are implied or triggered by Addenda to the RFP Documents issued in the Second Stage. Proposers that deviate from their First Stage Technical Proposals without specific endorsement by their memorandum or without a reason clearly established by Addenda issued in the Second Stage, place their Proposal at risk of being rejected.   3. The Proposer shall be responsible for ensuring that any subcontractor proposed complies with the requirements of ITP 4, and that any Plant or Installation Services to be provided by the subcontractor comply with the requirements of ITP 5 and ITP 15.1. |
| 1. First Stage Technical- Proposal Submission Form | * 1. The Proposer shall complete the First Stage Technical Proposal Submission Form furnished in the Sample Proposal Forms (Section IV) in the manner and detail indicated in this section and submit this form with the Proposal. |
| 1. Format and Signing of First Stage Proposal | * 1. The Proposer shall prepare an original and the number of copies/sets of the Proposal **specified in the PDS**, clearly marking each one as: “First Stage Technical Proposal – Original,” “First Stage Technical Proposal – Copy No. 1,” “First Stage TECHNICAL PROPOSAL -- Copy No. 2,” etc., as appropriate. In the event of any discrepancy between the original and any copy, the original shall govern. |
|  | * 1. The original and all copies of the Proposal shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Proposer. The authorization must be in writing **as specified in the PDS** and included in the Proposal pursuant to ITP 12.1 (c). The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Proposal where entries or amendments have been made shall be signed or initialed by the person signing the Proposal.   2. The Proposal shall contain no interlineations, erasures, or overwriting, except to correct errors made by the Proposer, in which case such corrections shall be initialed by the person or persons signing the Proposal.   3. Signing and submission of a First Stage Technical Proposal shall not bind or obligate the Proposer to submit a Second Stage Combined Technical and Financial Proposal. |

D. Submission of First Stage Technical Proposals

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| 1. Sealing and Marking of First Stage Technical Proposal | * 1. The Proposer shall seal the original First Stage Technical Proposal and each copy of the Proposal in separate envelopes, each containing the documents specified in ITP 12, and shall mark the envelopes as “First Stage Technical Proposal – Original,” and “First Stage Technical Proposal – Copy No.  [number],” all duly marked as required in ITP 17.1. The envelopes shall be sealed in an outer envelope. |
|  | * 1. The inner and outer envelopes shall:      1. bear the name and address of the Proposer;      2. be addressed to the Employer, at the address given **in the PDS** for ITP 19.1; and      3. bear the Contract(s) name, the Invitation for Proposals (RFP) title and number, as specified **in the PDS** for ITP 1.1, and the statement “First Stage Technical Proposal – Do Not Open Before [time and date],” to be completed with the time and date specified **in the PDS** for ITP 19.1.   2. If the outer envelope is not sealed and marked as required by ITP 18.1 and ITP 18.2, the Employer will assume no responsibility for the Proposal’s misplacement or premature opening. |
| 1. Deadline for Submission of First Stage Technical- Proposals | * 1. First Stage Technical Proposals must be received by the Employer at the address specified, and no later than the time and date specified, **in the PDS**. Proposers have the option of submitting their Proposals electronically if specified **in the PDS**. |
|  | * 1. The Employer may, at its discretion, extend the deadline for submission of Proposals by amending the RFP Documents in accordance with ITP 8.3, in which case all rights and obligations of the Employer and Proposers will thereafter be subject to the deadline as extended. |
| 1. Late Proposals | * 1. The Employer shall not consider any Proposal that arrives after the deadline for submission of Proposals, in accordance with ITP 19. Any Proposal received by the Employer after the deadline for submission of Proposals shall be declared late, rejected, and returned unopened to the Proposer. |
| 1. Withdrawal, Substitution, and Modification of Proposals | * 1. A Proposer may withdraw, substitute, or modify its Proposal after it has been submitted, and before the deadline for submission of proposals, by sending a written notice, duly signed by an authorized representative, including a copy of the authorization in accordance with ITP 17.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Proposal must accompany the respective written notice. All notices must be:      1. prepared and submitted in accordance with ITP 17 and ITP 18 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked “First Stage Proposal - Withdrawal,” “First Stage Proposal - Substitution,” “First Stage Proposal - Modification;” and      2. received by the Employer prior to the deadline prescribed for submission of Proposals, in accordance with ITP 19. |

E. Opening and Evaluation of First Stage TECHNICAL PROPOSALS

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| 1. Opening of First Stage Technical Proposals by Employer | * 1. Except as in the cases specified in ITP 20 and ITP 21, the Employer shall conduct the Proposal opening in public, in the presence of Proposers` designated representatives and anyone who chooses to attend, and at the address, date and time specified **in the PDS**. Any specific electronic Proposal opening procedures, if permitted, shall be as specified **in the PDS**.   2. First, the written notice of withdrawal in the envelopes marked “First Stage Proposal - Withdrawal” shall be opened and read out and the envelope with the corresponding Proposal shall not be opened, but returned to the Proposer. No Proposal withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Proposal opening.   3. Next, envelopes marked “Substitution” shall be opened and read out and exchanged with the corresponding First Stage Technical Proposal being substituted, and the substituted Proposal shall not be opened, but returned to the Proposer. No Proposal substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Proposal opening.   4. Envelopes marked “Modification” shall be opened and read out with the corresponding Proposal. No Proposal modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Proposal opening.   5. Next, all remaining envelopes shall be opened one at a time, reading out the names of all Proposers, and other such details as the Employer, at its discretion, may consider appropriate and recorded in the minutes of the First Stage Technical Proposal opening. The Employer will promptly convey these minutes in writing to all Proposers that met the deadline for submitting Proposals.   6. Only Proposals that are opened and read out at Proposal opening shall be considered further. The Employer shall neither discuss the merits of any Proposal nor reject any Proposal (except for late Proposals, in accordance with ITP 20.1). |
| 1. Determination of Responsiveness of First Stage Technical Proposals | * 1. The Employer will examine the First Stage Technical Proposals, including any alternatives submitted by Proposers, to determine whether they are complete, have been properly signed, and are generally in order. |
|  | * 1. The Employer will also determine if the Proposals contain departures from the requirements of the RFP Documents (e.g., documentary evidence, responsiveness of the technical proposal, etc.) in such numbers or of such nature that the Proposal cannot reasonably be expected to become responsive within the framework of the two-stage process. In this case, the Employer, at its discretion, may exclude the Proposal from further consideration and not issue a Request for Proposals - Second Stage to this Proposer. For all other Proposals, the Employer, through the detailed First Stage Technical Proposal evaluation process, will identify and communicate to the Proposers, pursuant to ITP  26, all those areas for which their Proposals depart from the requirements |
| 1. Technical Evaluation of First Stage Technical Proposals | * 1. The Employer will carry out a detailed technical evaluation of each First Stage Technical Proposal that was determined to be responsive in accordance with to ITP 23, in order to determine whether the technical aspects of the Proposal are responsive to the requirements set forth in the RFP Documents. In order to reach such a determination, the Employer will examine the information supplied by the Proposers, pursuant to ITP 12 to ITP 15, and in response to other requirements in the RFP Documents, taking into account the following factors: |
|  | * + 1. overall completeness and compliance with the Employer’s Performance and/or Functional Requirements; the technical merits of any alternatives offered, conformity of the Plant and Installation Services offered with specified performance criteria, including conformity with the specified minimum (or maximum, as the case may be) requirement corresponding to each functional guarantee, as indicated in the Employer Requirements and in Section III Evaluation and Qualification Criteria;     2. suitability of the Plant and Installation Services offered in relation to the environmental and climatic conditions prevailing at the site; and quality, function and operation of any process control concept included in the Proposal;     3. compliance with the time schedule called for by the Implementation Schedule and any alternative time schedules offered by Proposers, as evidenced by a milestone schedule provided in the Technical Proposal;     4. long-term availability of mandatory and recommended spare parts and maintenance services;     5. any other relevant technical factors that the Employer deems necessary or prudent to take into consideration as specified in Section III- Evaluation and Qualification Criteria; and     6. any proposed deviations in the Proposal to the contractual provisions stipulated in the RFP Documents.   1. The Employer will also review complete alternative technical proposals, if any, offered by the Proposer, pursuant to ITP 13, to determine whether such alternatives may constitute an acceptable basis for a Second Stage Proposal to be submitted on its own merits. |
| 1. Evaluation of Proposer’s Qualification | * 1. The Employer shall ascertain to its satisfaction that, on the basis of updated documentary evidence submitted in accordance with **ITP 12.1 (e),** andSection III- Evaluation and Qualification Criteria the Proposer continues to be qualified to satisfactorily perform the Contract. If there are issues with the continued qualification of the proposer, the Employer may explore ways to address the issues with the Proposer during clarification meeting(s) pursuant **to ITP 26**. |
| 1. Clarification of First Stage Technical Proposals and Review of Proposers’ Proposed Deviations and Alternative Solutions | * 1. The Employer may conduct clarification Meeting/Meetings with each responsive proposer to clarify aspects of the First Stage Technical Proposals that require explanation and to review any Proposer’s proposed alternative solutions or reservations to the commercial or contractual provisions of the RFP Documents. The purpose of the meetings shall be broad enough to permit discovery and clarification of technical aspects as well as commercial terms and conditions. Such a meeting shall review suitability of the proposed solutions.   2. During the discovery and clarification meetings, the Employer will be able to engage in a process to refine its requirements and identify appropriate changes to the technical and commercial terms. The Proposer may also bring to the Employer’s attention any changes it would like to make to its First Stage Technical proposal in the Second Stage Combined Technical and Financial Proposal. |
|  | * 1. There is no obligation upon the Proposer to attend a Clarification Meeting. If the Proposer is unable, or declines, to attend a Clarification Meeting, the Employer will undertake a reasonable effort to achieve the required clarification by correspondence with the Proposer or by other means such as audio or videoconference as may be available. Any reduction in the scope for obtaining complete clarification of a First Stage Technical Proposal due to having to use these alternative methods is at the Proposer’s risk of its Proposal being rejected.   2. The Employer will advise the Proposer, pursuant to **ITP 12.1 (g)**, of any deviations the Proposer made or proposed in the First Stage Technical Proposal that the Employer finds:      1. unacceptable and that must be withdrawn in the Second Stage Combined Technical and Financial Proposal;      2. acceptable and that will be incorporated into the RFP Documents by way of an Addendum that shall be sent to all Proposers invited to submit a Second Stage Proposal.   If any deviation is waived for a proposer, the Employer will ensure that this deviation is also waived for all other Proposers, as applicable. |
|  | * 1. Each Clarification Meeting must be attended by a person or persons that, through a written power of attorney, is/are duly authorized to represent Proposer in the discussions and to reach agreement with the Employer on the specific changes in the Proposer’s First Stage Technical Proposal that are required if the Proposer is to submit a Second Stage Technical and Financial Proposal. The Employer will not be responsible for any costs incurred by the Proposer’s party for and in attending the Clarification Meeting(s). An invitation for, and attendance at, Clarification Meetings does not necessarily imply that the Proposer will be invited for the second stage. However, if Clarification Meetings are held, all Proposers that have been determined to be responsive in accordance with ITP 23 and ITP 24 will be offered the opportunity of such a meeting, even if their Proposals, in the Employer’s opinion, do not require face to face clarification.   2. Neither the Proposer-specific memorandum pursuant to **ITP 26.7,** nor any minutes written of the Clarification Meeting(s) or any correspondence exchanged between a specific Proposer and the Employer, will be shared with other Proposers. Except for the memorandum, no requirements upon the Proposer’s Second Stage Combined Technical and Financial Proposal will be implied from any additional Proposer-specific minutes of meetings or correspondence. However, Employer and Proposer might use these documents, as appropriate, as clarification information in the second stage of Proposal preparation or evaluation, respectively. |
|  | * 1. At the end of the clarification process, the Employer will prepare a Proposer-specific memorandum entitled “Changes Required Pursuant to First Stage Evaluation” and conveyed this to the relevant Proposer as part of the Invitation for Proposals – Second Stage Combined Technical and Financial Proposal.   The Employer will record in each Proposer-specific memorandum:   * + 1. all changes to the First Stage Technical Proposal and further elaborations required in the Second Stage Combined Technical and Financial Proposal;     2. list any deviations pursuant to ITP 12.1 (g) and ITP 26.4 which are unacceptable to the Employer and which the Proposer must withdraw in the Second Stage Combined Technical and Financial Proposal;     3. any Subcontractors which the Proposer must delete or replace, including justification for the deletion/replacement; and     4. if there is no requirement for any Proposer-specific changes for a Proposer, the Request for Proposals - Second Stage will state so. |

F Invitation to Second Stage Combined Technical and Financial Proposals

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| 1. Invitation to Submit Second Stage Combined Technical and Financial Proposals | * 1. Having concluded the First Stage Technical evaluation (including any Clarification Meetings), the Employer:      1. may issue an Addendum to the RFP Documents amending, among others, **PDS**, the PCC, and the Technical Requirements with the objective of improving competition without compromising the essential performance and/functional requirements (e.g., acceptable deviations brought to the Employer’s attention by one or more Proposers; sharpened formulation of certain Technical Requirements; adjustments to the Implementation Schedule; etc.): |
|  | * + 1. will either:  1. invite the Proposer to submit Second Stage Technical and Financial Proposal, with an updated technical Proposal (reflecting the Proposer-specific memorandum entitled “Changes Required Pursuant to First Stage Technical Evaluation” and/or in Addenda to the RFP Documents) and a corresponding financial Proposal, or 2. notify the Proposer that its Proposal has been rejected on the grounds of being non-responsive, or that the Proposer does not continue to meet the minimum qualification requirements set forth in the Initial Selection Document and in Section III- Evaluation and Qualification Criteria. |
|  | * 1. Proposers invited to submit Second Stage Technical and Financial Proposals are required to promptly acknowledge to the Employer the receipt of the Invitation for Proposals -- Second Stage Technical and Financial Proposal and the attachments, if any, listed in it.   2. The deadline and address for the submission of Second Stage Technical and Financial Proposals will be specified in the Invitation for Proposals – Second Stage Technical and Financial Proposal. Similarly, required Proposal-securing Declaration or the amount of the required Proposal Security will also be communicated in the same Invitation.   3. Proposers are not allowed to form a Joint Venture with other Proposers, nor change the partner(s) or structure of the Joint Venture without the Employer’s approval. |

G Preparation of Second Stage Technical and Financial Proposals

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| 1. Documents Comprising the Second Stage Technical and Financial Proposal | * 1. The Proposal shall comprise two Parts, namely the Technical Part and the Financial Part. These two Parts shall be submitted simultaneously in two separate sealed envelopes. One envelope shall contain only information relating to the Technical Part and the other, only information relating to the Financial Part.   2. The Technical Part shall comprise the following:  1. **Letter of Proposal**: Second Stage - Technical Part, in accordance to ITP 29.1; 2. **Security**: Proposal Security or Proposal Securing declaration, in accordance with ITP 32; 3. **Authorization**: written confirmation authorizing the signatory of the Proposal to commit the Proposer, in accordance with ITP 34.2; 4. the updated First Stage technical proposal, comprising any modifications required to the first stage technical proposal as recorded in the Memorandum entitled “Changes Required Pursuant to First Stage Evaluation”; 5. documentary evidence established in accordance with ITP 14 that any additional or varied Plant and Installation Services offered by the Proposer, and not included in the First Stage technical proposal, are eligible; 6. documentary evidence regarding any changes that may have occurred between the time of submitting the First and Second Stage Proposals that have any material effect on the Proposer’s eligibility and qualifications to perform the Contract; 7. documentary evidence establishing that any additional or varied facilities to be supplied and installed by the Proposer, in accordance with the requirements of the Memorandum entitled “Changes Required Pursuant to First Stage Evaluation”, are technically acceptable. The documentary evidence of the conformity of the Plant and Installation Services to the requirements of the Memorandum entitled “Changes Required Pursuant to First Stage Evaluation” may be in the form of literature, drawings and data. The functional guarantees of any additional or varied Plant and Installation Services shall be stated in the applicable form in Section IV Proposal Forms; 8. If the Proposer proposes to engage any Subcontractors additional to or different from those named in its First Stage technical proposal for major items of supply or services which the Proposer intends to purchase or subcontract, the Proposer shall give details of the name and nationality of the proposed Subcontractors, including manufacturers, for each of those items. In addition, the Proposer shall include in its Proposal information establishing compliance with the requirements specified by the Employer for these items; and 9. other documentation and information which may be specified in the PDS.    1. The First Stage Proposal on which the Second Stage Proposal is based, while not having to be resubmitted, remains an implied, integral part of the Second Stage Proposal. The Proposal validity period pursuant to ITP 33 will include any parts or provisions of the First Stage Proposal as referenced, assumed or implied by the Second Stage Proposal. |
|  | * 1. **The Financial Part shall comprise the following:**      1. **Letter of Proposal** – Second Stage - Financial Part: prepared in accordance with ITP 29;      2. **Price Schedules:** completed prepared in accordance with ITP 30 and ITP 31;      3. **Financial Disclosure:** The Proposer shall furnish in the Letter of Proposal information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Proposal; and      4. **Other:** any other document required in the **PDS**. |
| 1. Letter of Proposal, and Schedules | * 1. The Proposer shall complete the Letter of Proposal Second Stage – Technical Part and Letter of Proposal Second Stage - Financial Part using the relevant forms furnished in Section IV, Proposal Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITP 17.3. All blank spaces shall be filled in with the information requested. |
| 1. Proposal Prices | * 1. Unless otherwise **specified in the PDS,** Proposers shall quote for the entire Plant and Installation Services on a “single responsibility” basis such that the total Proposal price covers all the Contractor’s obligations mentioned in or to be reasonably inferred from the RFP Document in respect of the design, manufacture, including procurement and subcontracting (if any), delivery, construction, installation and completion of the Plant. This includes all requirements under the Contractor’s responsibilities for testing, pre-commissioning and commissioning of the Plant and, where so required by the RFP Document, the acquisition of all permits, approvals and licenses, etc.; the operation, maintenance and training services and such other items and services as may be specified in the RFP Document, all in accordance with the requirements of the General Conditions. |
|  | * 1. Proposers shall give a breakdown of the prices in the manner and detail called for in the Price Schedules included in Section IV, Proposal Forms. |
|  | * 1. Depending on the scope of the Contract, the Price Schedules may comprise up to the six (6) schedules listed below. Separate numbered Schedules included in Section IV, Proposal Forms, from those numbered 1-4 below, shall be used for each of the elements of the Plant and Installation Services. The total amount from each Schedule corresponding to an element of the Plant and Installation Services shall be summarized in the schedule titled Grand Summary (Schedule 5) giving the total Proposal price(s) to be entered in the Letter of Proposal Second Stage – Financial Part.   Schedule No. 1 Plant (including Mandatory Spare Parts) Supplied from Abroad  Schedule No. 2 Plant (including Mandatory Spare Parts) Supplied from within the Employer’s Country  Schedule No. 3 Design Services  Schedule No. 4 Installation Services  Schedule No. 5 Grand Summary (Schedule Nos. 1 to 4)  Schedule No. 6 Recommended Spare Parts  Proposers shall note that the Plant and equipment included in Schedule Nos. 1 and 2 above **exclude** materials used for civil, building and other construction works. All such materials shall be included and priced under Schedule No. 4, Installation Services. |
|  | * 1. In the Schedules, Proposers shall give the required details and a breakdown of their prices as follows:   (a) Plant to be supplied from abroad (Schedule No. 1):  (i) The price of the Plant shall be quoted CIP-named place of destination basis as **specified in the PDS;**  (b) Plant manufactured within the Employer’s country (Schedule No. 2):   1. The price of the Plant shall be quoted on an EXW Incoterm basis (such as “ex-works,” “ex-factory,” “ex-warehouse” or “off-the-shelf,” as applicable),   (ii) Sales tax and all other taxes payable in the Employer’s country on the Plant if the contract is awarded to the Proposer;  (c) Design Services (Schedule No. 3)*;*  (d) Installation and other Services shall be quoted separately (Schedule No. 4) and shall include rates or prices for local transportation to named place of final destination as **specified in the PDS,** insurance and other services incidental to delivery of the Plant, all labor, contractor’s equipment, temporary works, materials, consumables and all matters and things of whatsoever nature, including operations and maintenance services, the provision of operations and maintenance manuals, training, etc., where identified in the RFP Documents, as necessary for the proper execution of the installation and other services, including all taxes, duties, levies and charges payable in the Employer’s country as of twenty-eight (28) days prior to the deadline for submission of Proposals;  (e) Recommended spare parts shall be quoted separately (Schedule 6) as specified in either subparagraph (a) or (b) above in accordance with the origin of the spare parts. |
|  | * 1. The terms EXW, CIP, and other similar terms shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce, as specified **in the PDS**. |
|  | * 1. The prices shall be either fixed or adjustable as specified **in the PDS**. |
|  | * 1. In the case of **Fixed Price**, prices quoted by the Proposer shall be fixed during the Proposer’s performance of the contract and not subject to variation on any account. A Proposal submitted with an adjustable price quotation will be treated as non-responsive and rejected. |
|  | * 1. In the case of **Adjustable Price**, prices quoted by the Proposer shall be subject to adjustment during performance of the contract to reflect changes in the cost elements such as labor, material, transport and Contractor’s equipment in accordance with the procedures specified in the corresponding Appendix to the Contract Agreement. A Proposal submitted with a fixed price quotation will not be rejected, but the price adjustment will be treated as zero. Proposers are required to indicate the source of labor and material indices in the corresponding Form in Section IV, Proposal Forms. |
|  | * 1. If so indicated in ITP 1.1, Proposals are being invited for individual lots (contracts) or for any combination of lots (packages). Proposers wishing to offer any price reduction (discount) for the award of more than one Contract shall specify in their Letter of Proposal the price reductions applicable to each package, or alternatively, to individual Contracts within the package, and the manner in which the price reductions will apply. **However, discounts that are conditional on the award of more that one lot will not be considered for proposal evaluation purpose..** |
|  | * 1. Proposers wishing to offer any unconditional discount shall specify in their Letter of Proposal the offered discounts and the manner in which price discounts will apply. |
| 1. Proposal Currencies | * 1. The currency (ies) of the Proposal and currencies of payment shall be the same. The Proposer shall quote in the currency of the Employer’s Country the portion of the Proposal price that corresponds to expenditures incurred in the currency of the Employer’s Country, unless otherwise specified **in the PDS**.   2. The Proposer may express the Proposal price in any currency. If the Proposer wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly but shall use no more than three foreign currencies in addition to the currency of the Employer’s Country.   3. Proposers may be required by the Employer to justify, to the Employer’s satisfaction, their local and foreign currency requirements. |
| 1. Securing the Proposal | * 1. The Proposer shall furnish as part of its Proposal, either a Proposal-Securing Declaration or a Proposal Security as specified **in the PDS**, in original form and, in the case of a Proposal Security, in the amount and currency specified **in the PDS**. |
|  | * 1. A Proposal-Securing Declaration shall use the form included in Section IV, Proposal Forms. |
|  | * 1. If a Proposal Security is specified pursuant to ITP 32.1, the Proposal security shall be a demand guarantee in any of the following forms at the Proposer’s option: |
|  | * 1. an unconditional guarantee issued by a bank or a non-bank financial institution (such as an insurance, bonding or surety company); |
|  | * 1. an irrevocable letter of credit; |
|  | * 1. a cashier’s or certified check; or |
|  | * 1. another security indicated in the **PDS**, |
|  | 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 Proposal submission, that a correspondent financial institution is not required. |
|  | * 1. In the case of a bank guarantee, the Proposal Security shall be submitted either using the Proposal Security Form included in Section IV, Proposal Forms or in another substantially similar format approved by the Employer prior to Proposal submission. In either case, the form must include the complete name of the Proposer. The Proposal Security shall be valid for twenty-eight days (28) beyond the original validity period of the Proposal, or beyond any period of extension if requested under ITP 33.2. |
|  | * 1. If a Proposal Security or a Proposal-Securing Declaration is specified pursuant to ITP 32.1, any Proposal not accompanied by a substantially responsive Proposal Security or Proposal-Securing Declaration shall be rejected by the Employer as non-responsive. |
|  | * 1. The Proposal Security of the successful Proposer shall be returned as promptly as possible once the successful Proposer has signed the Contract and furnished the required Performance Security. |
|  | * 1. The Proposal Security may be forfeited or the Proposal-Securing Declaration executed:  1. if a Proposer withdraws its Proposal during the period of Proposal validity specified by the Proposer on the Letter of Proposal or any extension thereto provided by the Proposer; or 2. if the successful Proposer fails to:  sign the Contract in accordance with ITP 64; orfurnish a performance security in accordance with ITP 65. |
|  | * 1. The Proposal Security or the Proposal-Securing Declaration of a JV shall be in the name of the JV that submits the Proposal. If the JV has not been legally constituted into a legally enforceable JV at the time of submission of Proposals, the Proposal Security or the Proposal-Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITP 4.1. |
|  | * 1. If a Proposal Security is not required **in the PDS**, and:      + - 1. if a Proposer withdraws its Proposal during the period of Proposal validity specified by the Proposer on the Letter of Proposal; or          2. if the successful Proposer fails to:  sign the Contract in accordance with ITP 64; orfurnish a performance security in accordance with ITP 65. the Employer may, if provided for in the **PDS**, declare the Proposer disqualified to be awarded a contract by the Employer for a period of time as stated in the **PDS**. |
| 1. Period of Validity of Proposals | * 1. Proposals shall remain valid, at a minimum, for the period specified in the **PDS** after the deadline date for Proposal submission prescribed by the Employer, pursuant to ITP 36. A Proposal valid for a shorter period shall be rejected by the Employer as non-responsive. |
|  | * 1. In exceptional circumstances, prior to expiry of the Proposal validity period, the Employer may request that the Proposers extend the period of validity for a specified additional period.  The request and the responses to the request shall be made in writing. A Proposer may refuse the request without risking execution of the Proposal-Securing Declaration or forfeiting the Proposal Security. Except as provided in ITP 33.3, a Proposer agreeing to the request will not be required or permitted to modify its Proposal, but will be required to ensure that the Proposal Security is extended for a correspondingly longer period, pursuant to ITP 32.4.   2. In the case of fixed price contracts, if the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial Proposal validity, the contract price will be adjusted as specified **in the PDS**. Proposal evaluation will be based on the Proposal prices without taking into consideration the above correction. |
| 1. Format and Signing of Second Stage Technical and Financial Proposal | * 1. The Proposer shall prepare an original and the number of copies/sets of the Proposal specified in the **PDS**, clearly marking each one as: “Stage 2 Proposal – Original” and “Stage 2 Proposal – copy”. In the event of any discrepancy between them, the original shall govern. |
|  | * 1. The original and all copies of the Proposal, each consisting of the documents listed in ITP 28.2, shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Proposer. The authorization must be in writing as **specified in the PDS**, and included in the Proposal pursuant to ITP 28.2 (c). The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Proposal where entries or amendments have been made shall be signed or initialed by the person signing the Proposal.   2. In case the Proposer is a JV, the Proposal 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.   3. The Proposal shall contain no interlineations, erasures, or overwriting, except to correct errors made by the Proposer, in which case such corrections shall be initialed by the person or persons signing the Proposal.   4. The Proposer shall furnish in the Technical and Financial Proposal Submission Forms (Section IV) information regarding commissions or gratuities, if any, paid or to be paid to agents relating to this procurement and to the execution of the Contract should the Proposer be successful. |

H. Submission of Second Stage Technical and Financial Proposals

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| 1. Submission, Sealing and Marking of Proposals | * 1. Unless the **PDS** states that Proposals are to be submitted electronically the following procedures shall apply.   The Proposer shall deliver the Proposal in two separate, sealed envelopes. One envelope containing the Technical Part and the other the Financial Part. These two envelopes shall be enclosed in a sealed outer envelope and clearly marked “Stage 2 Proposal - Original”.  In addition, the Proposer shall prepare copies of the Proposal, in the number specified in the **PDS**. Copies of the Technical Part shall be placed in a separate sealed envelope marked “Copies: Stage 2 Proposal Technical Part”. Copies of the Financial Part shall be placed in a separate sealed envelope marked “Copies: Stage 2 Proposal Financial Part”. The Proposer shall place both of these envelopes in a separate, sealed outer envelope marked “Stage 2 Proposal - Copies”. In the event of any discrepancy between the original and the copies, the original shall prevail. |
| 1. Deadline for Submission of Proposals | * 1. Stage 2 Proposals must be received by the Employer at the address and no later than the date and time indicated in the Letter of Invitation to submit Stage 2 Proposals |
|  | * 1. The Employer may, at its discretion, extend this deadline for submission of Proposals by amending the RFP Documents in accordance with ITP 8.3, in which case all rights and obligations of the Employer and Proposers will thereafter be subject to the deadline as extended. |
| 1. Late Proposals | * 1. Any Proposal received by the Employer after the Proposal submission deadline as specified in the Invitation for Proposals – Second Stage Combined Technical and Financial Proposal, will be rejected and returned unopened to the Proposer. |
| 1. Withdrawal, Substitution, and Modification of Stage 2 proposals | * 1. A Proposer may withdraw, substitute, or modify its Proposal after it has been submitted, and before the deadline for submission of proposals, by sending a written notice, duly signed by an authorized representative, including a copy of the authorization in accordance with ITP 34.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Proposal must accompany the respective written notice. All notices must be:  1. prepared and submitted in accordance with ITP 34 and ITP 35 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked “Stage  *2* Proposal - Withdrawal”; “Stage  *2* Proposal – Substitution (“Technical Part” and/or “Financial Part” )”; “Stage 2 Proposal – Modification (“Technical Part” and/or “Financial Part” );” and 2. received by the Employer prior to the deadline prescribed for submission of Proposals, in accordance with ITP 36. |

I. Second Stage: Public Opening of Technical Parts

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| 1. Public Opening Second Stage of Technical Part | * 1. The Employer shall conduct the Second Stage public opening of Technical Parts in the presence of Proposers` designated representatives and anyone who chooses to attend, and at the address, date and time specified in the request to submit Second Stage Proposals. Any specific electronic Proposal opening procedures required if permitted, shall be as specified **in the PDS**: |
|  | 1. first, the written notice of withdrawal in the envelopes marked “Stage 2 Proposal - Withdrawal” shall be opened and read out and the envelope with the corresponding Proposal shall not be opened, but returned to the Proposer. No Proposal withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Proposal opening; 2. next, the envelopes marked “Stage 2 Proposal – Substitution-Technical Part” shall be opened and read out and exchanged with the corresponding Proposal being substituted, and the substituted Proposal shall not be opened, but returned to the Proposer. No Proposal substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Proposal opening; 3. next, envelopes marked “Stage 2 Proposal – Modification – Technical Part” shall be opened and read out with the corresponding Proposal. No Proposal modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Proposal opening. Only Proposals that are opened and read out at Proposal opening shall be considered further; |
|  | 1. next, all other envelopes marked “Stage 2 Proposal – Technical Part” shall be opened one at a time. All envelopes marked “Stage 2 Proposal – Financial Part” shall remain sealed, and kept by the Employer in safe custody until they are opened, at a later public opening, following the evaluation of the Technical Part of the Proposals. On opening the Technical Part envelopes the Employer shall read out: the name of the Proposer and whether there is a modification; the presence or absence of a Proposal securityor a Proposal-Securing Declaration; and any other details as the Employer may consider appropriate 2. no Proposal shall be rejected at the public opening except for late Proposals, in accordance with ITP 37.1. |
|  | * 1. The Employer shall prepare a record of the public opening that shall include, as a minimum: the name of the Proposer and whether there is a withdrawal, substitution, or modification. The Proposers’ representatives who are present shall be requested to sign the record. The omission of a Proposer’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 Proposers who submitted Proposals in time, and posted online when electronic procurement is permitted. |

J. Second Stage: Evaluation of Technical Part

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| 1. Confidentiality | * 1. Information relating to the evaluation of the Technical Part shall not be disclosed to Proposers or any other persons not officially concerned with the RFP process until the Notification of evaluation of the Technical Part in accordance with ITP 44. |
|  | * 1. Any effort by a Proposer to influence the Employer in the evaluation of the Proposals may result in the rejection of its Proposal. |
|  | * 1. Notwithstanding ITP 44, from the time of Proposal opening to the time of Contract award, if any Proposer wishes to contact the Employer on any matter related to the RFP process, it should do so in writing. |
| 1. Clarification of Proposals | * 1. To assist in the examination, evaluation, and comparison of the Proposals, and qualification of the Proposers, the Employer may, at its discretion, ask any Proposer for a clarification of its Proposal. Any clarification submitted by a Proposer 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. |
|  | * 1. If a Proposer does not provide clarifications of its Proposal by the date and time set in the Employer’s request for clarification, its Proposal may be rejected. |
| 1. Determination of Responsiveness | * 1. The Employer’s determination of a Proposal’s substantial responsiveness is to be based on the contents of the Proposal itself. For purposes of this determination, a substantially responsive Proposal is one that (a) materially conforms with the First Stage Proposal and/or any alternative components or alternative Proposals which the Employer invited the Proposer to offer in its Second Stage Proposal, (b) incorporates the modifications, if any, listed in the Proposer-specific memorandum titled “Changes Required Pursuant to First Stage Evaluation” pursuant to ITP 26.7, and (c), reflects amendments, if any, to the RFP Documents issued as Addenda together with or subsequent to the Invitation for Proposals -- Second Stage, pursuant to ITP 27.1. |
|  | * 1. Provided that a Proposal is substantially responsive, the Employer may waive any nonmaterial nonconformity in the Proposal. |
|  | * 1. Provided that a Proposal is substantially responsive, the Employer may request that the Proposer submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the Proposal related to documentation requirements. |
| 1. Evaluation of Technical Proposals | * 1. The Employer’s evaluation of technical proposals will be carried out as specified in Section III, Evaluation and Qualification Criteria. |
|  | * 1. The scores to be given to technical criteria and sub criteria are specified in the PDS. |
| 1. Notification of evaluation of Technical Parts | * 1. Following the completion of the evaluation of the Technical Parts of Proposals, the Employer shall make the following notifications:  1. Notify in writing those Proposers whose Proposals were considered substantially non-responsive to the requirements in the RFP, advising them of the following information:    * 1. the grounds on which their Technical Part has been considered to be non-responsive;      2. their envelope marked “Financial Part” will be returned to them unopened after the completion of the Proposal evaluation process and the signing of the Contract; 2. simultaneously, notify in writing those Proposers whose Proposals were considered substantially responsive to the requirements in the RFP, advising them that their Proposal has been evaluated as substantially responsive to the RFP; and 3. notify all Proposers in accordance with the one of following two options: 4. Option 1: when **BAFO or negotiations is not to be applied,** the date, time and location of the public opening of the envelopes marked ‘Financial Part”, or; 5. Option 2: when BAFO or negotiations apply as specified **in the PDS** ITP 55 and ITP 57 respectively, that: (i) the envelopes marked ‘Financial Part’ will not be opened in public, but in the presence of a probity auditor appointed by the Employer, and that (ii) the announcement of the names of the Proposers whose Financial Parts will be opened and the total Proposal prices will be deferred to the time that the Notification of Intention to Award the contract is issued. |

K. Second Stage: Opening of Financial Parts

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| 1. Public Opening of Financial Parts when BAFO or negotiations do not apply | * 1. When BAFO or negotiations do not apply as specified **in the PDS**, the Financial Parts will be opened in public by the Employer in the presence of Proposers, or their designated representatives, and anyone else who chooses to attend. Each envelope marked “Financial Part” shall be inspected to confirm that it has remained sealed and unopened. These envelopes shall then be opened by the Employer. The Employer shall read out the names of each Proposer, the technical score, and the total Proposal prices, per lot (contract) if applicable, including any discounts, the presence or absence of a Proposal Security or Proposal-Securing Declaration, if required and any other details as the Employer may consider appropriate. Only discounts read out at the public opening shall be considered for evaluation. The Letter of Proposal - Financial Part and the Price Schedules are to be initialed by representatives of the Employer attending the public opening in the manner specified in the **PDS**.   2. The Employer shall prepare a record of the Financial Part of the Proposal opening that shall include, as a minimum:   (a) the name of the Proposers whose Financial Part was opened;  (b) the Proposal prices, per lot (contract) if applicable, including any discounts.   * 1. The Proposers whose envelopes marked “Financial Part” have been opened, or their representatives who are present, shall be requested to sign the record. The omission of a Proposer’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 Proposers. |
| 1. Opening of Financial Parts when BAFO or negotiations apply | * 1. When, **as specified in the PDS**, BAFO or negotiations apply the Financial Parts will not be opened in public, and will be opened in the presence of a probity auditor appointed by the Employer.   2. At the opening each of the envelopes marked “Financial Part” shall be inspected to confirm that they have remained sealed and unopened. These envelopes shall then be opened by the Employer. The Employer shall record the names of each Proposer, and the total Proposal prices and any other details as the Employer may consider appropriate. The Letter of Proposal - Financial Part and the Price Schedules are to be initialed by a representative of the Employer attending the public opening and by the probity auditor.   3. The Employer shall prepare a record of the opening of the Financial Part envelopes that shall include, as a minimum:   (a) the name of the Proposers whose Financial Part was opened;  (b) the Proposal prices including any discounts. And  (c) the Probity Auditor’s report of the opening of the Financial Part.   * 1. The probity auditor shall sign the record. The contents of the envelopes marked ‘Financial Part’ and the record of the opening shall be kept in safe custody by the Employer and not disclosed to anyone until the time of the transmission of the Notification of Intention to Award the contract. |

L. Second Stage: Evaluation of Financial Part

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| 1. Nonmaterial Nonconformities | * 1. Provided that a Proposal is substantially responsive, the Employer shall rectify quantifiable nonmaterial nonconformities related to the Proposal Price. To this effect, the Proposal Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified **in the PDS**. |
| 1. Arithmetic Correction | * 1. The Employer shall correct arithmetical errors on the following basis:  1. where there are errors between the total of the amounts given under the column for the price breakdown and the amount given under the Total Price, the former shall prevail and the latter will be corrected accordingly; 2. where there are errors between the total of the amounts of Schedule Nos. 1 to 4 and the amount given in Schedule No. 5(Grand Summary), the former shall prevail and the latter will be corrected accordingly; and 3. 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. |
|  | * 1. A Proposer shall be requested to accept the correction of arithmetical errors. Failure to accept the correction in accordance with ITP 48.1 shall result in the rejection of the Proposal. |
| 1. Conversion to Single Currency | * 1. For evaluation and comparison purposes, the currency (ies) of the Proposal shall be converted into a single currency as specified **in the PDS.** |
| 1. Margin of Preference | * 1. No margin of domestic preference shall apply. |
| 1. Evaluation Process Financial Parts | * 1. To evaluate each Proposal’s Financial Part, the Employer shall consider the following:      + - 1. the Proposal price, excluding provisional sums and the provision, if any, for contingencies in the Price Schedules;          2. price adjustment for correction of arithmetic errors in accordance with ITP 48.1;          3. price adjustment due to discounts offered in accordance with ITP 30.10;          4. price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITP 47.1;          5. converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITP 49.1; and          6. the evaluation factors indicated in the PDS and detailed in Section III, Evaluation and Qualification Criteria. |
|  | * 1. If price adjustment is allowed in accordance with ITP 30.8, 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 Proposal evaluation. |
|  | * 1. If this RFP allows Proposers to quote separate prices for different lots (contracts), each lot will be evaluated separately to determine the most advantageous proposal using the methodology specified in Section III, Evaluation and Qualification Criteria. **Discounts that are conditional on the award of more than one lot, or slice shall not be considered for proposal evaluation.** |
| 1. Abnormally Low Proposals | * 1. An Abnormally Low Proposal is one where the Proposal price, in combination with other elements of the Proposal, appears so low that it raises material concerns as to the capability of the Proposer to perform the Contract for the offered Proposal Price. |
|  | * 1. In the event of identification of a potentially Abnormally Low Proposal, the Employer shall seek written clarifications from the Proposer, including detailed price analyses of its Proposal 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 RFP Document.   2. After evaluation of the price analyses, in the event that the Employer determines that the Proposer has failed to demonstrate its capability to perform the Contract for the offered Proposal Price, the Employer shall reject the Proposal. |
| 1. Unbalanced or Front Loaded Proposals | * 1. If the Proposal that is evaluated as the lowest evaluated cost is, in the Employer’s opinion, seriously unbalanced or front loaded the Employer may require the Proposer to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the Proposal prices with the scope of Plant, Design, supply and installations, proposed methodology, schedule and any other requirements of the RFP Document. |
|  | * 1. After the evaluation of the information and detailed price analyses presented by the Proposer, the Employer may: |
|  | * + 1. accept the Proposal, or     2. if appropriate, require that the total amount of the Performance Security be increased, at the expense of the Proposer, to a level not exceeding twenty percent (20%) of the Contract Price; or     3. reject the Proposal. |

M. Stage 2: Evaluation of Combined Technical and Financial Part

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| 1. Evaluation of Combined Technical and Financial Proposals | * 1. The Employer’s evaluation of responsive Second Stage Proposals will take into account technical factors, in addition to cost factors in accordance with Section III – Second Stage Evaluation and Qualification Criteria. The weight to be assigned for the Technical factors and cost, and the discount rate for net present value calculations, if applicable, are specified **in the PDS**. The Employer will rank the proposals based on the evaluated proposal score (B). |
| 1. Best and Final Offer (BAFO) | * 1. After completion of the combined technical and financial evaluation of proposals, If **specified in the PDS**, the Employer may invite those Proposers to submit their BAFOs. The procedure for submitting BAFOs will be **specified in the PDS**. BAFO is a final opportunity for Proposers to improve their Proposals without changing the specified business function and performance requirements in accordance with the invitation to Submit Second Stage Combined Technical and Financial Proposals. Proposers are not obliged to submit a BAFO. Where BAFO is used there will be no negotiation after BAFO.   2. BAFO will apply a two envelope procurement process. The submission of BAFOs, opening of the Technical Parts and Financial Parts and the evaluation of Proposals will follow the procedures described for the Technical, Financial and Combined evaluation above, as appropriate. |
| 1. Most Advantageous Proposal | * 1. The Most Advantageous Proposal is the Proposal of the Proposer that meets the Qualification Criteria, and whose Proposal has been determined to be:  1. substantially responsive to the RFP; and 2. the best evaluated Proposal i.e. the highest scoring Proposal, in the combined technical and financial evaluation. |
| 1. Negotiations | * 1. If specified **in the PDS**, the Employer may conduct negotiations following the evaluation of Second Stage Proposals and before the final contract award. The procedure of the negotiations will be **specified in the PDS**.   2. Negotiations shall be held in the presence of probity auditor appointed by the Employer.   3. Negotiations may address any aspect of the contract so long as they do not change the specified business function and performance requirements.   4. The Employer may negotiate first with the Proposer that has the Most Advantageous Proposal. If the negotiations are unsuccessful the Employer may negotiate with the Proposer that has the next best Most Advantageous Proposal, and so on down the list until a successful negotiated outcome is achieved. |
| 1. Employer’s Right to Accept Any Proposal, and to Reject Any or All Proposals | * 1. The Employer reserves the right to accept or reject any Proposal, and to annul the RFP process and reject all Proposals at any time prior to contract award, without thereby incurring any liability to Proposers. In case of annulment, all Proposals submitted and specifically, Proposal securities shall be promptly returned to the Proposers. |
| 1. Standstill Period | * 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 ITP 63. The Standstill Period commences the day after the date the Employer has transmitted to each Proposer (that has not already been notified that it has been unsuccessful) the Notification of Intention to Award the Contract. Where only one Proposal is submitted, or if this contract is in response to an emergency situation recognized by the Bank, the Standstill Period shall not apply. |
| 1. Notification of Intention to Award | * 1. The Employer shall send to each Proposer (that has not already been notified that it has been unsuccessful) the Notification of Intention to Award the Contract to the successful Proposer. The Notification of Intention to Award shall contain, at a minimum, the following information:  1. the name and address of the Proposer submitting the successful Proposal; 2. the Contract price of the successful Proposal; 3. The total combined score of the successful Proposal; 4. the names of all Proposers who submitted Proposals, and their Proposal prices as readout and as evaluated prices and technical score; 5. a statement of the reason(s) the Proposal (of the unsuccessful Proposer to whom the notification is addressed) was unsuccessful; 6. the expiry date of the Standstill Period; and 7. instructions on how to request a debriefing or submit a complaint during the standstill period. |

N. Award of Contract

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| --- | --- |
| 1. Award Criteria | * 1. Subject to ITP 58.1*,* the Employer shall award the Contract to the Proposer with the Most Advantageous Proposal, provided that the Proposer is determined to be eligible and qualified to perform the Contract satisfactorily. |
| 1. Notification of Award | * 1. Prior to the expiration of the Proposal Validity Period and upon expiry of the Standstill Period, specified in ITP 59.1 or any extension thereof, and upon satisfactorily addressing any complaint that has been filed within the Standstill Period, the Employer, the Employer shall notify the successful Proposer, in writing, that its Proposal has been accepted. The notification of award (hereinafter and in the Contract Forms called the “Letter of Acceptance”) shall specify the sum that the Employer will pay the Supplier in consideration of the execution of the Contract (hereinafter and in the Conditions of Contract and Contract Forms called “the Contract Price”).   2. Within ten (10) Business Days from the transmission of the Letter of Acceptance, the Employer shall publish the Contract Award Notice which shall contain, at a minimum, the following information:  1. name and address of the Employer; 2. name and reference number of the contract being awarded, and the selection method used; 3. names of all Proposers that submitted Proposals, and their Proposal prices as read out at Proposal opening, and as evaluated; 4. name of Proposers whose Proposals were rejected and the reasons for their rejection; 5. the name of the successful Proposer, the final total contract price, the contract duration and a summary of its scope; and 6. successful Proposer’s Beneficial Ownership Disclosure Form, if specified in PDS ITP 64.1. |
|  | * 1. 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. |
|  | * 1. Until a formal contract is prepared and executed, the Notification of Award shall constitute a binding Contract. |
| 1. Debriefing by the Employer | * 1. On receipt of the Borrower’s Notification of Intention to Award referred to in ITP 60, an unsuccessful Proposer 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 Proposers whose request is received within this deadline.   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 Proposers of the extended standstill period.   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.   4. Debriefings of unsuccessful Proposers may be done in writing or verbally. Proposers shall bear their own costs of attending such a debriefing meeting. |
| 1. Signing of Contract | * 1. The Employer shall send to the successful Proposer the Letter of Acceptance including the Contract Agreement, and, if specified in the PDS, 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. |
|  | * 1. The successful Proposer shall sign, date and return to the Employer, the Contract Agreement within twenty-eight (28) days of its receipt. |
|  | * 1. Notwithstanding ITP 64.2 above, in case signing of the Contract Agreement is prevented by any export restrictions attributable to the Employer, to the country of the Employer, or to the use of the Plant and Installation to be supplied, where such export restrictions arise from trade regulations from a country supplying those Plant and Installation , the Proposer shall not be bound by its Proposal, always provided, , however, that the Proposer can demonstrate to the satisfaction of the Employer and of the Bank that signing of the Contract Agreement has not been prevented by any lack of diligence on the part of the Proposer in completing any formalities, including applying for permits, authorizations and licenses necessary for the export of the Plant and Installation under the terms of the Contract. |
| 1. Performance Security | * 1. Within twenty-eight (28) days of the receipt of the letter of Acceptance from the Employer, the successful Proposer shall furnish the performance security in accordance with the General Conditions of Contract, subject to ITP 53.2 (b), using for that purpose the Performance Security Form included in Section X, Contract Forms, or another form acceptable to the Employer. If the performance security furnished by the successful Proposer is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Proposer 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. |
|  | * 1. Failure of the successful Proposer to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Proposal security. In that event the Employer may award the Contract to the next lowest evaluated Proposer whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily. |
| 1. Procurement Related Complaint | * 1. The procedures for making a Procurement-related Complaint are as specified in the PDS. |

Section II - Proposal Data Sheet (PDS)

The following specific data for the Plant and Installation to be procured shall complement, supplement, or amend the provisions in the Instructions to Proposers (ITP). Whenever there is a conflict, the provisions herein shall prevail over those in ITP.

*[Where an e-procurement system is used, modify the relevant parts of the* ***PDS*** *accordingly to reflect the e-procurement process]*

*[Instructions for completing the Proposal Data Sheet are provided, as needed, in the notes in italics mentioned for the relevant ITP]*

|  |  |  |
| --- | --- | --- |
| **ITP Reference** | **A. General** | |
| **ITP 1.1** | The reference number of the Request for Proposals is : ***[insert reference number of the Request for Proposals]***  The Employer is: ***[insert name of the Employer]***  The name of the RFP is: ***[insert name of the RFP]***  The number and identification of lots (contracts)comprising this RFP is: **[*insert number and identification of lots (contracts)]*** | |
| **ITP 2.1** | The Borrower is: ***[insert name of the Borrower and statement of relationship with the Employer, if different from the Borrower. This insertion should correspond to the information provided in the Invitation for Proposals]*** | |
| **ITP 2.1** | Loan or Financing Agreement amount: ***[insert US$ equivalent]***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  The name of the Project is: ***[insert name of the project]*** |
| **ITP 1.3 (a)** | [*delete if not applicable*]  “ **Electronic – Procurement System**  The Employer shall use the following electronic-procurement system to manage this procurement process:  [*insert name of the e-system and url address or link*]  The electronic-procurement system shall be used to manage the following aspects of the Procurement process:  [*insert aspects e.g.* *issuing RFP, submissions of Proposals, opening of Proposals*]” | |
| **ITP 4.1** | Maximum number of members in the JV shall be: ***[insert a number]****\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* | |
| ITP 4.5 | A list of debarred firms and individuals is available on the Bank’s external website: <http://www.worldbank.org/debarr.> |
| **B. RFP Document** | |
| **ITP 7.1** | For **Clarification of Proposal purposes** only, the Employer’s address is:  ***[insert the corresponding information as required below. This address may be the same as or different from that specified under provision ITP 19.1 for Proposal submission]***  Attention: ***[insert full name of person, if applicable****]*  Address: *[****insert street address and number****]*  Floor/ Room number*: [****insert floor and room number, if applicable****]*  City:*] [****insert name of city or town****]*  ZIP Code:[***insert postal (ZIP) code, if applicable****]*  Country: *[****insert name of country****]*  Telephone: *[****insert telephone number, including country and city codes****]*  Facsimile number: *[****insert fax number, including country and city code****s]*  Electronic mail address: *[****insert email address, if applicable****]*  Requests for clarification should be received by the Employer no later than: ***[insert no. of days].*** | | |
| **ITP 7.1** | Web page: ***[in case used, identify the widely used website or electronic portal of free access where RFP process information is published****]*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | |
| **ITP 7.4** | A Pre-Proposal meeting\_\_\_\_\_\_\_\_\_ take place at the following date, time and place:  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Time:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Place:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  A site visit conducted by the Employer ***\_\_\_\_\_\_\_\_\_\_\_[insert “shall be” or “shall not be”]*** organized. | | |
| **C. Preparation of Proposals** | | | |
| **ITP 11.1** | The language of the Proposal is: ***[insert “English” or” Spanish” or “French”]****.*    ***[Note: In addition to the above language, and if agreed with the Bank, the Employer has the option to issue translated versions of the RFP Document in another language which should either be: (a) the national language of the Employer; or (b) the language used nation-wide in the Employer’s Country for commercial transactions. In such case, the following text shall be added:]***  ***“In addition, the RFP Document is translated into the [insert national or nation-wide used] language [if there are more than one national or nation-wide used language, add “and in the \_\_\_\_\_\_\_\_\_\_\_\_” [insert the second national or nation-wide language].***  ***Proposals shall have the option to submit their Proposal in any one of the languages stated above. Proposers shall not submit Proposals in more than one language.]”***  All correspondence exchange shall be in \_\_\_\_\_\_\_\_\_\_\_\_ language.  Language for translation of supporting documents and printed literature is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. ***[specify one language]****.* | | |
| **ITP 12.1 (j)** | The Proposer shall submit with its Proposal the following additional documents:  ***[list any additional document not already listed in ITP 12.1 that must be submitted with the Proposal]*** | | |
| **ITP 15.2 (b)** | Spares required for operation; is \_\_\_\_*[insert number of years]*  years following completion | | |
| **ITP 17.1, ITP 34.1 and, ITP 35.1** | In addition to the original of the Proposal, the number of copies is: ***[insert number of copies]*** | | |
| **ITP 17.2 and ITP 34.2** | The written confirmation of authorization to sign on behalf of the Proposer shall consist of: ***[insert the name and description of the documentation required to demonstrate the authority of the signatory to sign the*** *Proposal****].*** | | |
| **D. Submission of First Stage Technical Proposals** | | | |
| **ITP 19.1** | For **Proposal submission purposes** only, the Employer’s address is : ***[This address may be the same as or different from that specified under provision ITP 7.1 for clarifications]***  Attention: *[****insert full name of person, if applicable]***  Street Address: *[****insert street address and number****]*  Floor/Room number: *[****insert floor and room number, if applicable****]*  City: [***insert name of city or town***]  ZIP Code: [***insert postal (ZIP) code, if applicable***]  Country: [***insert name of country***]  **The deadline for Proposal submission is:**  Date: ***[insert day, month, and year, e.g. 15 June, 2017]***    Time: *[****insert time, and identify if a.m. or p.m., e.g. 10:30 a.m.****]*  ***[The date and time should be the same as those provided in the Request for Proposals, unless subsequently amended pursuant to ITP 19.2*]** | | |
| **ITP 19.1, ITP 35.1 and ITP 36.1** | Proposers \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ***[insert “shall” or “shall not”]*** have the option of submitting their Proposals electronically.  **[*The following provision should be included and the required corresponding information inserted only if Proposers have the option of submitting their Proposals electronically. Otherwise omit.]***  The electronic Proposal submission procedures shall be: ***[insert a description of the electronic Proposal submission procedures.]*** | | |
| **ITP 22.1** | The Proposal opening shall take place at:  Street Address: [***insert street address and numbe****r]*  Floor/Room number: *[****insert floor and room number, if applicable****]*  City: *[****insert name of city or town****]*    Country: *[****insert name of country****]*    Date: ***[insert day, month, and year, e.g. 15 June, 2017]***    Time:  *[****insert time, and identify if a.m. or p.m. e.g. 10:30 a.m.****]* ***[Date and time should be the same as those given for the deadline for submission of Proposals in ITP 19.1]*** | | |
| **ITP 22.1 and ITP 39.1** | ***[The following provision should be included and the required corresponding information inserted only if Proposers have the option of submitting their Proposals electronically. Otherwise omit.]***  The electronic Proposal opening procedures shall be: ***[insert a description of the electronic Proposal opening procedures.]*** | | |
| **ITP 28.2 (i)** | ‘The Proposer shall submit with its Proposal the following additional documents:  ***[list any additional document not already listed in ITP 28.2 that must be submitted with the Second Stage Financial Proposal]’ otherwise state ‘none’.*** | | |
| **ITP 28.4 (d)** | ‘The Proposer shall submit with its Proposal the following additional documents:  ***[list any additional document not already listed in ITP 28.4 that must be submitted with the Second Stage Financial Proposal]’ otherwise state ‘none’.*** | | |
| **ITP 30.4 (a)** | Named place of destinationis:*\_\_* **[*insert named Place of destination as per Incoterm used]*** *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* | | |
| **ITP 30.4 (d)** | Named place of final destination (or Project site) is:\_\_\_\_\_\_\_\_\_ *[insert name of location where the Plant is to be installed].*  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | |
| **ITP 30.5** | The Incoterms edition is: ***[insert relevant edition].*** | | |
| **ITP 30.6** | The prices quoted by the Proposer ***[insert “shall “or “shall not”] \_\_\_\_\_\_\_\_\_\_\_*** be subject to adjustment during the performance of the Contract. | | |
| **ITP 31.1** | The Proposer **[*insert “is” or “is not”’*] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**required to quote in the currency of the Employer’s Country the portion of the Proposal price that corresponds to expenditures incurred in that currency. | | |
| **ITP 32** | ***[If a Proposal Security shall be required, a Proposal-Securing Declaration shall not be required, and vice versa.]***  A *Proposal Security* ***[insert “shall be” or “shall not be”*]** required.  A Proposal-Securing Declaration **[*insert “shall be” or “shall not be*”]** required.  If a Proposal Security shall be required, the amount and currency of the Proposal Security shall be  **[*If a Proposal Security is required, insert amount and currency of the Proposal Security. Otherwise insert “Not Applicable”.]******[In case of lots, please insert amount and currency of the Proposal Security for each lot]***  ***Note: Proposal Security is required for each lot as per amounts indicated against each lot. Proposers have the option of submitting one Proposal Security for all lots (for the combined total amount of all lots) for which Proposals have been submitted, however if the amount of Proposal Security is less than the total required amount, the Employer will determine for which lot or lots the Proposal Security amount shall be applied.]***  **[*The following provision should be included and the required corresponding information inserted only if a Proposal security is not required under provision ITP 32.1 and the Employer wishes to declare the Proposer ineligible for a period of time should the Proposer performs the actions mentioned in provision ITP 32.9. Otherwise omit.]***  If the Proposer performs any of the actions prescribed in subparagraphs (a) or (b) of this provision, the Borrower will declare the Proposer ineligible to be awarded contracts by the Employer for a period of \_\_\_\_\_\_ years. [***insert period of time]*** | | |
| **ITP 32.3 (d)** | Other types of acceptable securities:  ***[Insert names of other acceptable securities. Insert “None” if no Proposal Security is required under provision ITP 32.1 or if Proposal Security is required but no other forms of Proposal securities besides those listed in ITP 32.3 (a) through (c) are acceptable*.]** | | |
| **ITP 33.1** | The Proposal validity period shall be \_\_\_\_\_\_\_\_***[insert the number of days]*** days. | | |
| **ITP 33.3** | The Proposal price shall be adjusted by the following factor(s): \_\_\_\_\_\_\_\_  ***[The local currency portion of the Contract price shall be adjusted by a factor reflecting local inflation during the period of extension, and the foreign currency portion of the Contract price shall be adjusted by a factor reflecting the international inflation (in the country of the foreign currency) during the period of extension.]*** | | |
| **ITP 43.2** | The technical factors and sub factors and the corresponding scores out of 100% are:  1.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  3. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  ***[Insert specific appropriate technical factors and sub factors. The technical factors are generally provided in Section III. The scores should be allocated in terms of relative significance of the technical factors.]*** | | |
| **ITP 45.1** | The Letter of Proposal and Price Schedules shallbe initialed by ***[insert number]*** representatives of the Employer conducting Proposal opening*.* ***[Insert procedure: Example: Each Proposal shall be numbered, any modification to the unit or total price shall be initialed by the Representative of the Employer, etc.]*** | | |
| **ITP 47.1** | ‘The adjustment shall be based on the \_\_\_\_\_\_\_\_\_ [insert “average” or ‘highest”] price of the item or component as quoted in other substantially responsive Proposals. If the price of the item or component cannot be derived from the price of other substantially responsive proposals, the Employer shall use its best estimate.’ | | |
| **ITP 49.1** | The currency that shall be used for Proposal evaluation and comparison purposes to convert at the selling exchange rate all Proposal prices expressed in various currencies into a single currency is: \_\_\_\_\_\_***[Insert name of currency]***  The source of exchange rate shall be: ***[Insert name of the source of exchange rates (e.g., the Central Bank in the Employer’s Country).]***  The date for the exchange rate shall be: ***[insert day, month and year, i.e. 15 June, 2016 not earlier than 28 days prior to the deadline for submission of the Proposals, nor later than the original date for the expiry of Proposal validity].*** | | |
| **ITP 51.1 (f)** | The adjustments shall be determined using the following criteria as detailed in Section III:   1. Deviation in Time for Completion: ***[insert Yes or No. If yes insert the adjustment factor in Section III, Evaluation and Qualification Criteria];*** 2. Life cycle costs: the projected operating and maintenance costs during the life of the goods or equipment ***[insert Yes or No, If yes, insert the Methodology and criteria in Section III, Evaluation and Qualification Criteria];*** 3. Functional Guarantees of the Facilities ***[insert Yes or No, If Yes, insert methodology and criteria in Section III, Evaluation and Qualification Criteria]***   and   1. ***[insert any other specific criteria here and provide details in Section III, Evaluation and Qualification Criteria]*** | | |
| **ITP 54.1** | The weight to be given for cost X is: \_\_\_\_\_\_\_\_ *[indicate weight for cost such that weight for cost plus weight for total technical score is 1(one).]*  ***[The relative weight to be assigned to cost should generally not be less than 70 %, but may be set as low as 50% if justified to achieve value for money].***  Discount Rate to be used for net present value calculations is …… ***[insert discount rate if applicable in accordance with PDS 51.1 (f) (b) or otherwise delete]’*** | | |
| **ITP 55.1** | BAFO (“applies” / “does not apply”)  If BAFO applies, the procedure will be: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | |
| **ITP 57.1** | Negotiation (“applies” / “does not apply”)  If negotiation applies, the procedure will be :\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | |
| **ITP 64.1** | The successful Proposer [*shall] or [shall not]* submit the Beneficial Ownership Disclosure Form. | | |
| **ITP 66.1** | The procedures for making a Procurement-related Complaint are detailed in the “[Procurement Regulations for IPF Borrowers](http://www.worldbank.org/en/projects-operations/products-and-services/brief/procurement-new-framework) (Annex III).” If a Proposer wishes to make a Procurement-related Complaint, the Proposer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by email or fax), to:  **For the attention**: *[insert full name of person receiving complaints]*  **Title/position**: *[insert title/position]*  **Employer:** *[insert name of Employer]*  **Email address***: [insert email address]*  **Fax number**: *[insert fax number]* ***delete if not used***  In summary, a Procurement-related Complaint may challenge any of the following:   1. the terms of this RFP document; 2. the Employer’s decision to exclude a Proposer from the procurement process prior to the award of contract; and 3. the Employer’s decision to award the contract. | | |

Section III. Evaluation and Qualification Criteria

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First Stage Technical Proposals

1. Evaluation (ITP 24.1 (e))

In addition to the criteria listed in ITP 24.1 (a) – (d) the following factors shall apply:

2. Qualification

**2.1 Update of Information**

The Proposer and any subcontractors shall meet or continue to meet the criteria used at the time of initial selection.

**2.2 Financial Resources**

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

(i) the following cash-flow requirement:

…………………………………………………………………………………

and

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

**2.3 Key Personnel**

The Proposer must demonstrate that it will have adequate key technical and managerial personnel required to perform the contract.

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

**2.4 Equipment**

The Proposer must demonstrate that it will have access to the key equipment required to perform the contract.

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

**2.5 Subcontractors/Manufacturers**

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

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

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

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

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

Second Stage Financial and Technical Proposals

Combined Evaluation

The Employer will evaluate and compare the Proposals that have been determined to be substantially responsive.

An Evaluated Proposal Score (B) will be calculated for each responsive Proposal using the following formula, which permits a comprehensive assessment of the evaluated cost and the technical merits of each Proposal:

|  |
| --- |
| where  *C* = Evaluated Proposal Cost  *C low* = the lowest of all Evaluated Cost among responsive Proposals  *T* = the total Technical Score awarded to the Proposal  *Thigh* = the Technical Score achieved by the Proposal that was scored best among all responsive Proposals  *X* = weight for Cost as specified in the PDS  The Proposal with the best evaluated Proposal Score (B) among responsive Proposals shall be the Most Advantageous Proposal provided the Proposer is qualified to perform the Contract. |

Evaluation of Technical Part (ITP 43)

The total technical points assigned to each Proposal in the Evaluated Proposal Formula will be determined by adding and weighting the scores assigned by an evaluation committee to technical factors of the Proposal in accordance with the criteria set forth below.

(a) The technical factors to be evaluated are generally defined below and specifically identified **in the PDS**:

1. to what extent that the performance, capacity, or functionality features meet or exceed the levels specified in the performance / functional requirements and/or influence the life-cycle cost and effectiveness of the Plant.
2. quality of Technical Proposal in terms of method statement, key personnel, access to key equipment, work program and organization, and any other activities as specified by the Employer and based on the proposers experience.
3. Any sustainable procurement requirement if specified in Section VII- Employer’s Requirements.

(b) Each technical factor may include sub factors as specified **in the PDS.** The scores to be given to each technical factor and sub criteria are specified **in the PDS.**

***TECHINICAL PROPOSAL SCORING METHOLOGY***

*[****NOTE TO THE EMPLOYER****:. The Employer shall develop a scoring methodology to be included here]*

*If as per* ***PDS 43.2****, the technical factors (and sub- factors, if applicable) are weighted in terms of relevance, the total technical score would be the weighted average in percent.*

The score for each sub- factor (i) within a factor (j) will be combined with the scores of sub- factors in the same factor as a weighted sum to form the Factor Technical Score using the following formula:



where:

*tji* = the technical score for sub- factor “i” in factor “j”

*wji* = the weight of sub- factor “i” in factor “j”,

*k* = the number of scored sub-factors in factor “j”

and 

The Factor Technical Scores will be combined in a weighted sum to form the total Technical Proposal Score using the following formula:



where:

*Sj* = the Factor Technical Score of factor “j”

*Wj* = the weight of factor “j” as specified in the PDS

*n* = the number of Factors

and 

Evaluation of Financial Part (ITP 51.1(i) )

The following factors and methods will apply:***[use one or more of the following adjustment factors consistent with ITP 51.1 (i) of the PDS]***

#### Time Schedule

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

**or**

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

#### Life Cycle Costs

#### Life cycle costing should be used when the costs of operation and/or maintenance over the specified life of the Facilities are estimated to be considerable in comparison with the initial cost and may vary among different proposals. It shall be evaluated on a net present value basis. When using life cycle costing, the Employer shall specify the following information:]

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

Option 1:

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

(i) number of years for life cycle*: \_\_\_\_[Insert number of years]*

(ii) operating costs *[state how they will be detrmined]*

(iii) maintenance costs, including the cost of spare parts for the initial period of operation *[state how they will be determined],* and

(iv) Discount rate: \_\_\_\_\_\_\_\_*[insert discount rate in percent]* to be used to discount to present value all annual future costs calculated under (ii) and (iii) above for the period specified in (i).

**or** Option 2:

Reference to the methodology specified in the Employer Requirement or elsewhere in the RFP Document

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

#### Functional Guarantees of the Facilities

For the purposes of evaluation, for each percentage point in perfromance of efficiency below the norm specified in the Specification, but above the minimum acceptable levels also specified therein, an adjustment of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*will be added to the proposal price. If the drop below the norm or the excess above the minimum acceptable levels is less than one percent, the adjustment will be prorated accordingly.

#### Specific additional criteria

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

……………………………………………………………………………………………………………………………………………………………………………………

Any adjustments in price that result from the above procedures shall be added, for purposes of comparative evaluation only, to arrive at an “Evaluated Proposal Cost (C) .”

#### Multiple Contracts (ITP 51.3)

*If not applicable state ‘Not Applicable’*

If in accordance with **ITP 1.1**, Proposals are invited for more than one lot, the contract will be awarded to the Proposer or Proposers with the Most Advanageous Proposal for the individual lots.

However, if a Proposer, with Proposals that are substantially responsive and with highest evaluated score for individual lots, is not qualified for the combination of the lots, then the award will be made based on the highest total score for combination of lots for which Proposers are qualified.

*[Note - Example of the above scenario: A Proposer who was initially selected for either Lot A or Lot B but not both submits Proposals for Lots A and B. These two Proposals are substantially responsive and get the highest total score for Lot A and Lot B respectively. In such a case, a decision has to be made on whether this Proposer should be awarded Lot A or Lot B by considering the combined scores of Proposers for Lot A and Lot B.]*

Cross discounts for award of multiple lots will not be considered.

#### Specific additional criteria

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

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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Proposal Forms

Letter of First Stage Proposal

Date: *[Proposer insert:* ***date of Proposal]***

Loan/Credit No.: *[Employer insert:* ***number****]*

RFP: *[Employer insert:* ***RFP name and number****]*

Contract: *[Employer insert:* ***name of Contract****]*

To: *[Employer insert:* ***name and address of Employer****]*

Dear Sir or Madam:

Having examined the request for proposal (RFP) document, including Addenda Nos. *[ insert* ***numbers****]*, the receipt of which is hereby acknowledged, we, the undersigned, offer to \_\_\_\_\_\_\_\_\_\_\_\_\_\_, in conformity with the RFP document, the following Plant and installation Services: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

We confirm that if you invite us to attend a Clarification Meeting(s) for the purpose of reviewing our First Stage Proposal at a place and date of your choice, we will endeavor to attend this/these meeting(s) at our own cost, and will duly note the amendments and additions to, and omissions from, our First Stage Proposal that you may require. We accept that we alone carry any risk for failing to reach clarification of our Proposal in case this failure is due to our inability to attend duly scheduled Clarification Meeting(s).

We undertake, upon receiving your written invitation, to proceed with the preparation of our Second Stage Proposal, updating the First Stage Proposal in accordance with the requirements, if any, specified in (a), the memorandum, specific for our First Stage Proposal, titled “Changes Required Pursuant to First Stage Evaluation” and any updates to this memorandum, and (b), Addenda to the RFP document issued together or after the invitation for the second stage. The Second Stage Proposal will also include our commercial Proposal in accordance with the requirements of the RFP Documents for second stage Proposals, for performing the Plant and Installation in accordance with our updated technical Proposal.

We hereby certify that we meet the eligibility requirements and have no conflict of interest in accordance with ITP 4.

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;

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.

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 ITP 4.6*];

We agree to abide by this First Stage Proposal, which, in accordance with ITP 12, consists of this letter (First Stage Proposal Form) and the enclosures listed below. Together with the above written undertakings, the Proposal shall remain binding on us. We understand that we may withdraw our Proposal, or any alternative Proposal included in it, at any time by so notifying you in writing. However, we accept that if invited to the second stage, once we have submitted a Second Stage Proposal, this Proposal (and the parts of the First Stage Proposals it includes and updates) can only be withdrawn before the deadline for submission of Second Stage Proposals, and only by the formal Second Stage Proposal withdrawal procedure stipulated in the RFP Documents.

**Name of the Proposer**: \*[*insert complete name of person signing the Proposal*]

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

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

**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*]

Letter of Second Stage Proposal - Technical Part

*INSTRUCTIONS TO PROPOSERS*

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| --- |
| *INSTRUCTIONS TO PROPOSERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE DOCUMENT*  *Place this Letter of Proposal in the first envelope “TECHNICAL PART”.*  *The Proposer must prepare the Letter of Proposal on stationery with its letterhead clearly showing the Proposer’s complete name and business address.*  *Note: All italicized text in black font is to help Proposers in preparing this form and Proposers shall delete it from the final document.* |

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

**RFP No.:** [*insert number of RFP process*]

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

**Alternative No.**:[*insert identification No if this is a Proposal for an alternative*]

To: *[Employer insert:* ***name and address of Employer****]*

Dear Sir or Madam:

We, the undersigned Proposer, hereby submit our Proposal, in two parts, namely:

1. the Technical Part, and
2. the Financial Part.

Having examined the RFP Documents, the Addenda issued during the first stage, Addenda Nos. *[insert:* ***numbers****]* issued with or after the Request for Proposals – Second Stage, the receipt of which is hereby acknowledged, as well as the requirements listed in the memorandum titled “Changes Required Pursuant to First Stage Evaluation” specific to our First Stage Proposal, and any updates to this memorandum, we, the undersigned, offer to \_\_\_\_\_\_\_\_\_, in full conformity with the said RFP Documents, Addenda and memorandum.

We undertake, if our Proposal is accepted, to commence work on the Plant and Installation and achieve Installation and Operational Acceptance within the respective times stated in the RFP Documents.

We hereby certify that we, including any subcontractors or manufacturers for any part of the contract, meet the eligibility requirements and have no conflict of interest in accordance with ITP 4.

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;

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.

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 ITP 4.6*];

We agree to abide by this Proposal, which, in accordance with ITP 28 and 29, consists of this letter (Second Stage Technical Part) and attachments, for a period of *[insert:* ***number from Request for Proposals -- Second Stage****]*days from the date fixed for submission of Proposals as stipulated in the Request for Proposals -- Second Stage or subsequent Addenda to the RFP Documents, and it shall remain binding upon us and may be accepted by you at any time before the expiration of that period.

Until the formal final Contract is prepared and executed between us, this Proposal, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us.

**Name of the Proposer**: \*[*insert complete name of person signing the Proposal*]

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

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

**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 Proposal submitted by a Joint Venture specify the name of the Joint Venture as Proposer.

\*\*: Person signing the Proposal shall have the power of attorney given by the Proposer. The power of attorney shall be attached with the Proposal Schedules.

Letter of Second Stage Proposal - Financial Part

*INSTRUCTIONS TO PROPOSERS*

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| --- |
| *INSTRUCTIONS TO PROPOSERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE DOCUMENT*  *Place this Letter of Proposal in the second envelope “FINANCIAL PART”.*  *The Proposer must prepare the Letter of Proposal on stationery with its letterhead clearly showing the Proposer’s complete name and business address.*  *Note: All italicized text in black font is to help Proposers in preparing this form and Proposers shall delete it from the final document.* |

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

**RFP No.:** [*insert number of RFP process*]

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

**Alternative No.**:[*insert identification No if this is a Proposal for an alternative*]

To: *[Employer insert:* ***name and address of Employer****]*

Dear Sir or Madam:

We, the undersigned Proposer, hereby submit the second part of our Proposal, the Financial Part

Having examined the RFP Documents, the Addenda issued during the first stage, Addenda Nos. *[insert:* ***numbers****]* issued with or after the Request for Proposals – Second Stage, the receipt of which is hereby acknowledged, as well as the requirements listed in the memorandum titled “Changes Required Pursuant to First Stage Evaluation” specific to our First Stage Proposal, and any updates to this memorandum, we, the undersigned, offer to \_\_\_\_\_\_\_\_\_, in full conformity with the said RFP Documents, Addenda and memorandum for the total sum of:

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | *[ insert:* ***amount of local currency in words****]* | (*[ insert:*  ***amount of local currency in figures from corresponding Grand Total entry of the Grand Summary Cost Tabl****e ]*) |
|  | plus | [*insert:* ***amount of foreign currency A in words****]* | (*[ insert:* ***amount of foreign currency A in figures from corresponding Grand Total entry of the Grand Summary Cost Table****])* |
|  | *[ as appropriate, add the following ]* | | |
|  | plus | *[ insert:* ***amount of foreign currency B in words****]* | (*[ insert:* ***amount of foreign currency B in figures from corresponding Grand Total entry of the Grand Summary Cost Table****]*) |
|  | plus | *[ insert:* ***amount of foreign currency C in words****]* | ([*insert:*  ***amount of foreign currency C in figures from corresponding Grand Total entry of the Grand Summary Cost Table****]*) |

Or such other sums as may be determined in accordance with the terms and conditions of the Contract. The above amounts are in accordance with the Price Schedules attached herewith and made part of this Proposal.

The discounts offered and the methodology for their application is:

(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*];

If our Proposal is accepted, we undertake to provide an advance payment security and a performance security in the form, in the amounts, and within the times specified in the RFP Documents.

We agree to abide by this Proposal, which, in accordance with ITP 28 and 29, consists of this letter (Second Stage Proposal Form) and the enclosures listed below, for a period of *[ insert:* ***number from Request for Proposals - Second Stage****]*days from the date fixed for submission of Proposals as stipulated in the Request for Proposals -- Second Stage or subsequent Addenda to the RFP Documents, and it shall remain binding upon us and may be accepted by you at any time before the expiration of that period.

**Commissions, gratuities and fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the RFP 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*].

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| Name of Recipient | Address | Reason | Amount |
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(If none has been paid or is to be paid, indicate “none.”)

Until the formal final Contract is prepared and executed between us, this Proposal, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us.

**Name of the Proposer**:\*[*insert complete name of the Proposer*]

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

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

**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 Proposal submitted by a Joint Venture specify the name of the Joint Venture as Proposer.

\*\*: Person signing the Proposal shall have the power of attorney given by the Proposer. The power of attorney shall be attached with the Proposal Schedules.

Schedules of Rates and Prices

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

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Item | Description | Code1 | Qty. | Unit Price2 | | Total Price2 |
|  |  |  |  |  | *CIP* |  |
|  |  |  | *(1)* | *(2)* | *(3)* | *(1) x (3)* |
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| TOTAL (to Schedule No. 5. Grand Summary) | | | | | |  |
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|  |  |  | Signature of Proposer | |  | |
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| 1 Proposers shall enter a code representing the country of origin of all imported Plant and equipment.  2 Specify currency. Create and use as many columns for Unit Price and Total Price as there are currencies. | | | | | | |

Country of Origin Declaration Form

|  |  |  |  |
| --- | --- | --- | --- |
| Item | Description | Code | Country |
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Schedule No. 2. Plant and Mandatory Spare Parts Supplied from Within the Employer’s Country

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| Item | Description | Qty. | | | EXW Unit Price1 | | Sales and other taxes payable per line item if Contract is awarded (in accordance with ITP 30.4 (b) (ii) | | | EXW Total Price1 | |
|  |  | *(1)* | | | *(2)* | | *(3)* | | | *(1) x (2)* | |
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|  |  | |  | Signature of Proposer | | | |  | |  | |
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| 1 Specify currency in accordance with specifications in ITP 31. | | | | | | | | | |  | |

Schedule No. 3. Design Services

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| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Item | Description | | Qty. | Unit Price1 | | | | Total Price1 |
|  |  | |  | Local Currency Portion | | Foreign Currency Portion | |  |
|  |  | | *(1)* | *(2)* | | *(optional)* | | *(1) x (2)* |
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| 1 Specify currency in accordance with specifications in ITP 31. | | | | | | | | |

Schedule No. 4. Installation and Other Services

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| Item | Description | Qty. | Unit Price1 | | | | Total Price1 | | |
|  |  |  | Foreign Currency Portion | | Local Currency Portion | | Foreign | | Local |
|  |  | *(1)* | *(2)* | | *(3)* | | *(1) x (2)* | | *(1) x (3)* |
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| TOTAL (to Schedule No. 5. Grand Summary) | | | | | | | | |  |
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|  |  |  | Signature of Proposer | | |  | | | |
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| 1 Specify currency in accordance with specifications in ITP 31. | | | | | | | | | |

Schedule No. 5. Grand Summary

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| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Item | Description | | | | Total Price1 | | | |
|  |  | | | | Foreign | | Local | |
|  |  | | | |  | |  | |
|  | Total Schedule No. 1. Plant, and Mandatory Spare Parts Supplied from Abroad | | | |  | |  | |
|  | Total Schedule No. 2. Plant, and Mandatory Spare Parts Supplied from Within the Employer’s Country | | | |  | |  | |
|  | Total Schedule No. 3. Design Services | | | |  | |  | |
|  | Total Schedule No. 4. Installation and Other Services | | | |  | |  | |
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| TOTAL (to Letter of Second Stage Proposal- Financial Part) | | | | | | |  | |
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|  |  |  |  |  | |  | |  |
|  |  |  | Signature of Proposer | | |  | | |
|  |  |  |  |  | |  | |  |
| 1 Specify currency in accordance with specifications in ITP 31. Create and use as many columns for Foreign Currency requirement as there are foreign currencies | | | | | | | | |

Schedule No. 6. Recommended Spare Parts

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Item | Description | | Qty. | Unit Price | | | Total Price | |
|  |  | |  | CIF or CIP  (foreign parts) | | EXW  (local parts) |  | |
|  |  | | *(1)* | *(2)* | | *(3)* | *(1) x (2) or(3)* | |
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|  |  |  |  | |  |  |  | |
|  |  |  | Name of Proposer | | |  | | |
|  |  |  |  | |  |  | |  |
|  |  |  |  | |  |  | |  |
|  |  |  | Signature of Proposer | | |  | | |
|  |  |  |  | |  |  | |  |

Price Adjustment

If price adjustment applies in accordance with ITP 30.8, the Proposer shall indicate the sources of indices and source of exchnage rate (if applicable) and the base date indices in its Proposal.

|  |  |  |  |
| --- | --- | --- | --- |
| Item | Source of Indices | Base date Indices | Source of exchnage rate (if applicable) |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

Technical Proposal Forms

1. Method Statement
2. Work Program
3. Plant
4. Contractor’s Equipment
5. Personnel
6. Proposed Subcontractors for Major Items of Plant and Installation Services
7. Others

Method Statement

***[insert technical proposal for Method Statement]***

The Method Statement shall address the following as applicable:

1. details of the arrangements and methods which the Proposer proposes to adopt for the design, supply and installation of the Plant, in sufficient detail to demonstrate their adequacy to achieve the Employer’s requirements including completion within the Time for Completion;
2. outline of the arrangements for testing and commissioning of the Plant;
3. outline of arrangements for conducting training if specified in the Employer’s Requirements;
4. quality management system including a draft of the quality management plan;
5. **Health and Safety:** proposed approach to managing Health and Safety aspects during execution of the contract;
6. **Environmental and Social Impact Management:** Proposed environmental and social impact management arrangements
7. **Sustainable Procurement:** sustainability aspects (e.g. energy efficiency, reduction of wastages, material reduction etc.) that describes the Proposer’s approach and commitment to sustainable design and construction practices;
8. **Value Engineering:** proposed value engineering (value management) arrangements for the Plant supply and Installation; and
9. [insert any other relevant information, as may be appropriate.]

Work Program and Organization

# *[insert technical proposal for Work program and organization]*

Technical Proposal - Plant

***[insert technical proposal for Plant]***

**Form ELI 1.1**

Proposer Information Sheet

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

RFP No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

|  |
| --- |
| 1. Proposer’s Legal Name |
| 2. In case of JV, legal name of each party: |
| 3. Proposer’s actual or intended Country of Registration: |
| 4. Proposer’s Year of Registration: |
| 5. Proposer’s Legal Address in Country of Registration: |
| 6. Proposer’s Authorized Representative Information  Name:  Address:  Telephone/Fax numbers:  Email Address: |
| 7. Attached are copies of original documents of  🞎 Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITP 4.4  🞎 In case of JV, letter of intent to form JV or JV agreement, in accordance with ITP 4.1  🞎 In case of state-owned enterprise or institution, in accordance with ITP 4.6, documents establishing:   * Legal and financial autonomy * Operation under commercial law * Establishing that the Proposer is not under the supervision of the Employer   8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. *[If required under PDS ITP 64.1, the successful Proposer shall provide additional information on beneficial ownership, using the Beneficial Ownership Disclosure Form.]* |

**Form ELI 1.2**

Party to JV Information Sheet

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

RFP No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

|  |
| --- |
| 1. Proposer’s Legal Name: |
| 2. JV’s Party legal name: |
| 3. JV’s Party Country of Registration: |
| 4. JV’s Party Year of Registration: |
| 5. JV’s Party Legal Address in Country of Registration: |
| 6. JV’s Party Authorized Representative Information  Name:  Address:  Telephone/Fax numbers:  Email Address: |
| 7. Attached are copies of original documents of  🞎 Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITP 4.4.  🞎 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 ITP 4.6.  8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. *[If required under PDS ITP 64.1, the successful Proposer shall provide additional information on beneficial ownership for each JV member using the Beneficial Ownership Disclosure Form.]* |

# Form CCC

Current Contract Commitments / Works in Progress

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

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

**Form FIN 3.3**

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 cash flow demands of the subject contract or contracts as indicated in Section III, Evaluation and Qualification Criteria

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

Form EQU

Contractor’s Equipment

The Proposer shall provide adequate information to demonstrate clearly that it has the capability to perform the contract. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Proposer.

|  |  |  |
| --- | --- | --- |
| 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  o Owned o Rented o Leased o Specially manufactured | |

Omit the following information for equipment owned by the Proposer.

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

# Form FUNC

Functional Guarantees

The Proposer shall copy in the left column of the table below; the identification of each functional guarantee required in the Specification and in the right column, provides the corresponding value for each functional guarantee of the proposed Plant and equipment.

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

# Form PER -1

Proposed Key Personnel

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

**Key Personnel**

|  |  |  |
| --- | --- | --- |
| **1.** | **Title of position:** *…* | |
|  | **Name of candidate:** | |
|  | **Duration of appointment:** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
|  | **Time commitment: for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
|  | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Gantt chart*] |
| **2.** | **Title of position: …** | |
|  | **Name of candidate:** | |
|  | **Duration of appointment:** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
|  | **Time commitment: for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
|  | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Gantt chart*] |
| **3.** | **Title of position:** *…* | |
|  | **Name of candidate:** | |
|  | **Duration of appointment:** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
|  | **Time commitment: for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
|  | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Gantt chart*] |

# Form PER-2

Resume of Proposed Key Personnel

|  |
| --- |
| **Name of Proposer** |

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

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

|  |  |  |
| --- | --- | --- |
| **From** | **To** | **Company / Project / Position / Relevant technical and management experience** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

Proposed Subcontractors for Major Items of Plant and Installation Services

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

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

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

**Others**

Commercial or contractual aspects of the RFP documents that the Proposer would like to discuss with the Employer during clarifications.

Manufacturer’s Authorization

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

RFP No.: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

To: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

WHEREAS

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

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

Signed: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Title:*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Duly authorized to sign this Authorization on behalf of: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Dated on \_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_

Form of Proposal Security (Bank Guarantee)

*[The bank shall fill in this Bank Guarantee Form in accordance with the instructions indicated.]*

*[Guarantor letterhead or SWIFT identifier code]*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Beneficiary:** *[Employer to insert its name and address]* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**RFP No.:** *[Employer to insert reference number for the Invitation for Proposals]*

**Alternative No***.: [Insert identification No if this is a Proposal for an alternative]*

**Date:** \_\_\_\_\_ *[Insert date of issue]* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**PROPOSAL GUARANTEE No.:** \_ *[Insert guarantee reference number]* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

We have been informed that \_\_\_\_ *[insert name of the Proposer, which in the case of a joint venture shall be the name of the joint venture (whether legally constituted or prospective) or the names of all members thereof]* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter called “the Applicant”) has submitted or will submit the Beneficiary its Proposal \_\_\_\_\_\_\_\_\_\_\_ (hereinafter called “the Proposal”) for the execution of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ under Request for Proposals No. \_\_\_\_\_\_\_\_\_\_\_ (“the RFP”).

Furthermore, we understand that, according to the Beneficiary’s, Proposals must be supported by a Proposal 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 the demand, stating that either the Applicant:

(a) has withdrawn its Proposal during the period of Proposal validity set forth in the Applicant’s Letter of Proposal (“the Proposal Validity Period”), or any extension thereof provided by the Applicant; or

(b) having been notified of the acceptance of its Proposal by the Beneficiary during the period of Proposal validity or any extension thereof provided by the Applicant has failed to: (i) execute the Contract Agreement, if required, or (ii) furnish the performance security, in accordance with the Instructions to Proposers (“ITP”) of the Beneficiary’s RFP Document.

This guarantee will expire: (a) if the Applicant is the successful Proposer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security issued to the Beneficiary in relation to such Contract Agreement; or (b) if the Applicant is not the successful Proposer, upon the earlier of (i) our receipt of a copy of the Beneficiary’s notification to the Applicant of the results of the RFP process; or (ii) twenty-eight days after the expiration of the Proposer’s Proposal Validity Period.

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

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

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*[signature(s)]*

Form of Proposal Security (Proposal Bond)

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

BY THIS BOND *\_\_\_\_\_\_\_\_\_\_\_\_\_* as Principal (hereinafter called “the Principal”), and *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,* **authorized to transact business in** *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,* as Surety (hereinafter called “the Surety”), are held and firmly bound unto *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* as Obligee (hereinafter called “the Employer”) in the sum of *\_\_\_\_\_\_\_\_\_\_\_\_*[[11]](#footnote-11) (*\_\_\_\_\_\_\_\_\_\_*), for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has submitted or will submit a written Proposal to the Employer dated the \_\_\_ day of \_\_\_\_\_\_, 20\_\_, for the supply of *\_\_\_[name of Contract]* *\_\_\_\_\_\_\_\_\_\_* (hereinafter called the “Proposal”).

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

1. has withdrawn its Proposal during the period of Proposal validity set forth in the Principal’s Letter of Proposal (the Proposal Validity Period), or any extension provided by the Principal; or
2. having been notified of the acceptance of its Proposal by the Employer during the Proposal Validity Period or any extension thereto provided by the Applicant has failed to; (i) execute the Contract Agreement, or (ii) furnish the Performance Security in accordance with the Instructions to Proposers (“ITP”) of the Employer’s RFP Document.

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

The Surety hereby agrees that its obligation will remain in full force and effect up to and including the date 28 days after the date of expiration of the Proposal Validity Period set forth in the Principal’s Letter of Proposal or extended thereto provided by the Principal...

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

Principal: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Surety: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Corporate Seal (where appropriate)

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

*(Printed name and title) (Printed name and title)*

Form of Proposal-Securing Declaration

*[The Proposer shall fill in this Form in accordance with the instructions indicated.]*

Date: *[date (as day, month and year)]*

Proposal No.: *[number of RFP process]*

Alternative No.: *[insert identification No if this is a Proposal for an alternative]*

To: *[complete name of Employer]*

We, the undersigned, declare that:

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

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

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

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

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

Name of the Proposer**\***

Name of the person duly authorized to sign the Proposal on behalf of the Proposer**\*\*** \_\_\_\_\_\_\_

Title of the person signing the Proposal \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

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

\*\*: Person signing the Proposal shall have the power of attorney given by the Proposer attached to the Proposal

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

Section V - Eligible Countries

**Eligibility for the Provision of Goods, Works and non-consulting Services in Bank-Financed Procurement**

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

Under ITP 4.8(a) and 5.1: *[insert a list of the countries following approval by the Bank to apply the restriction or state “none”].*

Under ITP 4.8(b) and 5.1: *[insert a list of the countries following approval by the Bank to apply the restriction or state “none”]*

Section VI - Fraud and Corruption

**(Section VI shall not be modified)**

1. **Purpose**
   1. The Bank’s Anti-Corruption Guidelines and this annex apply with respect to procurement under Bank Investment Project Financing operations.
2. **Requirements**
3. 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.
4. To this end, the Bank:
5. Defines, for the purposes of this provision, the terms set forth below as follows:
6. “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
7. “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;
8. “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;
9. “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;
10. “obstructive practice” is:
11. 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
12. acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under paragraph 2.2 e. below.
13. 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;
14. 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;
15. 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;[[12]](#footnote-12) (ii) to be a nominated[[13]](#footnote-13) 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;
16. 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[[14]](#footnote-14) 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.

PART 2 –Employer’s Requirements

Section VII. Employer’s Requirements

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Employer’s Requirements

*Notes on preparing the Employer’s Requirements*

*This Section contains the Scope, the Specifications, the Drawings, Supplementary Information that describe the Facilities and Forms to be used during the implementation of the contract.*

*This is a “single responsibility contract”.* ***The Employer is not expected to invite proposals with detailed technical specifications. However, the Employer does and must know what it wants and must communicate its needs to the Proposers.******Hence, this section on Employer’s Requirements replaces the usual Technical Specifications of a more traditional approach****.*

*To enable Proposers to propose appropriate solutions, the Employer should specify its requirements as clearly and as precisely as possible.* ***The Employer’s requirements must therefore, specify exactly the particular requirements of the completed Facilities.*** *Where the* ***performance*** *of the completed Facilities could be measured in quantitative terms such as production output of a manufacturing plant or maximum generating capacity of a power station, the Employer’s Requirements should not only clearly specify the desired output/capacity but also the upper and lower acceptable limits of deviation from the desired capacity and how such deviations (if any) will be evaluated. It will also be necessary to specify the tests that will be carried out on completion of the Facilities to verify compliance with the requirements specified. The Employer’s Requirements should also clearly specify what associated or incidental services and goods must be supplied by the Contractor. For example, the Contractor may be required to train the Employer’s personnel and to supply consumable or spare parts as listed in a schedule.*

*While this section of the RFP document should endeavor to define the Employer’s Requirements as precisely as possible* ***care must be taken to avoid over specifying details*** *to the extent that the flexibility and potential benefits associated with a “single responsibility” RFP approach are seriously eroded or threatened. This section on Employer’s Requirements should, therefore, be carefully prepared by experts who are familiar with the requirements and with the technical aspect of the required Facilities.*

*The Employer’s Requirements must be drawn up to permit the widest, possible competition and, at the same time, present a clear statement of the required standards of workmanship, materials performance and/or functions of the Facilities. The Employer’s Requirements should stipulate that all goods and materials to be incorporated in the Works are new, unused, of the most recent or current models and incorporate all recent improvements in design and materials.*

*Care must be taken when drafting the Employer’s Requirements to ensure that the requirements are not restrictive. Recognized international standards should be used as much as possible for the description of goods, materials and workmanship. Where other particular standards are specified, whether national standards of the Borrower’s country or other standards, it should be stated that goods, materials and workmanship meeting other authoritative standards and which promise to ensure equal or higher quality than the standards specified, will also be acceptable. Where a brand name of a product is specified it should always be qualified with the terms “or equivalent”.*

*For such a turnkey contract, no detail drawings would generally be available when inviting proposals. It would, however, be useful to include* ***conceptual drawings*** *as are appropriate to supplement or help explain the general concept of the Employer’s needs.*

*The Employer should specify any Environmental, Social, health, and safety requirements as appropriate.*

*Any* ***sustainable procurement*** *technical requirements shall be clearly specified. Please refer to the Bank’s Procurement Regulations for IPF Borrowers and Sustainable procurement guidance notes/tool kit for further information. The sustainable procurement requirements may be specified to enable evaluation of such a requirement on a pass/fail basis and/or rated criteria (point system), as appropriate.*

Scope of Supply of Plant and Installation Services by the Contractor

[*Insert scope*]

Specifications

*[insert the specifications-****see note above on drafting the specifications****]*

Forms and Procedures

Form of Completion Certificate

Date:

Loan/Credit No:

RFP No:

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

To: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dear Ladies and/or Gentlemen,

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

1. Description of the Facilities or part thereof: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

2. Date of Completion: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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

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

Very truly yours,

Title

(Project Manager)

Form of Operational Acceptance Certificate

Date:

Loan/Credit No:

IFB No:

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

To: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Dear Ladies and/or Gentlemen,

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

1. Description of the Facilities or part thereof: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

2. Date of Operational Acceptance: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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

Very truly yours,

Title

(Project Manager)

Change Order Procedure and Forms

Date:

Loan/Credit No:

IFB No:

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2. Change Order Log

3. References for Changes

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Annex 2 Estimate for Change Proposal

Annex 3 Acceptance of Estimate

Annex 4 Change Proposal

Annex 5 Change Order

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Annex 7 Application for Change Proposal

Change Order Procedure

**1. General**

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

**2. Change Order Log**

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

**3. References for Changes**

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

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

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

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

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

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

Home Office CR-H-nnn

Site CR-S-nnn

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

Annex 1. Request for Change Proposal

(Employer’s Letterhead)

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

Attention: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Number: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Dear Ladies and/or Gentlemen:

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

1. Title of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

2. Change Request No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

3. Originator of Change: Employer: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contractor (by Application for Change Proposal No. *\_\_\_\_\_\_\_*[[15]](#footnote-15):

4. Brief Description of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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

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

Drawing No./Document No. Description

7. Detailed conditions or special requirements on the requested Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

8. General Terms and Conditions:

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

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

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

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

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

(Employer’s Name)

(Signature)

(Name of signatory)

(Title of signatory)

Annex 2. Estimate for Change Proposal

(Contractor’s Letterhead)

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

Attention: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Number: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Dear Ladies and/or Gentlemen:

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

1. Title of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

2. Change Request No./Rev.: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

3. Brief Description of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

4. Scheduled Impact of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

5. Cost for Preparation of Change Proposal: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*[[16]](#footnote-16)

(a) Engineering (Amount)

(i) Engineer hrs x rate/hr =

(ii) Draftsperson hrs x rate/hr =

Sub-total hrs

Total Engineering Cost

(b) Other Cost

Total Cost (a) + (b)

(Contractor’s Name)

(Signature)

(Name of signatory)

(Title of signatory)

Annex 3. Acceptance of Estimate

(Employer’s Letterhead)

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

Attention: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Number: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Dear Ladies and/or Gentlemen:

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

1. Title of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

2. Change Request No./Rev.: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

3. Estimate for Change Proposal No./Rev.: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

4. Acceptance of Estimate No./Rev.: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

5. Brief Description of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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

(Employer’s Name)

(Signature)

(Name and Title of signatory)

Annex 4. Change Proposal

(Contractor’s Letterhead)

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

Attention: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Number: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Dear Ladies and/or Gentlemen:

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

1. Title of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

2. Change Proposal No./Rev.: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

3. Originator of Change: Employer: *[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contractor: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

4. Brief Description of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

5. Reasons for Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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

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

Drawing/Document No. Description

8. Estimate of increase/decrease to the Contract Price resulting from Change Proposal:[[17]](#footnote-17)

(Amount)

(a) Direct material

(b) Major construction equipment

(c) Direct field labor (Total hrs)

(d) Subcontracts

(e) Indirect material and labor

(f) Site supervision

(g) Head office technical staff salaries

Process engineer hrs @ rate/hr

Project engineer hrs @ rate/hr

Equipment engineer hrs @ rate/hr

Procurement hrs @ rate/hr

Draftsperson hrs @ rate/hr

Total hrs

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

(i) Fee for general administration, % of Items

(j) Taxes and customs duties

Total lump sum cost of Change Proposal

*(Sum of items (a) to (j))*

Cost to prepare Estimate for Change Proposal

*(Amount payable if Change is not accepted)*

9. Additional time for Completion required due to Change Proposal

10. Effect on the Functional Guarantees

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

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

13. Other terms and conditions of this Change Proposal:

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

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

(c) Contractor’s cost for preparation of this Change Proposal:[[18]](#footnote-18)2

(Contractor’s Name)

(Signature)

(Name of signatory)

(Title of signatory)

Annex 5. Change Order

(Employer’s Letterhead)

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

Attention: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Number: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Dear Ladies and/or Gentlemen:

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

1. Title of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

2. Change Request No./Rev.: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

3. Change Order No./Rev.: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

4. Originator of Change: Employer: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contractor: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

5. Authorized Price:

Ref. No.: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Foreign currency portion *\_\_\_\_\_\_\_\_\_\_* plus Local currency portion *\_\_\_\_\_\_\_\_\_\_*

6. Adjustment of Time for Completion

None Increase *\_\_\_\_\_\_\_\_\_* days Decrease *\_\_\_\_\_\_\_\_\_* days

7. Other effects, if any

Authorized by: Date:

(Employer)

Accepted by: Date:

(Contractor)

Annex 6. Pending Agreement Change Order

(Employer’s Letterhead)

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

Attention: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Number: *[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Dear Ladies and/or Gentlemen:

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

1. Title of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

2. Employer’s Request for Change Proposal No./Rev.: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* dated: *\_\_\_\_\_\_\_\_\_\_*

3. Contractor’s Change Proposal No./Rev.: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* dated: *\_\_\_\_\_\_\_\_\_\_*

4. Brief Description of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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

6. Reference Drawings and/or technical documents for the requested Change:

Drawing/Document No. Description

7. Adjustment of Time for Completion:

8. Other change in the Contract terms:

9. Other terms and conditions:

(Employer’s Name)

(Signature)

(Name of signatory)

(Title of signatory)

Annex 7. Application for Change Proposal

(Contractor’s Letterhead)

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

Attention: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Number: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Dear Ladies and/or Gentlemen:

We hereby propose that the below-mentioned work be treated as a Change in the Facilities.

1. Title of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

2. Application for Change Proposal No./Rev.: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* dated: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

3. Brief Description of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

4. Reasons for Change:

5. Order of Magnitude Estimation (in the currencies of the Contract):

6. Scheduled Impact of Change:

7. Effect on Functional Guarantees, if any:

8. Appendix:

(Contractor’s Name)

(Signature)

(Name of signatory)

(Title of signatory)

Drawings

Supplementary Information

PART 3 – Conditions of Contract and Contract Forms

Section VIII - General Conditions of Contract (GCC)

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**General Conditions of Contract**

1. Contract and Interpretation

|  |  |  |  |
| --- | --- | --- | --- |
| 1. Definitions | 1.1 The following words and expressions shall have the meanings hereby assigned to them:  “Contract” means the Contract Agreement entered into between the Employer and the Contractor, together with the Contract Documents referred to therein; they shall constitute the Contract, and the term “the Contract” shall in all such documents be construed accordingly.  “Contract Documents” means the documents listed in Article 1.1 (Contract Documents) of the Contract Agreement (including any amendments thereto).  “GCC” means the General Conditions of Contract hereof.  “PCC” means the Particular Conditions of Contract.  “day” means calendar day.  “year” means 365 days.  “month” means calendar month.  “Party” means the Employer or the Contractor, as the context requires, and “Parties” means both of them.  “Employer” means the person named as such **in the PCC** and includes the legal successors or permitted assigns of the Employer.  “Project Manager” means the person appointed by the Employer in the manner provided in GCC Sub-Clause 17.1 (Project Manager) hereof and named as such **in the PCC** to perform the duties delegated by the Employer.  “Contractor” means the person(s) whose Proposal to perform the Contract has been accepted by the Employer and is named as Contractor in the Contract Agreement, and includes the legal successors or permitted assigns of the Contractor.  “Contractor’s Representative” means any person nominated by the Contractor and approved by the Employer in the manner provided in GCC Sub-Clause 17.2 (Contractor’s Representative and Construction Manager) hereof to perform the duties delegated by the Contractor.  “Construction Manager” means the person appointed by the Contractor’s Representative in the manner provided in GCC Sub-Clause 17.2.4.  “Subcontractor,” including manufacturers, means any person to whom execution of any part of the Facilities, including preparation of any design or supply of any Plant, is sub-contracted directly or indirectly by the Contractor, and includes its legal successors or permitted assigns.  “Dispute Board” (DB) means the person or persons named as such in the PCC appointed by agreement between the Employer and the Contractor to make a decision with respect to any dispute or difference between the Employer and the Contractor referred to him or her by the Parties pursuant to GCC Sub-Clause 46.1 (Dispute Board) hereof.  “The Bank” means the financing institution **named in the PCC.**  “Contract Price” means the sum specified in Article 2.1 (Contract Price) of the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.  “Facilities” means the Plant to be supplied and installed, as well as all the Installation Services to be carried out by the Contractor under the Contract.  “Plant” means permanent Plant, equipment, machinery, apparatus, materials, articles and things of all kinds to be provided and incorporated in the Facilities by the Contractor under the Contract (including the spare parts to be supplied by the Contractor under GCC Sub-Clause 7.3 hereof), but does not include Contractor’s Equipment.  “Installation Services” means all those services ancillary to the supply of the Plant for the Facilities, to be provided by the Contractor under the Contract, such as transportation and provision of marine or other similar insurance, inspection, expediting, site preparation works (including the provision and use of Contractor’s Equipment and the supply of all construction materials required), installation, testing, precommissioning, commissioning, operations, maintenance, the provision of operations and maintenance manuals, training, etc… as the case may require.  “Contractor’s Equipment” means all facilities, equipment, machinery, tools, apparatus, appliances or things of every kind required in or for installation, completion and maintenance of Facilities that are to be provided by the Contractor, but does not include Plant, or other things intended to form or forming part of the Facilities.  “Country of Origin” means the countries and territories eligible under the rules of the Bank as further elaborated **in the PCC.**  “Site” means the land and other places upon which the Facilities are to be installed, and such other land or places as may be specified in the Contract as forming part of the Site.  “Effective Date” means the date of fulfillment of all conditions stated in Article 3 (Effective Date) of the Contract Agreement, from which the Time for Completion shall be counted.  “Time for Completion” means the time within which Completion of the Facilities as a whole (or of a part of the Facilities where a separate Time for Completion of such part has been prescribed) is to be attained, as referred to in GCC Clause 8 and in accordance with the relevant provisions of the Contract.  “Completion” means that the Facilities (or a specific part thereof where specific parts are specified in the Contract) have been completed operationally and structurally and put in a tight and clean condition, that all work in respect of Precommissioning of the Facilities or such specific part thereof has been completed, and that the Facilities or specific part thereof are ready for Commissioning as provided in GCC Clause 24 (Completion) hereof.  “Precommissioning” means the testing, checking and other requirements specified in the Employer’s Requirements that are to be carried out by the Contractor in preparation for Commissioning as provided in GCC Clause 24 (Completion) hereof.  “Commissioning” means operation of the Facilities or any part thereof by the Contractor following Completion, which operation is to be carried out by the Contractor as provided in GCC Sub-Clause 25.1 (Commissioning) hereof, for the purpose of carrying out Guarantee Test(s).  “Guarantee Test(s)” means the test(s) specified in the Employer’s Requirements to be carried out to ascertain whether the Facilities or a specified part thereof is able to attain the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees, in accordance with the provisions of GCC Sub-Clause 25.2 (Guarantee Test) hereof.  “Operational Acceptance” means the acceptance by the Employer of the Facilities (or any part of the Facilities where the Contract provides for acceptance of the Facilities in parts), which certifies the Contractor’s fulfillment of the Contract in respect of Functional Guarantees of the Facilities (or the relevant part thereof) in accordance with the provisions of GCC Clause 28 (Functional Guarantees) hereof and shall include deemed acceptance in accordance with GCC Clause 25 (Commissioning and Operational Acceptance) hereof.  “Defect Liability Period” means the period of validity of the warranties given by the Contractor commencing at Completion of the Facilities or a part thereof, during which the Contractor is responsible for defects with respect to the Facilities (or the relevant part thereof) as provided in GCC Clause 27 (Defect Liability) hereof. | | |
| 2. Contract Documents | 2.1 Subject to Article 1.2 (Order of Precedence) of the Contract Agreement, all documents forming part of the Contract (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The Contract shall be read as a whole. | | |
| 3. Interpretation | 3.1 In the Contract, except where the context requires otherwise:   1. words indicating one gender include all genders; 2. words indicating the singular also include the plural and words indicating the plural also include the singular; 3. provisions including the word “agree,” “agreed,” or “agreement” require the agreement to be recorded in writing; and 4. the word “tender” is synonymous with “Proposal,” “tenderer,” with “Proposer,” and “tender documents” with “RFP Document,” and      1. “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record.   The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.  3.2 Incoterms  Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of Parties thereunder shall be as prescribed by *Incoterms*.  Incoterms means international rules for interpreting trade terms published by the International Chamber of Commerce (latest edition), 38 Cours Albert 1er, 75008 Paris, France.  3.3 Entire Agreement  Subject to GCC Sub-Clause 16.4 hereof, the Contract constitutes the entire agreement between the Employer and Contractor with respect to the subject matter of Contract and supersedes all communications, negotiations and agreements (whether written or oral) of Parties with respect thereto made prior to the date of Contract.  3.4 Amendment  No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each Party hereto.  3.5 Independent Contractor  The Contractor shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the Parties hereto. Subject to the provisions of the Contract, the Contractor shall be solely responsible for the manner in which the Contract is performed. All employees, representatives or Subcontractors engaged by the Contractor in connection with the performance of the Contract shall be under the complete control of the Contractor and shall not be deemed to be employees of the Employer, and nothing contained in the Contract or in any subcontract awarded by the Contractor shall be construed to create any contractual relationship between any such employees, representatives or Subcontractors and the Employer.  3.6 Non-Waiver  3.6.1 Subject to GCC Sub-Clause 3.6.2 below, no relaxation, forbearance, delay or indulgence by either Party in enforcing any of the terms and conditions of the Contract or the granting of time by either Party to the other shall prejudice, affect or restrict the rights of that Party under the Contract, nor shall any waiver by either Party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.  3.6.2 Any waiver of a Party’s rights, powers or remedies under the Contract must be in writing, must be dated and signed by an authorized representative of the Party granting such waiver, and must specify the right and the extent to which it is being waived.  3.7 Severability  If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.  3.8 Country of Origin  “Origin” means the place where the Plant and component parts thereof are mined, grown, produced or manufactured, and from which the services are provided. Plant components are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that is substantially in its basic characteristics or in purpose or utility from its components. | | |
| 4. Communica­tions | 4.1 Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:   1. in writing and delivered against receipt; and 2. delivered, sent or transmitted to the address for the recipient’s communications as stated in the Contract Agreement.   When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Project Manager, a copy shall be sent to the Project Manager or the other Party, as the case may be. | | |
| 5. Law and Language | 5.1 The Contract shall be governed by and interpreted in accordance with laws of the country **specified in the PCC.**   * 1. The ruling language of the Contract shall be that **stated in the PCC.**   2. The language for communications shall be the ruling language unless otherwise **stated in the PCC.** | | |
| 6. Fraud and Corruption | * 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 Appendix B to the GCC.   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 request for proposal 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. | | |
| 1. Subject Matter of Contract | | | |
| 7. Scope of Facilities | | 7.1 Unless otherwise expressly limited in the Employer’s Requirements, the Contractor’s obligations cover the provision of all Plant and the performance of all Installation Services required for the design, and the manufacture (including procurement, quality assurance, construction, installation, associated civil works, Precommissioning and delivery) of the Plant, and the installation, completion and commissioning of the Facilities in accordance with the plans, procedures, specifications, drawings, codes and any other documents as specified in the Section, Employer’s Requirements. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labor, materials, equipment, spare parts (as specified in GCC Sub-Clause 7.3 below) and accessories; Contractor’s Equipment; construction utilities and supplies; temporary materials, structures and facilities; transportation (including, without limitation, unloading and hauling to, from and at the Site); and storage, except for those supplies, works and services that will be provided or performed by the Employer, as set forth in the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer.  7.2 The Contractor shall, unless specifically excluded in the Contract, perform all such work and/or supply all such items and materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Completion of the Facilities as if such work and/or items and materials were expressly mentioned in the Contract.  7.3 In addition to the supply of Mandatory Spare Parts included in the Contract, the Contractor agrees to supply spare parts required for the operation and maintenance of the Facilities for the period **specified in the PCC** and the provisions, if any, **specified in the PCC.**  However, the identity, specifications and quantities of such spare parts and the terms and conditions relating to the supply thereof are to be agreed between the Employer and the Contractor, and the price of such spare parts shall be that given in Price Schedule No. 6, which shall be added to the Contract Price. The price of such spare parts shall include the purchase price therefor and other costs and expenses (including the Contractor’s fees) relating to the supply of spare parts. |
| 8. Time for Commence­ment and Completion | | 8.1 The Contractor shall commence work on the Facilities within the period **specified in the PCC** and without prejudice to GCC Sub-Clause 26.2 hereof, the Contractor shall thereafter proceed with the Facilities in accordance with the time schedule specified in the Appendix to the Contract Agreement titled Time Schedule.  8.2 The Contractor shall attain Completion of the Facilities or of a part where a separate time for Completion of such part is specified in the Contract, within the time **stated in the PCC** or within such extended time to which the Contractor shall be entitled under GCC Clause 40 hereof. |
| 9. Contractor’s Responsibilities | | 9.1 The Contractor shall design, manufacture including associated purchases and/or subcontracting, install and complete the Facilities in accordance with the Contract. When completed, the Facilities should be fit for the purposes for which they are intended as defined in the Contract.  9.2 The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the Facilities including any data as to boring tests provided by the Employer, and on the basis of information that the Contractor could have obtained from a visual inspection of the Site if access thereto was available and of other data readily available to it relating to the Facilities as of the date twenty-eight (28) days prior to Proposal submission. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Facilities.  9.3 The Contractor shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located which such authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Contractor’s and Subcontractor’s personnel and entry permits for all imported Contractor’s Equipment. The Contractor shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Employer under GCC Sub-Clause 10.3 hereof and that are necessary for the performance of the Contract.  9.4 The Contractor shall comply with all laws in force in the country where the Facilities are to be implemented. The laws will include all local, state, national or other laws that affect the performance of the Contract and bind upon the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to GCC Sub-Clause 10.1 hereof.  9.5 Any Plant and Installation Services that will be incorporated in or be required for the Facilities and other supplies shall have their origin as specified under GCC Clause 1 (Country of Origin). Any subcontractors retained by the Contractor shall be from a country as specified in GCC Clause 1 (Country of Origin).  9.6 If the Contractor is a joint venture, or association (JV) of two or more persons, all such persons shall be jointly and severally bound to the Employer for the fulfillment of the provisions of the Contract, and shall designate one of such persons to act as a leader with authority to bind the JV. The composition or the constitution of the JV shall not be altered without the prior consent of the Employer.  9.7 Pursuant to paragraph 2.2 e. of Appendix B to the General Conditions the Contractor shall permit and shall cause its subcontractors and subconsultants to permit, the Bank and/or persons appointed by the Bank to inspect the Site and/or the accounts and records relating to procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by the Bank if requested by the Bank. The Contractor’s and its Subcontractors’ and subconsultants’ attention is drawn to Sub-Clause 6.1 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).  9.8 The Contractor shall conform to the sustainable procurement contractual provisions, if and as specified in the PCC. |
| 10. Employer’s Responsibilities | | 10.1 All information and/or data to be supplied by the Employer as described in the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer, shall be deemed to be accurate, except when the Employer expressly states otherwise.  10.2 The Employer shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of way, as specified in the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer. The Employer shall give full possession of and accord all rights of access thereto on or before the date(s) specified in that Appendix.  10.3 The Employer shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located which (a) such authorities or undertakings require the Employer to obtain in the Employer’s name, (b) are necessary for the execution of the Contract, including those required for the performance by both the Contractor and the Employer of their respective obligations under the Contract, and (c) are specified in the Appendix (Scope of Works and Supply by the Employer).  10.4 If requested by the Contractor, the Employer shall use its best endeavors to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the execution of the Contract from all local, state or national government authorities or public service undertakings that such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain.  10.5 Unless otherwise specified in the Contract or agreed upon by the Employer and the Contractor, the Employer shall provide sufficient, properly qualified operating and maintenance personnel; shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts, other materials and facilities; and shall perform all work and services of whatsoever nature, including those required by the Contractor to properly carry out Precommissioning, Commissioning and Guarantee Tests, all in accordance with the provisions of the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer, at or before the time specified in the program furnished by the Contractor under GCC Sub-Clause 18.2 hereof and in the manner thereupon specified or as otherwise agreed upon by the Employer and the Contractor.  10.6 The Employer shall be responsible for the continued operation of the Facilities after Completion, in accordance with GCC Sub-Clause 24.8, and shall be responsible for facilitating the Guarantee Test(s) for the Facilities, in accordance with GCC Sub-Clause 25.2.  10.7 All costs and expenses involved in the performance of the obligations under this GCC Clause 10 shall be the responsibility of the Employer, save those to be incurred by the Contractor with respect to the performance of Guarantee Tests, in accordance with GCC Sub-Clause 25.2.  10.8 In the event that the Employer shall be in breach of any of his obligations under this Clause, the additional cost incurred by the Contractor in consequence thereof shall be determined by the Project Manager and added to the Contract Price. |

1. Payment

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| 11. Contract Price | 11.1 The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement.  11.2 Unless an adjustment clause is **provided for in the PCC,** the Contract Price shall be a firm lump sum not subject to any alteration, except in the event of a Change in the Facilities or as otherwise provided in the Contract.  11.3 Subject to GCC Sub-Clauses 9.2, 10.1 and 35 hereof, the Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract. |
| 12. Terms of Payment | 12.1 The Contract Price shall be paid as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement and in the Appendix to the Contract Agreement titled Terms and Procedures of Payment, which also outlines the procedures to be followed in making application for and processing payments.  12.2 No payment made by the Employer herein shall be deemed to constitute acceptance by the Employer of the Facilities or any part(s) thereof.  12.3 In the event that the Employer fails to make any payment by its respective due date or within the period set forth in the Contract, the Employer shall pay to the Contractor interest on the amount of such delayed payment at the rate(s) shown in the Appendix to the Contract Agreement titled Terms and Procedures of Payment, for the period of delay until payment has been made in full, whether before or after judgment or arbitrage award.  12.4 The currency or currencies in which payments are made to the Contractor under this Contract shall be specified in the Appendix to the Contract Agreement titled Terms and Procedures of Payment, subject to the general principle that payments will be made in the currency or currencies in which the Contract Price has been stated in the Contractor’s Proposal. |
| 13. Securities | 13.1 Issuance of Securities  The Contractor shall provide the securities specified below in favor of the Employer at the times, and in the amount, manner and form specified below.  13.2 Advance Payment Security  13.2.1 The Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a security in an amount equal to the advance payment calculated in accordance with the Appendix to the Contract Agreement titled Terms and Procedures of Payment, and in the same currency or currencies.  13.2.2 The security shall be in the form provided in the RFP Documents or in another form acceptable to the Employer. The amount of the security shall be reduced in proportion to the value of the Facilities executed by and paid to the Contractor from time to time, and shall automatically become null and void when the full amount of the advance payment has been recovered by the Employer. The security shall be returned to the Contractor immediately after its expiration.  13.3 Performance Security  13.3.1 The Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a security for the due performance of the Contract in the amount **specified in the PCC.**  13.3.2 The Performance Security shall be denominated in the currency or currencies of the Contract, or in a freely convertible currency acceptable to the Employer, and shall be in the form provided in Section X, Contract Forms, corresponding to the type of bank guarantee stipulated by the Employer in the PCC, or in another form acceptable to the Employer.  13.3.3 Unless otherwise specified in the PCC, the security shall be reduced by half on the date of the Operational Acceptance. The Security shall become null and void, or shall be reduced pro rata to the Contract Price of a part of the Facilities for which a separate Time for Completion is provided, five hundred and forty (540) days after Completion of the Facilities or three hundred and sixty five (365) days after Operational Acceptance of the Facilities, whichever occurs first; provided, however, that if the Defects Liability Period has been extended on any part of the Facilities pursuant to GCC Sub-Clause 27.8 hereof, the Contractor shall issue an additional security in an amount proportionate to the Contract Price of that part. The security shall be returned to the Contractor immediately after its expiration, provided, however, that if the Contractor, pursuant to GCC Sub-Clause 27.10, is liable for an extended defect liability obligation, the Performance Security shall be extended for the period specified in the PCC pursuant to GCC Sub-Clause 27.10 and up to the amount specified in the PCC.  13.3.4 The Employer shall not make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract. The Employer shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent to which the Employer was not entitled to make the claim. |
| 14. Taxes and Duties | 14.1 Except as otherwise specifically provided in the Contract, the Contractor shall bear and pay all taxes, duties, levies and charges assessed on the Contractor, its Subcontractors or their employees by all municipal, state or national government authorities in connection with the Facilities in and outside of the country where the Site is located.  14.2 Notwithstanding GCC Sub-Clause 14.1 above, the Employer shall bear and promptly pay  (a) all customs and import duties for the Plant specified in Price Schedule No. 1; and  (b) other domestic taxes such as, sales tax and value added tax (VAT) on the Plant specified in Price Schedules No. 1 and No. 2 and that is to be incorporated into the Facilities, and on the finished goods, imposed by the law of the country where the Site is located.  14.3 If any tax exemptions, reductions, allowances or privileges may be available to the Contractor in the country where the Site is located, the Employer shall use its best endeavors to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.  14.4 For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies and charges prevailing at the date twenty-eight (28) days prior to the date of Proposal submission in the country where the Site is located (hereinafter called “Tax” in this GCC Sub-Clause 14.4). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of Contract, which was or will be assessed on the Contractor, Subcontractors or their employees in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction therefrom, as the case may be, in accordance with GCC Clause 36 hereof. |

1. Intellectual Property

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| 15. License/Use of Technical Information | 15.1 For the operation and maintenance of the Plant, the Contractor hereby grants a non-exclusive and non-transferable license (without the right to sub-license) to the Employer under the patents, utility models or other industrial property rights owned by the Contractor or by a third Party from whom the Contractor has received the right to grant licenses thereunder, and shall also grant to the Employer a non-exclusive and non-transferable right (without the right to sub-license) to use the know-how and other technical information disclosed to the Employer under the Contract. Nothing contained herein shall be construed as transferring ownership of any patent, utility model, trademark, design, copyright, know-how or other intellectual property right from the Contractor or any third Party to the Employer.  15.2 The copyright in all drawings, documents and other materials containing data and information furnished to the Employer by the Contractor herein shall remain vested in the Contractor or, if they are furnished to the Employer directly or through the Contractor by any third Party, including suppliers of materials, the copyright in such materials shall remain vested in such third Party. |
| 16. Confidential Information | 16.1 The Employer and the Contractor shall keep confidential and shall not, without the written consent of the other Party hereto, divulge to any third Party any documents, data or other information furnished directly or indirectly by the other Party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this GCC Clause 16.  16.2 The Employer shall not use such documents, data and other information received from the Contractor for any purpose other than the operation and maintenance of the Facilities. Similarly, the Contractor shall not use such documents, data and other information received from the Employer for any purpose other than the design, procurement of Plant, construction or such other work and services as are required for the performance of the Contract.  16.3 The obligation of a Party under GCC Sub-Clauses 16.1 and 16.2 above, however, shall not apply to that information which  (a) now or hereafter enters the public domain through no fault of that Party  (b) can be proven to have been possessed by that Party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other Party hereto  (c) otherwise lawfully becomes available to that Party from a third Party that has no obligation of confidentiality.  16.4 The above provisions of this GCC Clause 16 shall not in any way modify any undertaking of confidentiality given by either of the Parties hereto prior to the date of the Contract in respect of the Facilities or any part thereof.  16.5 The provisions of this GCC Clause 16 shall survive termination, for whatever reason, of the Contract. |

1. Execution of the Facilities

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| 17. Representatives | 17.1 Project Manager  If the Project Manager is not named in the Contract, then within fourteen (14) days of the Effective Date, the Employer shall appoint and notify the Contractor in writing of the name of the Project Manager. The Employer may from time to time appoint some other person as the Project Manager in place of the person previously so appointed, and shall give a notice of the name of such other person to the Contractor without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the Facilities. Such appointment shall only take effect upon receipt of such notice by the Contractor. The Project Manager shall represent and act for the Employer at all times during the performance of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract shall be given by the Project Manager, except as herein otherwise provided.  All notices, instructions, information and other communications given by the Contractor to the Employer under the Contract shall be given to the Project Manager, except as herein otherwise provided.  17.2 Contractor’s Representative & Construction Manager  17.2.1 If the Contractor’s Representative is not named in the Contract, then within fourteen (14) days of the Effective Date, the Contractor shall appoint the Contractor’s Representative and shall request the Employer in writing to approve the person so appointed. If the Employer makes no objection to the appointment within fourteen (14) days, the Contractor’s Representative shall be deemed to have been approved. If the Employer objects to the appointment within fourteen (14) days giving the reason therefor, then the Contractor shall appoint a replacement within fourteen (14) days of such objection, and the foregoing provisions of this GCC Sub-Clause 17.2.1 shall apply thereto.  17.2.2 The Contractor’s Representative shall represent and act for the Contractor at all times during the performance of the Contract and shall give to the Project Manager all the Contractor’s notices, instructions, information and all other communications under the Contract.  All notices, instructions, information and all other communications given by the Employer or the Project Manager to the Contractor under the Contract shall be given to the Contractor’s Representative or, in its absence, its deputy, except as herein otherwise provided.  The Contractor shall not revoke the appointment of the Contractor’s Representative without the Employer’s prior written consent, which shall not be unreasonably withheld. If the Employer consents thereto, the Contractor shall appoint some other person as the Contractor’s Representative, pursuant to the procedure set out in GCC Sub-Clause 17.2.1.  17.2.3 The Contractor’s Representative may, subject to the approval of the Employer which shall not be unreasonably withheld, at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Contractor’s Representative, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Employer and the Project Manager.  Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GCC Sub-Clause 17.2.3 shall be deemed to be an act or exercise by the Contractor’s Representative.  17.2.4 From the commencement of installation of the Facilities at the Site until Completion, the Contractor’s Representative shall appoint a suitable person as the Construction Manager. The Construction Manager shall supervise all work done at the Site by the Contractor and shall be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Contract. Whenever the Construction Manager is absent from the Site, a suitable person shall be appointed to act as the Construction Manager’s deputy.  17.2.5 The Employer may by notice to the Contractor object to any representative or person employed by the Contractor in the execution of the Contract who, in the reasonable opinion of the Employer, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under GCC Sub-Clause 22.4. The Employer shall provide evidence of the same, whereupon the Contractor shall remove such person from the Facilities.  17.2.6 If any representative or person employed by the Contractor is removed in accordance with GCC Sub-Clause 17.2.5, the Contractor shall, where required, promptly appoint a replacement. |
| 18. Work Program | 18.1 Contractor’s Organization  The Contractor shall supply to the Employer and the Project Manager a chart showing the proposed organization to be established by the Contractor for carrying out work on the Facilities within twenty-one (21) days of the Effective Date. The chart shall include the identities of the key personnel and the curricula vitae of such key personnel to be employed shall be supplied together with the chart. The Contractor shall promptly inform the Employer and the Project Manager in writing of any revision or alteration of such an organization chart.  18.2 Program of Performance  Within twenty-eight (28) days after the Effective Date, the Contractor shall submit to the Project Manager a detailed program of performance of the Contract, made in a form acceptable to the Project Manager and showing the sequence in which it proposes to design, manufacture, transport, assemble, install and precommission the Facilities, as well as the date by which the Contractor reasonably requires that the Employer shall have fulfilled its obligations under the Contract so as to enable the Contractor to execute the Contract in accordance with the program and to achieve Completion, Commissioning and Acceptance of the Facilities in accordance with the Contract. The program so submitted by the Contractor shall accord with the Time Schedule included in the Appendix to the Contract Agreement titled Time Schedule, and any other dates and periods specified in the Contract. The Contractor shall update and revise the program as and when appropriate or when required by the Project Manager, but without modification in the Times for Completion specified in the PCC pursuant to Sub-Clause 8.2 and any extension granted in accordance with GCC Clause 40, and shall submit all such revisions to the Project Manager.  18.3 Progress Report  The Contractor shall monitor progress of all the activities specified in the program referred to in GCC Sub-Clause 18.2 above, and supply a progress report to the Project Manager every month.  The progress report shall be in a form acceptable to the Project Manager and shall indicate: (a) percentage completion achieved compared with the planned percentage completion for each activity; and (b) where any activity is behind the program, giving comments and likely consequences and stating the corrective action being taken.  18.4 Progress of Performance  If at any time the Contractor’s actual progress falls behind the program referred to in GCC Sub-Clause 18.2, or it becomes apparent that it will so fall behind, the Contractor shall, at the request of the Employer or the Project Manager, prepare and submit to the Project Manager a revised program, taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress so as to attain Completion of the Facilities within the Time for Completion under GCC Sub-Clause 8.2, any extension thereof entitled under GCC Sub-Clause 40.1, or any extended period as may otherwise be agreed upon between the Employer and the Contractor.  18.5 Procedures  The Contract shall be executed in accordance with the Contract Documents including the procedures given in the Forms and Procedures of the Employer’s Requirements.  The Contractor may execute the Contract in accordance with its own standard project execution plans and procedures to the extent that they do not conflict with the provisions contained in the Contract. |
| 19. Subcontracting | 19.1 The Appendix to the Contract Agreement titled List of Major Items of Plant and Installation Services and List of Approved Subcontractors, specifies major items of supply or services and a list of approved Subcontractors against each item, including manufacturers. Insofar as no Subcontractors are listed against any such item, the Contractor shall prepare a list of Subcontractors for such item for inclusion in such list. The Contractor may from time to time propose any addition to or deletion from any such list. The Contractor shall submit any such list or any modification thereto to the Employer for its approval in sufficient time so as not to impede the progress of work on the Facilities. Such approval by the Employer for any of the Subcontractors shall not relieve the Contractor from any of its obligations, duties or responsibilities under the Contract.  19.2 The Contractor shall select and employ its Subcontractors for such major items from those listed in the lists referred to in GCC Sub-Clause 19.1.  19.3 For items or parts of the Facilities not specified in the Appendix to the Contract Agreement titled List of Major Items of Plant and Installation Services and List of Approved Subcontractors, the Contractor may employ such Subcontractors as it may select, at its discretion.  19.4 Each sub-contract shall include provisions which would entitle the Employer to require the sub-contract to be assigned to the Employer under GCC 19.5 (if and when applicable), or in event of termination by the Employer under GCC 42.2.  19.5 If a subcontractor's obligations extend beyond the expiry date of the relevant Defects Liability Period and theProject Manager, prior to that date, instructs the Contractor to assign the benefits of such obligations to the Employer, then the Contractor shall do so. |
| 20. Design and Engineering | 20.1 Specifications and Drawings  20.1.1 The Contractor shall execute the basic and detailed design and the engineering work in compliance with the provisions of the Contract, or where not so specified, in accordance with good engineering practice.  The Contractor shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, whether such specifications, drawings and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors or omissions are not because of inaccurate information furnished in writing to the Contractor by or on behalf of the Employer.  20.1.2 The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designated by or on behalf of the Employer, by giving a notice of such disclaimer to the Project Manager.  20.2 Codes and Standards  Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of Proposal submission shall apply unless otherwise specified. During Contract execution, any changes in such codes and standards shall be applied subject to approval by the Employer and shall be treated in accordance with GCC Clause 39.  20.3 Approval/Review of Technical Documents by Project Manager  20.3.1 The Contractor shall prepare or cause its Subcontractors to prepare, and furnish to the Project Manager the documents listed in the Appendix to the Contract Agreement titled List of Documents for Approval or Review, for its approval or review as specified and in accordance with the requirements of GCC Sub-Clause 18.2 (Program of Performance).  Any part of the Facilities covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager’s approval thereof.  GCC Sub-Clauses 20.3.2 through 20.3.7 shall apply to those documents requiring the Project Manager’s approval, but not to those furnished to the Project Manager for its review only.  20.3.2 Within fourteen (14) days after receipt by the Project Manager of any document requiring the Project Manager’s approval in accordance with GCC Sub-Clause 20.3.1, the Project Manager shall either return one copy thereof to the Contractor with its approval endorsed thereon or shall notify the Contractor in writing of its disapproval thereof and the reasons therefor and the modifications that the Project Manager proposes.  If the Project Manager fails to take such action within the said fourteen (14) days, then the said document shall be deemed to have been approved by the Project Manager.  20.3.3 The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with the Contract or that it is contrary to good engineering practice.  20.3.4 If the Project Manager disapproves the document, the Contractor shall modify the document and resubmit it for the Project Manager’s approval in accordance with GCC Sub-Clause 20.3.2. If the Project Manager approves the document subject to modification(s), the Contractor shall make the required modification(s), whereupon the document shall be deemed to have been approved.  20.3.5 If any dispute or difference occurs between the Employer and the Contractor in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) thereto that cannot be settled between the Parties within a reasonable period, then such dispute or difference may be referred to a Dispute Board for determination in accordance with GCC Sub-Clause 46.1 hereof. If such dispute or difference is referred to a Dispute Board, the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Contractor shall proceed with the Contract in accordance with the Project Manager’s instructions, provided that if the Dispute Board upholds the Contractor’s view on the dispute and if the Employer has not given notice under GCC Sub-Clause 46.3 hereof, then the Contractor shall be reimbursed by the Employer for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Dispute Board shall decide, and the Time for Completion shall be extended accordingly.  20.3.6 The Project Manager’s approval, with or without modification of the document furnished by the Contractor, shall not relieve the Contractor of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager.  20.3.7 The Contractor shall not depart from any approved document unless the Contractor has first submitted to the Project Manageran amended document and obtained the Project Manager’s approval thereof, pursuant to the provisions of this GCC Sub-Clause 20.3.  If the Project Manager requests any change in any already approved document and/or in any document based thereon, the provisions of GCC Clause 39 shall apply to such request. |
| 21. Procurement | 21.1 Plant  Subject to GCC Sub-Clause 14.2, the Contractor shall procure and transport all Plant in an expeditious and orderly manner to the Site.  21.2 Employer-Supplied Plant  If the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer, provides that the Employer shall furnish any specific items to the Contractor, the following provisions shall apply:  21.2.1 The Employer shall, at its own risk and expense, transport each item to the place on or near the Site as agreed upon by the Parties and make such item available to the Contractor at the time specified in the program furnished by the Contractor, pursuant to GCC Sub-Clause 18.2, unless otherwise mutually agreed.  21.2.2 Upon receipt of such item, the Contractor shall inspect the same visually and notify the Project Manager of any detected shortage, defect or default. The Employer shall immediately remedy any shortage, defect or default, or the Contractor shall, if practicable and possible, at the request of the Employer, remedy such shortage, defect or default at the Employer’s cost and expense. After inspection, such item shall fall under the care, custody and control of the Contractor. The provision of this GCC Sub-Clause 21.2.2 shall apply to any item supplied to remedy any such shortage or default or to substitute for any defective item, or shall apply to defective items that have been repaired.  21.2.3 The foregoing responsibilities of the Contractor and its obligations of care, custody and control shall not relieve the Employer of liability for any undetected shortage, defect or default, nor place the Contractor under any liability for any such shortage, defect or default whether under GCC Clause 27 or under any other provision of Contract.  21.3 Transportation  21.3.1 The Contractor shall at its own risk and expense transport all the materials and the Contractor’s Equipment to the Site by the mode of transport that the Contractor judges most suitable under all the circumstances.  21.3.2 Unless otherwise provided in the Contract, the Contractor shall be entitled to select any safe mode of transport operated by any person to carry the materials and the Contractor’s Equipment.  21.3.3 Upon dispatch of each shipment of materials and the Contractor’s Equipment, the Contractor shall notify the Employer by telex, cable, facsimile or electronic means, of the description of the materials and of the Contractor’s Equipment, the point and means of dispatch, and the estimated time and point of arrival in the country where the Site is located, if applicable, and at the Site. The Contractor shall furnish the Employer with relevant shipping documents to be agreed upon between the Parties.  21.3.4 The Contractor shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the materials and the Contractor’s Equipment to the Site. The Employer shall use its best endeavors in a timely and expeditious manner to assist the Contractor in obtaining such approvals, if requested by the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any claim for damage to roads, bridges or any other traffic facilities that may be caused by the transport of the materials and the Contractor’s Equipment to the Site.  21.4 Customs Clearance  The Contractor shall, at its own expense, handle all imported materials and Contractor’s Equipment at the point(s) of import and shall handle any formalities for customs clearance, subject to the Employer’s obligations under GCC Sub-Clause 14.2, provided that if applicable laws or regulations require any application or act to be made by or in the name of the Employer, the Employer shall take all necessary steps to comply with such laws or regulations. In the event of delays in customs clearance that are not the fault of the Contractor, the Contractor shall be entitled to an extension in the Time for Completion, pursuant to GCC Clause 40. |
| 22. Installation | 22.1 Setting Out/Supervision  22.1.1 Bench Mark: The Contractor shall be responsible for the true and proper setting-out of the Facilities in relation to bench marks, reference marks and lines provided to it in writing by or on behalf of the Employer.  If, at any time during the progress of installation of the Facilities, any error shall appear in the position, level or alignment of the Facilities, the Contractor shall forthwith notify the Project Manager of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of the Project Manager. If such error is based on incorrect data provided in writing by or on behalf of the Employer, the expense of rectifying the same shall be borne by the Employer.  22.1.2 Contractor’s Supervision: The Contractor shall give or provide all necessary superintendence during the installation of the Facilities, and the Construction Manager or its deputy shall be constantly on the Site to provide full-time superintendence of the installation. The Contractor shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.  22.2 Labor:  22.2.1 Engagement of Staff and Labor  Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labor, local or otherwise, and for their payment, housing, feeding and transport.  The Contractor shall provide and employ on the Site in the installation of the Facilities such skilled, semi-skilled and unskilled labor as is necessary for the proper and timely execution of the Contract. The Contractor is encouraged to use local labor that has the necessary skills.  The Contractor shall be responsible for obtaining all necessary permit(s) and/or visa(s) from the appropriate authorities for the entry of all labor and personnel to be employed on the Site into the country where the Site is located. The Employer will, if requested by the Contractor, use his best endeavors in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national or government permission required for bringing in the Contractor’s personnel.  The Contractor shall at its own expense provide the means of repatriation to all of its and its Subcontractor’s personnel employed on the Contract at the Site to the place where they were recruited or to their domicile. It shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Contract to the date programmed for their departure. In the event that the Contractor defaults in providing such means of transportation and temporary maintenance, the Employer may provide the same to such personnel and recover the cost of doing so from the Contractor.  22.2.2 Persons in the Service of Employer  The Contractor shall not recruit, or attempt to recruit, staff and labor from amongst the Employer’s Personnel.  22.2.3 Labor Laws  The Contractor shall comply with all the relevant labor Laws applicable to the Contractor’s Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.  The Contractor shall at all times during the progress of the Contract use its best endeavors to prevent any unlawful, riotous or disorderly conduct or behavior by or amongst its employees and the labor of its Subcontractors.  The Contractor shall, in all dealings with its labor and the labor of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs and all local laws and regulations pertaining to the employment of labor.  22.2.4 Rates of Wages and Conditions of Labor  The Contractor shall pay rates of wages, and observe conditions of labor, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.  The Contractor shall inform the Contractor’s Personnel about their liability to pay personal income taxes in the Country in respect of such of their salaries, wages and allowances as are chargeable under the Laws for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.  22.2.5 Working Hours  No work shall be carried out on the Site on locally recognized days of rest, or outside the normal working hours **stated in the PCC,** unless:  (a) otherwise stated in the Contract,  (b) the Project Manager gives consent, or  (c) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Project Manager.  If and when the Contractor considers it necessary to carry out work at night or on public holidays so as to meet the Time for Completion and requests the Project Manager’s consent thereto, the Project Manager shall not unreasonably withhold such consent.  This Sub-Clause shall not apply to any work which is customarily carried out by rotary or double-shifts.  22.2.6 Facilities for Staff and Labor  Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor’s Personnel. The Contractor shall also provide facilities for the Employer’s Personnel as stated in the Specification.  The Contractor shall not permit any of the Contractor’s Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.  22.2.7 Health and Safety  The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor’s Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor’s and Employer’s Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.  The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the performance of the Contract, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.  The Contractor shall send to the Project Manager, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Project Manager may reasonably require.  The Contractor shall throughout the contract (including the Defects Notification Period): (i) conduct Information, Education and Consultation Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and labor (including all the Contractor's employees, all Subcontractors and Employer’s and Project Manager’s' employees, and all truck drivers and crew making deliveries to Site for construction activities) and to the immediate local communities, concerning the risks, dangers and impact, and appropriate avoidance behavior with respect to of Sexually Transmitted Diseases (STD)—or Sexually Transmitted Infections (STI) in general and HIV/AIDS in particular; (ii) provide male or female condoms for all Site staff and labor as appropriate; and (iii) provide for STI and HIV/AIDS screening, diagnosis, counseling and referral to a dedicated national STI and HIV/AIDS program, (unless otherwise agreed) of all Site staff and labor.  The Contractor shall include in the program to be submitted for the execution of the Facilities under Sub-Clause 18.2 an alleviation program for Site staff and labor and their families in respect of Sexually Transmitted Infections (STI) and Sexually Transmitted Diseases (STD) including HIV/AIDS. The STI, STD and HIV/AIDS alleviation program shall indicate when, how and at what cost the Contractor plans to satisfy the requirements of this Sub-Clause and the related specification. For each component, the program shall detail the resources to be provided or utilized and any related sub-contracting proposed. The program shall also include provision of a detailed cost estimate with supporting documentation. Payment to the Contractor for preparation and implementation this program shall not exceed the Provisional Sum dedicated for this purpose.  22.2.8 Funeral Arrangements  In the event of the death of any of the Contractor’s personnel or accompanying members of their families, the Contractor shall be responsible for making the appropriate arrangements for their return or burial, unless otherwise **specified in the PCC.**  22.2.9 Records of Contractor’s Personnel  The Contractor shall keep accurate records of the Contractor’s personnel, including the number of each class of Contractor’s Personnel on theSite and the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarized on a monthly basis in a form approved by the Project Manager and shall be available for inspection by the Project Manager until the Contractor has completed all work.  22.2.10 Supply of Foodstuffs  The Contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Specification at reasonable prices for the Contractor’s Personnel for the purposes of or in connection with the Contract.  22.2.11 Supply ofWater  The Contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor’s Personnel.  22.2.12 Measures against Insect and Pest Nuisance  The Contractor shall at all times take the necessary precautions to protect the Contractor’s Personnel employed on the Site from insect and pest nuisance, and to reduce their danger to health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.  22.2.13 Alcoholic Liquor or Drugs  The Contractor shall not, otherwise than in accordance with the Laws of the Country, import, sell, give barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift barter or disposal by Contractor's Personnel.  22.2.14 Arms and Ammunition  The Contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so.  22.2.15 Prohibition of All Forms of Forced or Compulsory Labor  The contractor shall not employ “forced or compulsory labor” in any form. “Forced or compulsory labor” consists of all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.  22.2.16 Prohibition of Harmful Child Labor  The Contractor shall not employ any child to perform any work that is economically exploitative, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.  22.3 Contractor’s Equipment  22.3.1 All Contractor’s Equipment brought by the Contractor onto the Site shall be deemed to be intended to be used exclusively for the execution of the Contract. The Contractor shall not remove the same from the Site without the Project Manager’s consent that such Contractor’s Equipment is no longer required for the execution of the Contract.  22.3.2 Unless otherwise specified in the Contract, upon completion of the Facilities, the Contractor shall remove from the Site all Equipment brought by the Contractor onto the Site and any surplus materials remaining thereon.  22.3.3 The Employer will, if requested, use its best endeavors to assist the Contractor in obtaining any local, state or national government permission required by the Contractor for the export of the Contractor’s Equipment imported by the Contractor for use in the execution of the Contract that is no longer required for the execution of the Contract.  22.4 Site Regulations and Safety  The Employer and the Contractor shall establish Site regulations setting out the rules to be observed in the execution of the Contract at the Site and shall comply therewith. The Contractor shall prepare and submit to the Employer, with a copy to the Project Manager, proposed Site regulations for the Employer’s approval, which approval shall not be unreasonably withheld.  Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety of the Facilities, gate control, sanitation, medical care, and fire prevention.  22.5 Opportunities for Other Contractors  22.5.1 The Contractor shall, upon written request from the Employer or the Project Manager, give all reasonable opportunities for carrying out the work to any other contractors employed by the Employer on or near the Site.  22.5.2 If the Contractor, upon written request from the Employer or the Project Manager, makes available to other contractors any roads or ways the maintenance for which the Contractor is responsible, permits the use by such other contractors of the Contractor’s Equipment, or provides any other service of whatsoever nature for such other contractors, the Employer shall fully compensate the Contractor for any loss or damage caused or occasioned by such other contractors in respect of any such use or service, and shall pay to the Contractor reasonable remuneration for the use of such equipment or the provision of such services.  22.5.3 The Contractor shall also so arrange to perform its work as to minimize, to the extent possible, interference with the work of other contractors. The Project Manager shall determine the resolution of any difference or conflict that may arise between the Contractor and other contractors and the workers of the Employer in regard to their work.  22.5.4 The Contractor shall notify the Project Manager promptly of any defects in the other contractors’ work that come to its notice, and that could affect the Contractor’s work. The Project Manager shall determine the corrective measures, if any, required to rectify the situation after inspection of the Facilities. Decisions made by the Project Manager shall be binding on the Contractor.  22.6 Emergency Work  If, by reason of an emergency arising in connection with and during the execution of the Contract, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Facilities, the Contractor shall immediately carry out such work.  If the Contractor is unable or unwilling to do such work immediately, the Employer may do or cause such work to be done as the Employer may determine is necessary in order to prevent damage to the Facilities. In such event the Employer shall, as soon as practicable after the occurrence of any such emergency, notify the Contractor in writing of such emergency, the work done and the reasons therefor. If the work done or caused to be done by the Employer is work that the Contractor was liable to do at its own expense under the Contract, the reasonable costs incurred by the Employer in connection therewith shall be paid by the Contractor to the Employer. Otherwise, the cost of such remedial work shall be borne by the Employer.  22.7 Site Clearance  22.7.1 Site Clearance in Course of Performance: In the course of carrying out the Contract, the Contractor shallkeep theSite reasonably free from all unnecessary obstruction, store or remove any surplus materials, clear away any wreckage, rubbish or temporary works from the Site, and remove any Contractor’s Equipment no longer required for execution of the Contract.  22.7.2 Clearance of Site after Completion: After Completion of all parts of the Facilities, the Contractor shall clear away and remove all wreckage, rubbish and debris of any kind from the Site, and shall leave the Site and Facilities in a clean and safe condition.  22.8 Watching and Lighting  The Contractor shall provide and maintain at its own expense alllighting, fencing, and watching when and where necessary for the proper execution and the protection of the Facilities, or for the safety of the owners and occupiers of adjacent property and for the safety of the public. |
| 23. Test and Inspection | 23.1 The Contractor shall at its own expense carry out at the place of manufacture and/or on the Site all such tests and/or inspections of the Plant and any part of the Facilities as are specified in the Contract.  23.2 The Employer and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the Employer shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.  23.3 Whenever the Contractor is ready to carry out any such test and/or inspection, the Contractor shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Contractor shall obtain from any relevant third Party or manufacturer any necessary permission or consent to enable the Employer and the Project Manager or their designated representatives to attend the test and/or inspection.  23.4 The Contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection.  If the Employer or Project Manager or their designated representatives fails to attend the test and/or inspection, or if it is agreed between the Parties that such persons shall not do so, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Project Manager with a certified report of the results thereof.  23.5 The Project Manager may require the Contractor to carry out any test and/or inspection not required by the Contract, provided that the Contractor’s reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impede the progress of work on the Facilities and/or the Contractor’s performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.  23.6 If any Plant or any part of the Facilities fails to pass any test and/or inspection, the Contractor shall either rectify or replace such Plant or part of the Facilities and shall repeat the test and/or inspection upon giving a notice under GCC Sub-Clause 23.3.  23.7 If any dispute or difference of opinion shall arise between the Parties in connection with or arising out of the test and/or inspection of the Plant or part of the Facilities that cannot be settled between the Parties within a reasonable period of time, it may be referred to an Dispute Board for determination in accordance with GCC Sub-Clause 46.3.  23.8 The Contractor shall afford the Employer and the Project Manager, at the Employer’s expense, access at any reasonable time to any place where the Plant are being manufactured or the Facilities are being installed, in order to inspect the progress and the manner of manufacture or installation, provided that the Project Manager shall give the Contractor a reasonable prior notice.  23.9 The Contractor agrees that neither the execution of a test and/or inspection of Plant or any part of the Facilities, nor the attendance by the Employer or the Project Manager, nor the issue of any test certificate pursuant to GCC Sub-Clause 23.4, shall release the Contractor from any other responsibilities under the Contract.  23.10 No part of the Facilities or foundations shall be covered up on the Site without the Contractor carrying out any test and/or inspection required under the Contract. The Contractor shall give a reasonable notice to the Project Manager whenever any such parts of the Facilities or foundations are ready or about to be ready for test and/or inspection; such test and/or inspection and notice thereof shall be subject to the requirements of the Contract.  23.11 The Contractor shall uncover any part of the Facilities or foundations, or shall make openings in or through the same as the Project Manager may from time to time require at the Site, and shall reinstate and make good such part or parts.  If any parts of the Facilities or foundations have been covered up at the Site after compliance with the requirement of GCC Sub-Clause 23.10 and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by the Employer, and the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been delayed or impeded in the performance of any of its obligations under the Contract. |
| 24. Completion of the Facilities | 24.1 As soon as the Facilities or any part thereof has, in the opinion of the Contractor, been completed operationally and structurally and put in a tight and clean condition as specified in the Employer’s Requirements, excluding minor items not materially affecting the operation or safety of the Facilities, the Contractor shall so notify the Employer in writing.  24.2 Within seven (7) days after receipt of the notice from the Contractor under GCC Sub-Clause 24.1, the Employer shall supply the operating and maintenance personnel specified in the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer for Precommissioning of the Facilities or any part thereof.  Pursuant to the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer, the Employer shall also provide, within the said seven (7) day period, the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Precommissioning of the Facilities or any part thereof.  24.3 As soon as reasonably practicable after the operating and maintenance personnel have been supplied by the Employer and the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters have been provided by the Employer in accordance with GCC Sub-Clause 24.2, the Contractor shall commence Precommissioning of the Facilities or the relevant part thereof in preparation for Commissioning, subject to GCC Sub-Clause 25.5.  24.4 As soon as all works in respect of Precommissioning are completed and, in the opinion of the Contractor, the Facilities or any part thereof is ready for Commissioning, the Contractor shall so notify the Project Manager in writing.  24.5 The Project Manager shall, within fourteen (14) days after receipt of the Contractor’s notice under GCC Sub-Clause 24.4, either issue a Completion Certificate in the form specified in the Employer’s Requirements (Forms and Procedures), stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor’s notice under GCC Sub-Clause 24.4, or notify the Contractor in writing of any defects and/or deficiencies.  If the Project Manager notifies the Contractor of any defects and/or deficiencies, the Contractor shall then correct such defects and/or deficiencies, and shall repeat the procedure described in GCC Sub-Clause 24.4.  If the Project Manager is satisfied that the Facilities or that part thereof have reached Completion, the Project Manager shall, within seven (7) days after receipt of the Contractor’s repeated notice, issue a Completion Certificate stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor’s repeated notice.  If the Project Manager is not so satisfied, then it shall notify the Contractor in writing of any defects and/or deficiencies within seven (7) days after receipt of the Contractor’s repeated notice, and the above procedure shall be repeated.  24.6 If the Project Manager fails to issue the Completion Certificate and fails to inform the Contractor of any defects and/or deficiencies within fourteen (14) days after receipt of the Contractor’s notice under GCC Sub-Clause 24.4 or within seven (7) days after receipt of the Contractor’s repeated notice under GCC Sub-Clause 24.5, or if the Employer makes use of the Facilities or part thereof, then the Facilities or that part thereof shall be deemed to have reached Completion as of the date of the Contractor’s notice or repeated notice, or as of the Employer’s use of the Facilities, as the case may be.  24.7 As soon as possible after Completion, the Contractor shall complete all outstanding minor items so that the Facilities are fully in accordance with the requirements of the Contract, failing which the Employer will undertake such completion and deduct the costs thereof from any monies owing to the Contractor.  24.8 Upon Completion, the Employer shall be responsible for the care and custody of the Facilities or the relevant part thereof, together with the risk of loss or damage thereto, and shall thereafter take over the Facilities or the relevant part thereof. |
| 25. Commissioning and Operational Acceptance | 25.1 Commissioning  25.1.1 Commissioning of the Facilities or any part thereof shall be commenced by the Contractor immediately after issue of the Completion Certificate by the Project Manager, pursuant to GCC Sub-Clause 24.5, or immediately after the date of the deemed Completion, under GCC Sub-Clause 24.6.  25.1.2 The Employer shall supply the operating and maintenance personnel and all raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Commissioning.  25.1.3 In accordance with the requirements of the Contract, the Contractor’s and Project Manager’s advisory personnel shall attend the Commissioning, including the Guarantee Test, and shall advise and assist the Employer.  25.2 Guarantee Test  25.2.1 Subject to GCC Sub-Clause 25.5, the Guarantee Test and repeats thereof shall be conducted by the Contractor during Commissioning of the Facilities or the relevant part thereof to ascertain whether the Facilities or the relevant part can attain the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees. The Employer shall promptly provide the Contractor with such information as the Contractor may reasonably require in relation to the conduct and results of the Guarantee Test and any repeats thereof.  25.2.2 If for reasons not attributable to the Contractor, the Guarantee Test of the Facilities or the relevant part thereof cannot be successfully completed within the period from the date of Completion **specified in the PCC** or any other period agreed upon by the Employer and the Contractor, the Contractor shall be deemed to have fulfilled its obligations with respect to the Functional Guarantees, and GCC Sub-Clauses 28.2 and 28.3 shall not apply.  25.3 Operational Acceptance  25.3.1 Subject to GCC Sub-Clause 25.4 below, Operational Acceptance shall occur in respect of the Facilities or any part thereof when  (a) the Guarantee Test has been successfully completed and the Functional Guarantees are met; or  (b) the Guarantee Test has not been successfully completed or has not been carried out for reasons not attributable to the Contractor within the period from the date of Completion specified in the PCC pursuant to GCC Sub-Clause 25.2.2 above or any other period agreed upon by the Employer and the Contractor; or  (c) the Contractor has paid the liquidated damages specified in GCC Sub-Clause 28.3 hereof; and  (d) any minor items mentioned in GCC Sub-Clause 24.7 hereof relevant to the Facilities or that part thereof have been completed.  25.3.2 At any time after any of the events set out in GCC Sub-Clause 25.3.1 have occurred, the Contractor may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate in the form provided in the Employer’s Requirements (Forms and Procedures) in respect of the Facilities or the part thereof specified in such notice as of the date of such notice.  25.3.3 The Project Manager shall, after consultation with the Employer, and within seven (7) days after receipt of the Contractor’s notice, issue an Operational Acceptance Certificate.  25.3.4 If within seven (7) days after receipt of the Contractor’s notice, the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the Contractor in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the Facilities or the relevant part thereof shall be deemed to have been accepted as of the date of the Contractor’s said notice.  25.4 Partial Acceptance  25.4.1 If the Contract specifies that Completion and Commissioning shall be carried out in respect of parts of the Facilities, the provisions relating to Completion and Commissioning including the Guarantee Test shall apply to each such part of the Facilities individually, and the Operational Acceptance Certificate shall be issued accordingly for each such part of the Facilities.  25.4.2 If a part of the Facilities comprises facilities such as buildings, for which no Commissioning or Guarantee Test is required, then the Project Manager shall issue the Operational Acceptance Certificate for such facility when it attains Completion, provided that the Contractor shall thereafter complete any outstanding minor items that are listed in the Operational Acceptance Certificate.  25.5 Delayed Precommissioning and/or Guarantee Test  25.5.1 In the event that the Contractor is unable to proceed with the Precommissioning of the Facilities pursuant to Sub-Clause 24.3, or with the Guarantee Test pursuant to Sub-Clause 25.2, for reasons attributable to the Employer either on account of non availability of other facilities under the responsibilities of other contractor(s), or for reasons beyond the Contractor’s control, the provisions leading to “deemed” completion of activities such as Completion, pursuant to GCC Sub-Clause 24.6, and Operational Acceptance, pursuant to GCC Sub-Clause 25.3.4, and Contractor’s obligations regarding Defect Liability Period, pursuant to GCC Sub-Clause 27.2, Functional Guarantee, pursuant to GCC Clause 28, and Care of Facilities, pursuant to GCC Clause 32, and GCC Clause 41.1, Suspension, shall not apply. In this case, the following provisions shall apply.  25.5.2 When the Contractor is notified by the Project Manager that he will be unable to proceed with the activities and obligations pursuant to above Sub-Clause 25.5.1, the Contractor shall be entitled to the following:  (a) the Time of Completion shall be extended for the period of suspension without imposition of liquidated damages pursuant to GCC Sub-Clause 26.2;  (b) payments due to the Contractor in accordance with the provision specified in the Appendix to the Contract Agreement titled Terms and Procedures of Payment, which would not have been payable in normal circumstances due to non-completion of the subject activities, shall be released to the Contractor against submission of a security in the form of a bank guarantee of equivalent amount acceptable to the Employer, and which shall become null and void when the Contractor will have complied with its obligations regarding those payments, subject to the provision of Sub-Clause 25.5.3 below;  (c) the expenses towards the above security and extension of other securities under the contract, of which validity needs to be extended, shall be reimbursed to the Contractor by the Employer;  (d) the additional charges towards the care of the Facilities pursuant to GCC Sub-Clause 32.1 shall be reimbursed to the Contractor by the Employer for the period between the notification mentioned above and the notification mentioned in Sub-Clause 25.5.4 below. The provision of GCC Sub-Clause 33.2 shall apply to the Facilities during the same period.  25.5.3 In the event that the period of suspension under above Sub-Clause 25.5.1 actually exceeds one hundred eighty (180) days, the Employer and Contractor shall mutually agree to any additional compensation payable to the Contractor.  25.5.4 When the Contractor is notified by the Project Manager that the Plant is ready for Precommissioning, the Contractor shall proceed without delay in performing Precommissioning in accordance with Clause 24. |

1. Guarantees and Liabilities

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| 26. Completion Time Guarantee | 26.1 The Contractor guarantees that it shall attain Completion of the Facilities (or a part for which a separate time for completion is specified) within the Time for Completion specified in the PCC pursuant to GCC Sub-Clause 8.2, or within such extended time to which the Contractor shall be entitled under GCC Clause 40 hereof.  26.2 If the Contractor fails to attain Completion of the Facilities or any part thereof within the Time for Completion or any extension thereof under GCC Clause 40, the Contractor shall pay to the Employer liquidated damages in the amount **specified in the PCC** as a percentage rate of the Contract Price or the relevant part thereof. The aggregate amount of such liquidated damages shall in no event exceed the amount **specified as “Maximum” in the PCC** as a percentage rate of the Contract Price. Once the “Maximum” is reached, the Employer may consider termination of the Contract, pursuant to GCC Sub-Clause 42.2.2.  Such payment shall completely satisfy the Contractor’s obligation to attain Completion of the Facilities or the relevant part thereof within the Time for Completion or any extension thereof under GCC Clause 40. The Contractor shall have no further liability whatsoever to the Employer in respect thereof.  However, the payment of liquidated damages shall not in any way relieve the Contractor from any of its obligations to complete the Facilities or from any other obligations and liabilities of the Contractor under the Contract.  Save for liquidated damages payable under this GCC Sub-Clause 26.2, the failure by the Contractor to attain any milestone or other act, matter or thing by any date specified in the Appendix to the Contract Agreement titled Time Schedule, and/or other program of work prepared pursuant to GCC Sub-Clause 18.2 shall not render the Contractor liable for any loss or damage thereby suffered by the Employer.  26.3 If the Contractor attains Completion of the Facilities or any part thereof before the Time for Completion or any extension thereof under GCC Clause 40, the Employer shall pay to the Contractor a bonus in the amount **specified in the PCC.**  The aggregate amount of such bonus shall in no event exceed the amount **specified as “Maximum” in the PCC.** |
| 27. Defect Liability | 27.1 The Contractor warrants that the Facilities or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Plant supplied and of the work executed.  27.2 The Defect Liability Period shall be five hundred and forty (540) days from the date of Completion of the Facilities (or any part thereof) or one year from the date of Operational Acceptance of the Facilities (or any part thereof), whichever first occurs, unless specified otherwise in the PCC pursuant to GCC Sub-Clause 27.10.  If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Plant supplied or of the work executed by the Contractor, the Contractor shall promptly, in consultation and agreement with the Employer regarding appropriate remedying of the defects, and at its cost, repair, replace or otherwise make good as the Contractor shall determine at its discretion, such defect as well as any damage to the Facilities caused by such defect. The Contractor shall not be responsible for the repair, replacement or making good of any defect or of any damage to the Facilities arising out of or resulting from any of the following causes:  (a) improper operation or maintenance of the Facilities by the Employer;  (b) operation of the Facilities outside specifications provided in the Contract; or  (c) normal wear and tear.  27.3 The Contractor’s obligations under this GCC Clause 27 shall not apply to:  (a) any materials that are supplied by the Employer under GCC Sub-Clause 21.2, are normally consumed in operation, or have a normal life shorter than the Defect Liability Period stated herein;  (b) any designs, specifications or other data designed, supplied or specified by or on behalf of the Employer or any matters for which the Contractor has disclaimed responsibility herein; or  (c) any other materials supplied or any other work executed by or on behalf of the Employer, except for the work executed by the Employer under GCC Sub-Clause 27.7.  27.4 The Employer shall give the Contractor a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Employer shall afford all reasonable opportunity for the Contractor to inspect any such defect.  27.5 The Employer shall afford the Contractor all necessary access to the Facilities and the Site to enable the Contractor to perform its obligations under this GCC Clause 27.  The Contractor may, with the consent of the Employer, remove from the Site any Plant or any part of the Facilities that are defective if the nature of the defect, and/or any damage to the Facilities caused by the defect, is such that repairs cannot be expeditiously carried out at the Site.  27.6 If the repair, replacement or making good is of such a character that it may affect the efficiency of the Facilities or any part thereof, the Employer may give to the Contractor a notice requiring that tests of the defective part of the Facilities shall be made by the Contractor immediately upon completion of such remedial work, whereupon the Contractor shall carry out such tests.  If such part fails the tests, the Contractor shall carry out further repair, replacement or making good, as the case may be, until that part of the Facilities passes such tests. The tests shall be agreed upon by the Employer and the Contractor.  27.7 If the Contractor fails to commence the work necessary to remedy such defect or any damage to the Facilities caused by such defect within a reasonable time (which shall in no event be considered to be less than fifteen (15) days), the Employer may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Employer in connection therewith shall be paid to the Employer by the Contractor or may be deducted by the Employer from any monies due the Contractor or claimed under the Performance Security.  27.8 If the Facilities or any part thereof cannot be used by reason of such defect and/or making good of such defect, the Defect Liability Period of the Facilities or such part, as the case may be, shall be extended by a period equal to the period during which the Facilities or such part cannot be used by the Employer because of any of the aforesaid reasons.  27.9 Except as provided in GCC Clauses 27 and 33, the Contractor shall be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect of defects in the Facilities or any part thereof, the Plant, design or engineering or work executed that appear after Completion of the Facilities or any part thereof, except where such defects are the result of the gross negligence, fraud, or criminal or willful action of the Contractor.  27.10 In addition, any such component of the Facilities, and during the period of time as may be **specified in the PCC,** shall be subject to an extended defect liability period. Such obligation of the Contractor shall be in addition to the defect liability period specified under GCC Sub-Clause 27.2. |
| 28. Functional Guarantees | 28.1 The Contractor guarantees that during the Guarantee Test, the Facilities and all parts thereof shall attain the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees, subject to and upon the conditions therein specified.  28.2 If, for reasons attributable to the Contractor, the minimum level of the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees, are not met either in whole or in part, the Contractor shall at its cost and expense make such changes, modifications and/or additions to the Plant or any part thereof as may be necessary to meet at least the minimum level of such Guarantees. The Contractor shall notify the Employer upon completion of the necessary changes, modifications and/or additions, and shall request the Employer to repeat the Guarantee Test until the minimum level of the Guarantees has been met. If the Contractor eventually fails to meet the minimum level of Functional Guarantees, the Employer may consider termination of the Contract, pursuant to GCC Sub-Clause 42.2.2.  28.3 If, for reasons attributable to the Contractor, the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees, are not attained either in whole or in part, but the minimum level of the Functional Guarantees specified in the said Appendix to the Contract Agreement is met, the Contractor shall, at the Contractor’s option, either  (a) make such changes, modifications and/or additions to the Facilities or any part thereof that are necessary to attain the Functional Guarantees at its cost and expense, and shall request the Employer to repeat the Guarantee Test or  (b) pay liquidated damages to the Employer in respect of the failure to meet the Functional Guarantees in accordance with the provisions in the Appendix to the Contract Agreement titled Functional Guarantees.  28.4 The payment of liquidated damages under GCC Sub-Clause 28.3, up to the limitation of liability specified in the Appendix to the Contract Agreement titled Functional Guarantees, shall completely satisfy the Contractor’s guarantees under GCC Sub-Clause 28.3, and the Contractor shall have no further liability whatsoever to the Employer in respect thereof. Upon the payment of such liquidated damages by the Contractor, the Project Manager shall issue the Operational Acceptance Certificate for the Facilities or any part thereof in respect of which the liquidated damages have been so paid. |
| 29. Patent Indemnity | 29.1 The Contractor shall, subject to the Employer’s compliance with GCC Sub-Clause 29.2, indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney’s fees and expenses, which the Employer may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract by reason of: (a) the installation of the Facilities by the Contractor or the use of the Facilities in the country where the Site is located; and (b) the sale of the products produced by the Facilities in any country.  Such indemnity shall not cover any use of the Facilities or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the Facilities or any part thereof, or any products produced thereby in association or combination with any other equipment, Plant or materials not supplied by the Contractor, pursuant to the Contract Agreement.  29.2 If any proceedings are brought or any claim is made against the Employer arising out of the matters referred to in GCC Sub-Clause 29.1, the Employer shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Employer’s name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.  If the Contractor fails to notify the Employer within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission that may be prejudicial to the defense of any such proceedings or claim.  The Employer shall, at the Contractor’s request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.  29.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney’s fees and expenses, which the Contractor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Employer. |
| 30. Limitation of Liability | 30.1 Except in cases of criminal negligence or willful misconduct,  (a) neither Party shall be liable to the other Party, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, which may be suffered by the other Party in connection with the Contract, other than specifically provided as any obligation of the Party in the Contract, and  (b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed the amount resulting from the application of the multiplier specified in the PCC, to the Contract Price or, if a multiplier is not so specified, the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Employer with respect to patent infringement. |

1. Risk Distribution

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| 31. Transfer of Ownership | 31.1 Ownership of the Plant (including spare parts) to be imported into the country where the Site is located shall be transferred to the Employer upon loading on to the mode of transport to be used to convey the Plant from the country of origin to that country.  31.2 Ownership of the Plant (including spare parts) procured in the country where the Site is located shall be transferred to the Employer when the Plant are brought on to the Site.  31.3 Ownership of the Contractor’s Equipment used by the Contractor and its Subcontractors in connection with the Contract shall remain with the Contractor or its Subcontractors.  31.4 Ownership of any Plant in excess of the requirements for the Facilities shall revert to the Contractor upon Completion of the Facilities or at such earlier time when the Employer and the Contractor agree that the Plant in question are no longer required for the Facilities.  31.5 Notwithstanding the transfer of ownership of the Plant, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor pursuant to GCC Clause 32 (Care of Facilities) hereof until Completion of the Facilities or the part thereof in which such Plant are incorporated. |
| 32. Care of Facilities | 32.1 The Contractor shall be responsible for the care and custody of the Facilities or any part thereof until the date of Completion of the Facilities pursuant to GCC Clause 24 or, where the Contract provides for Completion of the Facilities in parts, until the date of Completion of the relevant part, and shall make good at its own cost any loss or damage that may occur to the Facilities or the relevant part thereof from any cause whatsoever during such period. The Contractor shall also be responsible for any loss or damage to the Facilities caused by the Contractor or its Subcontractors in the course of any work carried out, pursuant to GCC Clause 27. Notwithstanding the foregoing, the Contractor shall not be liable for any loss or damage to the Facilities or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Sub-Clauses 32.2 and 38.1.  32.2 If any loss or damage occurs to the Facilities or any part thereof or to the Contractor’s temporary facilities by reason of  (a) insofar as they relate to the country where the Site is located, nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks and Political Risks, taken out under GCC Clause 34 hereof; or  (b) any use or occupation by the Employer or any third Party other than a Subcontractor, authorized by the Employer of any part of the Facilities; or  (c) any use of or reliance upon any design, data or specification provided or designated by or on behalf of the Employer, or any such matter for which the Contractor has disclaimed responsibility herein,  the Employer shall pay to the Contractor all sums payable in respect of the Facilities executed, notwithstanding that the same be lost, destroyed or damaged, and will pay to the Contractor the replacement value of all temporary facilities and all parts thereof lost, destroyed or damaged. If the Employer requests the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Contractor shall make good the same at the cost of the Employer in accordance with GCC Clause 39. If the Employer does not request the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Employer shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the Facilities thereby lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the Facilities, the Employer shall terminate the Contract pursuant to GCC Sub-Clause 42.1 hereof.  32.3 The Contractor shall be liable for any loss of or damage to any Contractor’s Equipment, or any other property of the Contractor used or intended to be used for purposes of the Facilities, except (i) as mentioned in GCC Sub-Clause 32.2 with respect to the Contractor’s temporary facilities, and (ii) where such loss or damage arises by reason of any of the matters specified in GCC Sub-Clauses 32.2 (b) and (c) and 38.1.  32.4 With respect to any loss or damage caused to the Facilities or any part thereof or to the Contractor’s Equipment by reason of any of the matters specified in GCC Sub-Clause 38.1, the provisions of GCC Sub-Clause 38.3 shall apply. |
| 33. Loss of or Damage to Property; Accident or Injury to Workers; Indemnifica­tion | 33.1 Subject to GCC Sub-Clause 33.3, the Contractor shall indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney’s fees and expenses, in respect of the death or injury of any person or loss of or damage to any property other than the Facilities whether accepted or not, arising in connection with the supply and installation of the Facilities and by reason of the negligence of the Contractor or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Employer, its contractors, employees, officers or agents.  33.2 If any proceedings are brought or any claim is made against the Employer that might subject the Contractor to liability under GCC Sub-Clause 33.1, the Employer shall promptly give the Contractor a notice thereof and the Contractor may at its own expense and in the Employer’s name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.  If the Contractor fails to notify the Employer within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission that may be prejudicial to the defense of any such proceedings or claim.  The Employer shall, at the Contractor’s request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.  33.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from any liability for loss of or damage to property of the Employer, other than the Facilities not yet taken over, that is caused by fire, explosion or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 34, provided that such fire, explosion or other perils were not caused by any act or failure of the Contractor.  33.4 The Party entitled to the benefit of an indemnity under this GCC Clause 33 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the Party fails to take such measures, the other Party’s liabilities shall be correspondingly reduced. |
| 34. Insurance | 34.1 To the extent specified in the Appendix to the Contract Agreement titled Insurance Requirements, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in the said Appendix. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, who should not unreasonably withhold such approval.  (a) Cargo Insurance During Transport  Covering loss or damage occurring while in transit from the Contractor’s or Subcontractor’s works or stores until arrival at the Site, to the Plant (including spare parts therefor) and to the Contractor’s Equipment.  (b) Installation All Risks Insurance  Covering physical loss or damage to the Facilities at the Site, occurring prior to Completion of the Facilities, with an extended maintenance coverage for the Contractor’s liability in respect of any loss or damage occurring during the Defect Liability Period while the Contractor is on the Site for the purpose of performing its obligations during the Defect Liability Period.  (c) Third Party Liability Insurance  Covering bodily injury or death suffered by third Parties including the Employer’s personnel, and loss of or damage to property occurring in connection with the supply and installation of the Facilities.  (d) Automobile Liability Insurance  Covering use of all vehicles used by the Contractor or its Subcontractors, whether or not owned by them, in connection with the execution of the Contract.  (e) Workers’ Compensation  In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.  (f) Employer’s Liability  In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.  (g) Other Insurances  Such other insurances as may be specifically agreed upon by the Parties hereto as listed in the Appendix to the Contract Agreement titled Insurance Requirements.  34.2 The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 34.1, except for the Third Party Liability, Workers’ Compensation and Employer’s Liability Insurances, and the Contractor’s Subcontractors shall be named as co-insureds under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 34.1 except for the Cargo Insurance During Transport, Workers’ Compensation and Employer’s Liability Insurances. All insurer’s rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.  34.3 The Contractor shall, in accordance with the provisions of the Appendix to the Contract Agreement titled Insurance Requirements, deliver to the Employer certificates of insurance or copies of the insurance policies as evidence that the required policies are in full force and effect. The certificates shall provide that no less than twenty-one (21) days’ notice shall be given to the Employer by insurers prior to cancellation or material modification of a policy.  34.4 The Contractor shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Contractor.  34.5 The Employer shall at its expense take out and maintain in effect during the performance of the Contract those insurances specified in the Appendix to the Contract Agreement titled Insurance Requirements, in the sums and with the deductibles and other conditions specified in the said Appendix. The Contractor and the Contractor’s Subcontractors shall be named as co-insureds under all such policies. All insurers’ rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies. The Employer shall deliver to the Contractor satisfactory evidence that the required insurances are in full force and effect. The policies shall provide that not less than twenty-one (21) days’ notice shall be given to the Contractor by all insurers prior to any cancellation or material modification of the policies. If so requested by the Contractor, the Employer shall provide copies of the policies taken out by the Employer under this GCC Sub-Clause 34.5.  34.6 If the Contractor fails to take out and/or maintain in effect the insurances referred to in GCC Sub-Clause 34.1, the Employer may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Contractor under the Contract any premium that the Employer shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Contractor. If the Employer fails to take out and/or maintain in effect the insurances referred to in GCC 34.5, the Contractor may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Employer under the Contract any premium that the Contractor shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Employer. If the Contractor fails to or is unable to take out and maintain in effect any such insurances, the Contractor shall nevertheless have no liability or responsibility towards the Employer, and the Contractor shall have full recourse against the Employer for any and all liabilities of the Employer herein.  34.7 Unless otherwise provided in the Contract, the Contractor shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GCC Clause 34, and all monies payable by any insurers shall be paid to the Contractor. The Employer shall give to the Contractor all such reasonable assistance as may be required by the Contractor. With respect to insurance claims in which the Employer’s interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of the Employer. With respect to insurance claims in which the Contractor’s interest is involved, the Employer shall not give any release or make any compromise with the insurer without the prior written consent of the Contractor. |
| 35. Unforeseen Conditions | 35.1 If, during the execution of the Contract, the Contractor shall encounter on the Site any physical conditions other than climatic conditions, or artificial obstructions that could not have been reasonably foreseen prior to the date of the Contract Agreement by an experienced contractor on the basis of reasonable examination of the data relating to the Facilities including any data as to boring tests, provided by the Employer, and on the basis of information that it could have obtained from a visual inspection of the Site if access thereto was available, or other data readily available to it relating to the Facilities, and if the Contractor determines that it will in consequence of such conditions or obstructions incur additional cost and expense or require additional time to perform its obligations under the Contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Contractor shall promptly, and before performing additional work or using additional Plant or Contractor’s Equipment, notify the Project Manager in writing of  (a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen;  (b) the additional work and/or Plant and/or Contractor’s Equipment required, including the steps which the Contractor will or proposes to take to overcome such conditions or obstructions;  (c) the extent of the anticipated delay; and  (d) the additional cost and expense that the Contractor is likely to incur.  On receiving any notice from the Contractor under this GCC Sub-Clause 35.1, the Project Manager shall promptly consult with the Employer and Contractor and decide upon the actions to be taken to overcome the physical conditions or artificial obstructions encountered. Following such consultations, the Project Manager shall instruct the Contractor, with a copy to the Employer, of the actions to be taken.  35.2 Any reasonable additional cost and expense incurred by the Contractor in following the instructions from the Project Manager to overcome such physical conditions or artificial obstructions referred to in GCC Sub-Clause 35.1 shall be paid by the Employer to the Contractor as an addition to the Contract Price.  If the Contractor is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in GCC Sub-Clause 35.1, the Time for Completion shall be extended in accordance with GCC Clause 40. |
| 36. Change in Laws and Regulations | 36.1 If, after the date twenty-eight (28) days prior to the date of Proposal submission, in the country where the Site is located, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed which shall be deemed to include any change in interpretation or application by the competent authorities, that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the PCC pursuant to GCC Sub-Clause 11.2. |
| 37. Force Majeure | 37.1 “Force Majeure” shall mean any event beyond the reasonable control of the Employer or of the Contractor, as the case may be, and which is unavoidable notwithstanding the reasonable care of the Party affected, and shall include, without limitation, the following:  (a) war, hostilities or warlike operations whether a state of war be declared or not, invasion, act of foreign enemy and civil war  (b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts  (c) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority  (d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine and plague  (e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster  (f) shortage of labor, materials or utilities where caused by circumstances that are themselves Force Majeure.  37.2 If either Party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event.  37.3 The Party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such Party’s performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with GCC Clause 40.  37.4 The Party or Parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either Party’s right to terminate the Contract under GCC Sub-Clauses 37.6 and 38.5.  37.5 No delay or nonperformance by either Party hereto caused by the occurrence of any event of Force Majeure shall  (a) constitute a default or breach of the Contract, or  (b) give rise to any claim for damages or additional cost or expense occasioned thereby, subject to GCC Sub-Clauses 32.2, 38.3 and 38.4  if and to the extent that such delay or nonperformance is caused by the occurrence of an event of Force Majeure.  37.6 If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the Contract, the Parties will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Contract by giving a notice to the other, but without prejudice to either Party’s right to terminate the Contract under GCC Sub-Clause 38.5.  37.7 In the event of termination pursuant to GCC Sub-Clause 37.6, the rights and obligations of the Employer and the Contractor shall be as specified in GCC Sub-Clauses 42.1.2 and 42.1.3.  37.8 Notwithstanding GCC Sub-Clause 37.5, Force Majeure shall not apply to any obligation of the Employer to make payments to the Contractor herein. |
| 38. War Risks | 38.1 “War Risks” shall mean any event specified in paragraphs (a) and (b) of GCC Sub-Clause 37.1 and any explosion or impact of any mine, bomb, shell, grenade or other projectile, missile, munitions or explosive of war, occurring or existing in or near the country (or countries) where the Site is located.  38.2 Notwithstanding anything contained in the Contract, the Contractor shall have no liability whatsoever for or with respect to  (a) destruction of or damage to Facilities, Plant, or any part thereof;  (b) destruction of or damage to property of the Employer or any third Party; or  (c) injury or loss of life  if such destruction, damage, injury or loss of life is caused by any War Risks, and the Employer shall indemnify and hold the Contractor harmless from and against any and all claims, liabilities, actions, lawsuits, damages, costs, charges or expenses arising in consequence of or in connection with the same.  38.3 If the Facilities or any Plant or Contractor’s Equipment or any other property of the Contractor used or intended to be used for the purposes of the Facilities shall sustain destruction or damage by reason of any War Risks, the Employer shall pay the Contractor for  (a) any part of the Facilities or the Plant so destroyed or damaged to the extent not already paid for by the Employer  and so far as may be required by the Employer, and as may be necessary for completion of the Facilities  (b) replacing or making good any Contractor’s Equipment or other property of the Contractor so destroyed or damaged  (c) replacing or making good any such destruction or damage to the Facilities or the Plant or any part thereof .  If the Employer does not require the Contractor to replace or make good any such destruction or damage to the Facilities, the Employer shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the Facilities thereby destroyed or damaged or, where the loss, destruction or damage affects a substantial part of the Facilities, shall terminate the Contract, pursuant to GCC Sub-Clause 42.1.  If the Employer requires the Contractor to replace or make good on any such destruction or damage to the Facilities, the Time for Completion shall be extended in accordance with GCC 40.  38.4 Notwithstanding anything contained in the Contract, the Employer shall pay the Contractor for any increased costs or incidentals to the execution of the Contract that are in any way attributable to, consequent on, resulting from, or in any way connected with any War Risks, provided that the Contractor shall as soon as practicable notify the Employer in writing of any such increased cost.  38.5 If during the performance of the Contract any War Risks shall occur that financially or otherwise materially affect the execution of the Contract by the Contractor, the Contractor shall use its reasonable efforts to execute the Contract with due and proper consideration given to the safety of its and its Subcontractors’ personnel engaged in the work on the Facilities, provided, however, that if the execution of the work on the Facilities becomes impossible or is substantially prevented for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of any War Risks, the Parties will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Contract by giving a notice to the other.  38.6 In the event of termination pursuant to GCC Sub-Clauses 38.3 or 38.5, the rights and obligations of the Employer and the Contractor shall be specified in GCC Sub-Clauses 42.1.2 and 42.1.3. |

1. Change in Contract Elements

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| 39. Change in the Facilities | 39.1 Introducing a Change  39.1.1 Subject to GCC Sub-Clauses 39.2.5 and 39.2.7, the Employer shall have the right to propose, and subsequently require, that the Project Manager order the Contractor from time to time during the performance of the Contract to make any change, modification, addition or deletion to, in or from the Facilities hereinafter called “Change”, provided that such Change falls within the general scope of the Facilities and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Facilities and the technical compatibility of the Change envisaged with the nature of the Facilities as specified in the Contract.  39.1.2 Value Engineering: The Contractor may prepare, at its own cost, a value engineering proposal at any time during the performance of the contract. The value engineering proposal shall, at a minimum, include the following;  (a) the proposed change(s), and a description of the difference to the existing contract requirements;  (b) a full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs) the Employer may incur in implementing the value engineering proposal; and  (c) a description of any effect(s) of the change on performance/functionality.  The Employer may accept the value engineering proposal if the proposal demonstrates benefits that:  (a) accelerates the delivery period; or  (b) reduces the Contract Price or the life cycle costs to the Employer; or  (c) improves the quality, efficiency, safety or sustainability of the Facilities; or  (d) yields any other benefits to the Employer,  without compromising the necessary functions of the Facilities.  If the value engineering proposal is approved by the Employer and results in:  (a) a reduction of the Contract Price; the amount to be paid to the Contractor shall be the percentage specified in the PCC of the reduction in the Contract Price; or  (b) an increase in the Contract Price; but results in a reduction in life cycle costs due to any benefit described in (a) to (d) above, the amount to be paid to the Contractor shall be the full increase in the Contract Price.  39.1.3 Notwithstanding GCC Sub-Clauses 39.1.1 and 39.1.2, no change made necessary because of any default of the Contractor in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Completion.  39.1.4 The procedure on how to proceed with and execute Changes is specified in GCC Sub-Clauses 39.2 and 39.3, and further details and forms are provided in the Employer’s Requirements (Forms and Procedures).  39.2 Changes Originating from Employer  39.2.1 If the Employer proposes a Change pursuant to GCC Sub-Clause 39.1.1, it shall send to the Contractor a “Request for Change Proposal,” requiring the Contractor to prepare and furnish to the Project Manager as soon as reasonably practicable a “Change Proposal,” which shall include the following:  (a) brief description of the Change  (b) effect on the Time for Completion  (c) estimated cost of the Change  (d) effect on Functional Guarantees (if any)  (e) effect on the Facilities  (f) effect on any other provisions of the Contract.  39.2.2 Prior to preparing and submitting the “Change Proposal,” the Contractor shall submit to the Project Manager an “Estimate for Change Proposal,” which shall be an estimate of the cost of preparing and submitting the Change Proposal.  Upon receipt of the Contractor’s Estimate for Change Proposal, the Employer shall do one of the following:  (a) accept the Contractor’s estimate with instructions to the Contractor to proceed with the preparation of the Change Proposal  (b) advise the Contractor of any part of its Estimate for Change Proposal that is unacceptable and request the Contractor to review its estimate  (c) advise the Contractor that the Employer does not intend to proceed with the Change.  39.2.3 Upon receipt of the Employer’s instruction to proceed under GCC Sub-Clause 39.2.2 (a), the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GCC Sub-Clause 39.2.1.  39.2.4 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If such rates and prices are inequitable, the Parties thereto shall agree on specific rates for the valuation of the Change.  39.2.5 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith and with all other Change Orders that have already become binding upon the Contractor under this GCC Clause 39 would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price) of the Contract Agreement by more than fifteen percent (15%), the Contractor may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If the Employer accepts the Contractor’s objection, the Employer shall withdraw the proposed Change and shall notify the Contractor in writing thereof.  The Contractor’s failure to so object shall neither affect its right to object to any subsequent requested Changes or Change Orders herein, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Contractor represents.  39.2.6 Upon receipt of the Change Proposal, the Employer and the Contractor shall mutually agree upon all matters therein contained. Within fourteen (14) days after such agreement, the Employer shall, if it intends to proceed with the Change, issue the Contractor with a Change Order.  If the Employer is unable to reach a decision within fourteen (14) days, it shall notify the Contractor with details of when the Contractor can expect a decision.  If the Employer decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Contractor accordingly. Under such circumstances, the Contractor shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Contractor in its Estimate for Change Proposal submitted in accordance with GCC Sub-Clause 39.2.2.  39.2.7 If the Employer and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, or any other matters identified in the Change Proposal, the Employer may nevertheless instruct the Contractor to proceed with the Change by issue of a “Pending Agreement Change Order.”  Upon receipt of a Pending Agreement Change Order, the Contractor shall immediately proceed with effecting the Changes covered by such Order. The Parties shall thereafter attempt to reach agreement on the outstanding issues under the Change Proposal.  If the Parties cannot reach agreement within sixty (60) days from the date of issue of the Pending Agreement Change Order, then the matter may be referred to the Dispute Board in accordance with the provisions of GCC Sub-Clause 46.1.  39.3 Changes Originating from Contractor  39.3.1 If the Contractor proposes a Change pursuant to GCC Sub-Clause 39.1.2, the Contractor shall submit to the Project Manager a written “Application for Change Proposal,” giving reasons for the proposed Change and including the information specified in GCC Sub-Clause 39.1.2.  Upon receipt of the Application for Change Proposal, the Parties shall follow the procedures outlined in GCC Sub-Clauses 39.2.6 and 39.2.7. However, the Contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal. |
| 40. Extension of Time for Completion | 40.1 The Time(s) for Completion specified in the PCC pursuant to GCC Sub-Clause 8.2 shall be extended if the Contractor is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:  (a) any Change in the Facilities as provided in GCC Clause 39  (b) any occurrence of Force Majeure as provided in GCC Clause 37, unforeseen conditions as provided in GCC Clause 35, or other occurrence of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Sub-Clause 32.2  (c) any suspension order given by the Employer under GCC Clause 41 hereof or reduction in the rate of progress pursuant to GCC Sub-Clause 41.2 or  (d) any changes in laws and regulations as provided in GCC Clause 36 or  (e) any default or breach of the Contract by the Employer, Appendix to the Contract Agreement titled ,or any activity, act or omission of the Employer, or the Project Manager, or any other contractors employed by the Employer, or   1. any delay on the part of a Subcontractor, provided such delay is due to a cause for which the Contractor himself would have been entitled to an extension of time under this sub-clause, or 2. delays attributable to the Employer or caused by customs, or 3. any other matter specifically mentioned in the Contract   by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Contractor.  40.2 Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Project Manager a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Employer and the Contractor shall agree upon the period of such extension. In the event that the Contractor does not accept the Employer’s estimate of a fair and reasonable time extension, the Contractor shall be entitled to refer the matter to a Dispute Board, pursuant to GCC Sub-Clause 46.1.  40.3 The Contractor shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.  40.4 In all cases where the Contractor has given a notice of a claim for an extension of time under GCC 40.2, the Contractor shall consult with the Project Manager in order to determine the steps (if any) which can be taken to overcome or minimize the actual or anticipated delay. The Contractor shall there after comply with all reasonable instructions which the Project Manager shall give in order to minimize such delay. If compliance with such instructions shall cause the Contractor to incur extra costs and the Contractor is entitled to an extension of time under GCC 40.1, the amount of such extra costs shall be added to the Contract Price. |
| 41. Suspension | 41.1 The Employer may request the Project Manager, by notice to the Contractor, to order the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefor. The Contractor shall thereupon suspend performance of such obligation, except those obligations necessary for the care or preservation of the Facilities, until ordered in writing to resume such performance by the Project Manager.  If, by virtue of a suspension order given by the Project Manager, other than by reason of the Contractor’s default or breach of the Contract, the Contractor’s performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Project Manager requiring that the Employer shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GCC Clause 39, excluding the performance of the suspended obligations from the Contract.  If the Employer fails to do so within such period, the Contractor may, by a further notice to the Project Manager, elect to treat the suspension, where it affects a part only of the Facilities, as a deletion of such part in accordance with GCC Clause 39 or, where it affects the whole of the Facilities, as termination of the Contract under GCC Sub-Clause 42.1.  41.2 If  (a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Appendix to the Contract Agreement titled Terms and Procedures of Payment, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GCC Sub-Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor’s notice or  (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer’s failure to provide possession of or access to the Site or other areas in accordance with GCC Sub-Clause 10.2, or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities,  then the Contractor may by fourteen (14) days’ notice to the Employer suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress.  41.3 If the Contractor’s performance of its obligations is suspended or the rate of progress is reduced pursuant to this GCC Clause 41, then the Time for Completion shall be extended in accordance with GCC Sub-Clause 40.1, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by the Employer to the Contractor in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Contractor’s default or breach of the Contract.  41.4 During the period of suspension, the Contractor shall not remove from the Site any Plant, any part of the Facilities or any Contractor’s Equipment, without the prior written consent of the Employer. |
| 42. Termination | 42.1 Termination for Employer’s Convenience  42.1.1 The Employer may at any time terminate the Contract for any reason by giving the Contractor a notice of termination that refers to this GCC Sub-Clause 42.1.  42.1.2 Upon receipt of the notice of termination under GCC Sub-Clause 42.1.1, the Contractor shall either immediately or upon the date specified in the notice of termination  (a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition  (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii) below  (c) remove all Contractor’s Equipment from the Site, repatriate the Contractor’s and its Subcontractors’ personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition, and  (d) subject to the payment specified in GCC Sub-Clause 42.1.3,  (i) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination  (ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and  (iii) deliver to the Employer all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Facilities.  42.1.3 In the event of termination of the Contract under GCC Sub-Clause 42.1.1, the Employer shall pay to the Contractor the following amounts:  (a) the Contract Price, properly attributable to the parts of the Facilities executed by the Contractor as of the date of termination  (b) the costs reasonably incurred by the Contractor in the removal of the Contractor’s Equipment from the Site and in the repatriation of the Contractor’s and its Subcontractors’ personnel  (c) any amounts to be paid by the Contractor to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges  (d) costs incurred by the Contractor in protecting the Facilities and leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 42.1.2  (e) the cost of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with third Parties in connection with the Contract and that are not covered by paragraphs (a) through (d) above.  42.2 Termination for Contractor’s Default  42.2.1 The Employer, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefor to the Contractor, referring to this GCC Sub-Clause 42.2:  (a) if the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is a corporation, a resolution is passed or order is made for its winding up, other than a voluntary liquidation for the purposes of amalgamation or reconstruction, a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt  (b) if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of GCC Clause 43.  (c) if the Contractor, in the judgment of the Employer has engaged in Fraud and Corruption, as defined in paragraph 2.2 a. of Appendix B to the GCC, in competing for or in executing the Contract.  42.2.2 If the Contractor  (a) has abandoned or repudiated the Contract  (b) has without valid reason failed to commence work on the Facilities promptly or has suspended, other than pursuant to GCC Sub-Clause 41.2, the progress of Contract performance for more than twenty-eight (28) days after receiving a written instruction from the Employer to proceed  (c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause  (d) refuses or is unable to provide sufficient materials, services or labor to execute and complete the Facilities in the manner specified in the program furnished under GCC Sub-Clause 18.2 at rates of progress that give reasonable assurance to the Employer that the Contractor can attain Completion of the Facilities by the Time for Completion as extended,  then the Employer may, without prejudice to any other rights it may possess under the Contract, give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Employer may terminate the Contract forthwith by giving a notice of termination to the Contractor that refers to this GCC Sub-Clause 42.2.  42.2.3 Upon receipt of the notice of termination under GCC Sub-Clauses 42.2.1 or 42.2.2, the Contractor shall, either immediately or upon such date as is specified in the notice of termination,  (a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition  (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) below  (c) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination  (d) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors  (e) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities.  42.2.4 The Employer may enter upon the Site, expel the Contractor, and complete the Facilities itself or by employing any third Party. The Employer may, to the exclusion of any right of the Contractor over the same, take over and use with the payment of a fair rental rate to the Contractor, with all the maintenance costs to the account of the Employer and with an indemnification by the Employer for all liability including damage or injury to persons arising out of the Employer’s use of such equipment, any Contractor’s Equipment owned by the Contractor and on the Site in connection with the Facilities for such reasonable period as the Employer considers expedient for the supply and installation of the Facilities.  Upon completion of the Facilities or at such earlier date as the Employer thinks appropriate, the Employer shall give notice to the Contractor that such Contractor’s Equipment will be returned to the Contractor at or near the Site and shall return such Contractor’s Equipment to the Contractor in accordance with such notice. The Contractor shall thereafter without delay and at its cost remove or arrange removal of the same from the Site.  42.2.5 Subject to GCC Sub-Clause 42.2.6, the Contractor shall be entitled to be paid the Contract Price attributable to the Facilities executed as of the date of termination, the value of any unused or partially used Plant on the Site, and the costs, if any, incurred in protecting the Facilities and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 42.2.3. Any sums due the Employer from the Contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the Contractor under this Contract.  42.2.6 If the Employer completes the Facilities, the cost of completing the Facilities by the Employer shall be determined.  If the sum that the Contractor is entitled to be paid, pursuant to GCC Sub-Clause 42.2.5, plus the reasonable costs incurred by the Employer in completing the Facilities, exceeds the Contract Price, the Contractor shall be liable for such excess.  If such excess is greater than the sums due the Contractor under GCC Sub-Clause 42.2.5, the Contractor shall pay the balance to the Employer, and if such excess is less than the sums due the Contractor under GCC Sub-Clause 42.2.5, the Employer shall pay the balance to the Contractor.  The Employer and the Contractor shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.  42.3 Termination by the Contractor  42.3.1 If  (a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Appendix to the Contract Agreement titled Terms and Procedures of Payment, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GCC Sub-Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor’s notice, or  (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer’s failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities,  then the Contractor may give a notice to the Employer thereof, and if the Employer has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Contractor is still unable to carry out any of its obligations under the Contract for any reason attributable to the Employer within twenty-eight (28) days of the said notice, the Contractor may by a further notice to the Employer referring to this GCC Sub-Clause 42.3.1, forthwith terminate the Contract.  42.3.2 The Contractor may terminate the Contract forthwith by giving a notice to the Employer to that effect, referring to this GCC Sub-Clause 42.3.2, if the Employer becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Employer takes or suffers any other analogous action in consequence of debt.  42.3.3 If the Contract is terminated under GCC Sub-Clauses 42.3.1 or 42.3.2, then the Contractor shall immediately  (a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition  (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii)  (c) remove all Contractor’s Equipment from the Site and repatriate the Contractor’s and its Subcontractors’ personnel from the Site, and  (d) subject to the payment specified in GCC Sub-Clause 42.3.4,  (i) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination  (ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors, and  (iii) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities.  42.3.4 If the Contract is terminated under GCC Sub-Clauses 42.3.1 or 42.3.2, the Employer shall pay to the Contractor all payments specified in GCC Sub-Clause 42.1.3, and reasonable compensation for all loss, except for loss of profit, or damage sustained by the Contractor arising out of, in connection with or in consequence of such termination.  42.3.5 Termination by the Contractor pursuant to this GCC Sub-Clause 42.3 is without prejudice to any other rights or remedies of the Contractor that may be exercised in lieu of or in addition to rights conferred by GCC Sub-Clause 42.3.  42.4 In this GCC Clause 42, the expression “Facilities executed” shall include all work executed, Installation Services provided, and all Plant acquired, or subject to a legally binding obligation to purchase, by the Contractor and used or intended to be used for the purpose of the Facilities, up to and including the date of termination.  42.5 In this GCC Clause 42, in calculating any monies due from the Employer to the Contractor, account shall be taken of any sum previously paid by the Employer to the Contractor under the Contract, including any advance payment paid pursuant to the Appendix to the Contract Agreement titled Terms and Procedures of Payment. |
| 43. Assignment | 43.1 Neither the Employer nor the Contractor shall, without the express prior written consent of the other Party, which consent shall not be unreasonably withheld, assign to any third Party the Contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder, except that the Contractor shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract. |
| 44. Export Restrictions | 44.1 Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Employer, to the country of the Employer or to the use of the Plant and Installation Services to be supplied which arise from trade regulations from a country supplying those Plant and Installation Services, and which substantially impede the Contractor from meeting its obligations under the Contract, shall release the Contractor from the obligation to provide deliveries or services, always provided, however, that the Contractor can demonstrate to the satisfaction of the Employer and of the Bank that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the export of the Plant and Installation Services under the terms of the Contract. Termination of the Contract on this basis shall be for the Employer’s convenience pursuant to Sub-Clause 42.1. |

1. Claims, Disputes and Arbitration

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| 45. Contractor’s Claims | 45.1 If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall submit a notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.  If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.  The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.  The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the Employer’s liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.  Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:   1. this fully detailed claim shall be considered as interim; 2. the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Project Manager may reasonably require; and 3. the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.   Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.  Each Payment Certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.  The Project Manager shall agree with the Contractor or estimate: (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with GCC Clause 40, and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.  The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.  In the event that the Contractor and the Employer cannot agree on any matter relating to a claim, either Party may refer the matter to the Dispute Board pursuant to GCC 46 hereof. |
| 46. Disputes and Arbitration | 46.1 **Appointment of the Dispute Board**  Disputes shall be referred to a DB for decision in accordance with GCC Sub-Clause 46.3. The Parties shall appoint a DB by the date stated in the PCC.  The DB shall comprise, as stated in the PCC, either one or three suitably qualified persons (“the members”), each of whom shall be fluent in the language for communication defined in the Contract and shall be a professional experienced in the type of activities involved in the performance of the Contract and with the interpreta­tion of contractual documents. If the number is not so stated and the Parties do not agree otherwise, the DB shall comprise three persons, one of whom shall serve as chairman.  If the Parties have not jointly appointed the DB 21 days before the date stated in the PCC and the DB is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman.  However, if a list of potential members is included in the PCC, the members shall be selected from those on the list, other than anyone who is unable or unwilling to accept appointment to the DB.  The agreement between the Parties and either the sole member or each of the three members shall incorporate by reference the General Conditions of Dispute Board Agreement contained in the Appendix to these General Conditions, with such amendments as are agreed between them.  The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the DB consults, shall be mutually agreed upon by the Parties when agreeing the terms of appointment of the member or such expert (as the case may be). Each Party shall be responsible for paying one-half of this remuneration.  If a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Sub-Clause.  The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DB (including each member) shall expire when the Operational Acceptance Certificate has been issued in accordance with GCC Sub-Clause 25.3. |
|  | 46.2 Failure to Agree on the Composition of the Dispute Board  If any of the following conditions apply, namely:   1. the Parties fail to agree upon the appointment of the sole member of the DB by the date stated in the first paragraph of GCC Sub-Clause 46.1, 2. either Party fails to nominate a member (for approval by the other Party) of a DB of three persons by such date, 3. the Parties fail to agree upon the appointment of the third member (to act as chairman) of the DB by such date, or 4. the Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,   then the appointing entity or official **named in the PCC** shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official. |
|  | 46.3 Obtaining Dispute Board’s Decision  If a dispute (of any kind whatsoever) arises between the Parties in connection with the performance of the Contract, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Project Manager, either Party may refer the dispute in writing to the DB for its decision, with copies to the other Party and the Project Manager. Such reference shall state that it is given under this Sub-Clause.  For a DB of three persons, the DB shall be deemed to have received such reference on the date when it is received by the chairman of the DB.  Both Parties shall promptly make available to the DB all such additional information, further access to the Site, and appropriate facilities, as the DB may require for the purposes of making a decision on such dispute. The DB shall be deemed to be not acting as arbitrator(s).  Within 84 days after receiving such reference, or within such other period as may be proposed by the DB and approved by both Parties, the DB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue with the performance of the Facilities in accordance with the Contract.  If either Party is dissatisfied with the DB’s decision, then either Party may, within 28 days after receiving the decision, give notice to the other Party of its dissatisfaction and intention to commence arbitration. If the DB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give notice to the other Party of its dissatisfaction and intention to commence arbitration.  In either event, this notice of dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in GCC Sub-Clauses 46.6 and 46.7, neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Sub-Clause.  If the DB has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after it received the DB’s decision, then the decision shall become final and binding upon both Parties. |
|  | 46.4 Amicable Settlement  Where notice of dissatisfaction has been given under GCC Sub-Clause 46.3 above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the fifty-sixth day after the day on which notice of dissatisfaction and intention to commence arbitration was given, even if no attempt at amicable settlement has been made. |
|  | 46.5 Arbitration  Unless **indicated otherwise in the PCC,** any dispute not settled amicably and in respect of which the DB’s decision (if any) has not become final and binding shall be finally settled by arbitration. Unless otherwise agreed by both Parties, arbitration shall be conducted as follows:  (a) For contracts with foreign contractors:  (i) international arbitration with proceedings administered by the international arbitration institution **appointed in the PCC,** in accordance with the rules of arbitration of the appointed institution,  (ii) the place of arbitration shall be the city where the headquarters of the appointed arbitration institution is located or such other place selected in accordance with the applicable arbitration rules; and  (iii) the arbitration shall be conducted in the language for communications defined in Sub-Clause 5.3; and  (b) For contracts with domestic contractors, arbitration with proceedings conducted in accordance with the laws of the Employer’s Country.  The arbitrator(s) shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, and any decision of the DB, relevant to the dispute. Nothing shall disqualify the Project Manager from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute.  Neither Party shall be limited in the proceedings before the arbitrator(s) to the evidence or arguments previously put before the DB to obtain its decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the DB shall be admissible in evidence in the arbitration.  Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Project Manager and the DB shall not be altered by reason of any arbitration being conducted during the progress of the Works. |
|  | 46.6 Failure to Comply with Dispute Board’s Decision  In the event that a Party fails to comply with a DB decision which has become final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under GCC Sub-Clause 46.5. GCC Sub-Clauses 46.3 and 46.4 shall not apply to this reference. |
|  | **46.7** Expiry of Dispute Board’s Appointment  If a dispute arises between the Parties in connection with the performance of the Contract, and there is no DB in place, whether by reason of the expiry of the DB’s appointment or otherwise:  (a) GCC Sub-Clauses 46.3 and 46.4 shall not apply, and  (b) the dispute may be referred directly to arbitration under GCC Sub-Clause 46.5 |

**APPENDIX A**

**General Conditions of Dispute Board Agreement**

1. Definitions

Each “Dispute Board Agreement” is a tripartite agreement by and between:

the “Employer”;

the “Contractor”; and

the “Member” who is defined in the Dispute Board Agreement as being:

(i) the sole member of the “DB” and, where this is the case, all references to the “Other Members” do not apply, or

(ii) one of the three persons who are jointly called the “DB” (or “dispute board”) and, where this is the case, the other two persons are called the “Other Members”.

The Employer and the Contractor have entered (or intend to enter) into a contract, which is called the “Contract” and is defined in the Dispute Board Agreement, which incorporates this Appendix. In the Dispute Board Agreement, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract.

2. General Provisions

Unless otherwise stated in the Dispute Board Agreement, it shall take effect on the latest of the following dates:

(a) the Commencement Date defined in the Contract,

(b) when the Employer, the Contractor and the Member have each signed the Dispute Board Agreement, or

(c) when the Employer, the Contractor and each of the Other Members (if any) have respectively each signed a dispute board agreement.

This employment of the Member is a personal appointment. At any time, the Member may give not less than 70 days’ notice of resignation to the Employer and to the Contractor, and the Dispute Board Agreement shall terminate upon the expiry of this period.

3. Warranties

The Member warrants and agrees that he/she is and shall be impartial and independent of the Employer, the Contractor and the Project Manager. The Member shall promptly disclose, to each of them and to the Other Members (if any), any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.

When appointing the Member, the Employer and the Contractor relied upon the Member’s representations that he/she is:

(a) experienced in the work which the Contractor is to carry out under the Contract,

(b) experienced in the interpretation of contract documentation, and

(c) fluent in the language for communications defined in the Contract.

4. General Obligations of the Member

The Member shall:

(a) have no interest financial or otherwise in the Employer, the Contractor or the Project Manager, nor any financial interest in the Contract except for payment under the Dispute Board Agreement;

(b) not previously have been employed as a consultant or otherwise by the Employer, the Contractor or the Project Manager, except in such circumstances as were disclosed in writing to the Employer and the Contractor before they signed the Dispute Board Agreement;

(c) have disclosed in writing to the Employer, the Contractor and the Other Members (if any), before entering into the Dispute Board Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Employer, the Contractor or the Project Manager, and any previous involvement in the overall project of which the Contract forms part;

(d) not, for the duration of the Dispute Board Agreement, be employed as a consultant or otherwise by the Employer, the Contractor or the Project Manager, except as may be agreed in writing by the Employer, the Contractor and the Other Members (if any);

(e) comply with the annexed procedural rules and with GCC Sub-Clause 46.3;

(f) not give advice to the Employer, the Contractor, the Employer’s Personnel or the Contractor’s Personnel concerning the conduct of the Contract, other than in accordance with the annexed procedural rules;

(g) not while a Member enter into discussions or make any agreement with the Employer, the Contractor or the Project Manager regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Board Agreement;

(h) ensure his/her availability for all site visits and hearings as are necessary;

(i) become conversant with the Contract and with the progress of the Facilities (and of any other parts of the project of which the Contract forms part) by studying all documents received which shall be maintained in a current working file;

(j) treat the details of the Contract and all the DB’s activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer, the Contractor and the Other Members (if any); and

(k) be available to give advice and opinions, on any matter relevant to the Contract when requested by both the Employer and the Contractor, subject to the agreement of the Other Members (if any).

5. General Obligations of the Employer and the Contractor

The Employer, the Contractor, the Employer’s Personnel and the Contractor’sPersonnel shall not request advice from or consultation with the Member regarding theContract, otherwise than in the normal course of the DB’s activities under the Contract and the Dispute Board Agreement. The Employer and the Contractor shall be responsible for compliance with this provision, by the Employer’s Personnel and the Contractor’s Personnel respectively.

The Employer and the Contractor undertake to each other and to the Member that the Member shall not, except as otherwise agreed in writing by the Employer, the Contractor, the Member and the Other Members (if any):

(a) be appointed as an arbitrator in any arbitration under the Contract;

(b) be called as a witness to give evidence concerning any dispute before arbitrator(s) appointed for any arbitration under the Contract; or

(c) be liable for any claims for anything done or omitted in the discharge or purported discharge of the Member’s functions, unless the act or omission is shown to have been in bad faith.

The Employer and the Contractor hereby jointly and severally indemnify and hold the Member harmless against and from claims from which he is relieved from liability under the preceding paragraph.

Whenever the Employer or the Contractor refers a dispute to the DB under GCC Sub-Clause 46.3, which will require the Member to make a site visit and attend a hearing, the Employer or the Contractor shall provide appropriate security for a sum equivalent to the reasonable expenses to be incurred by the Member. No account shall be taken of any other payments due or paid to the Member.

6. Payment

The Member shall be paid as follows, in the currency named in the Dispute Board Agreement:

(a) a retainer fee per calendar month, which shall be considered as payment in full for:

(i) being available on 28 days’ notice for all site visits and hearings;

(ii) becoming and remaining conversant with all project developments and maintaining relevant files;

(iii) all office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties; and

(iv) all services performed hereunder except those referred to in sub-paragraphs (b) and (c) of this Clause.

The retainer fee shall be paid with effect from the last day of the calendar month in which the Dispute Board Agreement becomes effective; until the last day of the calendar month in which the Taking-Over Certificate is issued for the whole of the Works.

With effect from the first day of the calendar month following the month in which Taking-Over Certificate is issued for the whole of the Works, the retainer fee shall be reduced by one third This reduced fee shall be paid until the first day of the calendar month in which the Member resigns or the Dispute Board Agreement is otherwise terminated.

(b) a daily fee which shall be considered as payment in full for:

(i) each day or part of a day up to a maximum of two days’ travel time in each direction for the journey between the Member’s home and the site, or another location of a meeting with the Other Members (if any);

(ii) each working day on site visits, hearings or preparing decisions; and

(iii) each day spent reading submissions in preparation for a hearing.

(c) all reasonable expenses including necessary travel expenses (air fare in less than first class, hotel and subsistence and other direct travel expenses) incurred in connection with the Member’s duties, as well as the cost of telephone calls, courier charges, faxes and telexes: a receipt shall be required for each item in excess of five percent of the daily fee referred to in sub-paragraph (b) of this Clause;

(d) any taxes properly levied in the Country on payments made to the Member (unless a national or permanent resident of the Country) under this Clause 6.

The retainer and daily fees shall be as specified in the Dispute Board Agreement. Unless it specifies otherwise, these fees shall remain fixed for the first 24 calendar months, and shall thereafter be adjusted by agreement between the Employer, the Contractor and the Member, at each anniversary of the date on which the Dispute Board Agreement became effective.

If the Parties fail to agree on the retainer fee or the daily fee the appointing entity or official named in the PCC shall determine the amount of the fees to be used.

The Member shall submit invoices for payment of the monthly retainer and air fares quarterly in advance. Invoices for other expenses and for daily fees shall be submitted following the conclusion of a site visit or hearing. All invoices shall be accompanied by a brief description of activities performed during the relevant period and shall be addressed to the Contractor.

The Contractor shall pay each of the Member’s invoices in full within 56 calendar days after receiving each invoice and shall apply to the Employer (in the Statements under the Contract) for reimbursement of one-half of the amounts of these invoices. The Employer shall then pay the Contractor in accordance with the Contract.

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the Dispute Board Agreement, the Employer shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the DB; and without prejudice to the Employer’s rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in accordance with GCC Sub-Clause 12.3.

If the Member does not receive payment of the amount due within 70 days after submitting a valid invoice, the Member may (i) suspend his/her services (without notice) until the payment is received, and/or (ii) resign his/her appointment by giving notice under Clause 7.

7. Termination

At any time: (i) the Employer and the Contractor may jointly terminate the Dispute Board Agreement by giving 42 days’ notice to the Member; or (ii) the Member may resign as provided for in Clause 2.

If the Member fails to comply with the Dispute Board Agreement, the Employer and the Contractor may, without prejudice to their other rights, terminate it by notice to the Member. The notice shall take effect when received by the Member.

If the Employer or the Contractor fails to comply with the Dispute Board Agreement, the Member may, without prejudice to his other rights, terminate it by notice to the Employer and the Contractor. The notice shall take effect when received by them both.

Any such notice, resignation and termination shall be final and binding on the Employer, the Contractor and the Member. However, a notice by the Employer or the Contractor, but not by both, shall be of no effect.

8. Default of the Member

If the Member fails to comply with any of his obligations under Clause 4 concerning his impartiality or independence in relation to the Employer or the Contractor, he/she shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses received by the Member and the Other Members (if any), for proceedings or decisions (if any) of the DB which are rendered void or ineffective by the said failure to comply.

9. Disputes

Any dispute or claim arising out of or in connection with this Dispute Board Agreement, or the breach, termination or invalidity thereof, shall be finally settled by institutional arbitration. If no other arbitration institute is agreed, the arbitration shall be conducted under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with these Rules of Arbitration.

**Appendix A**

**DISPUTE BOARD GUIDELINES**

1. Unless otherwise agreed by the Employer and the Contractor, the DB shall visit the site at intervals of not more than 140 days, including times of critical construction events, at the request of either the Employer or the Contractor. Unless otherwise agreed by the Employer, the Contractor and the DB, the period between consecutive visits shall not be less than 70 days, except as required to convene a hearing as described below.

2. The timing of and agenda for each site visit shall be as agreed jointly by the DB, the Employer and the Contractor, or in the absence of agreement, shall be decided by the DB. The purpose of site visits is to enable the DB to become and remain acquainted with the progress of the Works and of any actual or potential problems or claims, and, as far as reasonable, to prevent potential problems or claims from becoming disputes.

3. Site visits shall be attended by the Employer, the Contractor and the Project Manager and shall be co-ordinated by the Employer in co-operation with the Contractor. The Employer shall ensure the provision of appropriate conference facilities and secretarial and copying services. At the conclusion of each site visit and before leaving the site, the DB shall prepare a report on its activities during the visit and shall send copies to the Employer and the Contractor.

4. The Employer and the Contractor shall furnish to the DB one copy of all documents which the DB may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the performance of the Contract. All communications between the DB and the Employer or the Contractor shall be copied to the other Party. If the DB comprises three persons, the Employer and the Contractor shall send copies of these requested documents and these communications to each of these persons.

5. If any dispute is referred to the DB in accordance with GCC Sub-Clause 46.3, the DB shall proceed in accordance with GCC Sub-Clause 46.3 and these Guidelines. Subject to the time allowed to give notice of a decision and other relevant factors, the DB shall:

(a) act fairly and impartially as between the Employer and the Contractor, giving each of them a reasonable opportunity of putting his case and responding to the other’s case, and

(b) adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.

6. The DB may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing.

7. Except as otherwise agreed in writing by the Employer and the Contractor, the DB shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the Employer, the Contractor and the Project Manager, and to proceed in the absence of any Party who the DB is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.

8. The Employer and the Contractor empower the DB, among other things, to:

(a) establish the procedure to be applied in deciding a dispute,

(b) decide upon the DB’s own jurisdiction, and as to the scope of any dispute referred to it,

(c) conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Guidelines,

(d) take the initiative in ascertaining the facts and matters required for a decision,

(e) make use of its own specialist knowledge, if any,

(f) decide upon the payment of financing charges in accordance with the Contract,

(g) decide upon any provisional relief such as interim or conservatory measures,

(h) open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute, and

(i) appoint, should the DB so consider necessary and the Parties agree, a suitable expert at the cost of the Parties to give advice on a specific matter relevant to the dispute.

9. The DB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DB shall make and give its decision in accordance with GCC Sub-Clause 46.3, or as otherwise agreed by the Employer and the Contractor in writing. If the DB comprises three persons:

(a) it shall convene in private after a hearing, in order to have discussions and prepare its decision;

(b) it shall endeavour to reach a unanimous decision: if this proves impossible the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the Employer and the Contractor; and

(c) if a Member fails to attend a meeting or hearing, or to fulfil any required function, the other two Members may nevertheless proceed to make a decision, unless:

(i) either the Employer or the Contractor does not agree that they do so, or

(ii) the absent Member is the chairman and he/she instructs the other Members to not make a decision.

**APPENDIX B**

**APPENDIX TO GENERAL CONDITIONS**

**Fraud and Corruption**

***(Text in this Appendix shall not be modified)***

1. **Purpose**
   1. The Bank’s Anti-Corruption Guidelines and this annex apply with respect to procurement under Bank Investment Project Financing operations.
2. **Requirements**
3. 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.
4. To this end, the Bank:
5. Defines, for the purposes of this provision, the terms set forth below as follows:
6. “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
7. “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;
8. “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;
9. “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;
10. “obstructive practice” is:
11. 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
12. acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under paragraph 2.2 e. below.
13. 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;
14. 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;
15. 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;[[19]](#footnote-19) (ii) to be a nominated[[20]](#footnote-20) 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;
16. 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[[21]](#footnote-21) 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.

Section IX - Particular Conditions of Contract

|  |
| --- |
| The following Particular Conditions of Contract shall supplement the General Conditions of Contract in Section VIII. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions. |

# Particular Conditions of Contract

The following Particular Conditions of Contract(PCC) shall supplement the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC. The clause number of the PCC is the corresponding clause number of the GCC.

PCC 1. Definitions

The Employer is: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

The Project Manager is: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

The Bank is: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Country of Origin: all countries and territories as indicated in Section V of the RFP Documents, Eligible Countries.

PCC 5. Law and Language

PCC 5.1 The Contract shall be interpreted in accordance with the laws of: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

PCC 5.2 The ruling language is: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

PCC 5.3 The language for communications is: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

PCC 7. Scope of Facilities [Spare Parts] (GCC Clause 7)

PCC 7.3 The Contractor agrees to supply spare parts for a period of years: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

**Sample Addition to** PCC **7.3**

The Contractor shall carry sufficient inventories to ensure an ex-stock supply of consumable spares for the Plant. Other spare parts and components shall be supplied as promptly as possible, but at the most within six (6) months of placing the order and opening the letter of credit. In addition, in the event of termination of the production of spare parts, advance notification will be made to the Employer of the pending termination, with sufficient time to permit the Employer to procure the needed requirement. Following such termination, the Contractor will furnish to the extent possible and at no cost to the Employer the blueprints, drawings and specifications of the spare parts, if requested.

PCC 8. Time for Commencement and Completion

PCC 8.1 The Contractor shall commence work on the Facilities within \_\_\_\_\_\_\_\_\_\_\_ from the Effective Date for determining Time for Completion as specified in the Contract Agreement.

PCC 8.2 The Time for Completion of the whole of the Facilities shall be \_\_\_\_\_\_\_\_\_\_\_ from the Effective Date as described in the Contract Agreement*.*

PCC 9. Contractor’s Responsibilities

PCC 9.8 *[Delete if not applicable] [Insert any sustainable procurement contractual provisions if applicable. Refer to the World Bank Procurement Regulations for IPF Borrowers and the sustainable procurement guidance notes/toolkit]*

The following sustainable procurement contractual provisions apply:

PCC 11. Contract Price

PCC 11.2 The Contract Price shall be adjusted in accordance with the provisions of the Appendix to the Contract Agreement titled Adjustment Clause. ‘*[Delete if contract price is not adjustable]*’

PCC 13. Securities

PCC 13.3.1 The amount of Performance Security, as a percentage of the Contract Price for the Facility or for the part of the Facility for which a separate Time for Completion is provided, shall be: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

PCC 13.3.2 The Performance Security shall be in the form of the \_\_\_\_\_\_\_\_\_\_\_\_attached hereto in Section X, Contract Forms.

PCC 13.3.3 The Performance Security shall not be reduced on the date of the Operational Acceptance.

PCC 13.3.3 The Performance Security shall be reduced to ten percent (10%) of the value of the component covered by the extended defect liability to cover the Contractor’s extended defect liability in accordance with the provision in the PCC, pursuant to GCC Sub-Clause 27.10.

PCC 22 Installation

PCC 22.2.5 Working Hours

Normal working hours are:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

PCC 22.2.8 Funeral Arrangements: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

PCC 25. Commissioning and Operational Acceptance

PCC 25.2.2 The Guarantee Test of the Facilities shall be successfully completed within \_\_\_\_\_\_ from the date of Completion.

PCC 26. Completion Time Guarantee

PCC 26.2

Applicable rate for liquidated damages: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

The above rate applies to the price of the part of the Facilities, as quoted in the Price Schedule, for that part for which the Contractor fails to achieve Completion within the particular Time for Completion.

Maximum deduction for liquidated damages: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

PCC 26.3

Applicable *(amount or rate)* for the bonus for early Completion:

Maximum bonus:

PCC 26.3 No bonus will be given for earlier Completion of the Facilities or part thereof.

PCC 27. Defect Liability

PCC 27.10 The critical components covered under the extended defect liability are *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*, and the period shall be *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* *(to be inserted* ***only*** *when an extended defect liability is requested)*.

PCC 30. Limitation of Liability

**Sample Clause**

PCC30.1 (b) The multiplier of the Contract Price is: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

PCC 39.1.2 Value Engineering

If the value engineering proposal is approved by the Employer the amount to be paid to the Contractor shall be \_\_\_% *[insert appropriate percentage. The percentage is normally up to 50%) of the reduction in the Contract Price.]*

PCC 46. Disputes and Arbitration

PCC 46.1 The DB shall be appointed within [28 days] after the Effective Date.

PCC 46.1 The DB shall be:

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*or*

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

PCC 46.1 List of potential DB members is: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

PCC 46.2 Appointment (if not agreed) to be made by:

PCC 46.5 Procedure to settle disputes in respect of DB’s decisions: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

(a) Appointed arbitration institution:

Section X. - Contract Forms

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Notification of Intention to Award

**[*This Notification of Intention to Award shall be sent to each Proposer that submitted a Proposal, unless the Proposer has previously received notice of exclusion from the process at an interim stage of the procurement process.*]**

**[*Send this Notification to the Proposer’s Authorized Representative named in the Proposer Information Form*]**

For the attention of Proposer’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 all participating Proposers. The Notification must be sent to all Proposers 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 RFP is issued]*

**Loan No. /Credit No. / Grant No.:** *[insert reference number for loan/credit/grant]*

**RFP No:** *[insert RFP 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:

1. request a debriefing in relation to the evaluation of your Proposal, and/or
2. submit a Procurement-related Complaint in relation to the decision to award the contract.
3. **The successful Proposer**

|  |  |
| --- | --- |
| **Name:** | [*insert name* *of successful Proposer*] |
| **Address:** | [*insert address* *of the successful Proposer*] |
| **Contract price:** | [*insert contract price* *of the successful Proposer*] |
| **Total combined score:** | [*insert the total combined score of the successful Proposer*] |

1. **Other Proposers *[INSTRUCTIONS: insert names of all Proposers that submitted a Proposal. If the Proposal’s price was evaluated, include the evaluated price as well as the Proposal price as read out.]***

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Name of Proposer** | **Technical Score** | **Proposal price** | **Evaluated Proposal Cost** | **Combined Score** |
| [*insert name*] | [*insert Technical score*] | [*insert Proposal price*] | [*insert evaluated cost*] | [*insert* combined *s*c*ore*] |
| [*insert name*] | [*insert Technical score*] | [*insert Proposal price*] | [*insert evaluated cost*] | [*insert combined score*] |
| [*insert name*] | [*insert Technical score*] | [*insert Proposal price*] | [*insert evaluated cost*] | [*insert combined score*] |
| [*insert name*] | [*insert Technical score*] | [*insert Proposal price*] | [*insert evaluated cost*] | [*insert combined score*] |
| [*insert name*] | [*insert Technical score*] | [*insert Proposal price*] | [*insert evaluated cost*] | [*insert combined score*] |

1. **Reason/s why your Proposal was unsuccessful [*Delete if the combined score already reveals the reason*]**

|  |
| --- |
| ***[INSTRUCTIONS; State the reason/s why this Proposer’s Proposal was unsuccessful. Do NOT include: (a) a point by point comparison with another Proposer’s Proposal or (b) information that is marked confidential by the Proposer in its Proposal.]*** |

1. **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 Proposal. 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 Proposer, 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. |

1. **How to make a complaint**

|  |
| --- |
| **DEADLINE: The deadline for submitting a Procurement-related Complaint challenging the decision to award the contract expires on midnight, [*insert date*] (local time).**  Provide the contract name, reference number, name of the Proposer, 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](https://policies.worldbank.org/sites/ppf3/PPFDocuments/Forms/DispPage.aspx?docid=4005) (Procurement Regulations) (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](file:///F:\2.%20%20World%20Bank%202017\17.%20Tools%20and%20Templates\NIA\get%20the%20address%20once%20it%20is%20published)” 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 Proposer who submitted a Proposal in this procurement, 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 deadline stated above. 4. You must include, in your complaint, all of the information required by the Procurement Regulations (as described in Annex III). |

1. **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. This may happen where we are unable to provide a debriefing within the five (5) Business Day deadline. If this happens we will notify you of the extension. |

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 PROPOSERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE FORM*

*This Beneficial Ownership Disclosure Form (“Form”) is to be completed by the successful Proposer. In case of joint venture, the Proposer 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 Proposer is any natural person who ultimately owns or controls the Proposer 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 Proposer*

**RFP No.:** [*insert number of RFP process*]

**Request for Proposal 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 Proposer  (Yes / No) |
| *[include full name (last, middle, first), nationality, country of residence]* |  |  |  |

***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 Proposer

**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 Proposer 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 Proposer]”

**Name of the Proposer**: \*[*insert complete name of the Proposer*]\_\_\_\_\_\_\_\_\_

**Name of the person duly authorized to sign the Proposal on behalf of the Proposer**: \*\*[*insert complete name of person duly authorized to sign the Proposal*]\_\_\_\_\_\_\_\_\_\_\_

**Title of the person signing the Proposal**: [*insert complete title of the person signing the Proposal*]\_\_\_\_\_\_

**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 Proposal submitted by a Joint Venture specify the name of the Joint Venture as Proposer. In the event that the Proposer is a joint venture, each reference to “Proposer” in the Beneficial Ownership Disclosure Form (including this Introduction thereto) shall be read to refer to the joint venture member.

\*\* Person signing the Proposal shall have the power of attorney given by the Proposer. The power of attorney shall be attached with the Proposal Schedules.

Letter of Acceptance

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

To: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

This is to notify you that your Proposal dated *\_\_\_\_\_\_\_\_\_\_\_\_* for execution of the *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* for the Contract Price in the aggregate of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*, as corrected and modified in accordance with the Instructions to Proposers is hereby accepted by our Agency.

You are requested to furnish (i) the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose one of the Performance Security Form*s* and (ii) the additional information on beneficial ownership in accordance with PDS ITP 64.1 within eight (8) Business days using the Beneficial Ownership Disclosure Form, included in Section X, - Contract Forms, of the RFP Document.

Authorized Signature:

Name and Title of Signatory:

Name of Agency:

Attachment: Contract Agreement

|  |
| --- |
| Contract Agreement |

THIS AGREEMENT is made the \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_,

BETWEEN

(1) *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*, a corporation incorporated under the laws of \_\_\_\_\_\_\_\_\_\_\_ and having its principal place of business at *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* (hereinafter called “the Employer”), and (2) *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*, a corporation incorporated under the laws of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* and having its principal place of business at *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* (hereinafter called “the Contractor”).

WHEREAS the Employer desires to engage the Contractor to design, manufacture, test, deliver, install, complete and commission certain Facilities, viz. *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* (“the Facilities”), and the Contractor has agreed to such engagement upon and subject to the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:

|  |  |
| --- | --- |
| **Article 1. Contract Documents** | 1.1 Contract Documents (Reference GCC Clause 2)  The following documents shall constitute the Contract between the Employer and the Contractor, and each shall be read and construed as an integral part of the Contract:  (a) This Contract Agreement and the Appendices hereto  (b) Letter of Proposal and Price Schedules submitted by the Contractor  (c) Particular Conditions of Contract  (d) General Conditions of Contract  (e) Specification  (f) Drawings  (g) Other completed Proposal forms submitted with the Proposal  (h) Any other documents forming part of the Employer’s Requirements  (i) Any other documents shall be added here  1.2 Order of Precedence (Reference GCC Clause 2)  In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above.  1.3 Definitions (Reference GCC Clause 1)  Capitalized words and phrases used herein shall have the same meanings as are ascribed to them in the General Conditions. |
| **Article 2. Contract Price and Terms of Payment** | 2.1 Contract Price (Reference GCC Clause 11)  The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. The Contract Price shall be the aggregate of: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*, *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* as specified in Price Schedule No. 5 (Grand Summary), and*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*, *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*, or such other sums as may be determined in accordance with the terms and conditions of the Contract.  2.2 Terms of Payment (Reference GCC Clause 12)  The terms and procedures of payment according to which the Employer will reimburse the Contractor are given in the Appendix (Terms and Procedures of Payment) hereto.  The Employer may instruct its bank to issue an irrevocable confirmed documentary credit made available to the Contractor in a bank in the country of the Contractor. The credit shall be for an amount of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*; and shall be subject to the Uniform Customs and Practice for Documentary Credits, 2007 Revision, UCP 600, and (ICC Publication No. 600).  In the event that the amount payable under Schedule No. 1 is adjusted in accordance with GCC 11.2 or with any of the other terms of the Contract, the Employer shall arrange for the documentary credit to be amended accordingly. |
| **Article 3. Effective Date** | 3.1 Effective Date (Reference GCC Clause 1)  The Effective Date from which the Time for Completion of the Facilities shall be counted is the date when all of the following conditions have been fulfilled:  (a) This Contract Agreement has been duly executed for and on behalf of the Employer and the Contractor;  (b) The Contractor has submitted to the Employer the Performance Security and the advance payment guarantee;  (c) The Employer has paid the Contractor the advance payment  (d) The Contractor has been advised that the documentary credit referred to in Article 2.2 above has been issued in its favor.  Each party shall use its best efforts to fulfill the above conditions for which it is responsible as soon as practicable.  3.2 If the conditions listed under 3.1 are not fulfilled within two (2) months from the date of this Contract notification because of reasons not attributable to the Contractor, the Parties shall discuss and agree on an equitable adjustment to the Contract Price and the Time for Completion and/or other relevant conditions of the Contract. |
| **Article 4. Communications** | 4.1 The address of the Employer for notice purposes, pursuant to GCC 4.1 is: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*.   * 1. The address of the Contractor for notice purposes, pursuant to GCC 4.1 is: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.* |
| **Article 5. Appendices** | 5.1 The Appendices listed in the attached List of Appendices shall be deemed to form an integral part of this Contract Agreement.   * 1. Reference in the Contract to any Appendix shall mean the Appendices attached hereto, and the Contract shall be read and construed accordingly. |

IN WITNESS WHEREOF the Employer and the Contractor have caused this Agreement to be duly executed by their duly authorized representatives the day and year first above written.

Signed by, for and on behalf of the Employer

*[Signature]*

*[Title]*

in the presence of

Signed by, for and on behalf of the Contractor

*[Signature]*

*[Title]*

in the presence of

APPENDICES

Appendix 1 Terms and Procedures of Payment

Appendix 2 Price Adjustment

Appendix 3 Insurance Requirements

Appendix 4 Time Schedule

Appendix 5 List of Major Items of Plant and Installation Services and List of Approved Subcontractors

Appendix 6 Scope of Works and Supply by the Employer

Appendix 7 List of Documents for Approval or Review

Appendix 8 Functional Guarantees

Appendix 1. Terms and Procedures of Payment

In accordance with the provisions of GCC Clause 12 (Terms of Payment), the Employer shall pay the Contractor in the following manner and at the following times, on the basis of the Price Breakdown given in the section on Price Schedules. Payments will be made in the currencies quoted by the Proposer unless otherwise agreed between the Parties. Applications for payment in respect of part deliveries may be made by the Contractor as work proceeds.

TERMS OF PAYMENT

Schedule No. 1. Plant and Equipment Supplied from Abroad

In respect of Plant and equipment supplied from abroad, the following payments shall be made:

Ten percent (10%) of the total CIPamount as an advance payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of the Plant and equipment delivered to the site, as evidenced by shipping and delivery documents.

Eighty percent (80%) of the total or pro rata CIPamount upon Incoterm “CIP”, upon delivery to the carrier within forty-five (45) days after receipt of documents.

Five percent (5%) of the total or pro rata CIPamount upon issue of the Completion Certificate, within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata CIP amount upon issue of the Operational Acceptance Certificate, within forty-five (45) days after receipt of invoice.

Schedule No. 2. Plant and Equipment Supplied from within the Employer’s Country

In respect of Plant and equipment supplied from within the Employer’s Country, the following payments shall be made:

Ten percent (10%) of the total EXW amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of the Plant and equipment delivered to the site, as evidenced by shipping and delivery documents.

Eighty percent (80%) of the total or pro rata EXW amount upon Incoterm “Ex-Works,” upon delivery to the carrier within forty-five (45) days after receipt of invoice and documents*.*

Five percent (5%) of the total or pro rata EXW amount upon issue of the Completion Certificate, within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata EXW amount upon issue of the Operational Acceptance Certificate, within forty-five (45) days after receipt of invoice.

Schedule No. 3. Design Services

In respect of design services for both the foreign currency and the local currency portions, the following payments shall be made:

Ten percent (10%) of the total design services amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer.

Ninety percent (90%) of the total or pro rata design services amount upon acceptance of design in accordance with GCC Clause 20 by the Project Manager within forty-five (45) days after receipt of invoice.

Schedule No. 4. Installation Services

In respect of installation services for both the foreign and local currency portions, the following payments shall be made:

Ten percent (10%) of the total installation services amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of work performed by the Contractor as evidenced by the invoices for installation services.

Eighty percent (80%) of the measured value of work performed by the Contractor, as identified in the said Program of Performance, during the preceding month, as evidenced by the Employer’s authorization of the Contractor’s application, will be made monthly within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata value of installation services performed by the Contractor as evidenced by the Employer’s authorization of the Contractor’s monthly applications, upon issue of the Completion Certificate, within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata value of installation services performed by the Contractor as evidenced by the Employer’s authorization of the Contractor’s monthly applications, upon issue of the Operational Acceptance Certificate, within forty-five (45) days after receipt of invoice.

In the event that the Employer fails to make any payment on its respective due date, the Employer shall pay to the Contractor interest on the amount of such delayed payment at the rate of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]* percent (\_\_%) per month for period of delay until payment has been made in full.

PAYMENT PROCEDURES

The procedures to be followed in applying for certification and making payments shall be as follows:

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Appendix 2. Price Adjustment

|  |
| --- |
| Where the Contract Period (excluding the Defects Liability Period) exceeds eighteen (18) months, it is normal procedure that prices payable to the Contractor shall be subject to adjustment during the performance of the Contract to reflect changes occurring in the cost of labor and material components. In such cases the RFP Document shall include in this Appendix 2 a formula of the following general type, pursuant to GCC Sub-Clause 11.2.  Where Contracts are of a shorter duration than eighteen (18) months or in cases where there is to be no Price Adjustment, the following provision shall not be included. Instead, it shall be indicated under this Appendix 2 that the prices are to remain firm and fixed for the duration of the Contract. |

**Sample Price Adjustment Formula**

If in accordance with GCC 11.2, prices shall be adjustable, the following method shall be used to calculate the price adjustment:

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



in which:

*P*1 = adjustment amount payable to the Contractor

*P*0 = Contract price (base price)

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

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

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

*L*0, *L*1 = labor indices applicable to the appropriate industry in the country of origin on the base date and the date for adjustment, respectively

*M*0, *M*1= material and equipment indices in the country of origin on the base date and the date for adjustment, respectively

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

**Conditions Applicable To Price Adjustment**

The Proposer shall indicate the source of labor and materials indices and source of exchnage rate (if applicable), and the base date indices in its Proposal.

Item Source of Indices Used Base Date Indices

The base date shall be the date twenty-eight (28) days prior to the Proposal closing date.

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

The following conditions shall apply:

1. No price increase will be allowed beyond the original delivery date unless covered by an extension of time awarded by the Employer under the terms of the Contract. No price increase will be allowed for periods of delay for which the Contractor is responsible. The Employer will, however, be entitled to any price decrease occurring during such periods of delay.
2. If the currency in which the Contract price, P0, is expressed is different from the currency of the country of origin of the labor and/or materials indices, a correction factor will be applied to avoid incorrect adjustments of the Contract price. The correction factor shall be: Z0 / Z1, where,

Z0  = the number of units of currency of the origin of the indices which equal to one unit of the currency of the Contract Price P0 on the Base date, and

Z1 = the number of units of currency of the origin of the indices which equal to one unit of the currency of the Contract Price P0 on the Date of Adjustment.

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

Appendix 3. Insurance Requirements

**Insurances to be Taken Out by the Contractor**

In accordance with the provisions of GCC Clause 34, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, such approval not to be unreasonably withheld.

(a) Cargo Insurance

Covering loss or damage occurring, while in transit from the supplier’s or manufacturer’s works or stores until arrival at the Site, to the Facilities (including spare parts therefor) and to the construction equipment to be provided by the Contractor or its Subcontractors.

Amount Deductible limits Parties insured From To

(b) Installation All Risks Insurance

Covering physical loss or damage to the Facilities at the Site, occurring prior to completion of the Facilities, with an extended maintenance coverage for the Contractor’s liability in respect of any loss or damage occurring during the defect liability period while the Contractor is on the Site for the purpose of performing its obligations during the defect liability period.

Amount Deductible limits Parties insured From To

(c) Third Party Liability Insurance

Covering bodily injury or death suffered by third parties (including the Employer’s personnel) and loss of or damage to property (including the Employer’s property and any parts of the Facilities that have been accepted by the Employer) occurring in connection with the supply and installation of the Facilities.

Amount Deductible limits Parties insured From To

(d) Automobile Liability Insurance

Covering use of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the supply and installation of the Facilities. Comprehensive insurance in accordance with statutory requirements.

(e) Workers’ Compensation

In accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

(f) Employer’s Liability

In accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

(g) Other Insurances

The Contractor is also required to take out and maintain at its own cost the following insurances:

Details:

Amount Deductible limits Parties insured From To

The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 34.1, except for the Third Party Liability, Workers’ Compensation and Employer’s Liability Insurances, and the Contractor’s Subcontractors shall be named as co-insureds under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 34.1, except for the Cargo, Workers’ Compensation and Employer’s Liability Insurances. All insurer’s rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.

**Insurances To Be Taken Out By The Employer**

The Employer shall at its expense take out and maintain in effect during the performance of the Contract the following insurances.

Details:

Amount Deductible limits Parties insured From To

Appendix 4. Time Schedule

Appendix 5. List of Major Items of Plant and Installation Services and List of Approved Subcontractors

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

The following Subcontractors and/or manufacturers are approved for carrying out the items of the Facilities indicated below. Where more than one Subcontractor is listed, the Contractor is free to choose between them, but it must notify the Employer of its choice in good time prior to appointing any selected Subcontractor. In accordance with GCC Sub-Clause 19.1, the Contractor is free to submit proposals for Subcontractors for additional items from time to time. No Subcontracts shall be placed with any such Subcontractors for additional items until the Subcontractors have been approved in writing by the Employer and their names have been added to this list of Approved Subcontractors.

|  |  |  |
| --- | --- | --- |
| Major Items of Plant and Installation Services | Approved Subcontractors/Manufacturers | Nationality |
|  |  |  |
|  |  |  |
|  |  |  |

Appendix 6. Scope of Works and Supply by the Employer

The following personnel, facilities, works and supplies will be provided/supplied by the Employer, and the provisions of GCC Clauses 10, 21 and 24 shall apply as appropriate.

All personnel, facilities, works and supplies will be provided by the Employer in good time so as not to delay the performance of the Contractor, in accordance with the approved Time Schedule and Program of Performance pursuant to GCC Sub-Clause 18.2.

Unless otherwise indicated, all personnel, facilities, works and supplies will be provided free of charge to the Contractor.

Personnel Charge to Contractor (if any)

Facilities Charge to Contractor (if any)

Works Charge to Contractor (if any)

Supplies Charge to Contractor (if any)

Appendix 7. List of Documents for Approval or Review

Pursuant to GCC Sub-Clause 20.3.1, the Contractor shall prepare, or cause its Subcontractor to prepare, and present to the Project Manager in accordance with the requirements of GCC Sub-Clause 18.2 (Program of Performance), the following documents for

A. Approval

1.

2.

3.

B. Review

1.

2.

3.

Appendix 8. Functional Guarantees

1. General

This Appendix sets out

(a) the functional guarantees referred to in GCC Clause 28 (Functional Guarantees)

(b) the preconditions to the validity of the functional guarantees, either in production and/or consumption, set forth below

(c) the minimum level of the functional guarantees

(d) the formula for calculation of liquidated damages for failure to attain the functional guarantees.

2. Preconditions

The Contractor gives the functional guarantees (specified herein) for the facilities, subject to the following preconditions being fully satisfied:

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

3. Functional Guarantees

Subject to compliance with the foregoing preconditions, the Contractor guarantees as follows:

3.1 ProductionCapacity

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

**and/or**

3.2 Raw Materials and Utilities Consumption

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

4. Failure in Guarantees and Liquidated Damages

4.1 Failure to Attain Guaranteed Production Capacity

If the production capacity of the facilities attained in the guarantee test, pursuant to GCC Sub-Clause 25.2, is less than the guaranteed figure specified in para. 3.1 above, but the actual production capacity attained in the guarantee test is not less than the minimum level specified in para. 4.3 below, and the Contractor elects to pay liquidated damages to the Employer in lieu of making changes, modifications and/or additions to the Facilities, pursuant to GCC Sub-Clause 28.3, then the Contractor shall pay liquidated damages at the rate of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* for every complete one percent (1%) of the deficiency in the production capacity of the Facilities, or at a proportionately reduced rate for any deficiency, or part thereof, of less than a complete one percent (1%).

4.2 Raw Materials and Utilities Consumption in Excess of Guaranteed Level

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

If the actual measured figure of specified raw materials and utilities consumed per unit (or their average total cost of consumption) exceeds the guaranteed figure specified in para. 3.2 above (or their specified average total cost of consumption), but the actual consumption attained in the guarantee test, pursuant to GCC Sub-Clause 25.2, is not more than the maximum level specified in para. 4.3 below, and the Contractor elects to pay liquidated damages to the Employer in lieu of making changes, modifications and/or additions to the Facilities pursuant to GCC Sub-Clause 28.3, then the Contractor shall pay liquidated damages at the rate of *[amount in the contract currency]* for every complete one percent (1%) of the excess consumption of the Facilities, or part thereof, of less than a complete one percent (1%).

4.3 Minimum Levels

Notwithstanding the provisions of this paragraph, if as a result of the guarantee test(s), the following minimum levels of performance guarantees (and consumption guarantees) are not attained by the Contractor, the Contractor shall at its own cost make good any deficiencies until the Facilities reach any of such minimum performance levels, pursuant to GCC Sub-Clause 28.2:

(a) production capacity of the Facilities attained in the guarantee test: ninety-five percent (95%) of the guaranteed production capacity (the values offered by the Contractor in its Proposal for functional guarantees represents 100%).

**and/or**

(b) average total cost of consumption of all the raw materials and utilities of the Facilities: one hundred and five percent (105%) of the guaranteed figures (the figures offered by the Contractor in its Proposal for functional guarantees represents 100%).

4.4 Limitation of Liability

Subject to para. 4.3 above, the Contractor’s aggregate liability to pay liquidated damages for failure to attain the functional guarantees shall not exceed \_\_\_\_\_\_ percent ( \_\_\_ %) of the Contract price

Performance Security Form *–* Bank Guarantee[[22]](#footnote-22)

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** *[insert name and Address of* Employer*]*

**Date:** \_ *[Insert date of issue]*

**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 *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* (\_\_\_)*[[23]](#footnote-23)*, 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 be reduced by half upon our receipt of:

(a) a copy of the Operational Acceptance Certificate; or

(b) a registered letter from the Applicant (i) attaching a copy of its notice requesting issuance of the Operational Acceptance Certificate and (ii) stating that the Project Manager has failed to issue such Certificate within the time required or provide in writing justifiable reasons why such Certificate has not been issued, so that Operational Acceptance is deemed to have occurred.

This guarantee shall expire no later than the earlier of:*[[24]](#footnote-24)*

(a) twelve months after our receipt of either (a) or (b) above; or

(b) eighteen months after our receipt of:

(i) a copy of the Completion Certificate; or

(ii) a registered letter from the Applicant, attaching a copy of the notice to the Project Manager that the Facilities are ready for commissioning, and stating that fourteen days have elapsed from receipt of such notice (or seven days have elapsed if the notice was a repeated notice) and the Project Manager has failed to issue a Completion Certificate or inform the Applicant in writing of any defects or deficiencies; or

(iii) a registered letter from the Applicant stating that no Completion Certificate has been issued but the Employer is making use of the Facilities; or

(c) the \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_.[[25]](#footnote-25)

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.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
*[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 Form - Conditional Bank Guarantee

Date:

Loan/Credit No:

RFP No:

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

To: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dear Ladies and/or Gentlemen,

We refer to the Contract Agreement (“the Contract”) signed on [date] between you and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“the Contractor”) concerning design, execution and completion of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

By this letter we, the undersigned, [name of Bank], a Bank (or company) organized under the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and having its registered/principal office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, do hereby jointly and severally with the Contractor irrevocably guarantee payment owed to you by the Contractor, pursuant to the Contract, up to the sum of \_\_\_\_\_\_\_\_\_\_\_, equivalent to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ percent ( %) of the Contract Price until the date of the Operational Acceptance Certificate and thereafter up to a sum of \_\_\_\_\_\_\_\_\_\_\_\_, equivalent to\_\_\_\_\_\_\_\_\_\_ percent ( %) of the Contract Price, until twelve (12) months after the date of Operational Acceptance, or eighteen (18) months after Completion of the Facilities, whichever comes first.

Where it is agreed between you and the Contractor that the Facilities are to be accepted in parts, and thus where there are separate Completion and Operational Acceptance Certificates for each part, this Letter of Guarantee shall be apportioned to the value of each such part and shall reduce or expire as provided above on or following Completion or Operational Acceptance of each part.

We shall only undertake to make payment under this Letter of Guarantee upon our receipt of a written demand signed by your duly authorized officer for a specified sum, where such demand sets out the reasons for your claim under this Letter of Guarantee and is accompanied by

(a) a copy of the written notice sent by you to the Contractor before making the claim under this Guarantee, specifying the Contractor’s breach of contract and requesting the Contractor to remedy it

(b) a letter signed by your duly authorized officer certifying that the Contractor has failed to remedy the default within the period allowed for remedial action

(c) a copy of your written notice to the Contractor stating your intent to claim under this Letter of Guarantee because of the Contractor’s failure to remedy the default in accordance with the request referred to in para. (a) above.

Our liability under this Letter of Guarantee shall be to pay to you whichever is the lesser of the sum so requested or the amount then guaranteed hereunder in respect of any demand duly made hereunder prior to expiry of this Letter of Guarantee, without being entitled to inquire whether or not this payment is lawfully demanded.

This Letter of Guarantee shall be valid from the date of issue until the earlier of twelve (12) months after the date of Operational Acceptance or eighteen (18) months after the date of Completion of the Facilities or, where the Facilities are to be accepted in parts, twelve (12) months after the date of Operational Acceptance or eighteen (18) months after the date of Completion of the last part or [date], whichever comes first.

Except for the documents herein specified, no other documents or other action shall be required, notwithstanding any applicable law or regulation.

If the Defect Liability Period is extended with respect to any part of the Facilities in accordance with the Contract, you shall notify us, and the validity of this Letter of Guarantee shall be extended with respect to the percentage of the Contract Price stipulated in the notification until expiry of such extended Defect Liability Period.

Our liability under this Letter of Guarantee shall become null and void immediately upon its expiry, whether it is returned or not, and no claim may be made hereunder after such expiry or after the aggregate of the sums paid by us to you shall equal the sums guaranteed hereunder, whichever is the earlier.

All notices to be given hereunder shall be given by registered (airmail) post to the addressee at the address herein set out or as otherwise advised by and between the parties hereto.

We hereby agree that any part of the Contract may be amended, renewed, extended, modified, compromised, released or discharged by mutual agreement between you and the Contractor, and this security may be exchanged or surrendered without in any way impairing or affecting our liabilities hereunder without notice to us and without the necessity for any additional endorsement, consent or guarantee by us, provided, however, that the sum guaranteed shall not be increased or decreased.

No action, event or condition which by any applicable law should operate to discharge us from liability hereunder shall have any effect and we hereby waive any right we may have to apply such law, so that in all respects our liability hereunder shall be irrevocable and, except as stated herein, unconditional in all respects.

Yours truly,

Authorized Signature

|  |
| --- |
| Advance Payment Security  Demand Guarantee |

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:  *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 . . . .*. . . . .* (. . . . .*. . . . .*  ) [[26]](#footnote-26) 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:

* + 1. has used the advance payment for purposes other than the costs of mobilization in respect of the Facilities; or
    2. 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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of documentation indicating full repayment by the Applicant of the amount of the advance payment, or on the . . . day of . . . . . . . , . . . . .[[27]](#footnote-27), 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.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*[signature(s)]*

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

1. Substitute “contracts” where Proposals are called concurrently for multiple contracts. Add a new para. 3 and renumber paras 3 - 8 as follows: “Proposers may submit Proposal for one or several contracts, as further defined in the RFP Document.” [↑](#footnote-ref-1)
2. Insert if applicable: “This contract will be jointly financed by [insert name of cofinancing agency]. Procurement process will be governed by the World Bank’s Procurement Regulations.” [↑](#footnote-ref-2)
3. A brief description of the type(s) of Plant Design, Supply and Installation that should be provided, including location, quantities, delivery and installation period, and other information necessary to enable potential Proposers to decide whether or not to respond to the Request for Proposals. [↑](#footnote-ref-3)
4. The office for inquiry and issuance of RFP Document and that for Proposal submission may or may not be the same. [↑](#footnote-ref-4)
5. The fee chargeable should only be nominal to defray reproduction and mailing costs. An amount between US$50 and US$300 or equivalent is deemed appropriate. [↑](#footnote-ref-5)
6. For example, cashier’s check, direct deposit to specified account number, etc. [↑](#footnote-ref-6)
7. The delivery procedure is usually airmail for overseas delivery and surface mail or courier for local delivery. If urgency or security dictates, courier services may be required for overseas delivery. With the agreement of the World Bank, documents may be distributed by e-mail, downloading from authorized web site(s) or electronic procurement system. [↑](#footnote-ref-7)
8. Substitute the address for Proposal submission if it is different from address for inquiry and issuance of RFP Document. [↑](#footnote-ref-8)
9. The time given to Proposers for the preparation of their Second Stage Proposals should be adequate for the effort needed to update their First Stage Proposals in line with any addendum issued with the invitation and any Proposer-specific memoranda, the expected complexity of price schedules, and any other factors that may be relevant. However, the allotted time should normally not be less than four weeks so that Proposers have at least one week for the submission of any further clarification questions.

   The dates of the deadline for Proposal submission and of Proposal opening should be the same, and the time for proposal opening should be same or immediately after the time for proposal submission.

   The period should be sufficient to permit completion of the Second Stage Proposal evaluation, review of the recommended selection by the Bank if required, obtaining of approvals and notification of award. A realistic period (e.g., not less than sixty [60] days) should be specified in order to avoid the need for extension. [↑](#footnote-ref-9)
10. If the RFP Documents allow for lots or slices that may be procured separately, the amounts of Proposal security have to be defined per lot or slice. The amount of security should not be set so high as to discourage Proposers. If no Proposal security is required, this paragraph should say so. [↑](#footnote-ref-10)
11. The amount of the Bond shall be denominated in the currency of the *Employer*’s Country or the equivalent amount in a freely convertible currency. [↑](#footnote-ref-11)
12. 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. [↑](#footnote-ref-12)
13. 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. [↑](#footnote-ref-13)
14. 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. [↑](#footnote-ref-14)
15. [↑](#footnote-ref-15)
16. Costs shall be in the currencies of the Contract. [↑](#footnote-ref-16)
17. Costs shall be in the currencies of the Contract. [↑](#footnote-ref-17)
18. 2 Specify where necessary. [↑](#footnote-ref-18)
19. 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. [↑](#footnote-ref-19)
20. 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. [↑](#footnote-ref-20)
21. 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. [↑](#footnote-ref-21)
22. *The Employer should insert either the Bank Guarantee (4.1) or the Conditional Guarantee (4.2).* [↑](#footnote-ref-22)
23. The Guarantor shall insert an amount representing the percentage of the Contract Price specified in the Contract and denominated either in the currency(ies) of the Contract or a freely convertible currency acceptable to the *Employer*. [↑](#footnote-ref-23)
24. This text shall be revised as and where necessary to take into account (i) partial acceptance of the Facilities in accordance with Sub-Clause 25.4 of the GCC; and (ii) extension of the performance security when the Contractor is liable for an extended warranty obligation pursuant to Sub-Clause 27.10 of the GCC (although in this latter case the *Employer* might want to consider an extended warranty security in lieu of the extension of the performance security). [↑](#footnote-ref-24)
25. Insert the date twenty-eight days after the expected expiration date of the Defect Liability Period. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Employer’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.” [↑](#footnote-ref-25)
26. *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.* [↑](#footnote-ref-26)
27. *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.”* [↑](#footnote-ref-27)