STANDARD BIDDING DOCUMENTS

**Procurement of Works and Services**

under

**Output- and Performance-Based Road Contracts**

**(With or Without Prequalification)**

(where the Bank’s disqualification mechanism for non-compliance with SEA/SH obligations DOES **NOT** APPLY**; NOT** for use for contracts under Projects assessed as high risk for SEA/SH)



**February 2021**

This document is subject to copyright.

This document may be used and reproduced for non-commercial purposes only. Any commercial use, including without limitation reselling, charging to access, redistribute, or for derivative works such as unofficial translations based on these documents is not allowed

**February 2021**

This SBD shall NOT be used for contracts under Projects assessed as high risk for SEA/SH.

This revision includes enhanced provisions on environmental and social aspects, including on SEA (Sexual Exploitation and Abuse) and SH (Sexual Harassment). This version also has provisions to ensure that a firm disqualified by the Bank for non-compliance with SEA/SH obligations is not awarded a contract.

This revision also includes a number of modifications to the SBD reflecting lessons learned during implementation. In particular, changes have been made to Parts 1 and 3 of the SBD, as well as to the Sample Specifications which is available separately.

**October 2017**

This revision dated October, 2017 incorporates enhancements to the environmental, social, health and safety aspects to include additional provisions on sexual exploitation and abuse (SEA) and gender based violence (GBV).

**January 2017**

This revision dated January, 2017 incorporates changes to enhance environmental, social, health and safety performance.

**November 2009**

This version 2 incorporates the Fraud and Corruption clauses of the Procurement Guidelines and are reflected in ITB 3.1 (Corrupt Practices), ITB 4.4 (Eligible Bidders), GC 11.6 (Contractor’s Responsibilities), and GC 59.2.1 (Termination).

**October 2006**

This revision dated October 2006 incorporates the following changes:

This revision dated October, 2006 incorporates changes to the Section I - Instructions to Bidders, Section III -Evaluation and Qualification Criteria and Section VI Specifications.

**Foreword and Notes to the Users of this SBD**

1. This Foreword summarizes the contract modality of Output- and Performance-based Road Contracts (OPBRC). A more detailed description of the concept of OPBRC is provided in Part A of the *Sample Specifications for OPBRC,* which is available at: <https://www.worldbank.org/en/projects-operations/products-and-services/brief/procurement-new-framework#SPD>
2. This SBD has a general structure similar to the World Bank’s Standard Bidding Document for Works. Given the specific characteristics of Output- and Performance-based Contracting for Roads, modifications were however made in most sections of the bidding document including the use of several aspects of the World Bank’s Standard Bidding Document for Design, Supply and Installation of Plant and Equipment. In particular, the Conditions of Contract have been written in order to take into account the specific nature of the services to be provided by the Contractor, which go much beyond the mere execution of pre-defined physical works. The Contract covers an array of activities needed to achieve and maintain a certain Service Level for road users, including the design, construction, operation and maintenance, as well as several activities related to the management (including periodic evaluation) of the road network under contract. It includes carrying out Rehabilitation Works to bring the Road up to pre-defined standards, Improvement Works specified by the Employer aiming at adding new characteristics to the Roads in response to new traffic, safety or other conditions and Emergency Works needed to reinstate the Roads after damage has occurred as a result of natural phenomena with imponderable consequences (such as strong storms, flooding and earthquakes). A separate document has also been prepared and is presented as an Annex, providing “Sample Specifications for OPBRC,” meant to facilitate the preparation of actual and specific Specifications which must be part of the final bidding document.
3. Output-and Performance-based contracting for Roads is designed to increase the efficiency and effectiveness of road asset management and maintenance. It should ensure that the physical condition of the roads under contract is adequate for the need of road users, over the entire period of the contract which is normally several years. This type of contract significantly expands the role of the private sector, from the simple execution of works to the management and conservation of road assets.
4. In traditional road construction and maintenance contracts, the Contractor is responsible for the execution of works which are normally defined by the Employer, and the Contractor is paid on the basis of unit prices for different work items, i.e. a contract based on “inputs” to the works. The results of traditional road contracts are in many cases less-than-optimal. The problem is that the Contractor has the wrong incentive, which is to carry out the maximum amount of works, in order to maximize its turnover and profits. Even if the work is carried out according to plan and much money is spent, the overall service quality for the road user depends on the quality of the design given to the Contractor who is not accountable for it. In many cases the roads do not last as long as they should because the original design assumes that appropriate routine and periodic maintenance will be done. This is very often an incorrect assumption. The problem is further aggravated if there are problems in the design as such. .
5. The OPBRC addresses the issue of inadequate incentives. During the Bidding process, contractors compete among each other by essentially proposing fixed lump-sum prices for bringing the roads covered by the contract to a certain service level and then maintaining it at that level for a relatively long period. It is important to understand that contractors are not paid directly for “inputs” in the form of physical works (which they will undoubtedly have to carry out), but for achieving specified Service Levels, i.e., the Rehabilitation of the road to pre-defined standards (if so required by the bidding document), the Maintenance Service of ensuring certain Service Levels on the roads under contract, and specific Improvement Works (if so required by the bidding document), all representing outputs or outcomes. A monthly lump-sum remuneration paid to the Contractor will cover all physical and non-physical Maintenance Services provided by the Contractor, except for unforeseen Emergency Works which are remunerated separately. The Rehabilitation and Improvement Works which have been explicitly specified by the Employer in the contract are quoted on the basis of measurable output quantities and paid pro rata as performed. In order to be entitled to the monthly payment for Maintenance Services, the Contractor must ensure that the roads under contract comply with the Service Levels which have been specified in the bidding document. It is possible that during some months the Contractor will have to carry out a rather large amount of physical works in order to comply with the required Service Levels and very little work during other months. However, its monthly payment remains the same as long as the required Service Levels are complied with.
6. A fundamental feature of the OPBRC is that the contractor is responsible for designing and carrying out the works, services and actions it believes are necessary in order to achieve and maintain the Service Levels stated in the contract. The Service Levels are defined from a road user’s perspective and may include factors such as average travel speeds, riding comfort, safety features, etc. If the Service Level is not achieved in any given month, the payment for that month shall be reduced or even suspended.
7. Under the OPBRC, the Contractor has a strong financial incentive to be both efficient and effective whenever he undertakes work. In order to maximize profits, he must reduce its activities to the smallest possible volume of intelligently designed interventions, which nevertheless ensure that pre-defined indicators of Service Level are achieved and maintained over time. This type of contract makes it necessary for the Contractor to have a good management capacity. Here, “management” means the capability to define, optimize and carry out on a timely basis the physical interventions which are needed in the short, medium and long term, in order to guarantee that the roads under contract remain above the agreed Service Levels. In other words, within the contract limitations and those required to comply with local legislation, technical and performance specifications and environmental and social regulations, the Contractor is entitled to independently define: (i) what to do, (ii) where to do it, (iii) how to do it, and (iv) when to do it. The role of the Road Administration and of the Employer is to enforce the contract by verifying compliance with the agreed Service Levels and with all applicable legislation and regulations.
8. Maintaining a road network includes both routine and periodic tasks. Routine maintenance consists of many different tasks frequently necessary to maintain the function of the road (such as pothole repairs, cleaning of drainage, sealing of cracks, cutting of vegetation, etc.). Periodic maintenance consists of predictable and more costly measures of a less frequent nature designed to avoid road degradation (such as grading, drainage work, resurfacing, asphalt concrete overlays). Intelligent management, the timeliness of interventions and the adequacy of technical solutions are critical. It is expected that the use of private specialized firms under output- and performance-based contracts will unleash significant efficiency gains, and stimulate innovation in comparison with traditional road administration practices.
9. Minimum road conditions and Service Levels are defined through Operational Performance Measures (OPMs), and these are used under the OPBRC to define and measure the desired performance of the Contractor. In the OPBRC, the defined performance measures are thus the accepted minimum thresholds for the quality levels of the roads for which the Contractor is responsible.
10. The performance criteria should ideally cover all aspects of the contract and take account of the fact that different sub-areas within the contract area might require different Service Levels. Operational Performance Measures can be defined at two levels (although simpler contracts will not use all of the criteria identified below):
11. Road User Service and Comfort measures, which can be expressed in terms such as:
    * Road Roughness
    * Road and lane width
    * Rutting
    * Vegetation control
    * Visibility of road signs and markings
    * Road Safety features
    * Availability of each lane-km for use by traffic
    * Cleanliness of the road and its right-of-way Attendance at road accidents
    * Drainage off the pavement (standing water is dangerous for road users)
12. Road Durability measures, which can be expressed in terms such as:

* Longitudinal profile (for unpaved roads)
* Pavement strength
* The extent of repairs permissible before a more extensive periodic maintenance treatment is required
* Degree of sedimentation in drainage facilities

1. The contract also includes Management Performance Measures (MPMs), which describe contractual requirements that are not directly related to physical road conditions. Most MPMs relate to information that the Contractor needs to deliver to the Employer, so that the Employer can monitor certain aspects of the contract and the road asset, to operate its Road Asset Management System (RAMS) and to facilitate the preparation of the next contracts for the roads.
2. To avoid ambiguity, all performance measures must be clearly defined in the contract and objectively measurable.
3. When setting the Operational Performance Measures, various criteria (both technical and practical) need to be carefully considered, such as (i) traffic volume and composition, (ii) urban vs. rural roads (iii) flat, hilly or mountainous terrain, (iv) subgrade quality and type, (v) quality of available construction materials, (vi) capacity of available contractors, (vii) any environmental constraints and climate factors. However, probably the most important criterion is the question of what Service Level can be afforded and economically justified for the road in question. The World Bank provides guidance material for setting economically justified Service Levels on its website. 13. Under the terms of the contract, the Contractor will also be responsible for the continuous monitoring and control of road conditions and Service Levels for all roads included in the contract. This will not only be necessary to fulfill the contract requirements, but it is an activity which will provide the Contractor with the information needed to be able (i) to know the degree of its own compliance with Service Level requirements, and (ii) to define and plan, in a timely fashion, all physical interventions required to ensure that service quality indicators never fall below the indicated thresholds. Under the OPBRC modality, the Contractor will not receive instructions from the Employer concerning the type and volume of physical works to be carried out on the roads. Instead, all initiative rests with the Contractor who must do whatever is necessary and efficient to achieve the quality levels required. This concept is expected to lead not only to significant efficiency gains, as mentioned earlier, but also to technological innovation.
4. The main beneficiaries of the new concept are expected to be the road users, the Road Administration, and the contractors. In a wider sense, future generations will be able to benefit from a better preservation of past investments in roads. Road users will be able to know the Service Level they can expect in return for the payments they make for the use of the infrastructure (tolls, tariffs, user fees, taxes, etc.). The Road Administrations should benefit by obtaining better overall road conditions at the same levels of expenditure. For contractors, this type of contracts should open up new business opportunities, in which longer contract periods provide a more stable business environment.
5. Although the design of the works and services to be carried out is the responsibility of the Contractor, this type of procurement requires good preparatory engineering work by the Employer. It is necessary to obtain and present comprehensive up-to-date information on the actual condition of the roads covered by the contract. If Rehabilitation Works are required, the Employer must define the level of quality (or standard) to be achieved by the Contractor. If Improvement Works are required, these must be well-described in terms of specific outputs or results which can be priced by Bidders and, later on, measured and paid. Emergency works, although impossible to quantify in advance, will certainly be necessary. To allow Bidders to offer prices for Emergency Works, a unit price bill of quantities (similar for civil works under unit prices) with hypothetical quantities must be prepared for Bidders to price for Bid evaluation purposes. Later on, these unit prices and the actual measured volumes of Emergency Works executed will be used for payments.
6. When Rehabilitation Works and Improvement Works are not specifically required in the bidding document, it is expected that in order to comply with the contract, the Contractor will most likely have to carry out different types of works, including some small initial rehabilitation and improvements, routine maintenance activities and periodic maintenance works. The definition of the exact nature of the works, their timing, their costing and their implementation is left to the judgment of the Contractor. This means that the Contractor’s capacity must be above the usual capacity of a traditional civil works contractor. In fact, an essential attribute is the capacity to manage roads, while the actual physical execution may either be carried out by the Contractor itself, or by different specialized firms participating in a Joint Venture with the main Contractor, or under subcontracts. Joint Ventures may include Engineering firms and medium, small and even micro-enterprises. Consequently, a well-designed prequalification process is highly recommended in order to ensure that only qualified Bidders participate in the Bidding process, even though the present bidding document can also be used when post-qualification is envisaged. In the design of the prequalification requirements the Employer should consider if the experience of specialized sub-contractors (such as an engineering consultant) should be allowed to be added to those of the applicants. The activities which may be delegated by the main Contractor to subcontractors not participating in the prequalification process must be listed in the Particular Conditions and Bidders should be alerted about this point in the Bid Data Sheet.
7. Output- and Performance-based Road Contracts transfer a significant burden of risk onto the contractor. It is important that this burden is both equitable and within the capacity of the contracting industry. The contract defines the risk profile carried by the contractor arising from natural events, accidents, legislation changes, changes in traffic volumes, and roadside development.
8. Some Emergency Works should always be foreseen. Those are meant to remedy unexpected damage which occurs as a result of extraordinary natural phenomena, and which affect the normal use of the road network, or the safety and security of the users. For emergency events, the contract limits the responsibility of the Contractor, establishing that the Employer will approve execution of Emergency Works and separate remuneration for those, based on specific amounts of works proposed by the Contractor for each case and on unit prices included in the Bid and in the Contract. A provisional sum is normally set aside for Emergency Works.
9. The Contractor should be entitled to implement an axle load control system, which can be fixed or mobile, based on the legislation and in cooperation with the relevant authorities. Under such a system, the Contractor will build, operate and maintain the axle load control infrastructure and equipment, while the ~~police~~ relevant authorities will apply the measures foreseen under the legislation (such as penalties).
10. Bidders will present their financial offer for:

* the Maintenance Services in the form of the amount of the monthly lump-sum payment demanded by the Bidder according to the conditions of contract;
* the Rehabilitation Works (if so required in the Bid Data Sheet), in the form of a lump-sum amount, while indicating the required quantities of measurable outputs to be executed. Payments will be made pro rata in accordance with the progress in the execution of those measured outputs;
* the Improvement Works (if so required and for the improvements indicated in the bidding document) in the form of unit prices for completed outputs of each type of Improvement Works. Payments for improvements will be made in accordance with quoted unit prices for those outputs; and
* unit prices for Emergency Works in the form of a traditional bill of quantities. Payments will be made for each emergency on a case-by-case basis, in the amount of a lump-sum value estimated by the Contractor and approved by the Employer, on the basis of the estimated quantities and on the quoted unit prices.

There should also be a price adjustment clause applicable to all prices and activities in order to compensate for increases in cost indices during the contract period, which shall always be several years.

1. The agreed monthly payment for Maintenance Services will be made to the Contractor if it has complied, during the month for which the payment is to be made, with the agreed Service Levels on the road network under contract. Together with its monthly invoice, the Contractor will report the result of his own evaluation of compliance with the required Service Levels, based on his own monitoring system which is mandatory. Its statement will then be verified by the Project Manager or its representative (Monitoring Consultant) through inspections. If the Service Levels are not met, payments are reduced, based on the provisions and procedures stated in the contract. Payments may even be suspended, and the contract cancelled, if the contractor fails during an extended period to achieve certain minimum thresholds values of Service Levels. The contract describes the formulas used to calculate payment reduction and potential contract suspensions.

**Preface**

This Standard Bidding Document (SBD) for Output- and Performance-Based Road Contracts (OPBRC) has been prepared for the use in contracts financed by the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA) for the procurement of road contracts through International Competitive Bidding (ICB), in projects that are financed in whole or in part by the World Bank. It is consistent with the January 2011 edition of the Guidelines for Procurement for Goods, Works and Non Consulting Services under IBRD Loans and IDA Credits and Grants by World Bank Borrowers

The SBD is meant to be used for the multi-year management and maintenance of existing road networks (or of discrete road links) which also require Rehabilitation Works and/or Improvement Works. It has been issued by the World Bank to provide its clients with an alternative to the traditional methods of procuring road reconstruction, rehabilitation and maintenance. This SBD should not be used for the construction of new roads, for which other types of contracts are more appropriate, such traditional Civil Works contracts (FIDIC Red Book), Design-Build Contracts, etc.

The contract included in this SBD differs substantially from traditional contracts for civil works. The basic difference is that under the Output- and Performance-based Road Contract, most of the payments to be made to the Contractor are not based on quantities of works measured and on unit prices for works inputs, but on measured “outputs” reflecting the target conditions of the roads under contract (in other words: “what the roads are supposed to look like”), expressed through **“Service Levels.”** These Service Levels are defined in the contract. Another major difference is that the Contractor is fully responsible for the design of the works which are necessary to reach the required Service Levels, and the durability and performance of the roads over a longer period.

The present document is designed to allow for much flexibility in its use, according to the specific needs of the road network covered by the contract . An important focus of the contract is on **Maintenance Services**, which include not only the physical works on the Roads under contract which are needed to maintain the agreed Service Levels over time, but also all activities related to the management and evaluation of the road network under contract. The Contract allows for the execution of (i) **Rehabilitation Works** to be carried out in order to bring the Roads up to pre-defined standards; (ii) **Improvement Works** aiming at adding new characteristics to the Roads in response to new traffic, safety or other considerations; and (iii) **Emergency Works** comprising of activities needed to reinstate the Roads after damage resulting from unforeseen natural phenomena with imponderable consequences.

It should be noted that the OPBRC is not designed for the Contractor to simply build a road and then move on to other things. It is meant to establish a **longer-term Public-Private Partnership (PPP)** between the contractor and the Government, in which both parties have long-term commitments. The contractor’s focus will not simply be on road construction, but on the **Integral Management of the Road Asset** over a period which should reflect the expected lifetime of the asset. In this sense, the “contractor” must be a firm or a business venture which has the technical, managerial and financial capacity to fulfill the contract in all its aspects. Further explanations on the nature and character of Output- and Performance-Based Road Contracts are provided in the Foreword and the accompanying Sample Specifications for OPBRC.

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

Chief Procurement Officer

Standards, Procurement and Financial Management Department

The World Bank

1818 H Street, NW

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

http://www.worldbank.org

Summary Description

Invitation for Bids

Two templates for Invitation for Bids are attached for inviting Bids either after prequalification or without prequalification.

SBD for Procurement of Road Works and Services under OPBRC

These Standard Bidding Documents for Procurement of Road Works and Services apply either when a prequalification process has taken place before bidding or when a prequalification process has not taken place before bidding (provided alternative documents should be selected as applicable).

A brief description of these documents is given below.

**Summary**

**PART 1 – BIDDING PROCEDURES**

**Section I: Instructions to Bidders (ITB)**

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

**Section II. Bid Data Sheet (BDS)**

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

**Section III. Evaluation and Qualification Criteria** *(alternative Section III to be used when Prequalification has taken place before bidding)*

This Section contains the criteria to determine the lowest evaluated bid and to ascertain the continued qualification of the Bidder to perform the contract.

Section III. Evaluation and Qualification Criteria *(alternative Section III to be used when Prequalification has not taken place before bidding)*

This Section contains the criteria to determine the lowest evaluated bid and the qualifications of the Bidder to perform the contract.

**Section IV: Bidding Forms**

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

**Section V. Eligible Countries**

This Section contains information regarding eligible countries.

**Section VI - Fraud and Corruption**

This section includes the fraud and corruption provisions which apply to this Bidding process.

**PART 2 – WORKS’ AND SERVICES’ REQUIREMENTS**

**Section VII. Specifications for OPBRC**

This Section contains the Specification, the Drawings, and supplementary information that describe the Services and Works to be procured. The Specifications have to be prepared specifically for each contract to be procured. To facilitate this work, the Bank has provided a separate volume with Sample Specifications for OPBRC available at: <https://www.worldbank.org/en/projects-operations/products-and-services/brief/procurement-new-framework#SPD>.

The Works’ and Services’ Requirements shall also include the Environmental and Social (including sexual exploitation and abuse (SEA) and Sexual Harassment (SH) requirements to be satisfied by the Contractor in designing and executing the Works and Services.

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

**Section VIII. General Conditions (GC)**

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

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

This Section consists of the Particular Conditions. The contents of this Section modify or supplement the General Conditions and shall be prepared by the Employer.

**Section X: Contract Forms**

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

##### **Invitation for Bids Following Prequalification**

**Employer:**

**Project:**

**Contract title:**

**Country:**

**Loan No./Credit No./ Grant No**.:

**Reference No**. (from Procurement Plan):

**Issued on:**

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-2)for [*insert title of contract*][[2]](#footnote-3).

The *[insert name of implementing agency]* now invites sealed bids from prequalified eligible bidders for *[insert brief description of Works and Services required, including contract period, location, margin of preference if applicable, etc.][[3]](#footnote-4)*.

Bidding will be conducted through the International Competitive Bidding procedures as specified in the World Bank’s [*Guidelines: Procurement of Goods, Works and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers*](http://www.worldbank.org/html/opr/procure/guidelin.html)  *[insert correct title and date of applicable Guidelines edition as per legal agreement]* (“Procurement Guidelines”), and is open to all eligible bidders as defined in the Procurement Guidelines. In addition, please refer to paragraphs 1.6 and 1.7 setting forth the World Bank’s policy on conflict of interest.

Prequalified eligible bidders may obtain further information from *[insert name of implementing agency, insert name and e-mail of officer in charge]* and inspect the bidding documents 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 invitation]* [[4]](#footnote-5)*.*

A complete set of bidding documents in [*insert name of language*] may be purchased by prequalified eligible bidders upon the submission of a written application to the address below and upon payment of a nonrefundable fee[[5]](#footnote-6) of [*insert amount in Borrower’s currency or in a convertible currency*]. The method of payment will be [*insert method of payment*].[[6]](#footnote-7) The document will be sent by [*insert delivery procedure*].[[7]](#footnote-8)

Bids must be delivered to the address below *[state address at the end of this invitation]* [[8]](#footnote-9) on or before *[insert time and date].* Electronic bidding will *[will not]* be permitted. Late bids will be rejected. Bids will be publicly opened in the presence of the bidders’ designated representatives and anyone who choose to attend at the address below *[state address at the end of this invitation]* on *[insert time and date]*.

All bids must be accompanied by a *[insert “Bid Security” or “Bid-Securing Declaration,” as appropriate]* of *[insert amount and currency in case of a Bid Security*.]

The address(es) referred to above is(are): *[insert detailed address(es) ]*

[*insert name of office, room number*]

Attn: [*insert name of officer & title*]

[*insert postal address and/or street address*]

[*insert postal code, city, country*]

Tel: [*include the country and city code*]

Fax: [*include the country and city code*]

E-mail: [*insert electronic address if electronic bidding is permitted*]

Web site:

**Invitation for Bids**

**Without Prequalification**

**Employer:**

**Project:**

**Contract title:**

**Country:**

**Loan No./Credit No./ Grant No**.:

**Reference No**. (from Procurement Plan):

**Issued on:**

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 [[9]](#footnote-10)for [*insert title of contract*][[10]](#footnote-11).

The *[insert name of implementing agency]* now invites sealed bids from eligible bidders for *[insert brief description of Works and Services required, including location, contract period, margin of preference if applicable, etc.][[11]](#footnote-12)*.

Bidding will be conducted through the International Competitive Bidding procedures as specified in the World Bank’s [*Guidelines: Procurement of Goods, Works and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers*](http://www.worldbank.org/html/opr/procure/guidelin.html)  *[insert correct title and date of applicable Guidelines edition as per legal agreement]* (“Procurement Guidelines”), and is open to all eligible bidders as defined in the Procurement Guidelines. In addition, please refer to paragraphs 1.6 and 1.7 setting forth the World Bank’s policy on conflict of interest.

Interested eligible bidders may obtain further information from *[insert name of implementing agency, insert name and e-mail of officer in charge]* and inspect the bidding documents 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 invitation]* [[12]](#footnote-13)*.*

A complete set of bidding documents in [*insert name of language*] may be purchased by interested eligible bidders upon the submission of a written application to the address below and upon payment of a nonrefundable fee[[13]](#footnote-14) of [*insert amount in Borrower’s currency or in a convertible currency*]. The method of payment will be [*insert method of payment*].[[14]](#footnote-15) The document will be sent by [*insert delivery procedure*].[[15]](#footnote-16)

Bids must be delivered to the address below *[state address at the end of this invitation]* [[16]](#footnote-17) on or before *[insert time and date].* Electronic bidding will *[will not]* be permitted. Late bids will be rejected. Bids will be publicly opened in the presence of the bidders’ designated representatives and anyone who choose to attend at the address below *[state address at the end of this invitation]* on *[insert time and date]*.

All bids must be accompanied by a *[insert “Bid Security” or “Bid-Securing Declaration,” as appropriate]* of *[insert amount and currency in case of a Bid Security*.

The address(es) referred to above is(are): *[insert detailed address(es)]*

[*insert name of office, room number*]

Attn: [*insert name of officer & title*]

[*insert postal address and/or street address*]

[*insert postal code, city, country*]

Tel: [*include the country and city code*]

Fax: [*include the country and city code*]

E-mail: [*insert electronic address if electronic bidding is permitted*]

Web site:

BIDDING DOCUMENTS

Issued on: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**for**

**Procurement of Works and Services**

**under**

**Output- and Performance-based Road Contract**

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

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

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

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

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

**Country:**

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

**ICB No:** *[insert RFB reference number from Procurement Plan]*

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

**Table of Contents**

[PART 1 – Bidding Procedures 1](#_Toc65247344)

[Section I. Instructions to Bidders 3](#_Toc65247345)

[Section II. Bid Data Sheet 31](#_Toc65247346)

[Section III. Evaluation and Qualification Criteria *(Following Prequalification)* 41](#_Toc65247347)

[Section III. Evaluation and Qualification Criteria *(Without Prequalification)* 45](#_Toc65247348)

[Section IV. Bidding Forms 69](#_Toc65247349)

[Section V. Eligible Countries 134](#_Toc65247350)

[Section VI. Bank Policy - Corrupt and Fraudulent Practices 135](#_Toc65247351)

[PART 2 – Works AND SERVICES’ Requirements 139](#_Toc65247352)

[Section VII. Specifications 141](#_Toc65247353)

[PART 3 – Conditions of Contract and Contract Forms 145](#_Toc65247354)

[Section VIII - General Conditions 147](#_Toc65247355)

[Section IX. Particular Conditions (PC) 259](#_Toc65247356)

[Section X. Contract Forms 264](#_Toc65247357)

PART 1 – Bidding Procedures

|  |
| --- |
| Section I. Instructions to Bidders |

Table of Clauses

A. General 5

1. Scope of Bid 5

2. Source of Funds 6

3. Corrupt Practices 7

4. Eligible Bidders 7

5. Eligible Materials, Equipment, and Services 9

B. Contents of Bidding Document 10

6. Sections of Bidding Document 10

7. Clarification of Bidding Document, Site Visit, Pre-Bid Meeting 11

8. Amendment of Bidding Document 12

C. Preparation of Bids 12

9. Cost of Bidding 12

10. Language of Bid 12

11. Documents Comprising the Bid 13

12. Letter of Bid, and Schedules 13

13. Alternative Bids 14

14. Bid Prices and Discounts 14

15. Currencies of Bid and Payment 15

*16.* Documents Comprising the Technical Proposal 15

17. Documents Establishing the Qualifications of the Bidder 16

18. Period of Validity of Bids 16

19. Bid Security 17

20. Format and Signing of Bid 19

D. Submission and Opening of Bids 19

21. Sealing and Marking of Bids 19

22. Deadline for Submission of Bids 20

23. Late Bids 20

24. Withdrawal, Substitution, and Modification of Bids 20

25. Bid Opening 21

E. Evaluation and Comparison of Bids 22

26. Confidentiality 22

27. Clarification of Bids 22

28. Deviations, Reservations, and Omissions 23

29. Determination of Responsiveness 23

30. Nonmaterial Nonconformities 24

31. Correction of Arithmetical Errors 24

32. Conversion to Single Currency 25

33. Margin of Preference 25

34. Evaluation of Bids 25

35. Comparison of Bids 26

36. Qualification of the Bidder 26

37. Employer’s Right to Accept Any Bid, and to Reject Any or All Bids 27

F. Award of Contract 27

38. Award Criteria 27

39. Notification of Award 27

40. Signing of Contract 28

41. Performance Security 28

|  |  |  |
| --- | --- | --- |
| **Section I. Instructions to Bidders** | | |
|  | | General |
| 1. Scope of Bid | | 1.1 In connection with the Invitation for Bids indicated in the Bid Data Sheet (BDS), the Employer, as indicated in the BDS, issues these Bidding Documents for the procurement of Works and Services as listed below for the award of an ***Output- and Performance-based Road Contract (OPBRC).*** The Works and Services under the OPBRC will coverthe Roads **indicated in the BDS** and will consist of:  (a) Maintenance Services or “Services” consisting of all interventions on the Roads which are to be carried out by the contractor in order to achieve and keep the Road performance standards defined by the Service Level included in the Specifications in Section VII of these Bidding Documents, and all activities related to the management and evaluation of the road network under contract.  (b) Rehabilitation Works, **when requested in the BDS** for the sections of the Road(s) **indicated in the BDS,** consisting of specific types of civil works described in the Specifications.  (c) Improvement Works, **when requested in the BDS,** consisting of a set of specific interventions indicated in the Specifications to add new characteristics to the Roads in response to existing or new traffic and safety or other considerations.  (d) Emergency Works consisting of activities needed to reinstate the Roads and reconstruct their structure or their right of way which has been damaged as a result of natural phenomena with imponderable consequences, such as strong storms, flooding, and earthquakes. |
|  | | 1.2 Throughout these Bidding Documents:  the term “in writing” means communicated in written form (e.g. by mail, e-mail, and fax, including ifspecified **in the BDS**, distributed or received through electronic-procurement system used by the Employer) with proof of receipt;  except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular;  “day” means calendar day; and  “ES” means environmental and social (including Sexual Exploitation and Abuse (SEA), and Sexual Harassment (SH));  **“Sexual Exploitation and Abuse” “(SEA)”** means the following:  **Sexual Exploitation** is defined as any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another;  **Sexual Abuse** is defined as the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.  “Sexual Harassment” “(SH)” is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by the Contractor’s Personnel with other Contractor’s or Employer’s Personnel;  **“Contractor’s Personnel”** is as defined in GC Sub-Clause 1.1 of the General Conditions; and  **“Employer’s Personnel”** is as defined in GC Sub-Clause 1.1 of the General Conditions.  A non-exhaustive list of (i) behaviors which constitute SEA and (ii) behaviors which constitute SH is attached to the Code of Conduct form in Section IV. |
| 1. Source of Funds | | 2.1 The Borrower or Recipient (hereinafter called “Borrower”) indicated in the BDS has applied for or received financing (hereinafter called “funds”) from the International Bank for Reconstruction and Development or the International Development Association (hereinafter called “the Bank”) toward the cost of the project named in the BDS. The Borrower intends to apply a portion of the funds to eligible payments under the contract(s) for which these Bidding Documents are issued. |
|  | | 2.2 Payments by the Bank will be made only at the request of the Borrower and upon approval by the Bank in accordance with the terms and conditions of the financing agreement between the Borrower and the Bank *(*hereinafter called the Loan Agreement*)*, and will be subject in all respects to the terms and conditions of that Loan Agreement. No party other than the Borrower shall derive any rights from the Loan Agreement or have any claim to the funds. The Loan Agreementprohibits a withdrawal from the loan account for the purpose of any payment to persons or entities, or for any import of equipment, plant, or materials, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations. |
| 1. Corrupt and Fraudulent Practices | | 3.1 The Bank requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Section VI. |
|  | | 3.2 In further pursuance of this policy, Bidders shall permit and shall cause its agents (where declared or not), sub-contractors, sub-consultants, service providers, suppliers, and personnel, to permit the Bank to inspect all accounts, records and other documents relating to any prequalification process, bid submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the Bank. |
| 1. Eligible Bidders | | 4.1 A Bidder may be a natural person, private entity, government-owned entity—subject to ITB 4.6—or any combination of such entities supported by a letter of intent to enter into an agreement or under an existing agreement in the form of a joint venture or association *(*JVA*)*. In the case of a joint venture or association:   * + 1. unless otherwise specified in the BDS, all partners shall be jointly and severally liable, and     2. the JVA shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the partners of the JVA during the bidding process and, in the event the JVA is awarded the Contract, during contract execution. |
|  | | 4.2 A Bidder, and all parties constituting the Bidder, may have the nationality of any country as defined under the *Guidelines: Procurement under IBRD Loans and IDA Credits* (hereinafter referred to as the Guidelines), subject to the restrictions specified in Section V, Eligible Countries. A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related Services. |
|  | | 4.3 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if :   * + 1. they have controlling partners in common; or     2. they receive or have received any direct or indirect subsidy from any of them; or     3. they have the same legal representative for purposes of this bid; or     4. they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder, or influence the decisions of the Purchaser regarding this bidding process; or     5. a Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which the party is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or     6. a Bidder participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the bid;     7. a Bidder was affiliated with a firm or entity that has been hired (or is proposed to be hired) by the Employer or Borrower as Project Manager for the contract. |
|  | | 4.4 A Bidder that has been sanctioned by the Bank in accordance with the above ITB 3.1, including in accordance with the Bank’s Guidelines on Preventing and Combating Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants (“Anti-Corruption Guidelines”), shall be ineligible to be prequalified for, bid 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 as specified in the BDS. |
|  | | 4.5 Government-owned entities in the Employer’s country shall be eligible only if they can establish that they are legally and financially autonomous and operate under commercial law. Also, they shall not be dependent agencies of the Employer. |
|  | | 4.6 Bidders shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request. |
|  | | 4.7 Firms shall be excluded if:   * + 1. as a matter of law or official regulation, the Borrower’s country prohibits commercial relations with that country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the supply of goods or related services required; or     2. by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower’s country prohibits any import of goods or contracting of Works or services from that country or any payments to persons or entities in that country.   4.8 Bidder shall not be under suspension from bidding by the Employer as the result of the operation of a Bid–Securing or Proposal-Securing Declaration.  4.9 This bidding is open only to prequalified Bidders, unless stated otherwise in the **BDS**. |
| 1. Eligible Materials, Equipment, and Services | | 5.1 The materials, equipment and services to be supplied under the Contract and financed by the Bank may have their origin in any country subject to the restrictions specified in Section V, Eligible Countries, and all expenditures under the Contract will not contravene such restrictions. At the Employer’s request, Bidders may be required to provide evidence of the origin of materials, equipment and services. |
|  | | 5.2 For purposes of ITB 5.1 above, “origin” means the place where the materials and equipment are mined, grown, produced or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that is substantially in its basic characteristics or in purpose or utility from its components. |
|  | | Contents of Bidding Document |
| 1. Sections of Bidding Document | | 6.1 The Bidding Documents consist of Parts 1, 2, and 3, which include all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITB 8.  **PART 1 Bidding Procedures**   * Section I. Instructions to Bidders (ITB) * Section II. Bid Data Sheet (BDS) * Section III. Evaluation Criteria and Qualification Criteria * Section IV. Bidding Forms * Section V. Eligible Countries * Section VI. Bank Policy-Corrupt and Fraudulent Practices   **PART 2 Specifications for Works and Services**   * Section VII. Specifications for Works and Services   **PART 3 Conditions of Contract and Contract Forms**   * Section VIII. General Conditions (GC) * Section IX. Particular Conditions (PC) * Section IX. Contract Forms |
|  | | 6.2 The Invitation for Bids issued by the Employer is not part of the Bidding Document. |
|  | | 6.3 The Employer is not responsible for the completeness of the Bidding Documents and their addenda, if they were not obtained directly from the source stated by the Employerin the Invitation for Bids. |
|  | | 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document. Failure to furnish all information or documentation required by the Bidding Documents may result in the rejection of the bid. |
| 1. Clarification of Bidding Document, Site Visit, Pre-Bid Meeting | | 7.1 A prospective Bidder requiring any clarification of the Bidding Document shall contact the Employer in writing at the Employer’s address indicated in the BDS or raise his enquiries during the pre-bid meeting if provided for in accordance with ITB 7.4. The Employer will respond in writing to any request for clarification, provided that such request is received no later than the period specified **in the BDS** prior to the deadline for submission of Bids. The Employer shall forward copies of its response to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. If so specified **in the BDS**, the Employer shall also promptly publish its response at the web page identified **in the BDS.** Should the Employer deem it necessary to amend the Bidding Document as a result of a request for clarification, it shall do so following the procedure under ITB 8 and ITB 22.2. |
|  | | 7.2 The Bidder is advised to visit and examine the Site of the Roads and its surroundings and obtain for itself and on its own responsibility all information that may be necessary for preparing the Bid and entering into a contract for the execution of the Works and Services. The costs of visiting the Site of the Roads shall be at the Bidder’s own expense. |
|  | | 7.3 The Bidder and any of its personnel or agents will be granted permission by the Employer to visit the Roads and surrounding lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection. |
|  | | 7.4 If so provided in the BDS, the Bidder’s designated representative is required to attend a pre-bid meeting and/or a Site of the Roads’ visit. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage. |
|  | | 7.5 The Bidder is requested, as far as possible, to submit any questions in writing, to reach the Employer not later than one week before the meeting. |
|  | | 7.6 Minutes of the pre-bid meeting, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Documents in accordance with ITB 6.3. Any modification to the Bidding Documents that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting. Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder. |
| 1. Amendment of Bidding Document | | 8.1 At any time prior to the deadline for submission of bids, the Employer may amend the Bidding Documents by issuing addenda. |
|  | | 8.2 Any addendum issued shall be part of the Bidding Documents and shall be communicated in writing to all who have obtained the Bidding Document from the Employerin accordance with ITB 6.3. The Employer shall also promptly publish the addendum on the Employer’s web page in accordance with ITB 7.1. |
|  | | 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB 22.2 |
|  | | Preparation of Bids |
| 1. Cost of Bidding | | 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process. |
| 1. Language of Bid | | 10.1 The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Employer, shall be written in the language specified in the BDS. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the BDS, in which case, for purposes of interpretation of the Bid, such translation shall govern. |
| 1. Documents Comprising the Bid | | 11.1 The Bid shall comprise the following:   1. **Letter of Bid** prepared in accordance with ITB 12; 2. **Schedules**, including priced Bills of Quantities, completed in accordance with ITB 12 and ITB 14; 3. **Bid Security or Bid-Securing Declaration**, in accordance with ITB 19; 4. **Alternative Bid**, if permissible, in accordance with ITB 13; 5. **Authorization**: written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2; 6. **Qualifications**: documentary evidence in accordance with ITB 17 establishing the Bidder’s qualifications, or continued qualified status, as the case may be, to perform the Contract if its Bid is accepted; 7. Technical Proposal in accordance with ITB 16; 8. any other document required in the BDS.    1. In addition to the requirements under ITB 11.1, bids submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a Letter of Intent to execute a Joint Venture Agreement in the event of a successful bid shall be signed by all members and submitted with the bid, together with a copy of the proposed agreement.    2. The Bidder shall furnish in the Letter of Bid information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid. |
| 1. Letter of Bid, and Schedules | | 12.1 The Letter of Bid and Schedules, including the Bills of Quantities*,* shall be prepared using the relevant form*s* furnished in Section IV, Bidding Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested. |
| 1. Alternative Bids | | 13.1 Unless otherwise indicated in the BDS, alternative bids shall not be considered. |
|  | | 13.2 When alternative times for reaching the required Service Levels or for the completion of Rehabilitation or Improvement Works are explicitly invited, a statement to that effect will be included in the BDS, as will the method of evaluating different times for completion. |
|  | | 13.3 Except as provided under ITB 13.4 below, Bidders wishing to offer technical alternatives to the requirements of the bidding document must first price the Employer’s design as described in the bidding document and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Employer. |
|  | | 13.4 When specified in the BDS, Bidders are permitted to submit alternative technical solutions for specified parts of the Rehabilitation and/or Improvement Works, and such parts will be identified in the BDS, as will the method for their evaluating, and described in Section VII, Works and Services’ Requirements. |
| 1. Bid Prices and Discounts | | 14.1 The prices and discounts quoted by the Bidder in the Letter of Bid and in the Bills of Quantities shall conform to the requirements specified below. |
|  | | 14.2 The Bidder shall fill in rates and prices for all items of the Works and Services described in the Bills of Quantities. Items against which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Bills of Quantities and will not be paid for separately by the Employer. An item not listed in the priced Bill of Quantities shall be assumed to be not included in the bid, and provided that the bid is determined substantially responsive notwithstanding this omission, the average price of the item quoted by substantially responsive Bidders will be added to the Bid price and the equivalent total cost of the bid so determined will be used for price comparison |
|  | | 14.3 The price to be quoted in the Letter of Bid, in accordance with ITB 12.1, shall be the total price of the Bid, excluding any discounts offered. |
|  | | 14.4 The Bidder shall quote any discounts and the methodology for their application in the Letter of Bid, in accordance with ITB 12.1. |
|  | | 14.5 Unless otherwise provided in the BDS and the Contract, the rates and prices quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract. In such a case, the Bidder shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data and the Employer may require the Bidder to justify its proposed indices and weightings. |
|  | | 14.6 If so indicated in ITB 1.1, bids are being invited for individual lots (contracts)or for any combination of lots (packages). Bidders wishing to offer any price reduction for the award of more than one Contract shall specify in their bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITB 14.4, provided the bids for all lots (contracts) are submitted and opened at the same time. |
|  | | 14.7 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the rates and prices and the total Bid Price submitted by the Bidder. |
| 1. Currencies of Bid and Payment | | 15.1 The currency(cies) of the bid and the currency(ies) of payments shall be as specified in the BDS*.*  15.2 Bidders may be required by the Employer to justify, to the Employer’s satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Summary of Payment Currency Schedule, in which case a detailed breakdown of the foreign currency requirements shall be provided by Bidders. |
| 1. Documents Comprising the Technical Proposal | | 16.1 The Bidder shall furnish a technical proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section IV, Bidding Forms, in sufficient detail to demonstrate the adequacy of the Bidders’ proposal to meet the work and services’ requirements and the completion time. |
| 1. Documents Establishing the Qualifications of the Bidder | | 17.1 To establish Bidder’s eligibility in accordance with ITB 4, Bidders shall complete the Letter of Bid, included in Section IV, Bidding Forms.  17.2 In accordance with Section III, Evaluation and Qualification Criteria, to establish its qualifications to perform the Contract the Bidder shall provide the information requested in the corresponding information sheets included in Section IV, Bidding Forms. |
|  | | 17.3 If a margin of preference applies as specified in accordance with ITB 33.1, domestic Bidders, individually or in joint ventures, applying for eligibility for domestic preference shall supply all information required to satisfy the criteria for eligibility specified in accordance with ITB 33.1. |
| 1. Period of Validity of Bids | | 18.1 Bids shall remain valid until the date specified **in the** **BDS** or any extended date if amended by the Employer in accordance with ITB 8. A Bid that is not valid until the date specified **in the BDS,** or any extended date if amended by the Employer in accordance with ITB 8, shall be rejected by the Employer as nonresponsive. |
|  | 18.2 In exceptional circumstances, prior to the expiration of the bid validity, the Employer may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITB 19, it shall also be extended for twenty-eight (28) days beyond the extended date for validity period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid, except as provided in ITB 18.3. |
|  | | 18.3 If the award is delayed by a period exceeding fifty-six (56) days beyond the date of expiry of the bid validity specified in accordance with ITB 18.1, the Contract price shall be determined as follows:   1. in the case of fixed price contracts, the Contract price shall be the Bid price adjusted by the factor specified **in the BDS**; 2. in the case of adjustable price contracts, no adjustment shall be made; 3. in any case, Bid evaluation shall be based on the bid price without taking into consideration the applicable correction from those indicated above. |
| 1. Bid Security | * 1. The Bidder shall furnish as part of its bid, either a Bid-Securing Declaration or a bid Security as specified **in the BDS**, in original form and, in the case of a bid security, in the amount and currency specified in the BDS.   2. A Bid-Securing Declaration shall use the form included in Section IV, Bidding Forms. | |
|  | | * 1. The bid security shall be a demand guarantee at the Bidder’s option, in any of the following forms:      1. an unconditional guarantee issued by a bank or financial institution (such as an insurance, bonding or surety company);      2. an irrevocable letter of credit;      3. a cashier’s or certified check; or      4. another security indicated in the BDS,   from a reputable source from an eligible country. If the bid security furnished by the Bidder is in the form of a bond issued by an insurance or bonding institution located outside the Employer’s Country, it shall have a correspondent financial institution located in the Employer’s Country to make it enforceable. The bid security shall be submitted either using the Bid Security Form included in Section IV, Bidding Forms, in the case of a bank guarantee*,* or in another substantially similar format approved by the Employer prior to bid submission. In either case, the form must include the complete name of the Bidder. The bid security shall be valid for twenty-eight (28) days beyond the original date of expiry of the bid validity, or beyond any extended date if requested under ITB 18.2. |
|  | | * 1. If a bid security or Bid Securing Declaration is specified pursuant to ITB 19.1, any bid not accompanied by an enforceable and compliant bid security, if one is required in accordance with ITB 19.1, shall be rejected by the Employer as non responsive. |
|  | | * 1. If a bid security is specified pursuant to ITB 19.1, the bid security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder’s furnishing of the performance security and if required in the BDS, the Environmental and Social (ES) Performance Security pursuant to ITB 41. |
|  | | * 1. The bid security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required performance security, and if required in the BDS, the Environmental and Social, (ES) Performance Security. |
|  | | * 1. The bid security may be forfeited:      1. if a Bidder withdraws its Bid prior to the expiry date of the Bid validity specified by the Bidder on the Letter of Bid, or any extended date provided by the Bidder; or      2. if the successful Bidder fails to:  (i) sign the Contract in accordance with ITB 40; or(ii) furnish a performance security and if required in the BDS, the Environmental and Social (ES) Performance Security, in accordance with ITB 41. |
|  | | * 1. The bid security of a JV shall be in the name of the JV that submits the bid. If the JV has not been legally constituted at the time of bidding, the bid security shall be in the names of all future partners as named in the letter of intent referred to in ITB 4.1 and ITB 11.2*.*   2. If a bid security is not required in the BDS pursuant to ITB 19.1, and   3. if a Bidder withdraws its Bid prior to the expiry date of the Bid validity specified by the Bidder on the Letter of Bid or any extended date provided by the Bidder, or   4. if the successful Bidder fails to:  (i) sign the Contract in accordance with ITB 40; or(ii) furnish a performance security and if required in the BDS, the Environmental and Social (ES) Performance Security in accordance with ITB 41; the Borrower may, if provided for in the BDS, declare the Bidder ineligible to be awarded a contract by the Borrower for a period of time as stated in the BDS. |
| 1. Format and Signing of Bid | | 20.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB 11 and clearly mark it “ORIGINAL.” Alternative bids, if permitted in accordance with ITB 13, shall be clearly marked “ALTERNATIVE.” In addition, the Bidder shall submit copies of the bid, in the number specified in the BDS and clearly mark them “COPY.” In the event of any discrepancy between the original and the copies, the original shall prevail. |
|  | | 20.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the BDS and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid where entries or amendments have been made shall be signed or initialed by the person signing the bid. |
|  | | 20.3 In case the Bidder is a JV, the bid shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.  20.4 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the bid. |
|  | | Submission and Opening of Bids |
| 1. Sealing and Marking of Bids | | 21.1 The Bidder shall enclose the original and all copies of the bid, including alternative bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as “Original,” “Alternative,” and “Copy.” These envelopes containing the original and the copies shall then be enclosed in one single envelope. |
|  | | 21.2 The inner and outer envelopes shall:   1. bear the name and address of the Bidder; 2. be addressed to the Employer in accordance with ITB 22.1; 3. bear the specific identification of this bidding process indicated in the BDS 1.1; and 4. bear a warning not to open before the time and date for bid opening. |
|  | | 21.3 If all envelopes are not sealed and marked as required, the Employer will assume no responsibility for the misplacement or premature opening of the bid. |
| 1. Deadline for Submission of Bids | | 22.1 Bids must be received by the Employer at the address and no later than the date and time indicated in the BDS. When so specified in the BDS, bidders shall have the option of submitting their bids electronically. Bidders submitting bids electronically shall follow the electronic bid submission procedures specified in the BDS. |
|  | | 22.2 The Employer may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Document in accordance with ITB 8, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended. |
| 1. Late Bids | | 23.1 The Employer shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB 22. Any bid received by the Employer after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder. |
| 1. Withdrawal, Substitution, and Modification of Bids | | 24.1 A Bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 20.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:   1. prepared and submitted in accordance with ITB 20 and ITB 21 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked “Withdrawal,” “Substitution,” “Modification;” and 2. received by the Employer prior to the deadline prescribed for submission of bids, in accordance with ITB 22. |
|  | | 24.2 Bids requested to be withdrawn in accordance with ITB 24.1 shall be returned unopened to the Bidders. |
|  | | 24.3 No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Bid or any extension thereof. |
| 1. Bid Opening | | 25.1 The Employer shall open the bids in public, in the presence of Bidders` designated representatives and anyone who choose to attend, and at the address, date and time specified in the BDS. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 22.1, shall be as specified in the BDS. |
|  | | 25.2 First, envelopes marked “Withdrawal” shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked “Substitution” shall be opened and read out and exchanged with the corresponding bid being substituted, and the substituted bid shall not be opened, but returned to the Bidder. No bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening. Envelopes marked “Modification” shall be opened and read out with the corresponding bid. No bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at bid opening. Only envelopes that are opened and read out at bid opening shall be considered further. |
|  | | 25.3 All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the Bid Price(s), including any discounts and alternative offers; the presence of a bid security, if required; and any other details as the Employer may consider appropriate. Only discounts and alternative offers read out at bid opening shall be considered for evaluation. **If so requested by the Employer in the BDS**, the Letter of Bid andtheBill of Quantitiesare to be initialed by representatives of the Employer attending bid opening in the manner indicated in the BDS. No bid shall be rejected at bid opening except for late bids, in accordance with ITB 23.1. |
|  | | 25.4 The Employer shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot if applicable, including any discounts and alternative offers; and the presence or absence of a bid security, if one was required. The Bidders’ representatives who are present shall be requested to sign the record. The omission of a Bidder’s signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders. |
|  | | Evaluation and Comparison of Bids |
| 1. Confidentiality | | 26.1 Information relating to the evaluation of bids and recommendation of contract award shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on Contract award is communicated to all Bidders. |
|  | | 26.2 Any attempt by a Bidder to influence the Employer in the evaluation of the bids or Contract award decisions may result in the rejection of its bid. |
|  | | 26.3 Notwithstanding ITB 26.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the bidding process, it may do so in writing. |
| 1. Clarification of Bids | | 27.1 To assist in the examination, evaluation, and comparison of the bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its bid. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer’s request for clarification and the response shall be in writing. No change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids, in accordance with ITB 31. |
|  | | 27.2 If a Bidder does not provide clarifications of its bid by the date and time set in the Contracting Agency’s request for clarification, its bid may be rejected. |
| 1. Deviations, Reservations, and Omissions | | 28.1 During the evaluation of bids, the following definitions apply:   1. “Deviation” is a departure from the requirements specified in the Bidding Document; 2. “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and 3. “Omission” is the failure to submit part or all of the information or documentation required in the Bidding Document. |
| 1. Determination of Responsiveness | | 29.1 The Employer’s determination of a bid’s responsiveness is to be based on the contents of the bid itself, as defined in ITB11. |
|  | | 29.2 A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,  (a) if accepted, would (i) affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or(ii) limit in any substantial way, inconsistent with the Bidding Document, the Employer’s rights or the Bidder’s obligations under the proposed Contract; or (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids. |
|  | | 29.3 The Employer shall examine the technical aspects of the bid submitted in accordance with ITB 16, Technical Proposal, in particular, to confirm that all requirements of Section VII, Specifications for Works and Services have been met without any material deviation or reservation. |
|  | | 29.4 If a bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission. |
| 1. Nonmaterial Nonconformities | | 30.1 Provided that a bid is substantially responsive, the Employer may waive any nonconformities in the bid*.* |
|  | | 30.2 Provided that a bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the bid. Failure of the Bidder to comply with the request may result in the rejection of its bid. |
|  | | 30.3 Provided that a bid is substantially responsive, the Employer shall rectify nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or nonconforming item or component by adding the average price of the item or component quoted by substantially responsive Bidders. If the price of the item or component cannot be derived from the price of other substantially responsive Bids, the Employer shall use its best estimate*.* |
| 1. Correction of Arithmetical Errors | | 31.1 Provided that the bid is substantially responsive, the Employer shall correct arithmetical errors on the following basis:  (a) if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of theEmployer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;  (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and  (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above. |
|  | | 31.2 Bidders shall be requested to accept correction of arithmetical errors. Failure to accept the correction in accordance with ITB 31.1, shall result in the rejection of the bid. |
| 1. Conversion to Single Currency | | 32.1 For evaluation and comparison purposes, the currency(ies) of the bid shall be converted into a single currency as specified in the BDS. |
| 1. Margin of Preference | | 33.1 Unless otherwise specified in the BDS*,* a margin of preference for domestic Bidders[[17]](#footnote-18) shall not apply. |
| 1. Evaluation of Bids | | 34.1 The Employer shall use the criteria and methodologies listed in this ITB and Section III, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted.  34.2 To evaluate a bid, the Employer shall consider the following:  (a) the bid price, excluding Provisional Sums and the provision, if any, for contingencies in the Summary Bill of Quantities;  (b) price adjustment for correction of arithmetic errors in accordance with ITB 31.1;  (c) price adjustment due to discounts offered in accordance with ITB 14.4;  (d) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 32;  (e) adjustment for nonconformities in accordance with ITB 30.3;  (f) the additional evaluation factors indicated in Section III, Evaluation and Qualification Criteria; |
|  | | 34.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation. |
|  | | 34.4 If these Bidding Documents allows Bidders to quote separate prices for different lots (contracts), and the award to a single Bidder of multiple lots (contracts), the methodology to determine the lowest evaluated price of the lot (contract) combinations, including any discounts offered in the Letter of Bid, is specified in Section III, Evaluation and Qualification Criteria. |
|  | | 34.5 The price of the Rehabilitation and Improvement Works included in each Bid shall not be higher than the threshold indicated **in the BDS**. If the Bidder estimates that its costs for the Rehabilitation and Improvement Works are higher than the threshold indicated in the BDS, it shall include the portion above the threshold in its price for the Maintenance Services. If the bid which results in the lowest Evaluated Bid Price is above the threshold indicated in the BDS for the Rehabilitation and Improvement Works, the Employer may reject the bid. |
| 1. Comparison of Bids | | 35.1 The Employer shall compare all substantially responsive bids to determine the lowest evaluated bid, in accordance with ITB 34.2*.*  35.2 After application of the criteria established in Sub-Clauses 34.1 to 34.5, the Evaluated Bid Price for comparison of bids will be:   1. the lump-sum price offered by the Bidder for the Maintenance Services; plus 2. the lump-sum price offered by the Bidder for the Rehabilitation Works, if the bidding documents require prices for this type of works; plus 3. the total price of the priced Bill of Quantities for the Improvement Works, if the bidding documents require prices for this type of works, plus 4. the total price of the priced Bill of Quantities for the Emergency Works. |
| 1. Qualification of the Bidder | | 36.1 The Employer shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria. |
|  | | 36.2 The determination shall be based upon an examination of the documentary evidence of the Bidder’s qualifications submitted by the Bidder, pursuant to ITB 17.1.  36.3 Prior to Contract award, the Employer will verify that the successful Bidder (including each member of a JV) is not disqualified by the Bank due to noncompliance with contractual SEA/SH prevention and response obligations. The Employer will conduct the same verification for each subcontractor proposed by the successful Bidder. If any proposed subcontractor does not meet the requirement, the Employer will require the Bidder to propose a replacement subcontractor.  36.4 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Employer shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder’s qualifications to perform satisfactorily. |
| 1. Employer’s Right to Accept Any Bid, and to Reject Any or All Bids | | 37.1 The Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders. |
|  | | Award of Contract |
| 1. Award Criteria | | 38.1 Subject to ITB 37.1,the Employer shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated bid and is substantially responsive to the bidding documents, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily. |
| 1. Notification of Award | | 39.1 Prior to the date of expiry of the bid validity, the Employer shall notify the successful Bidder, in writing, that its bid has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the “Letter of Acceptance”) shall specify the sum that the Employer will pay the Contractor in consideration of the execution and completion of the Works (hereinafter and in the Conditions of Contract and Contract Forms called “the Contract Price”) and the requirement for the Contractor to remedy any defects therein as prescribed by the Contract. At the same time, the Employer shall also notify all other Bidders of the results of the bidding and shall publish in *UNDB online* and in the *dgMarket* the results identifying the bid and lot numbers and the following information: (i) name of each Bidder who submitted a Bid; (ii) bid prices as read out at Bid Opening; (iii) name and evaluated prices of each Bid that was evaluated; (iv) name of bidders whose bids were rejected and the reasons for their rejection; and (v) name of the winning Bidder, and the Price it offered, as well as the duration and summary scope of the contract awarded. |
|  | | 39.2 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract. |
|  | | 39.3 The Employer shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 39.1, requests in writing the grounds on which its tender was not selected. |
| 1. Signing of Contract | | 40.1 Promptly after notification, the Employer shall send the successful Bidder the Contract Agreement. |
|  | | 40.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Employer. |
| 1. Performance Security | | 41.1 Within twenty-eight (28) days of the receipt of notification of award from the Employer, the successful Bidder shall furnish the performance security and if required in the BDS, the Environmental and Social (ES) Performance Security, in accordance with the conditions of contract, subject to ITB 34.5, using for that purpose the Performance Security and ES Performance Security Forms included in Section X- Contract Forms, or another form acceptable to the Employer. If the performance security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been verified by the successful Bidder to be acceptable to the Employer. A foreign institution providing a bond shall have a correspondent financial institution located in the Employer’s Country. |
|  | | 41.2 Failure of the successful Bidder to submit the above-mentioned Performance Security and, if required in the BDS, the Environmental and Social (ES) Performance Security, or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security. In that event the Employer may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily. |

Section II. Bid Data Sheet

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

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

*[Instructions for completing the Bid Data Sheet are provided, as needed, in the notes in italics mentioned for the relevant ITB.]*

|  |  |
| --- | --- |
| **ITB Reference** | **A. General** |
| **ITB 1.1** | The number of the Invitation for Bids is : *[Insert*  *number of the Invitation for Bids]* |
| **ITB 1.1** | The Employer is: *[Insert name*  *of the Employer]* |
| **ITB 1.1** | The name of the ICB is: *[Insert*  *name of the ICB]*  The identification numberof the ICB is: *[Insert*  *number of the ICB]*  *[The following text is to be included and the corresponding information inserted only if the contract is to be bid simultaneously with other contracts on a “slice and package” basis. Otherwise omit.]*  The number and identification of lots (contracts)comprising this ICB is: \_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[Insert number and identification of lots (contracts)]* |
| **ITB 1.1** | The Roads are: \_\_\_\_\_\_\_\_\_\_\_\_\_\_*[Insert identification of the Roads covered under the contract]* |
| **ITB 1.1** | Rehabilitation Works are \_\_\_\_\_\_\_\_\_ required. *[Insert “are” or “are not” as appropriate].*  The sections of the Road(s) subject to Rehabilitation Works are:\_*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[If Rehabilitation Works are required, insert identification of the sections of the Road(s) covered under the contract; otherwise, insert “Not Applicable”]* |
| **ITB 1.1** | Improvement Works are \_\_\_\_ \_\_\_\_\_ required. *[Insert “are” or “are not” as appropriate]* |
| **ITB 1.2 (a)** | *delete if not applicable*]  **Electronic –Procurement System**  The Employer shall use the following electronic-procurement system to manage this Bidding 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 Bidding process:  *[list the aspects here and modify the relevant parts of the BDS accordingly, e.g., issuing bidding document, submission of Bid, opening of Bids]* |
| **ITB 2.1** | The Borrower is:  *[Insert name of the Borrower and statement of relationship with the Employer, if different from the Borrower. This insertion should correspond to the information provided in the Invitation for Bids]* |
| **ITB 2.1** | The name of the Project is: *[Insert*  *name of the project]* |
| ITB 4.1 | Maximum number of members in the JV shall be: *[insert a number]\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.* |
| ITB 4.4 | A list of debarred firms and individuals is available on the Bank’s external website: <http://www.worldbank.org/debarr.> |
| ITB 4.8 | This Bidding is open only for prequalified Bidders. *[In cases where prequalification has not taken place, indicate that Bidding is open to all interested Bidders.]* |
| **B. Bidding Documents** | |
| **ITB 7.1** | For **clarification purposes** only, the Employer’s address is: *[Insert the corresponding information as required below. This address may be the same as or different from that specified under provision ITB 22.1 for bid submission]*  Attention:  Street Address:  Floor/Room number:  City:  ZIP Code:  Country:  Telephone:  Facsimile number:  Electronic mail address:  Web page: ***[in case used, identify the website with free access where Bidding process information is published****]: \_\_\_\_\_\_\_\_*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Requests for clarification should be received by the Employer no later than: ***[insert no. of days].*** |
| **ITB 7.4** | A Pre-Bid meeting \_\_\_\_\_\_\_\_\_\_\_ *[insert “will” and insert the date, time and place information in the spaces provided below if a pre-bid meeting will take place, taking into consideration that the meeting should take place no later than four weeks before the deadline for bid submission. Otherwise, insert “will not” and insert “Not Applicable” in the spaces provided below for the date, time and place]* take place at the following date, time and place:  Date:  Time:  Place:  A site visit conducted by the Employer\_\_\_\_\_\_\_\_\_\_\_ *[insert “will be” or “will not be”, as appropriate]* organized. |
| **C. Preparation of Bids** | |
| ITB 10.1 | The language of the bid is:  *[Insert “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 bidding 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 bidding 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].*  *Bidders shall have the option to submit their Bid in any one of the languages stated above. Bidders shall not submit Bids in more than one language.]”*  All correspondence exchange shall be in \_\_\_\_\_\_\_\_\_\_\_\_ *[insert language]* language.  Language for translation of supporting documents and printed literature is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. *[Specify one language].* |
| ITB 11.1 (h) | The Bidder shall submit the following additional documents in its Bid: *[list any additional document not already listed in ITB 11.1 that must be submitted with the Bid. The list of additional documents should include the following:]*  **Code of Conduct for Contractor’s Personnel (ES)**  The Bidder shall submit its Code of Conduct that will apply to Contractor’s Personnel (as defined in Sub- Clause 1.1 of the General Conditions of Contract), to ensure compliance with the Contractor’s Environmental and Social (ES) obligations under the Contract. The Bidder shall use for this purpose the Code of Conduct form provided in Section IV. No substantial modifications shall be made to this form, except that the Bidder may introduce additional requirements, including as necessary to take into account specific Contract issues/risks.  **Management Strategies and Implementation Plans (MSIP) to manage the (ES) risks**  The Bidder shall submitManagement Strategies and Implementation Plans (MSIPs) to manage the following key Environmental and Social (ES) risks:  ***[Note:*** *insert name of any specific plan and risk/s informed by the relevant environmental and social assessment]:*  *[e.g.* Sexual Exploitation, and Abuse (SEA) *prevention and response action plan];*  [*e.g. Traffic Management Plan to ensure safety of local communities from construction traffic*]; |
| **ITB 13.1** | *[The following provision should be included and the required corresponding information inserted only if alternative bids will be considered. Otherwise omit.]*  Alternative bids \_\_\_\_\_\_\_\_\_\_\_ *[insert “shall be”]* permitted. |
| ITB 13.2 | Alternative times for reaching the required Service Levels and for the completion of the Rehabilitation and/or Improvement Works\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[insert “will be” or “will not be”, as appropriate]* permitted. *[Alternative times for completion should be permitted when the Employer sees potential net benefits in different times for completion; they also have merit for contracts bid on a “slice and package” basis.]*  If alternative times for completion are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria. |
| ITB 13.4 | Alternative technical solutions for the Rehabilitation and/or Improvement Works shall be permitted for the following parts of the Works: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[List the parts of the Works]*.  If alternative technical solutions are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria. |
| **ITB 14.5** | *[Price adjustment is mandatory for contracts expected to last more than 18 months. The following provision should be included and the required corresponding information inserted only if the prices quoted by the Bidder are not subject to price adjustment. Otherwise omit.]*  The prices quoted by the Bidder shall be: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[Insert “fixed; consequently, the Bidder is not required to furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data”.]* |
| **ITB 15.1** | The currency(ies) of the Bid and the payment currency(ies) shall be in accordance with Alternative \_\_\_\_\_\_\_\_\_ as described below:  **Alternative A: (Bidders to quote entirely in local currency):**  (a) The unit rates and the prices shall be quoted by the Bidder in the Bill of Quantities, entirely in ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[Insert the name of the currency of the Employer’s country,]*** and further referred to as “the local currency”. A Bidder expecting to incur expenditures in other currencies for inputs to the Works supplied from outside the Employer’s country (referred to as “the foreign currency requirements”) shall indicate in the Appendix to Bid - Table C, the percentage(s) of the Bid Price (excluding Provisional Sums), needed by the Bidder for the payment of such foreign currency requirements, limited to no more than three foreign currencies.  (b) The rates of exchange to be used by the Bidder in arriving at the local currency equivalent and the percentage(s) mentioned in (a) above shall be specified by the Bidder in the Appendix to Bid - Table C, and shall apply for all payments under the Contract so that no exchange risk will be borne by the successful Bidder.  **Alternative B: (Bidders allowed to quote in local and foreign currencies):**  (a) The unit rates and prices shall be quoted by the Bidder in the Bill of Quantities separately in the following currencies:  (i) for those inputs to the Works that the Bidder expects to supply from within the Employer’s country, in ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[Insert the name of the currency of the Employer’s country],*** and further referred to as “the local currency”; and  (ii) for those inputs to the Works that the Bidder expects to supply from outside the Employer’s country (referred to as “the foreign currency requirements”), in up to any three foreign currencies. |
| **ITB 18.1** | *The Bid shall be valid until:\_\_\_\_\_\_\_* ***[insert day, month and year, taking into account reasonable time needed to complete the bid evaluation, obtain necessary approvals and the Bank’s No-objection (if subject to prior review).] [To minimize the risk of errors by bidders, the bid validity period is a specific date and not linked to the deadline for submission of bids. As stated in ITB 18.1, if there is a need to extend the date, for example because the bid submission deadline is significantly extended by the Employer, the revised bid validity date shall be specified in accordance with ITB 8].*** |
| **ITB 18.3 (a)** | The Bid 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.]*** |
| **ITB 19.1** | ***[If a bid security shall be required, a Bid-Securing Declaration shall not be required, and vice versa.]***  A bid security ***\_\_\_\_\_\_\_\_[insert “shall be” or “shall not be”*]** required.  A Bid-Securing Declaration \_\_\_\_\_\_\_\_ **[*insert “shall be” or “shall not be*”]** required.  If a bid security shall be required, the amount and currency of the bid security shall be  **[*If a bid security is required, insert amount and currency of the bid security. Otherwise insert “Not Applicable”.]******[In case of lots, please insert amount and currency of the bid security for each lot]***  ***Note: bid security is required for each lot as per amounts indicated against each lot. Bidders have the option of submitting one bid security for all lots (for the combined total amount of all lots) for which Bids have been submitted, however if the amount of bid security is less than the total required amount, the Employer will determine for which lot or lots the bid security amount shall be applied.]*** |
| **ITB 19.3 (d)** | Other types of acceptable securities:  *[Insert names of other acceptable securities. Insert “None” if no bid security is required under provision ITB 19.1 or if bid security is required but no other forms of bid securities besides those listed in ITB 19.3 (a) through (c) are acceptable.]* |
| **ITB 19.9** | *[The following provision should be included and the required corresponding information inserted only if a bid security is not required under provision ITB 19.1 and the Employer wishes to declare the Bidder ineligible for a period of time should the Bidder perform any of the actions mentioned in provision ITB 19. 9 (a) or (b), Otherwise omit.]*  If the Bidder performs any of the actions prescribed in ITB 19.9 (a) or (b), the Borrower will declare the Bidder ineligible to be awarded contracts by the Employer for a period of \_\_\_\_\_\_ years **[*insert period of time]*** starting from the date the Bidder performs any of the actions |
| **ITB 20.1** | In addition to the original of the bid, the number of copies is: *[Insert*  *number of copies]* |
| **ITB 20.2** | The written confirmation of authorization to sign on behalf of the Bidder shall consist of: *[Insert the form*  *the written confirmation of authorization should consist of]* |
| **D. Submission and Opening of Bids** | |
| **ITB 22.1** | For **bid submission purposes** only, the Employer’s address is: *[Insert the corresponding information as required below. This address may be the same as or different from that specified under provision ITB 7.1 for clarifications]*  Attention:  Street Address:  Floor/Room number:  City:  ZIP Code:  Country:  **The deadline for bid submission is:** *[insert date and time in the spaces provided below]*  Date:  Time:  *[The date and time should be the same as those provided in the Invitation for Bids, unless subsequently amended pursuant to Clause 22.2.]*  Bidders \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[insert “shall” or “shall not”]* have the option of submitting their bids electronically.  ***The following provision should be included and the required corresponding information inserted only if Bidders have the option of submitting their Bids electronically. Otherwise omit.]***  The electronic Bidding submission procedures shall be: ***[insert a description of the electronic bidding submission procedures.]*** |
| **ITB 25.1** | The bid opening shall take place at: *[insert the corresponding information as required below]*  Street Address:  Floor/Room number:  City :  Country:  Date:  Time:  *[Date and time should be the same as those given for the deadline for submission of bids (Clause 22).]*  If bidders have the option of submitting their bids electronically, the electronic bid opening procedures shall be: *[If “shall” is inserted in ITB 22.1 above, insert a description of the electronic bid opening procedures; otherwise insert “Not Applicable”.]* |
| **ITB 25.3** | The Letter of Bid and Bills of Quantities \_\_\_\_\_\_\_\_\_\_\_\_\_ *[insert “shall” or “shall not”]* be initialed by representatives of the Employer attending Bid opening.  If initialization is required, it shall be conducted as follows: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[If “shall” is inserted above, insert a description of the manner in which the Letter of Bid and Bill of Quantities are to be initialed, e.g., pages (all or some) to be initialed and number of Employer representatives attending Bid opening that shall initial the Letter of Bid and Bill of Quantities. Otherwise insert “Not Applicable”.]* |
| **E. Evaluation and Comparison of Bids** | |
| **ITB 32.1** | The currency that shall be used for bid evaluation and comparison purposes to convert at the selling exchange rate all Bid prices expressed in various currencies into a single currency is:\_\_\_\_\_\_\_\_\_\_\_\_*[****insert name of currency]***  The date for the exchange rate shall be*:\_\_\_\_\_\_\_* ***[insert day, month and year, e.g. 15 June, 2021 not earlier than 28 days prior to the deadline for submission of the Bids, nor later than the date for the expiry of Bid validity specified in accordance with ITB BDS 18.1].*** |
| **ITB 33.1** | ***[The following provision should be included and the required corresponding information inserted only if the Procurement Plan authorizes the application of margin of preference and the Employer intends to apply it to the subject contract. Otherwise omit]***  A margin of domestic preference ***[insert* *either “shall” or “shall not”*]** *\_\_\_\_\_\_\_\_\_\_\_*apply. ***[If a margin of preference applies, the application methodology shall be defined in Section III, Evaluation and Qualification Criteria]*** |
| **ITB 34.2 (f)** | **[*Delete if not applicable*]**  Additional requirements apply. These are detailed in the evaluation criteria in Section III, Evaluation and Qualification Criteria. |
| **ITB 34.5** | The combined price for the Rehabilitation and Improvement Works may not exceed the following threshold: *[select one of the two options below]*  Option 1: \_\_\_\_\_\_\_% of the total contract price excluding provisional sums *[insert percentage], or*  Option 2: The amount of *…………………[insert amount and currency]* |
| **ITB 41.1 and 41.2** | **[Delete the following if not applicable]**  The successful Bidder shall be required to submit an Environmental and Social (ES) Performance Security.  *[Note: The ES Performance Security shall normally be required where ES risks are high.]* |

|  |
| --- |
| Section III. Evaluation and Qualification Criteria *(Following Prequalification)* |

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

1. **Evaluation**
   1. **Margin of Preference**

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

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

(a) Group A: Bids offered by domestic contractors eligible for the preference.

(b) Group B: Bids offered by other contractors.

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

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

* 1. **Assessment of adequacy of Technical Proposal with Requirements**
  2. **Alternative Completion Times**, if permitted under ITB 13.2, will be evaluated as follows: ……………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………..
  3. **Technical alternatives** , if permitted under ITB 13.4, will be evaluated as follows: ……………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………..
  4. **Multiple Contracts**

If permitted under ITB 34.4, will be evaluated as follows:

Award Criteria for Multiple Contracts (ITB 34.4):

**Lots**

Bidders have the option to Bid for any one or more lots. Bids will be evaluated lot-wise, taking into account discounts offered, if any, after considering all possible combinations of lots, the contract(s) will be awarded to the Bidder or Bidders offering the lowest evaluated cost to the Employer for combined lots, subject to the selected Bidder(s) meeting the required qualification criteria for lot or combination of lots as the case may be.

**Packages**

Bidders have the option to Bid for any one or more packages and for any one or more lots within a package. Bids will be evaluated package-wise, taking into account discounts offered, if any, for combined packages and/or lots within a package. The contract(s) will be awarded to the Bidder or Bidders offering the lowest evaluated cost to the Employer for combined packages, subject to the selected Bidder(s) meeting the required qualification criteria for combination of packages and or lots as the case may be.

1. **Qualification**
   1. **Update of Information**

The Bidder shall continue to meet the criteria used at the time of prequalification. The bidder shall use the relevant forms in Section IV to provide any updates to the information it provided at the time of prequalification.

* 1. **Financial Resources**

Using the relevant Forms CCC and FIN-1 in Section IV, Bidding Forms, the Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet:

1. the following cash-flow requirement:

……………………………………………………………………………

and

1. the overall cash flow requirements for this contract and its current Works commitment.

* 1. **Key Personnel**

The Bidder must demonstrate that it will have suitably qualified (and in adequate numbers) Key Personnel, as described in the Specifications.

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

* 1. **Equipment**

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

|  |  |  |
| --- | --- | --- |
| **No.** | **Equipment Type and Characteristics** | **Minimum Number required** |
| 1 |  |  |
| 2 |  |  |
| 3 |  |  |
| 4 |  |  |
| 5 |  |  |
|  |  |  |
|  |  |  |

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

|  |
| --- |
| Section III. Evaluation and Qualification Criteria *(Without Prequalification)* |

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

1. **Evaluation** 
   1. **Margin of Preference**

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

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

(a) Group A: Bids offered by domestic contractors eligible for the preference.

(b) Group B: Bids offered by other contractors.

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

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

* 1. **Assessment of adequacy of Technical Proposal with Requirements**

……………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………..

* 1. **Alternative Completion Times**, (if permitted under ITB 13.2, will be evaluated as follows: ……………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………..
  2. **Technical alternatives** , if permitted under ITB 13.4, will be evaluated as follows: ……………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………..
  3. **Multiple Contracts**

If permitted under ITB 34.4, will be evaluated as follows:

Award Criteria for Multiple Contracts [ITB 34.4]:

**Lots**

Bidders have the option to Bid for any one or more lots. Bids will be evaluated lot-wise, taking into account discounts offered, if any, after considering all possible combinations of lots, the contract(s) will be awarded to the Bidder or Bidders offering the lowest evaluated cost to the Employer for combined lots, subject to the selected Bidder(s) meeting the required qualification criteria for lot or combination of lots as the case may be.

**Packages**

Bidders have the option to Bid for any one or more packages and for any one or more lots within a package. Bids will be evaluated package-wise, taking into account discounts offered, if any, for combined packages and/or lots within a package. The contract(s) will be awarded to the Bidder or Bidders offering the lowest evaluated cost to the Employer for combined packages, subject to the selected Bidder(s) meeting the required qualification criteria for combination of packages and or lots as the case may be.

1. **Qualification**

**Qualification Criteria for Multiple Contracts**

The criteria for qualification are aggregate minimum requirement for respective lots as specified under items 3.1, 3.2, 4.2(a) and 4.2(b). However, with respect to the specific experience under item 4.2 (a) of Section III, the Employer will select any one or more of the options as identified below:

N is the minimum number of contracts

V is the minimum value of a single contract

**(a) For one Contract**:

**Option 1:**

(i) N contracts, each of minimum value V;

Or

**Option 2:**

(i) N contracts, each of minimum value V; or

(ii) Less than or equal to N contracts, each of minimum value V, but with total value of all contracts equal or more than N x V.

**(b) For multiple Contracts**

**Option 1:**

(i) Minimum requirements for combined contract(s) shall be the aggregate requirements for each contract for which the Bidder has submitted Bids as follows, and N1, N2, N3, etc. shall be different contracts:

Lot 1: N1 contracts, each of minimum value V1;

Lot 2: N2 contracts, each of minimum value V2;

Lot 3: N3 contracts, each of minimum value V3;

----etc.

Or

**Option 2:**

(i) Minimum requirements for combined contract(s) shall be the aggregate requirements for each contract for which the Bidder has submitted Bids as follows, and N1,N2,N3, etc. shall be different contracts:

Lot 1: N1 contracts, each of minimum value V1;

Lot 2: N2 contracts, each of minimum value V2;

Lot 3: N3 contracts, each of minimum value V3;

----etc., **or**

(ii) Lot 1: N1 contracts, each of minimum value V1; or number of contracts less than or equal to N1, each of minimum value V1, but with total value of all contracts equal or more than N1 x V1.

(iii) Lot 2: N2 contracts, each of minimum value V2; or number of contracts less than or equal to N2, each of minimum value V2, but with total value of all contracts equal or more than N2 x V2.

(iv) Lot 3: N3 contracts, each of minimum value V3; or number of contracts less than or equal to N3, each of minimum value V3, but with total value of all contracts equal or more than N3 x V3.

----etc.

Or

**Option 3:**

(i) Minimum requirements for combined contract(s) shall be the aggregate requirements for each contract for which the Bidder has bid for as follows, and N1, N2, N3, etc. shall be different contracts:

Lot 1: N1 contracts, each of minimum value V1;

Lot 2: N2 contracts, each of minimum value V2;

Lot 3: N3 contracts, each of minimum value V3;

----etc., **or**

(ii) Lot 1: N1 contracts, each of minimum value V1; or number of contracts less than or equal to N1, each of minimum value V1, but with total value of all contracts equal or more than N1 x V1.

Lot 2: N2 contracts, each of minimum value V2; or number of contracts less than or equal to N2, each of minimum value V2, but with total value of all contracts equal or more than N2 x V2.

Lot 3: N3 contracts, each of minimum value V3; or number of contracts less than or equal to N3, each of minimum value V3, but with total value of all contracts equal or more than N3 x V3.

----etc., **or**

(iii) Subject to compliance as per (ii) above with respect to minimum value of single contract for each lot, total number of contracts is equal or less than N1 + N2 + N3 +--but the total value of all such contracts is equal or more than N1 x V1 + N2 x V2 + N3 x V3 +---.

**2. Qualification**

| ***Factor*** | 2.1 Eligibility | | | | | |
| --- | --- | --- | --- | --- | --- | --- |
| Sub-Factor | Criteria | | | | | Documentation Required |
| Requirement | Bidder | | | |
| **Single Entity** | Joint Venture, *Consortium or Association* | | |
| **All partners combined** | Each partner | **At least one partner** |
| *Nationality* | *Nationality in accordance with ITB 4.2.* | *Must meet requirement* | *Must meet requirement* | *Must meet requirement* | *N / A* | *Forms ELI –1.1 and 1.2, with attachments* |
| *Conflict of Interest* | *No- conflicts of interest in accordance with ITB 4.3.* | *Must meet requirement* | *Must meet requirement* | *Must meet requirement* | *N / A* | *Letter of Bid* |
| *Bank Ineligibility* | *Not having been declared ineligible by the Bank as described in ITB 4.4.* | *Must meet requirement* | *Must meet requirement* | *Must meet requirement* | *N / A* | *Letter of Bid* |
| *Government Owned Entity* | *Meets conditions of ITB 4.5* | *Must meet requirement* | *Must meet requirement* | *Must meet requirement* | *N / A* | *Forms ELI –1.1 and 1.2, with attachments* |
| *Ineligibility based on a United Nations resolution or Borrower’s country law* | *Not having been excluded as a result of the Borrower’s country laws or official regulations, or by an act of compliance with UN Security Council resolution, in accordance with ITB 4.7 and Section V.* | *Must meet requirement* | *Must meet requirement* | *Must meet requirement* | *N / A* | *Letter of Bid* |

| **Factor** | 2.2 Historical Contract Non-Performance | | | | | |
| --- | --- | --- | --- | --- | --- | --- |
| Sub-Factor | Criteria | | | | | **Documentation Required** |
| Requirement | Bidder | | | |
| **Single Entity** | Joint Venture, *Consortium or Association* | | |
| **All partners combined** | **Each partner** | **At least one partner** |
| *History of non-performing contracts* | Non-performance of a contract[[18]](#footnote-19) did not occur as a result of contractor default since 1st January [*insert year]*. | *Must meet requirement* | *Must meet requirement* | *Must meet requirement* | *N / A* | *Form CON - 2* |
| *Suspension Based on Execution of Bid/Proposal Securing Declaration by the Employer* | Not under suspension based on-execution of a Bid/Proposal Securing Declaration pursuant to ITB 4.8 or withdrawal of the Bid pursuant ITB 19.9. | *Must meet requirement* | *Must meet requirement* | *Must meet requirement* | *N / A* | *Letter of Bid* |
| *Pending Litigation* | Bidder’s financial position and prospective long term profitability still sound according to criteria established in 2.3.1 below and assuming that all pending litigation will be resolved against the Bidder*.* | *Must meet requirement* | *N / A* | *Must meet requirement* | *N / A* | *Form CON – 2* |
| *Litigation History* | No consistent history of court/arbitral award decisions against the Bidder[[19]](#footnote-20) since 1st January *[insert year]* | *Must meet requirement* | *Must meet requirement* | *Must meet requirement* | N/A | *Form CON – 2* |
| *Declaration: Environmental and Social (ES) past performance* | Declare any civil work contracts that have been suspended or terminated and/or performance security called by an employer for reasons of breach of environmental, or social (including Sexual Exploitation, and Abuse) contractual obligations in in the past five years[[20]](#footnote-21). | *Must make the declaration. Where there are Specialized Sub-contractor/s, the Specialized Sub-contractor/s must also make the declaration.* | *N/A* | *Each must make the declaration. Where there are Specialized Sub-contractor/s, the Specialized Sub-contractor/s must also make the declaration.* | *N/A* | Form CON-3 ES Performance Declaration |
| *Bank’s SEA and/or SH Disqualification* | At the time of Contract Award, not subject to disqualification by the Bank for non-compliance with SEA/ SH obligations | *Must meet requirement*  *(including each subcontractor proposed by the Bidder)* | *N/A* | *Must meet requirement* *(including each subcontractor proposed by the Bidder)* | *N/A* | *Letter of Bid, Form CON-4* |

| **Factor** | 2.3 Financial Situation | | | | | |
| --- | --- | --- | --- | --- | --- | --- |
| **Sub-Factor** | Criteria | | | | | Documentation Required |
| Requirement | Bidder | | | |
| **Single Entity** | Joint Venture, *Consortium or Association* | | |
| **All partners combined** | **Each partner** | **At least one partner** |
| *Financial Capabilities* | (i) The Bidder shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as USD $ *[insert amount]* for the subject contract(s) net of the Bidder’s other commitments.  (ii) The Bidder shall also demonstrate, to the satisfaction of the Employer, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.  (iii)The audited balance sheets or, if not required by the laws of the Bidder’s country, other financial statements acceptable to the Employer, for the last *[insert number of years]* years shall be submitted and must demonstrate the current soundness of the Bidder’s financial position and indicate its prospective long-term profitability | *Must meet requirement*  *Must meet requirement*  *Must meet requirement* | Must meet requirement  *Must meet requirement*  *N/A* | N/A  *N/A*  *Must meet requirement* | *N / A*  *N/A*  N/A | *Form FIN – 3.1 with attachments* |
| *2.3.2. Average Annual Construction Turnover* | Minimum average annual construction turnover of US$ *[insert amount]*, calculated as total certified payments received for contracts in progress and/or completed within the last *[insert of year]* years, divided by *[insert number of years]* years | *Must meet requirement* | *Must meet requirement* | *Must meet*  *\_\_\_\_\_\_\_\_\_ percent (\_\_\_\_\_%) of the requirement* | *Must meet*  *\_\_\_\_\_\_\_\_\_ percent (\_\_\_\_\_%) of the requirement* | *Form FIN –3.2* |

| **Factor** | 2.4 Experience | | | | | |
| --- | --- | --- | --- | --- | --- | --- |
| **Sub-Factor** | Criteria | | | | | Documentation Required |
| **Requirement** | Bidder | | | |
| Single Entity | **Joint Venture, *Consortium or Association*** | | |
| **All partners combined** | **Each partner** | **At least one partner** |
| *2.4.1General Experience* | Experience under contracts in the role of prime contractor, JV member, subcontractor, or management contractor for at least the last\_\_\_\_\_\_\_\_ [\_\_\_\_] years prior to the applications submission deadline, and with activity in at least nine (9) months in each year. | *Must meet requirement* | *N / A* | *Must meet requirement* | *N / A* | *Form EXP-4.1* |
| *2.4.2 (a) Specific Experience* | (i) A minimum number of *[state the number]* similar contracts specified below that have been satisfactorily and *substantially*[[21]](#footnote-22) completed as a prime contractor, joint venture member[[22]](#footnote-23), management contractor or sub-contractor6 between 1st January [insert year] and bid submission deadline:  (i) N contracts, each of minimum value V;  Or  (ii) Less than or equal to N contracts, each of minimum value V, but with total value of all contracts equal or more than N x V; [insert values of N & V, delete (ii) above if not applicable].  [*In case the Works and Services are to be bid as individual contracts under a slice and package (multiple contract) procedure, the minimum number of contracts required for purposes of evaluating qualification shall be selected from the options in accordance with ITB 34.4]* The similarity of the contracts shall be based on the following: [*Based on Section VII, Scope of Works, specify the minimum key requirements in terms of physical size, complexity, construction method, technology and/or other characteristics including part of the requirements that may be met by specialized subcontractors]* | *Must meet requirement* | *Must meet requirement*[[23]](#footnote-24) | *N / A* | *Must meet the following requirements* *for the key activities listed below* *[list key activities and the corresponding minimum requirements to be met by one partner; otherwise state: “N/A”]* | *Form EXP 4.2(a)* |
| *2.4.2 (b) Specific Experience* | For the above and any other contracts [substantially completed and under implementation] as prime contractor, joint venture member, or sub-contractor between 1st January *[insert year]* and Application submission deadline, a minimum experience in the following key activities successfully completed[[24]](#footnote-25): *[list key activities indicating volume, number or rate of production as applicable. Under 2.4.2(a), specified requirements define similarity of contracts, whereas the key activities or production rates to be specified under 2.4.2 (b) define the required capability of the Applicant to execute the Works. There shall not be any inconsistency or repetition of requirement between 2.4.2(a) and 2.4.2(b). For the rate of production, specify that the rate of production shall be on the basis of either the average during the entire specified period OR the rate of annual production in any 12-month period in the specified period****.****][[25]](#footnote-26)* | *Must meet requirements [Specify activities that may be met through a specialized subcontractor]* | *Must meet requirements[Specify activities that may be met through a specialized subcontractor]* | *N / A* | *Must meet the following requirements for key activities listed below* *[if applicable, out of the key activities in the first column of this 2.4.2 b),**list key activities (volume, number or rate of production as applicable) and the corresponding minimum requirements that have to be met by one member, otherwise this cell should state: “N/A”.]* | *Form EXP-4.2(b)* |
| *2.4.2 (c)Specific Experience* | *Specific Experience in managing ES aspects*  For the contracts in 2.4.2 (a) above and/or any other contracts substantially completed and under implementation] as prime contractor, joint venture member, or Subcontractor between 1st January *[insert year]* and Application submission deadline, experience in managing ES risks and impacts in the following aspects: *[Based on the ES assessment, specify, as appropriate, specific experience requirements to manage ES aspects.]* | Must meet requirements | Must meet requirements | *Must meet the following requirements:* [*list key requirements to be met by each member otherwise state: ”N/A”]* | *Must meet the following requirements: [list key requirements to be met by one member otherwise state: ”N/A”]* | *Form EXP-4.2(c)* |

***Note: [For Multiple lots (contracts) specify financial and experience criteria for each lot under Sub-Factors 2.3.1, 2.3.2, 24.2(a), 2.4.2(b) and 2.4.2(c)]***

**2.5 Key Personnel**

The Bidder must demonstrate that it will have suitably qualified (and in adequate numbers) Key Personnel, as described in the Specifications.

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

* 1. **Equipment**

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

|  |  |  |
| --- | --- | --- |
| **No.** | **Equipment Type and Characteristics** | **Minimum Number required** |
| 1 |  |  |
| 2 |  |  |
| 3 |  |  |
| 4 |  |  |
| 5 |  |  |
|  |  |  |
|  |  |  |

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

|  |
| --- |
| Section IV. Bidding Forms |

Table of Forms

Letter of Bid 70

Appendix to Bid 76

Bills of Quantities 79

Bill of Quantities for Maintenance Services 80

Bill of Quantities for Rehabilitation and Improvement Works 86

Bills of Quantities for Emergency Works 90

Technical Proposal Forms 95

Bidder’s Qualification Forms 112

Form of Bid Security 131

Form of Bid-Securing Declaration 133

|  |
| --- |
| Letter of Bid |

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

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

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

Date:

ICB No.:

Invitation for Bid No.:

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

We, the undersigned, declare that:

1. **No reservations**: We have examined and have no reservations to the bidding document, including Addenda issued in accordance with Instructions to Bidders (ITB) ;
2. **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with ITB 4;
3. **Bid-Securing Declaration:** We have not been suspended nor declared ineligible by the Employer based on execution of a Bid-Securing Declaration or Proposal-Securing Declaration in the Employer’s Country in accordance with ITB 4.8.
4. **Exploitation and Abuse (SEA) and/or Sexual Harassment (SH):** [*select the appropriate option from (i) to (v) below and delete the others*].

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

1. [have not been subject to disqualification by the Bank for non-compliance with SEA/ SH obligations.]
2. [are subject to disqualification by the Bank for non-compliance with SEA/ SH obligations.]
3. [had been subject to disqualification by the Bank for non-compliance with SEA/ SH obligations. An arbitral award on the disqualification case has been made in our favor.]
4. [had been subject to disqualification by the Bank for non-compliance with SEA/ SH obligations for a period of two years. We have subsequently provided and demonstrated that we have adequate capacity and commitment to comply with SEA and SH prevention and response obligations.]
5. [had been subject to disqualification by the Bank for non-compliance with SEA/ SH obligations for a period of two years. We have attached documents demonstrating that we have adequate capacity and commitment to comply with SEA and SH prevention and response obligations.]
6. **Conformity:** We offer to execute in conformity with the bidding document and in accordance with the construction or service schedule the following Works and Services: .

*[Insert one of the options below as appropriate]*

1. **Bid Price:** The total price of our Bid, excluding any discounts offered in item (f) below is:

|  |  |
| --- | --- |
| **Description** | **Amount (in numbers)** |
| (a) Maintenance Services in an amount of *[amount in words] [name of currency]*.  (b) Rehabilitation Works in an amount of *[amount in words] [name of currency]*.  (c) Improvement Works in an amount of *[amount in words] [name of currency]*. |  |
| **A. SUB-TOTAL = (a) + (b) + (c)** |  |
| (d) Emergency Works in an amount of *[amount in words] [name of currency]*. |  |
| **B. TOTAL = A + (d)** |  |

1. **Combined Price:** We hereby confirm that our combined price for Rehabilitation Works and Improvement Works does not exceed the threshold given in the BDS ITB 34.5 which is *[insert amount or percentage of the total contract price].*

or

(e ) **Bid Price**: The total price, excluding any discounts offered in item (f) below is:

|  |  |  |  |
| --- | --- | --- | --- |
| **Description** | **Amount (in numbers and words)** | | |
|  | **Lot 1** | **Lot 2** | **Lot 3** |
| **(a) Maintenance Services** *[amount in numbers, name of currency]* |  |  |  |
| *[amount in words]* |  |  |  |
| **(b) Rehabilitation Works** *[amount in numbers, name of currency]* |  |  |  |
| *[amount in words]* |  |  |  |
| **(c) Improvement Works** *[amount in numbers, name of currency]* |  |  |  |
| *[amount in words]* |  |  |  |
| **A. SUB-TOTAL = (a) + (b) + (c)** *[amount in numbers, name of currency]* |  |  |  |
| *[amount in words]* |  |  |  |
| (d) **Emergency Works** *[amount in numbers, name of currency]* |  |  |  |
| *[amount in words]* |  |  |  |
| **B. TOTAL = A + (d)** *[amount in numbers, name of currency]* |  |  |  |
| *[amount in words]* |  |  |  |

(f) Combined Price: We hereby confirm that our combined price for Rehabilitation Works and Improvement Works does not exceed the threshold given in the BDS ITB 34.5, which is *[insert amount or percentage of the total contract price].*

1. **Discounts**: The discounts offered and the methodology for their application are:

(i) The discounts offered are: *[Specify in detail each discount offered.]*

(ii) The exact method of calculations to determine the net price after application of discounts is shown below: [*Specify in detail the method that shall be used to apply the discounts*];

1. **Bid Validity**: Our Bid shall be valid until *[insert day, month and year in accordance with ITB 18.1]*, and it shall remain binding upon us and may be accepted at any time on or before this date;
2. **Performance Security**: If our Bid is accepted, we commit to obtain a Performance Security [*and an Environmental and Social (ES) Performance Security,* ***Delete if not applicable***] in accordance with the bidding document;
3. **One Bid per Bidder:** We are not submitting any other Bid(s) as an individual Bidder, and weare not participating in any other Bid(s) as a Joint Venture member or as a subcontractor, and meet the requirements of ITB 4.3(e), other than alternative Bids submitted in accordance with ITB 13;
4. **Suspension and Debarment**: We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the World Bank Group or a debarment imposed by the World Bank Group in accordance with the Agreement for Mutual Enforcement of Debarment Decisions between the World Bank and other development banks. Further, we are not ineligible under the Employer’s Country laws or official regulations or pursuant to a decision of the United Nations Security Council;
5. **Government-owned entities:** [*select the appropriate option and delete the other*] [*We are not a government-owned entity*] / [*We are a government-owned entity but meet the requirements of ITB 4.5*];
6. **Commissions, gratuities and fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the Bidding process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity]*

|  |  |  |  |
| --- | --- | --- | --- |
| Name of Recipient | Address | Reason | Amount |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

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

1. **Binding Contract:** We understand that this Bid, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
2. **Not Bound to Accept**: We understand that you are not bound to accept the lowest evaluated cost Bid, the Most Advantageous Bid or any other Bid that you may receive;
3. **Fraud and Corruption:** We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption;

**Name of the Bidder**:\* [*insert complete name of person signing the Bid*]

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

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

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

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

Name In the capacity of \_

Signed

Duly authorized to sign the Bid for and on behalf of

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

|  |
| --- |
| Appendix to Bid |

**Schedule of Adjustment Data**

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

**Table A. Local Currency**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Index code\*** | **Index description\*** | **Source of index\*** | **Base value**  **and date\*** | **Bidder’s**  **related currency amount** | **Bidder’s**  **proposed**  **weighting** |
|  | Nonadjustable | — | — | — | A: \*  B:  C:  D:  E: |
|  |  |  | **Total** |  | **1.00** |

[\* To be entered by the Employer]

**Table B. Foreign Currency**

**State type:** ....................... [If the Bidder wishes to quote in more than one foreign currency, this table should be repeated for each foreign currency.]

| **Index code** | **Index description** | **Source of index** | **Base value and date** | **Bidder’s related source currency in type/amount** | **Equivalent in FC1** | **Bidder’s proposed weighting** |
| --- | --- | --- | --- | --- | --- | --- |
|  | Nonadjustable | **—** | **—** | **—** |  | **A: \_\_\_\_\_\_\_\_\***  **B:**  **C:**  **D:**  **E:** |
|  |  |  |  | **Total** |  | **1.00** |

[\* To be entered by the Employer]

**Table C. Summary of Payment Currencies**

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

[Separate tables may be required if the various sections of the Works (or of the Bill of Quantities) will have substantially different foreign and local currency requirements. The Employer should insert the names of each Section of the Works.]

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Name of payment currency** | **A**  **Amount of currency** | **B**  **Rate of exchange**  **(local currency per unit of foreign)** | **C**  **Local currency equivalent**  **C = A x B** | **D**  **Percentage of  Net Bid Price (NBP)**  **100xC**  **NBP** |
| **Local currency** |  | **1.00** |  |  |
| **Foreign currency #1** |  |  |  |  |
| **Foreign currency #2** |  |  |  |  |
| **Foreign currency #** |  |  |  |  |
| **Net Bid Price** |  |  |  | **100.00** |
| **Provisional sums expressed in local currency** | *[To be entered by the Employer]* |  | *[To be entered by the Employer]* |  |
| **BID PRICE** |  |  |  |  |

|  |
| --- |
| Bills of Quantities |

The bid includes the following Bills of Quantities:

* **Bill of Quantities for Maintenance Services**
* **Bill of Quantities for Rehabilitation Works** (if those are required under the contract)
* **Bill of Quantities for Improvement Works** (if those are required under the contract)
* **Bill of Quantities for Emergency Works**

*[*Samples *of the above Bills of Quantities are presented on the following pages.]*

|  |
| --- |
| Bill of Quantities for Maintenance Services |

1. The Bill of Quantities for Maintenance Services shall be read in conjunction with the Instructions to Bidders, Conditions of Contract, Specifications and the Drawings.
2. This Bill of Quantities is the basis for payment of maintenance services that are to be provided on a lump sum per km basis for maintaining the roads covered under the contract, at the Service Levels defined in the Specifications. The rates given by the bidder shall, except if otherwise provided under the Contract, include all plant, equipment, labor, management and supervision, materials, erection, maintenance, insurance, profit, taxes and duties, together with all general risks, liabilities and obligations set out or implied in the Contract.
3. Payment shall be made in accordance with the actual performance of the Contractor and compliance with the Service Level criteria given in the Specifications for each road. Failure to meet the Service Levels will result in payment reductions in accordance with Clause 47 of the General Conditions and the Performance Specifications.
4. The unit rates and prices shall be quoted entirely in local currency but payment will be made in the proportions and currencies quoted in the Schedule of Adjustment Data.
5. A unit rate or price shall be entered by the bidder against each item in the Bill of Quantities. The cost of items against which the bidder has failed to enter a unit rate or price shall be deemed to be covered by other unit rates and prices entered in the Bill of Quantities.
6. General directions and descriptions of work and materials are not repeated or summarized in the Bill of Quantities. References to the relevant sections of the Contract documentation shall be made before entering rates or prices against each item in the Bill of Quantities.
7. The method of measurement of completed Maintenance Services shall be in accordance with the measurement and payment provisions of the relevant section in the Specifications.
8. Arithmetical errors discovered prior to award of the Contract will be corrected by the Employer pursuant to the Instructions to Bidders.

**Bill of Quantities and Unit Prices for Maintenance Services**

*[To be completed by the bidder]*

|  |  |
| --- | --- |
| **Price N°** | **Description of Service and Price** |
| **1.** | Unit Prices per kilometer and month |
|  | This price is the full remuneration to the Contractor to carry out the services and works required in order to reach and maintain the Service Levels described in the Specifications and elsewhere in the contract. It further includes all activities of the Contractor related to management, self-control, quality assurance, material testing and reporting. |
|  | |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | |  |  |  |  | **Unit prices per km and month**  *[Currency]* | | | | No. | Road or road section | Length  (km) | Service Level class[[26]](#footnote-27) | **Minimum[[27]](#footnote-28)** Service Level | **Reduced[[28]](#footnote-29)** Service Level | **Normal** Service Level | | 1 | Road from …… to …………... |  |  |  |  |  | | 2 | Road from …… to …………... |  |  |  |  |  | | 3 | Road from …… to …………... |  |  |  |  |  | | 4 | Road from …… to …………... |  |  |  |  |  | | etc. | …………………….. |  |  |  |  |  |   *[Note: Not all contracts specify different Service Level classes for different roads. If there is only one Service Level Class applied for all roads, delete the corresponding column of the table.]* |

**Bill of Quantities for Maintenance Services and their Prices**

*[To be completed by the bidder]*

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Price N°** | **Description of Service and Price** | | | | | | | | | | | | |
| **2** | **Total lump-sum price of Maintenance Services for each road or road section included in the contract** | | | | | | | | | | | | |
|  | This price is the full remuneration to the Contractor to carry out the services and works required in order to reach and maintain the Service Levels described in the Specifications and elsewhere in the contract. It further includes all activities of the Contractor related to management, self-control, quality assurance, material testing and reporting. | | | | | | | | | | | | |
|  |  |  |  | **Minimum**  **Service Level** | | | **Reduced**  **Service Level** | | | **Normal**  **Service Level** | | | **Total Price**  *[local currency]* |
|  | Road or road section | Length  (km) | Service Level class | **Duration**  **(months)** | **Unit Price** | **Sub-total** | **Duration**  **(months)** | **Unit Price** | **Sub-total** | **Duration**  **(months)** | **Unit Price** | **Sub-total** |
| 2.1 | *[Indicate Road or Road Sections]* |  |  |  |  |  |  |  |  |  |  |  |  |
| 2.2 |  |  |  |  |  |  |  |  |  |  |  |  |  |
| 2.3 |  |  |  |  |  |  |  |  |  |  |  |  |  |
| 2.4 |  |  |  |  |  |  |  |  |  |  |  |  |  |
| etc. |  |  |  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  | **Total Price for Maintenance Services ----🡪** | | | | | | | | |  |

*[Notes:*

* + - 1. *The column “Service Level Class may be deleted if there is only one Service Level class specified for all roads under the contract.*
      2. *The “Duration” of each Service Level is as stipulated in the Specifications for each road.]*

|  |
| --- |
| Bill of Quantities for Rehabilitation  and Improvement Works |

1. The Bills of Quantities for Rehabilitation Works and for Improvement Works shall be read in conjunction with the Instructions to Bidders, Conditions of Contract, Specifications and the Drawings.

**Bill of Quantities for Rehabilitation Works**

1. The Bill of Quantities for Rehabilitation Works presents specific works (i) that are explicitly required under the contract as a minimum and (ii) that will be paid as Rehabilitation Works.
2. The Employer does not guarantee that the Rehabilitation Works stipulated in the Specifications are sufficient to reach the required Service Levels. Other works that are not specifically required in the Specifications may be needed. It is the Bidder’s responsibility to assess the condition of the roads included in the contract at the time of preparing the bid and to price those other works into the bid, as part of the lumpsum price for Maintenance Services.
3. Payment for the required Rehabilitation Works shall be made in relation to the actual work progress. The procedures to be applied for payment are described in the Specifications.
4. The total price for Rehabilitation Works and Improvement Works, if any, shall not exceed the threshold value or percentage given by the Employer in the Bid Data Sheet.

**Bill of Quantities for Improvement Works**

1. The Bill of Quantities for Improvement Works lists a set of required interventions to be carried out by the contractor that add new characteristics to the Road in response to existing or new traffic, safety or other conditions, as defined in the Bid Data Sheet and the Specifications.
2. Payment for Improvement Works shall be made in relation to the work items satisfactorily completed in conformity with the Specifications, as measured by the Contractor and verified by the Project Manager, and valued at the unit rates and prices stated in the priced Bill of Quantities for Improvement Works.

**General**

1. The unit rates and prices Bid in the priced Bill of Quantities shall, unless otherwise provided under the Contract, include all plant, equipment, labor, supervision, materials, erection, maintenance, insurance, profit, taxes and duties, together with all general risks, liabilities and obligations set out or implied in the Contract. Unit rates and prices shall also include the cost of engineering design services, and measures needed to prevent or mitigate environmental and social impacts and safety measures.
2. The unit rates and prices shall be quoted entirely in local currency but payment will be made in the proportions and currencies quoted in the Schedule of Adjustments.
3. General directions and descriptions of work and materials are shown in the Specifications and are not repeated or summarized in the Bill of Quantities.
4. The method of measurement of completed work for payment shall be in accordance with the measurement and payment provisions of the relevant section of the Specifications.
5. Arithmetical errors discovered prior to award of the Contract will be corrected by the Employer pursuant to the Instructions to Bidders.

**Sample**

**Bill of Quantities for Rehabilitation Works**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **No.** | **Output** | | **Quantity** | **Unit** | **Unit Price *[local currency]*** | **Lumpsum Price**  ***[local currency]*** |
| 1. | Rehabilitation of Road between …… *[insert start and end points]* ………………. as per Specifications | |  | Km |  |  |
| 2. | Rehabilitation of Road between …… *[insert start and end points]* ………………. as per Specifications | |  | Km |  |  |
| 3. | Rehabilitation of Road between …… *[insert start and end points]* ………………. as per Specifications | |  | km |  |  |
| 4. | etc. | |  |  |  |  |
|  |  | |  |  |  |  |
|  |  | |  |  |  |  |
|  |  | |  |  |  |  |
|  |  | |  |  |  |  |
|  |  | |  |  |  |  |
|  |  | |  |  |  |  |
|  |  | **Total lumpsum price for required Rehabilitation Works ----🡪** | | | |  |

Sample

Bill of Quantities for Improvement Works

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **No.** | **Description of outputs** | **Quantity** | **Unit** | **Unit Price**  *[local currency]* | **Lumpsum Price**  *[local currency]* |
| 1 | Additional Lanes between Km 50 and 53 as per Specifications | 3 | km |  |  |
| 2 | Shoulder paving between Km 93 and 123 as per Specifications | 30 | km |  |  |
| 3 | Construction of five bus stops as per Specifications | 5 | Bus Stop |  |  |
| 4 | Replacement of three intersections by roundabouts as per Specifications | 3 | Roundabout |  |  |
| 5 | etc. |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  | **Total lumpsum price for required Improvement Works** | | | |  |

|  |
| --- |
| Bills of Quantities for Emergency Works |

**GENERAL**

1. The Bill of Quantities for Emergency Works shall be read in conjunction with the Instructions to Bidders, Conditions of Contract, Specifications and the Drawings.
2. The quantities given in the Bill of Quantities are hypothetical and provisional, and are given to provide a common basis for Bidding. Actual quantities for Emergency Works will be specified in Work Orders, issued by the Project Manager in accordance with the General Conditions and the Specifications. The basis of payment for Emergency Works will be the actual quantities of work ordered and carried out, as measured by the Contractor and verified by the Project Manager and valued at the unit rates and prices stated in the priced Bill of Quantities, where applicable, and otherwise at such unit rates and prices as may be agreed or determined by the Project Manager under the provisions of the Contract.
3. The unit rates and prices stated in the priced Bill of Quantities shall, except if otherwise provided under the Contract, include all plant, equipment, labor, supervision, materials, erection, maintenance, insurance, profit, taxes and duties, together with all general risks, liabilities and obligations set out or implied in the Contract.
4. The unit rates and prices shall be quoted entirely in local currency, but payment will be made in the proportions and currencies quoted in the Schedule of Adjustments.
5. A unit rate or price shall be entered against each item in the Bill of Quantities. The cost of items against which the Contractor has failed to enter a unit rate or price shall be deemed to be covered by other unit rates and prices entered in the Bill of Quantities.
6. General directions and descriptions of work and materials are not repeated or summarized in the Bill of Quantities.
7. The method of measurement of completed work for payment shall be in accordance with the measurement and payment provisions of the relevant section of the Specifications.
8. Arithmetical errors discovered prior to award of the Contract will be corrected by the Employer pursuant to ITB 31

**Sample**

**Bill of Quantities for Emergency Works**

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

*[List below the part Bills applicable under the Contract, such as*

*Bill No. 1—General Items*

*Bill No. 2—Earthworks*

*Bill No. 3—Culverts and Bridges*

*Bill No. 4—etc., as required*

*and*

*Summary Bill of Quantities]*

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

**Sample**

**Bill of Quantities for Emergency Works**

#### Bill No. 1: General Items

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| *Item no.* | *Description* | *Unit* | *Quantity* | *Rate* | *Amount* |
| 101 | Provide diversion road with gravel surfacing | km | 5 |  |  |
| 102 | Provide for traffic control and maintenance of diversion road | km-day | 30 |  |  |
| 103 | Transport of material for fill or improved subgrade layers | m3 x km | 2500 |  |  |
| 104 | Transport of material for gravel wearing course | m3 x km | 1400 |  |  |
| 105 | —etc.— |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
| Total for Bill No. 1  (carried forward to Summary, p. ) | | | | |  |

Sample

**Bill of Quantities for Emergency Works**

#### Bill No. 2: Earthworks

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| *Item no.* | *Description* | *Unit* | *Quantity* | *Rate* | *Amount* |
| 201 | Excavate topsoil to maximum depth 25 cm and stockpile for reuse, maximum haul distance 1 km | m3 | 95,000 |  |  |
| 202 | Excavate topsoil to maximum depth 25–50 cm, and dispose | m3 | 15,000 |  |  |
| 203 | —etc.— |  |  |  |  |
| 206 | Excavate fill material from cuttings or approved borrow pits, haul up to 1 km, deposit, shape, and compact to fill | m3 | 258,000 |  |  |
| 207 | Excavate rock in cuttings and dispose, any depth | m3 | 25,000 |  |  |
| 208 | —etc.— |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
| Total for Bill No. 2  (carried forward to Summary, p. ) | | | | |  |

Summary of Specified Provisional Sums

|  |  |  |  |
| --- | --- | --- | --- |
| *Bill no.* | *Item no.* | *Description* | *Amount* |
| 1 |  |  |  |
|  |  |  |  |
|  |  |  |  |
| 2 |  |  |  |
|  |  |  |  |
|  |  |  |  |
| 3 |  |  |  |
|  |  |  |  |
|  |  |  |  |
| 4 |  |  |  |
|  |  |  |  |
|  |  | [*To be entered by the Employer; Delete if not applicable:]* Provisional sums for additional ES outcomes. |  |
|  |  |  |  |
| etc. |  |  |  |
|  |  |  |  |
| Total Provisional sum for Emergency Works and [if applicable]other Specified Provisional Sums  (carried forward to Grand Summary (B), p. ) | | |  |

|  |
| --- |
| Technical Proposal Forms |

The bidder’s Technical Proposal shall include the following elements:

SCHEDULE A. Projected Cash Flow

SCHEDULE B. Site Organizations

SCHEDULE C. Method Statement

SCHEDULE D. Subcontractors

SCHEDULE E. Contractor’s Equipment

SCHEDULE F. Tentative Program of Performance

SCHEDULE G. Key Personnel Proposed

SCHEDUEL H. ES Management Strategies and Implementation Plans

SCHEDUEL I. Code of Conduct (ES)

Instructions on how to present the various schedules of the Technical Proposal are given on the following pages.

**SCHEDULE A**

**Projected Cash Flow**

(1) Bidders shall tabulate below estimates, based on their preliminary work programme, of:

(a) On the expenditure side, the value of the work which will be carried out;

(b) On the revenue side, the net payments to which they will become entitled with due allowance for the advance payment and repayment, materials prepayments, and retention money, but excluding price adjustments for rise and fall and provisional sums for emergency works.

(c) The projected net cash flow during the contract period.

(2) The prospective successful bidder may be required to submit full details to substantiate his estimates.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Period (Months) | **Expenditures** | | **Revenues** | | | **Net Cash Flow** |
| Cost/Value of Rehabilitation and Improvement Works  *[show amount and currency]* | Cost/Value of Maintenance Services  *[show amount and currency]* | Payments to be received  *[show amounts and currency]* | | |
| For Rehabilitation and Improvement Works | For Maintenance Services | Total |
| 1 to 6 |  |  |  |  |  |  |
| 6 to 12 |  |  |  |  |  |  |
| 12 to 18 |  |  |  |  |  |  |
| 18 to 24 |  |  |  |  |  |  |
| 24 to 30 |  |  |  |  |  |  |
| 30 to 36 |  |  |  |  |  |  |
| 36 to 42 |  |  |  |  |  |  |
| 42 to 48 |  |  |  |  |  |  |
| 48 to 54 |  |  |  |  |  |  |
| 54 to 60 |  |  |  |  |  |  |
| …etc… |  |  |  |  |  |  |
| **Total** |  |  |  |  |  |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 48 to 54 |  |  |  |  |
| 54 to 60 |  |  |  |  |
| … etc. |  |  |  |  |
| Total |  |  |  |  |

**SCHEDULE B**

**Site Organization**

Bidders shall give below full particulars of the organization they propose to establish, direct, and administer the performance of the Contract. In particular, bidders shall indicate the location of site camps and the resources they intend to allocate to Self-Control Units for planning and monitoring purposes.

**1. Site Organization Chart**

**2. Narrative Description Of Site Organization Chart**

**SCHEDULE C**

**METHOD STATEMENT**

**SCHEDULE D**

**SUBCONTRACTORS**

Bidders shall list below those parts of the Works and Services which they propose to subcontract, and state the approximate value of those parts and the names and addresses of the proposed subcontractors, if those are known at bidding stage. Bidders shall also list other business partners involved in the execution of the contract and their respective roles and responsibilities.

Part of Works / Services:

Approximate value:

Name and address of

proposed subcontractor / partner:

Part of Works / Services:

Approximate value:

Name and address of

proposed subcontractor / partner:

Part of Works / Services:

Approximate value:

Name and address of

proposed subcontractor / partner:

Part of Works / Services:

Approximate value:

Name and address of

proposed subcontractor / partner:

**SCHEDULE E**

**Contractor’s Equipment**

**Form EQU**

The Bidder shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III, Evaluation and Qualification Criteria. A separate Form shall be prepared for each item of equipment listed (with a current new purchase price exceeding US$ 5.000), or for alternative equipment proposed by the Bidder.

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

Omit the following information for equipment owned by the Bidder.

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

**SCHEDULE F**

**Tentative Program of Performance**

To demonstrate a clear understanding of the requirements of the Contract, bidders shall provide the following:

i) a bar chart sub-divided into sections for each road showing the major activities to be carried out for Maintenance Services, Rehabilitation Works and Improvement Works, if any. The activities shall be shown against time, with linkages shown between related/sequential activities as far as possible and appropriate.

ii) a bar chart or schedule showing the usage of major plant, including those listed in Schedule D (Contractor’s Equipment).

**SCHEDULE G**

**Form PER -1**

**Key Personnel**

**Schedule**

Bidders should provide the names and details of the suitably qualified Key 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: Road Manager** | |
|  | **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: Head of Self-Control Unit (SCU)** | |
|  | **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*] |
| **4.** | **Title of position:** *[Environmental Specialist]* | |
|  | **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*] |
| **5.** | **Title of position:** *[Health and Safety Specialist]* | |
|  | **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*] |
| **6.** | **Title of position:** *[Social Specialist]* | |
|  | **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*] |
| **7.** | **Title of position:** *[insert title]* | |
|  | **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 and Declaration

Key Personnel

|  |
| --- |
| **Name of Bidder** |

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

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

|  |  |  |  |
| --- | --- | --- | --- |
| **Project** | **Role** | **Duration of involvement** | **Relevant experience** |
| *[main project details]* | *[role and responsibilities on the project]* | *[time in role]* | *[describe the experience relevant to this position]* |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**Declaration**

I, the undersigned Key Personnel, certify that to the best of my knowledge and belief, the information contained in this Form PER-2 correctly describes myself, my qualifications and my experience.

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

|  |  |
| --- | --- |
| **Commitment** | **Details** |
| **Commitment to duration of contract:** | *[insert period (start and end dates) for which this Key Personnel is available to work on this contract]* |
| **Time commitment:** | *[insert the number of days/week/months/ that this Key Personnel will be engaged]* |

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

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

**Name of Key Personnel: [*insert name*]**

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

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

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

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

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

**SCHEDULE H**

ES Management Strategies and Implementation Plans

(ES-MSIP)

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

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

**SCHEDULE H**

**Code of Conduct**

Environmental and Social (ES)

***Note to the Employer****:*

***The following minimum requirements shall not be modified****. The Employer may add additional requirements to address identified issues, informed by relevant environmental and social assessment.*

*The types of issues identified could include risks associated with: labour influx, spread of communicable diseases,*Sexual Exploitation and Abuse (SEA), Sexual Harassment (SH) *etc.*

***Delete this Box prior to issuance of the bidding documents.***

**Note to the Bidder**:

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

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

**CODE OF CONDUCT FOR CONTRACTOR’S PERSONNEL**

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

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

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

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

**REQUIRED CONDUCT**

Contractor’s Personnel shall:

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

**RAISING CONCERNS**

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

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

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

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

**CONSEQUENCES OF VIOLATING THE CODE OF CONDUCT**

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

FOR CONTRACTOR’S PERSONNEL:

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

Name of Contractor’s Personnel: [insert name]

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

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

Countersignature of authorized representative of the Contractor:

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

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

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

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

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

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

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

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

1. **Examples of sexual harassment** **in a work context**

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

Bidder’s Qualification Forms

Bidders Qualification without Prequalification

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

Bidder’s Qualification following Prequalification

The Bidder shall update the information given during the corresponding prequalification exercise to demonstrate that it continues to meet the criteria used at the time of prequalification regarding

1. Eligibility
2. Contract non-performance, pending litigation and litigation history
3. Environmental and Social(ES) past performance
4. Bank’s SEA and/or SH Disqualification
5. Financial Situation and Performance

For this purpose, the Bidder shall use the relevant forms included in hereunder.

|  |
| --- |
| Form ELI -1.1 |
| Bidder Information Form |
| Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* ICB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* Page *\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages |
|  |
| |  | | --- | | Bidder's name | | In case of Joint Venture (JV), name of each member: | | Bidder's actual or intended country of registration:  *[indicate country of Constitution]* | | Bidder's actual or intended year of incorporation: | | Bidder's legal address [in country of registration]: | | Bidder's authorized representative information  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Address: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Telephone/Fax numbers: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  E-mail address: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* | | 1. Attached are copies of original documents of  🞎 Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITB 4.2.  🞎 In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1.  🞎 In case of a Government-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and absence of dependent status, in accordance with ITB 4.5. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. | |

Form ELI -1.2

Bidder's JV Information Form  
(to be completed for each member of Bidder’s JV)

Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*ICB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* of *\_\_\_\_\_\_\_\_\_\_\_\_* pages

|  |
| --- |
| Bidder’s JV name: |
| JV member’s name: |
| JV member’s country of registration: |
| JV member’s year of constitution: |
| JV member’s legal address in country of constitution: |
| JV member’s authorized representative information  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Telephone/Fax numbers: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  E-mail address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| 1. Attached are copies of original documents of  🞎 Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITB 4.2.  🞎 In case of a government-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and absence of dependent status, in accordance with ITB 4.5.  2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. |

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

Bidder’s Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Joint Venture Member’s Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ICB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria  *(In case of prequalification, in accordance with Section III, Qualification Criteria and Requirements of the Prequalification document)* | | | | | | | | | |
| 🞎 Contract non-performance did not occur since 1st January *[insert year]*  🞎 Contract(s) not performed since 1st January *[insert year]* | | | | | | | | | |
| **Year** | **Non- performed portion of contract** | | | **Contract Identification** | | | | **Total Contract Amount (current value, currency, exchange rate and US$ equivalent)** | |
| *[insert year]* | *[insert amount and percentage]* | | | Contract Identification: *[indicate complete contract name/ number, and any other identification]*  Name of Employer: *[insert full name]*  Address of Employer: *[insert street/city/country]*  Reason(s) for nonperformance: *[indicate main reason(s)]* | | | | *[insert amount]* | |
| Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria  *(In case of prequalification, in accordance with Section III, Qualification Criteria and Requirements of the Prequalification document)* | | | | | | | | | |
| 🞎 No pending litigation | | | | | | | | | |
| 🞎 Pending litigation | | | | | | | | | |
| **Year of dispute** | | | | **Amount in dispute (currency)** | | | **Contract Identification** | **Total Contract Amount (currency), USD Equivalent (exchange rate)** | |
|  | | | |  | | | Contract Identification: \_\_\_\_\_\_\_\_\_  Name of Employer: \_\_\_\_\_\_\_\_\_\_\_\_  Address of Employer: \_\_\_\_\_\_\_\_\_\_  Matter in dispute: \_\_\_\_\_\_\_\_\_\_\_\_\_\_  Party who initiated the dispute: \_\_\_\_  Status of dispute: *\_\_\_\_\_\_\_\_\_\_\_* |  | |
|  | | | |  | | | Contract Identification:  Name of Employer:  Address of Employer:  Matter in dispute:  Party who initiated the dispute:  Status of dispute: |  | |
| Litigation History in accordance with Section III, Evaluation and Qualification Criteria  *(In case of prequalification, in accordance with Section III, Qualification Criteria and Requirements of the Prequalification document)* | | | | | | | | | |
| 🞎 No Litigation History  🞎 Litigation History | | | | | | | | | |
| **Year of award** | | | **Outcome as percentage of Net Worth** | | | **Contract Identification** | | **Total Contract Amount (currency), USD Equivalent (exchange rate)** | |
| *[insert year]* | | | *[insert percentage]* | | | Contract Identification: *[indicate complete contract name, number, and any other identification]*  Name of Employer: *[insert full name]*  Address of Employer: *[insert street/city/country]*  Matter in dispute: *[indicate main issues in dispute]* | | *[insert amount]* | |

**Form CON – 3**

Environmental and Social Performance Declaration

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

**Bidder’s Name: *[insert full name]*Date: *[insert day, month, year]*Joint Venture Member’s or Specialized Subcontractor’s Name: *[insert* *full name]***ICB No. and title: *[insert ICB number and title]*Page *[insert page number]* of *[insert total number]* pages

|  |  |  |  |
| --- | --- | --- | --- |
| Environmental and Social Performance Declaration  in accordance with Section III, Evaluation and Qualification Criteria  *(In case of prequalification, in accordance with Section III Evaluation and Qualification Criteria of the Prequalification document)* | | | |
| 🞎 **No suspension or termination of contract**: An employer has not suspended or terminated a contract and/or called the performance security for a contract for reasons related to Environmental and Social (ES) performance since the date specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.2.5.  🞎 **Declaration of suspension or termination of contract**: The following contract(s) has/have been suspended or terminated and/or Performance Security called by an employer(s) for reasons related to Environmental and Social (ES) performance since the date specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.2.5. Details are described below: | | | |
| **Year** | **Suspended or terminated portion of contract** | **Contract Identification** | **Total Contract Amount (current value, currency, exchange rate and US$ equivalent)** |
| *[insert year]* | *[insert amount and percentage]* | Contract Identification: *[indicate complete contract name/ number, and any other identification]*  Name of Employer: *[insert full name]*  Address of Employer: *[insert street/city/country]*  Reason(s) for suspension or termination: *[indicate main reason(s) e.g. gender-based violence; sexual exploitation or sexual abuse breaches]* | *[insert amount]* |
| *[insert year]* | *[insert amount and percentage]* | Contract Identification: *[indicate complete contract name/ number, and any other identification]*  Name of Employer: *[insert full name]*  Address of Employer: *[insert street/city/country]*  Reason(s) for suspension or termination: *[indicate main reason(s)]* | *[insert amount]* |
| *…* | *…* | *[list all applicable contracts]* | *…* |
| **Performance Security called by an employer(s) for reasons related to ES performance** | | | |
| Year | Contract Identification | | Total Contract Amount (current value, currency, exchange rate and US$ equivalent) |
| *[insert year]* | Contract Identification: *[indicate complete contract name/ number, and any other identification]*  Name of Employer: *[insert full name]*  Address of Employer: *[insert street/city/country]*  Reason(s) for calling of performance security: *[indicate main reason(s) e.g. gender-based violence; sexual exploitation, or sexual abuse breaches]* | | *[insert amount]* |
|  |  | |  |

**Form CON – 4**

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

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

Bidder’s Name: *[insert full name]*Date: *[insert day, month, year]*Joint Venture Member’s or Subcontractor’s Name: *[insert* *full name]*ICB No. and title: *[insert ICB number and title]*Page *[insert page number]* of *[insert total number]* pages

|  |
| --- |
| **SEA and/or SH Declaration**  **in accordance with Section III,** **Evaluation and Qualification Criteria**  *(In case of prequalification, in accordance with Section III, Qualification Criteria and Requirements of the Prequalification document)* |
| We:  🞎 (a) have not been subject to disqualification by the Bank for non-compliance with SEA/ SH obligations  🞎 (b) are subject to disqualification by the Bank for non-compliance with SEA/ SH obligations  🞎 (c) had been subject to disqualification by the Bank for non-compliance with SEA/ SH obligations. An arbitral award on the disqualification case has been made in our favor.  🞎 (d) had been subject to disqualification by the Bank for non-compliance with SEA/ SH obligations for a period of two years. We have subsequently demonstrated that we have adequate capacity and commitment to comply with SEA/ SH obligations.  🞎 (e) had been subject to disqualification by the Bank for non-compliance with SEA/ SH obligations for a period of two years. We have attached evidence demonstrating that we have adequate capacity and commitment to comply with SEA/ SH obligations. |
| **[*If (c) above is applicable*, *attach evidence of an arbitral award reversing the findings on the issues underlying the disqualification.]*** |
| ***[If (d) or ( e) above are applicable, provide the following information:]*** |
| Period of disqualification: From: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ To: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| If previously provided on another Bank financed works contract, details of evidence that demonstrated adequate capacity and commitment to comply with SEA/ SH obligations (**as per (d) above)**  Name of Employer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name of Project: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Contract description: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Brief summary of evidence provided: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Contact Information: (Tel, email, name of contact person): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| As an alternative to the evidence under (d), other evidence demonstrating adequate capacity and commitment to comply with SEA/ SH obligations (**as per (e) above)** *[attach details as appropriate].* |

Form FIN – 3.1:

**Financial Situation and Performance**

Bidder’s Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*JV Member’s Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ICB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

**1. Financial data**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Type of Financial information in**  **(currency)** | **Historic information for previous** *\_\_\_\_\_\_\_\_\_years,*  *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  **(amount in currency, currency, exchange rate\*, USD equivalent)** | | | | |
|  | Year 1 | Year 2 | Year 3 | Year4 | Year 5 |
| Statement of Financial Position (Information from Balance Sheet) | | | | | |
| Total Assets (TA) |  |  |  |  |  |
| Total Liabilities (TL) |  |  |  |  |  |
| Total Equity/Net Worth (NW) |  |  |  |  |  |
| Current Assets (CA) |  |  |  |  |  |
| Current Liabilities (CL) |  |  |  |  |  |
| Working Capital (WC) |  |  |  |  |  |
| Information from Income Statement | | | | | |
| Total Revenue (TR) |  |  |  |  |  |
| Profits Before Taxes (PBT) |  |  |  |  |  |
| Cash Flow Information | | | | | |
| Cash Flow from Operating Activities |  |  |  |  |  |

**2. Sources of Finance**

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

|  |  |  |
| --- | --- | --- |
| **No.** | **Source of finance** | **Amount (US$ equivalent)** |
| 1 |  |  |
| 2 |  |  |
| 3 |  |  |
|  |  |  |

**Financial documents**

The Bidder and its parties shall provide copies of financial statements for *\_\_\_\_\_\_\_\_\_\_\_*years pursuant Section III, Evaluation and Qualifications Criteria, Sub-factor 2. 3.1. The financial statements shall:

(a) reflect the financial situation of the Bidder or in case of JV member, and not an affiliated entity (such as parent company or group member).

(b) be independently audited or certified in accordance with local legislation.

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

(d) correspond to accounting periods already completed and audited.

🞎 Attached are copies of financial statements[[29]](#footnote-30) for the *\_\_\_\_\_\_\_\_\_\_\_\_*years required above; and complying with the requirements

**Form FIN – 3.2:**

**Average Annual Construction Turnover**

Bidder’s Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*JV Member’s Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ICB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | | **Annual turnover data (construction only)** | | |
| **Year** | **Amount**  **Currency** | | **Exchange rate** | **USD equivalent** |
| *[indicate year]* | *[insert amount and indicate currency]* | |  |  |
|  |  | |  |  |
|  |  | |  |  |
|  |  | |  |  |
|  |  | |  |  |
| Average Annual Construction Turnover \* |  | |  |  |

\* See Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.2.

Form FIN – 3.4:

**Current Contract Commitments / Works in Progress**

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

|  |
| --- |
| **Current Contract Commitments** |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| No. | Name of Contract | Employer’s  Contact Address, Tel, Fax | Value of Outstanding Work  [Current US$ Equivalent] | Estimated Completion Date | Average Monthly Invoicing Over Last Six Months [US$/month)] |
| 1 |  |  |  |  |  |
| 2 |  |  |  |  |  |
| 3 |  |  |  |  |  |
| 4 |  |  |  |  |  |
| 5 |  |  |  |  |  |
|  |  |  |  |  |  |

Form EXP – 4.1

General Construction Experience

Bidder’s Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*JV Member’s Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ICB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

|  |  |  |  |
| --- | --- | --- | --- |
| Starting  Year | Ending  Year | Contract Identification | Role of  Bidder |
|  |  | Contract name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Brief Description of the Works and Services performed by the  Bidder: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Amount of contract: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Name of Employer: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Address: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |  |
|  |  | Contract name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Brief Description of the Works and Services performed by the  Bidder: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Amount of contract: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Name of Employer: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Address: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |  |
|  |  | Contract name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Brief Description of the Works and Services performed by the  Bidder: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Amount of contract: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Name of Employer: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Address: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |  |

Form EXP – 4.2(a)

**Specific Construction and Contract Management Experience**

Bidder’s Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*JV Member’s Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ICB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Similar Contract No.** | **Information** | | | | |
| Contract Identification |  | | | | |
| Award date |  | | | | |
| Completion date |  | | | | |
| Role in Contract | Prime Contractor 🞎 | | Member in  JV  🞎 | Management Contractor  🞎 | Sub-contractor 🞎 |
| Total Contract Amount |  | | | US$ | |
| If member in a JV or sub-contractor, specify participation in total Contract amount |  |  | |  | |
| Employer's Name: |  | | | | |
| Address:  Telephone/fax number  E-mail: |  | | | | |

**Form EXP – 4.2(a) (cont.)**

**Specific Construction and Contract Management Experience (cont.)**

|  |  |
| --- | --- |
| **Similar Contract No.** | **Information** |
| Description of the similarity in accordance with Sub-Factor 2.4.2 (a) of Section III: |  |
| 1. Amount |  |
| 2. Physical size of required Works and Services items |  |
| 3. Complexity |  |
| 4. Methods/Technology |  |
| 5. Construction rate for key activities |  |
| 6. Other Characteristics |  |

Form EXP – 4.2(b)

Construction Experience in Key Activities

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

Sub-contractor's Name[[30]](#footnote-31)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ICB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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

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

|  | **Information** | | | | |
| --- | --- | --- | --- | --- | --- |
| Contract Identification |  | | | | |
| Award date |  | | | | |
| Completion date |  | | | | |
| Role in Contract | Prime Contractor  🞎 | Member in  JV  🞎 | | Management Contractor  🞎 | Sub-contractor  🞎 |
| Total Contract Amount |  | | | US$ | |
| Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year | Total quantity in the contract  (i) | | Percentage  participation  (ii) | | Actual Quantity Performed  (i) x (ii) |
| Year 1 |  | |  | |  |
| Year 2 |  | |  | |  |
| Year 3 |  | |  | |  |
| Year 4 |  | |  | |  |
| Employer’s Name: |  | | | | | |
| Address:  Telephone/fax number  E-mail: |  | | | | | |

Form EXP – 4.2(c)

Specific Experience in Managing ES aspects

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

Bidder's Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Bidder's JV Member Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*ICB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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

* + - 1. Key Requirement no 1 in accordance with 2. 4.2 (c): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Contract Identification |  | | | |
| Award date |  | | | |
| Completion date |  | | | |
| Role in Contract | Prime Contractor   | Member in  JV   | Management Contractor   | Subcontractor   |
| Total Contract Amount |  | | US$ | |
| Details of relevant experience |  | | | |

* + - 1. Key Requirement no 2 in accordance with 2.4.2 (c): *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*
      2. Key Requirement no 3 in accordance with 2.4.2 (c): *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

…

|  |
| --- |
| Form of Bid Security |

**(Bank Guarantee)**

**Beneficiary:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[Name and Address of* Employer*]*

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

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

**Guarantor:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*[Bank’s Name, and Address of Issuing Branch or Office]*

We have been informed that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter called "the Applicant") has submitted or will submit to the Beneficiary its Bid (hereinafter called "the Bid") for the execution of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[name of contract]* under Invitation for Bids No. \_\_\_\_\_\_\_\_\_\_\_ (“the IFB”).

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

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

(a) has withdrawn its Bid prior to the Bid validity expiry date set forth in the Applicant’s Letter of Bid, or any extension thereto provided by the Applicant; or

(b) having been notified of the acceptance of its Bid by the Beneficiary prior to the expiry date of the Bid validity or any extension thereto provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance Security, and, if required, the Environmental and Social (ES) Performance Security, in accordance with the Instructions to Bidders (“ITB”) of the Beneficiary’s Bidding document.

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

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

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

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

*[signature(s)]*

Form of Bid-Securing Declaration

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

ICB No.: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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

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

We, the undersigned, declare that:

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

We accept that we will automatically be suspended from being eligible for Bidding or submitting Proposals in any contract with the Employer for the period of time specified in Section II – Bid Data Sheet, if we are in breach of our obligation(s) under the Bid conditions, because we:

(a) have withdrawn our Bid prior to the expiry date of the Bid validity specified in the Letter of Bid or any extended date provided by us; or

(b) having been notified of the acceptance of our Bid by the Employer prior to the expiry date of the Bid validity in the Letter of Bid or any extended date provided by us, or (ii) fail or refuse to furnish the Performance Security and, if required, the Environmental and Social, (ES) Performance Security, in accordance with the ITB.

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

Name of the Bidder**\***

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

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

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

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

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

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

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

Section V. Eligible Countries

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

In reference to ITB 4.7 and 5.1, for the information of the Bidders, at the present time firms, goods and services from the following countries are excluded from this bidding process:

Under ITB 4.7(a) and 5.1:  *[insert a list of the countries following approval by the Bank to apply the restriction or state “none”]*

Under ITB 4.7(b) and 5.1:  *[insert a list of the countries following approval by the Bank to apply the restriction or state “none”]*

Section VI. Bank Policy - Corrupt and Fraudulent Practices

(Section VI shall not be modified)

Guidelines for Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers, dated January 2011.

“**Fraud and Corruption:**

1.16 It is the Bank’s policy to require that Borrowers (including beneficiaries of Bank loans), bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standard of ethics during the procurement and execution of Bank-financed contracts.[[31]](#footnote-32) In pursuance of this policy, the Bank:

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

(i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;[[32]](#footnote-33);

(ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;[[33]](#footnote-34)

(iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;[[34]](#footnote-35)

(iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;[[35]](#footnote-36)

(v) "obstructive practice" is:

(aa) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or

(bb) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under paragraph 1.16(e) below.

(b) will reject a proposal for award if it determines that the bidder recommended for award, or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;

(c) will declare misprocurement and cancel the portion of the loan allocated to a contract if it 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 or the implementation of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;

(d) will sanction a firm or individual, at any time, in accordance with the prevailing Bank’s sanctions procedures,[[36]](#footnote-37) including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Bank-financed contract; and (ii) to be a nominated[[37]](#footnote-38) sub-contractor, consultant, supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract;

(e) will require that a clause be included in bidding documents and in contracts financed by a Bank loan, requiring bidders, suppliers and contractors, and their sub-contractors, agents, personnel, consultants, service providers, or suppliers, to permit the Bank to inspect all accounts, records, and other documents relating to the submission of bids and contract performance, and to have them audited by auditors appointed by the Bank.”

PART 2 – Works AND SERVICES’ Requirements

|  |
| --- |
| Section VII. Specifications |

*[These* ***Notes for Preparing Specifications******for Output- and Performance-based Road Contracts*** *are intended only as information for the Employer and/or the persons drafting the bidding document on behalf of the Employer. They should* ***not*** *be included in the final bidding document.*

*The* ***Specifications*** *to be used for bidding are to be prepared by the Employer on the basis of the* ***Sample Specifications*** *provided by the Bank. The Specifications shall either (i) be inserted here or (ii) shall be provided to bidders as a separate volume, with a reference made here.*

*Precise and clear Specifications are a prerequisite for Bidders to respond realistically and competitively to the requirements of the Employer without qualifying or conditioning their Bids. The Specifications for any bidding document for* ***Output- and Performance-based Road Contracts*** *must include at least the following parts:*

*Part A: Basic Concept of OPBRC*

*Part B: Technical and Performance Specifications*

*Part C: Operational Procedures*

*Part D: Environmental and Social Requirements*

*The text for Part A of the Specifications (“Basic Concept of OPBRC”) is provided by the Bank and is generally not to be altered by the Employer.*

*Parts B and C of the Specifications must be written by the Employer to suit (i) the specific conditions of the country in which the contract is to be executed and (ii) the specific roads included in the contract.*

*Part D of the Specifications (“Environmental and Social Requirements”) must be prepared by the Employer in a manner that does not conflict with the relevant clauses of the General Conditions of Contract (and the corresponding Particular Conditions of Contract if any), and other parts of the Specifications. The following is a non-exhaustive list of Sub-Clauses of the Conditions of Contract that make reference to Environmental and Social matters to be covered in the Specifications.*

| **Sub-Clause/Clause No.** | **Sub-Clause/Clause** | **Remarks** |
| --- | --- | --- |
| *18.7* | *Security of the Site* | *State any additional relevant requirements for the security arrangements.* |
| *19.2.1, 19.2.2, 19.2.6* | *labor* | *State applicable requirements in accordance with the labor management procedure.* |
| *19.2.5* | *Facilities for Staff and Labor* | *-Indicate if access to or provision of services that accommodate physical, social and cultural needs of Contractor’s Personnel is required.* |
| *19.2.19* | *Training of Contractor’s Personnel* | *Specify details of any training to relevant Contractor’s Personnel to be provided by the Employer’s Personnel on environmental and social aspects*. (whom, what, when, where, how long etc.) |
| *26.2* | *Health and Safety* | *Indicate any additional requirements for the health and safety manual* |
| *26.3* | *Protection of the Environment* | *Specify any values for emissions, surface discharges, effluent and any other pollutants from the Contractor’s activities that shall not be exceeded.* |
| *26.4* | *Archeological and Geological Findings* | *Specify other relevant requirements if any.* |

***Sustainable Procurement.*** *The World Bank promotes sustainable procurement practices. Any technical requirements related to sustainable procurement that the Employer wishes to introduce in the bidding document (beyond the Environmental and Social Requirements in Part D of the Specifications) shall be clearly defined in the Specifications. Please refer to the Bank’s Procurement Regulations and the Sustainable Procurement Guidance for further information. Any sustainable procurement requirements to be introduced shall be specific enough to enable evaluation. To encourage Bidders’ innovation in addressing sustainable procurement requirements, as long as the Bid evaluation criteria specify the mechanism for monetary adjustments for the purpose of Bid comparisons, the Employer may invite Bidders to offer Road Works and Services that exceed the specified minimum sustainable procurement requirements.*

*In general terms, the Specifications must be drafted to permit the widest possible competition and, at the same time, present a clear statement of the requirements to be complied with during the execution of the contract.*

*For the guidance and convenience of Borrowers and other users of this document, the Bank has prepared a separate document titled* ***“Sample Specifications for OPBRC”*** *which provides a template, sample texts and guidance notes for the preparation of this Section VII - Specifications. In order to ensure coherence between the Specifications and the other parts of the bidding document, the template and sample texts shall applied, with the necessary adjustments to take into account the specific situation of the roads to be included in the contract. The sample texts are applicable for different types of roads, ranging from low-volume unpaved rural roads to multi-lane paved highways. The sample Specifications provided by the Bank reflect the basic principles which have been adopted under this Standard Bidding Document for Output- and Performance-Based Road Contracts. Their use should help preventing conflicts which could derive from contradictions between the administrative sections of the bidding document and the Specifications.*

*The document “Sample Specifications for OPBRC” can be found at the following website: https://www.worldbank.org/en/projects-operations/products-and-services/brief/procurement-new-framework#SPD*

*Only if the various parts of the Specifications are completed adequately and included in the bidding document, will the objectives of economy, efficiency, and equality in procurement be realized, responsiveness of Bids be ensured, and the subsequent task of Bid evaluation facilitated.*

*The use of metric units is encouraged by the Bank.*

*Care must be taken in drafting Specifications to ensure that they are not too restrictive. In the specification of standards for materials, plant, other supplies, and workmanship, recognized international standards should be used as much as possible.]*

Key Personnel

*[Note: Insert in the following table, the minimum key specialists required to execute the contract, taking into account the nature, scope, complexity and risks of the contract.]*

**Contractor’s Representative and** **Key Personnel**

|  |  |  |  |
| --- | --- | --- | --- |
| **Item No.** | **Position/specialization** | **Relevant academic qualifications** | **Minimum years of relevant work experience** |
| *1* | Contractor’s Representative |  |  |
| *2* | *[Environmental]* | *[e.g. degree in relevant environmental subject]* | *[e.g. [years] working on road contracts in similar work environments]* |
| *3* | *[Health and Safety]* |  |  |
| *4* | *[Social]* |  |  |
| *5* | Sexual Exploitation, Abuse and Harassment  *[Where a Project SEA risks are assessed to be substantial or high, Key Personnel shall include an expert(s) with relevant experience in addressing sexual exploitation, sexual abuse and sexual harassment cases]* |  | *[e.g. 5 years of monitoring and managing risks related to gender-based violence, out of which 3 years of relevant experience in addressing issues related to sexual exploitation, sexual abuse and sexual harassment]* |
| *6* | *modify as appropriate* |  |  |

PART 3 – Conditions of Contract and Contract Forms

|  |
| --- |
| Section VIII - General Conditions |

**Table of Clauses**

[A. Contract and Interpretation 149](#_Toc65264660)

[1. Definitions 149](#_Toc65264661)

[2. Interpretation 154](#_Toc65264662)

[3. Documents Forming the Contract 154](#_Toc65264663)

[4. Language and Law 154](#_Toc65264664)

[5. Notices 154](#_Toc65264665)

[B. Assignment of Responsibilities 163](#_Toc65264666)

[7. Scope of Works and Services 163](#_Toc65264667)

[8. Design Responsibility 164](#_Toc65264668)

[9. Copyright 167](#_Toc65264669)

[10. Start Date and Completion 167](#_Toc65264670)

[11. Contractor’s Responsibilities 167](#_Toc65264671)

[13. Assignment of Contract 171](#_Toc65264672)

[14. Employer’s Responsibilities 171](#_Toc65264673)

[15. Confidential Information 172](#_Toc65264674)

[C. Execution of Works and Services 173](#_Toc65264675)

[16. Representatives 173](#_Toc65264676)

[17. Work Program 176](#_Toc65264677)

[18. Execution of Works 178](#_Toc65264678)

[19. Staff and Labor 182](#_Toc65264679)

[20. Test and Inspection 189](#_Toc65264680)

[21. Rehabilitation Works 191](#_Toc65264681)

[22. Improvement Works 191](#_Toc65264682)

[23. Maintenance Services 191](#_Toc65264683)

[24. Performance Standards 192](#_Toc65264684)

[25. Contractor’s Self-Control of Quality and Safety 192](#_Toc65264685)

[26. Health, Safety Protection of the Environment, Archaeological and Geological Findings 192](#_Toc65264686)

[27. Work Orders for Improvement Works and Emergency Works 196](#_Toc65264687)

[28. Taking Over Procedures 197](#_Toc65264688)

[29. Emergency Works 198](#_Toc65264689)

[30. Quality of materials used by Contractor 198](#_Toc65264690)

[31. Signaling and demarcation of work zones and bypasses 199](#_Toc65264691)

[D. Allocation of Risks 200](#_Toc65264692)

[32. Employer’s Risks 200](#_Toc65264693)

[33. Contractor’s Risks 201](#_Toc65264694)

[34. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification 201](#_Toc65264695)

[35. Insurance 202](#_Toc65264696)

[36. Unforeseen Conditions 204](#_Toc65264697)

[37. Change in Laws and Regulations 205](#_Toc65264698)

[38. Force Majeure 205](#_Toc65264699)

[E. Guarantees and Liabilities 207](#_Toc65264700)

[39. Completion Time Guarantee and Liability 207](#_Toc65264701)

[40. Performance Guarantee and Liability 208](#_Toc65264702)

[41. Defect Liability 208](#_Toc65264703)

[42. Limitation of Liability 210](#_Toc65264704)

[43. Liability for Damages through Traffic Accidents and Traffic Interruptions 210](#_Toc65264705)

[F. Payment 211](#_Toc65264706)

[44. Contract Price 211](#_Toc65264707)

[45. Advance Payment 211](#_Toc65264708)

[46. Bill of Quantities 212](#_Toc65264709)

[47. Measurement 213](#_Toc65264710)

[48. Price Adjustments 213](#_Toc65264711)

[49. Monthly Statement and Payments 214](#_Toc65264712)

[50. Payments 215](#_Toc65264713)

[51. Retention and Reductions 216](#_Toc65264714)

[52. Taxes and Duties 217](#_Toc65264715)

[53. Securities 217](#_Toc65264716)

[54. Certificate of Completion 218](#_Toc65264717)

[55. Final Completion Report 218](#_Toc65264718)

[56. Final Statement 219](#_Toc65264719)

[57. Discharge 219](#_Toc65264720)

[G. Remedies 219](#_Toc65264721)

[58. Suspension 219](#_Toc65264722)

[59. Termination 221](#_Toc65264723)

[H. Provisional Sum 228](#_Toc65264724)

[60. Provisional Sum 228](#_Toc65264725)

[61. Use of Provisional Sum for Emergency Works 228](#_Toc65264726)

[62. Use of Provisional Sum for Contingencies 228](#_Toc65264727)

[I. Change in Contract Elements 229](#_Toc65264728)

[63. Change in Assignments to Contractor 229](#_Toc65264729)

[65. Release from Performance 234](#_Toc65264730)

[J. FRAUD AND CORRUPTION 234](#_Toc65264731)

[66. Fraud and Corruption 234](#_Toc65264732)

A. Contract and Interpretation

|  |  |  |
| --- | --- | --- |
| 1. Definitions | * 1. Boldface type is used to identify defined terms.   **Accepted Contract Amount** means the amount accepted in the Letter of Acceptance for the execution of Works and provision of Services in accordance with the Contract.  **Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Contractor’s Bid.  The **Certificate of Completion** is a document issued by the Project Manager upon completion of Rehabilitation Works, Improvement Works and Emergency Works, or parts thereof, as applicable, in accordance with GC 54.1  The **Completion Date** is the date of completion of the Services and Works, or parts thereof, as applicable as certified by the Project Manager.  The **Contract** is the Contract between the Employer and the Contractor to perform the services to be provided by the Contractor, and to execute, complete, and maintain the Works. It consists of the documents listed in GC Clause 3 below.  The **Contractor** is a person or corporate body whose Bid to carry out the Works and Services has been accepted by the Employer.  The **Contractor’s Bid** is the completed bidding document submitted by the Contractor to the Employer.  The “**Contractor’s Personnel**” is the Contractor’s Representative and all personnel whom the Contractor utilizes on the Site or other places where the Works and Services are carried out, including the staff, labor and other employees of each Subcontractor.  The **Contract Price** is the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.  **Days** are calendar days; **months** are calendar months.  A **Defect** is any part of the Works and Services not completed in accordance with the Contract or a condition which causes a non-compliance with Service Level requirements.  The **Defect Liability Period** is the period specified in the Contract and is applicable for Rehabilitation Works, Improvement Works, and Emergency Works, with exclusions identified in the PC, if any.  **Dispute Review Board (DRB)** is a board of three members selected and act in accordance with rules and procedures defined in the Contract to seek to resolve any dispute of any kind that may arise between the Employer and the Contractor in connection with or arising out of the Contract, as provided for in GC Clause 6 hereunder.  **Dispute Review Expert (DRE)** is one expert selected and acting in accordance with rules and procedures defined in the Contract to seek to resolve any dispute of any kind that may arise between the Employer and the Contractor in connection with or arising out of the contract, as provided for in GC Clause 6 hereunder.  **Drawings** include calculations and other information provided by the Contractor for the execution of the Contract.  **Emergency Works** is a set of necessary and sufficient activities to reinstate the Road and reconstruct its structure or right of way strip damaged as a result of natural phenomena with imponderable consequences, such as strong storms, flooding and earthquakes. The need for execution of Emergency Works is jointly identified by the Employer and the Contractor and for starting of execution of Emergency Works the Employer shall issue a Work Order.  The **Employer** is the party who employs the Contractor to carry out the Works and Services.  The **“Employer’s Personnel”** meansall staff, labor and other employees of the Project Manager and of the Employerengaged in fulfilling the Employer’s obligations under the Contract; and any other personnel identified as Employer’s Personnel, by a notice from the Employer to the Contractor  **Equipment** is the Contractor’s machinery and vehicles brought temporarily to the Site to construct the Works and to carry out the Services.  **“ES”** means Environmental and Social (including Sexual Exploitation and Abuse (SEA) and Sexual Harassment (SH)).  **Improvement Works** consists of a set of interventions that add new characteristics to the Road in response to existing or new traffic, safety or other conditions, as defined in the Specifications.  **“Key Personnel”** means the positions (if any) of the Contractor’s personnel that are stated in the Specification.  **Rehabilitation Works** are civil works the Contractor needs to carry out to bring a road to the required Service Level.  **Required Rehabilitation Works** are those that the Contractor is obliged to carry out as a minimum under the conditions of the Contract, as defined in the Specifications.  **Materials** are all supplies, including consumables, used by the Contractor for incorporation in the Works and for provision of Services.  The **Monthly Statement** is the Contractor’s estimate of amounts owed to him by the Employer related to all works and services carried out by him during the calendar month. It is the basis for the Contractor’s monthly invoice to the Employer. The **Monthly Progress Report** is the Contractor’s estimate of progress of all Works under execution and of the volumes of works carried out during the corresponding calendar month. It is a required supporting document for the Monthly Statement.  The **Project Manager** is the person named in the PC who is responsible for the overall administration of the Contract on behalf of the Employer, and the supervision of works and services to be performed thereunder. The Project Manager may delegate through a written instrument some of his functions to any other competent person, retaining however the overall responsibility for the actions of that person. The Project Manager may not delegate the overall administrative control of the Contract.  **Road** means the road, roads or network of roads for which the Works and Services are contracted under the Contract.  The **Road Management Office** is the location indicated by the Contractor from which the Road Manager operates, and where the Contractor shall receive notifications.  The **Road Manager** is a person appointed by the Contractor who is in charge of managing all activities of the Contractor under the Contract. He is also the Contractor’s Representative for the purposes of this contract.  **Services** means all interventions on the Road under the Contract and all activities related to the management and evaluation of the Road which shall be carried out by the Contractor in order to achieve and keep the Road Performance Standards as defined in the Specifications, and to receive full payment of the monthly fee under the contract.  **Service Levels** are the minimum performance standards for the level of quality of Road conditions defined in the Specifications which the Contractor shall comply with.  **“Sexual Exploitation and Abuse” “(SEA)”** means the following:  **Sexual Exploitation** is defined as any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another;  **Sexual Abuse** is defined as the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.  **“Sexual Harassment” “(SH)”** is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by the Contractor’s Personnel with other Contractor’s or Employer’s Personnel.  The **Site** is the area defined as such in the Specifications. It normally includes all roads included in the contract, including their right-of-way.  The **Start Date** is the date by which the Contractor shall start the physical execution of the Works and Services on the site. It shall not be later than the number of days stated in the Particular Conditions after the issuance of the Letter of Acceptance by the Employer.  A **Subcontractor** is a person or corporate body who has a contractual agreement with the Contractor to carry out certain activities related to the services to be provided under the contract, which may include work on the Site.  **Specifications** means the Specifications of the Works and Services included in the Contract and any modification or addition made and approved by the Project Manager.  The **Works** are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as covered under Rehabilitation Works, Improvement Works and Emergency Works.  **Work Order** is an order issued by the Project Manager to the Contractor authorizing the execution of Improvement Works and Emergency Works, as provided for in GC Clause 27 hereunder.  **Change Order** is an order issued by the Project Manager which formalizes an agreed change in the assignment of the Contractor as per the provisions of GC Clause 63. | |
| 1. Interpretation | * 1. In interpreting these General Conditions (GC), singular also means plural, male also means female or neuter, and vice versa. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager will provide instructions clarifying queries about these General Conditions (GC). | |
| 1. Documents Forming the Contract | * 1. The documents forming the Contract shall be interpreted in the following order of priority:   (1) Agreement,  (2) Letter of Acceptance,  (3) Contractor’s Bid,  (4) Particular Conditions (PC),  (5) General Conditions (GC),  (6) Specifications,  (7) Drawings,  (8) Bill of Quantities, and  (9) any other document listed in the PC as forming part of the Contract. | |
| 1. Language and Law | * 1. The language of the Contract and the law governing the Contract are stated in the PC. | |
| 1. Notices | * 1. Unless otherwise stated in the Contract, all notices to be given under the Contract shall be in writing, and shall be sent by personal delivery, airmail post, special courier, fax or E-mail to the address of the relevant party set out in the PC, with the following provisions:   5.1.1 Any notice sent by fax or E-mail shall be confirmed within two (2) days after dispatch by notice sent by airmail post or special courier, except as otherwise specified in the Contract.  5.1.2 Any notice sent by airmail post or special courier shall be deemed (in the absence of evidence of earlier receipt) to have been delivered ten (10) days after dispatch. In proving the fact of dispatch, it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and conveyed to the postal authorities or courier service for transmission by airmail or special courier.  5.1.3 Any notice delivered personally or sent by fax or E-mail shall be deemed to have been delivered on date of its dispatch.  5.1.4 Either party may change its postal, fax or E-mail address or addressee for receipt of such notices by ten (10) days’ notice to the other party in writing.   * 1. Notices shall be deemed to include any approvals, consents, instructions, orders and certificates to be given under the Contract.   2. The Contractor shall provide at its own cost, and maintain in operation permanently during the duration of the Contract, such communications equipment which ensures that both written (fax or E-mail) and oral (voice) communications can be established at all times   (a) between the Road Manager and his senior field staff;  (b) between the Project Manager and the Road Manager;  (c) between the public telephone system and the Road Manager;  (d) The equipment to be provided and maintained includes the equipment located at the Project Manager’s office.   * 1. At the Start Date of the Contract, the Contractor must communicate to the Employer the address of his office, including the postal, fax and E-mail address, which for the purposes of this contract is called the Road Management Office, where Notices will be addressed to. The Employer may require that the physical location of the Road Management Office is within the close geographical area of the Road. If the Contractor fails to communicate the address of his Road Management Office, and the Employer is otherwise unable to locate the Road Manager, all notifications to the Contractor shall be valid if they are deposited at a designated location within the office of the Project Manager, and if a copy is sent to the Contractor’s legal address. | |
| 1. Settlement of Disputes (Alternative when using a Dispute Review Board) | * 1. Dispute Review Board   6.1.1 If any dispute of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the execution of the Works and Services—whether during the progress of the execution or after completion and whether before or after the termination, abandonment or breach of the Contract—the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation, then the matter in dispute shall, in the first place, be referred in writing by either party to the Disputes Review Board (‘the Board’), with a copy to the other party.  6.1.2 The Board shall be deemed to be constituted on the date the Parties and each of the three Board members have all signed a Dispute Review Board Agreement. The agreement between the Parties and each of the three members shall incorporate by reference the General Conditions of Dispute Review Board Agreement contained in Appendix C to these General Conditions, with such amendments as are agreed between them.  6.1.3 The Board shall comprise three Members each of whom shall meet the criteria set forth in Clause 3 of Appendix C- General Conditions of Dispute Review Board Agreement. One Member shall be selected by each of the Employer and the Contractor and approved by the other. If either of these Members is not so selected and approved within 42 days after signature by both parties of the Contract Agreement, then upon the request of either or both parties such Member shall be selected as soon as practicable by the Appointing Authority specified in the PC. The third Member shall be selected by the other two and approved by the parties. If the two Members selected by or on behalf of the parties fail to select the third Member within 14 days after the later of their selections, or if within 14 days after the selection of the third Member, the parties fail to approve that Member, then upon the request of either or both parties such third Member shall be selected promptly by the same Appointing Authority specified in the PC who shall seek the approval of the proposed third Member by the parties before selection but, failing such approval, nevertheless shall select the third Member. The third Member shall serve as Chairman of the Board.  6.1.4 In the event of death, disability, or resignation of any Member, such Member shall be replaced in the same manner as the Member being replaced was selected. If for whatever other reason a Member shall fail or be unable to serve, the Chairman (or failing the action of the Chairman then either of the other Members) shall inform the parties and such nonserving Member shall be replaced in the same manner as the Member being replaced was selected. Any replacement made by the parties shall be completed within 28 days after the event giving rise to the vacancy on the Board, failing which the replacement shall be made by the Appointing Authority in the same manner as described above. Replacement shall be considered completed when the new Member signs the Dispute Review Board Agreement. Throughout any replace­ment process the Members not being replaced shall continue to serve and the Board shall continue to function and its activities shall have the same force and effect as if the vacancy had not occurred, provided, however, that the Board shall not conduct a hearing nor issue a Recommendation until the replacement is completed.  6.1.5 Either the Employer or the Contractor may refer a dispute to the Board in accordance with the provisions of the Dispute Review Board’s Rules and Procedures, attached to the Contract. The Recommendation of the Board shall be binding on both parties, who shall promptly give effect to it unless and until the same shall be revised, as hereinafter provided, in an arbitral award. Unless the Contract has already been repudiated or terminated, the Contractor shall continue to proceed with the Works and Services in accordance with the Contract.  6.1.6 If either the Employer or the Contractor is dissatisfied with any Recommendation of the Board, or if the Board fails to issue its Recommendation within 56 days after receipt by the Chairman of the Board of the written Request for Recommendation, then either the Employer or the Contractor may, within 14 days after his receipt of the Recommendation, or within 14 days after the expiry of the said 56-day period, as the case may be, give notice to the other party of his intention to commence arbitration, as hereinafter provided, as to the matter in dispute. Such notice shall establish the entitlement of the party giving the same to commence arbitration, as hereinafter provided, as to such dispute and, subject to GC Sub-Clause 6.3, no arbitration in respect thereof may be commenced unless such notice is given.  6.1.7 If the Board has issued a Recommendation to the Employer and the Contractor within the said 56 days and no notice of intention to commence arbitration as to such dispute has been given by either the Employer or the Contractor within 14 days after the parties received such Recommendation from the Board, the Recommendation shall become final and binding upon the Employer and the Contractor.  6.1.8 Whether or not it has become final and binding upon the Employer and the Contractor, a Recommendation shall be admissible as evidence in any subsequent dispute resolution procedure, including any arbitration or litigation having any relation to the dispute to which the Recommendation relates.  6.1.9 All Recommendations that have become final and binding shall be implemented by the parties forthwith.   * 1. Arbitration   6.2.1 If either the Employer or the Contractor is dissatisfied with the Board’s decision, then either the Employer or the Contractor may, in accordance with GC Sub-Clause 6.1.6, give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. The arbitral tribunal shall have full power to open up, review, and revise any decision, opinion, instruction, determination, certificate, and any Recommendation(s) of the Board.  6.2.2 Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with GC Sub-Clause 6.2.1, shall be finally settled by arbitration. Neither party shall be limited in the proceedings before such arbitration tribunal to the evidence or arguments put before the Board for the purpose of obtaining his Recommendation(s) pursuant to GC Sub-Clause 6.2.1. No Recommendation shall disqualify the Board from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute Arbitration may be commenced prior to or after completion of the Works and Services.  6.2.3 Arbitration proceedings shall be conducted in accordance with the rules of procedure designated in the PC.   * 1. Where neither the Employer nor the Contractor has given notice of intention to commence arbitration of a dispute within the period stated in GC Sub-Clause 6.1.6 and the related Recommendation has become final and binding, either party may, if the other party fails to comply with such Recommendation and without prejudice to any other right it may have, refer the failure to arbitration in accordance with GC Sub-Clause 6.2. The provisions of GC Sub-Clause 6.1 shall not apply to any such reference   2. Notwithstanding any reference to the Board or Arbitration herein,   (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree   1. the Employer shall pay the Contractor any monies due the Contractor. | |
| 1. Settlement of Disputes (Alternative when using a Dispute Review Expert) | * 1. Dispute Review Expert   6.1.1 If any dispute of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the execution of the Works and Services—whether during the progress of the execution or after completion and whether before or after the termination, abandonment or breach of the Contract, the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation, then the matter in dispute shall, in the first place, be referred in writing by either party to the Disputes Review Expert (‘DRE’), with a copy to the other party.  6.1.2 The DRE, who shall meet the criteria set forth in Clause 3 of Appendix C- General Conditions of Dispute Review Expert Agreement, shall be selected by agreement between the Employer and the Contractor. The DRE shall take up his functions after having signed a DRE’s Agreement which incorporates the General Conditions for Dispute Review Expert attached as Appendix C to the General Conditions of Contract. If the DRE is not selected within 42 days after signature by both parties of the Contract Agreement, then upon the request of either or both parties, the DRE shall be selected as soon as practicable by the Appointing Authority specified in the PC.  6.1.3 In the event of death, disability, or resignation of the DRE, the latter shall be replaced by agreement between the Employer and the Contractor. Any replacement made by the parties shall be completed within 28 days after the event giving rise to the need for a replacement, failing which the replacement shall be made by the same Appointing Authority as above.  6.1.4 Either the Employer or the Contractor may refer a dispute to the DRE in accordance with the provisions of the DRE’s Procedures, attached to the Contract. The Recommendation of the DRE shall be binding on both parties, who shall promptly give effect to it unless and until the same shall be revised, as hereinafter provided, in an arbitral award. Unless the Contract has already been repudiated or terminated, the Contractor shall continue to proceed with the Works and Services in accordance with the Contract.  6.1.5 If either the Employer or the Contractor is dissatisfied with any Recommendation of the DRE, or if the DRE fails to issue his Recommendation within 56 days after he has received the written Request for Recommendation, then either the Employer or the Contractor may, within 14 days after his receipt of the Recommendation, or within 14 days after the expiry of the said 56-day period, as the case may be, give notice to the other party of his intention to commence arbitration, as hereinafter provided, as to the matter in dispute. Such notice shall establish the entitlement of the party giving the same to commence arbitration, as hereinafter provided, as to such dispute and, subject to GC Sub-Clause 6.3, no arbitration in respect thereof may be commenced unless such notice is given.  6.1.6 If the DRE has issued a Recommendation to the Employer and the Contractor within the said 56 days and no notice of intention to commence arbitration as to such dispute has been given by either the Employer or the Contractor within 14 days after the parties received such Recommendation from the DRE, the Recommendation shall become final and binding upon the Employer and the Contractor.  6.1.7 Whether or not it has become final and binding upon the Employer and the Contractor, a Recommendation shall be admissible as evidence in any subsequent dispute resolution procedure, including any arbitration or litigation having any relation to the dispute to which the Recommendation relates.  6.1.8 All Recommendations that have become final and binding shall be implemented by the parties forthwith.   * 1. Arbitration      1. If either the Employer or the Contractor is dissatisfied with the DRE’s decision, then either the Employer or the Contractor may, in accordance with GC Sub-Clause 6.1.5, give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. The arbitral tribunal shall have full power to open up, review, and revise any decision, opinion, instruction, determination, certificate, and any Recommendation(s) of the DRE.      2. Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with GC Sub-Clause 6.2.1, shall be finally settled by arbitration. Neither party shall be limited in the proceedings before such arbitration tribunal to the evidence or arguments put before the DRE for the purpose of obtaining his Recommendation(s) pursuant to Sub-Clause 6.2.1. No Recommendation shall disqualify the DRE from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute Arbitration may be commenced prior to or after completion of the Works and Services.      3. Arbitration proceedings shall be conducted in accordance with the rules of procedure designated in the PC.   2. Where neither the Employer nor the Contractor has given notice of intention to commence arbitration of a dispute within the period stated in GC Sub-Clause 6.1.5 and the related Recommendation has become final and binding, either party may, if the other party fails to comply with such Recommendation and without prejudice to any other right it may have, refer the failure to arbitration in accordance with GC Sub-Clause 6.2. The provisions of GC Sub-Clause 6.1 shall not apply to any such reference.   3. Notwithstanding any reference to the DRE or Arbitration herein,  1. the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree 2. the Employer shall pay the Contractor any monies due the Contractor. | |
| B. Assignment of Responsibilities | | |
| 1. Scope of Works and Services | * 1. Unless otherwise expressly limited in the Specifications, the Contractor’s obligations cover the Design, the carrying out of all Works and the performance of all Services required for keeping the Road in accordance with the Service Levels defined in the Specifications, while at the same time respecting the plans, procedures, specifications, drawings, codes and any other documents as identified in the Specifications. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labor, materials, equipment; 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, if any, as set forth in the corresponding Specifications.   2. The Contractor shall, unless specifically excluded in the Contract, perform all such work, services 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 the Performance Standards (as specified in GC Clause 24) as if such work, services and/or items and materials were expressly mentioned in the Contract. | |
| 1. Design Responsibility | * 1. The Contractor shall be responsible for the design and programming of the Works and Services, and for the accuracy and completeness of the information used for that design and programming in accordance with the requirements established in the Specifications.   2. Specifications and Drawings   8.2.1 The Contractor shall execute the basic and detailed design and the engineering work in compliance with the provisions of the Contract and the Specifications, or where not so specified, in accordance with good engineering practice.  8.2.2 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.  8.2.3 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.   * 1. Codes and Standards   Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of Bid submission shall apply unless otherwise specified. During Contract execution, any changes in such codes and standards shall be applied after approval by the Employer and shall be treated in accordance with GC Clause 63.   * 1. Approval/Review of Technical Documents by Project Manager   8.4.1 The Contractor shall prepare (or cause its Subcontractors to prepare) and furnish to the Project Manager the documents stated in the Specifications for its approval or review. The Contractor shall also submit for the Project Manager’s approval any other document so specified in the Contract, including in accordance with GC Sub-Clauses 10.2 and 26.2.  Unless otherwise specified in the PC, the Contractor shall not be required to submit for the Employer’s approval the Design or other technical documents concerning the Maintenance Services remunerated through monthly lump-sum payments.  Any part of the Works covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager’s approval thereof.  GC Sub-Clauses 8.4.2 through 8.4.7 shall apply only to those documents requiring the Project Manager’s approval, but not to those furnished to the Project Manager for his information or review only.  8.4.2 Within fourteen (14) days after receipt by the Project Manager of any document requiring the Project Manager’s approval in accordance with GC Sub-Clause 8.4.1, 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 therefore 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, except for designs and drawings for works which in any case require the written approval of the Project Manager  8.4.3 The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with some specified provision of the Contract or that it is contrary to good engineering practice.  8.4.4 If the Project Manager disapproves the document, the Contractor shall modify the document and resubmit it for the Project Manager’s approval in accordance with GC Sub-Clause 8.4.2. 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.  8.4.5 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 the DRB (or DRE) for determination in accordance with GC Sub-Clause 6.1 hereof. If such dispute or difference is referred to the DRB (or DRE), 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 DRB (or DRE) upholds the Contractor’s view on the dispute and if the Employer has not given notice under GC Sub-Clause 6.1.5 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 DRB (or DRE) shall decide, and the Time for Completion shall be extended accordingly.  8.4.6 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.  8.4.7 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 GC Sub-Clause 8.4.  If the Project Manager requests any change in any already approved document and/or in any document based thereon, the provisions of GC Clause 63.2 shall apply to such request. | |
| 1. Copyright | * 1. 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. | |
| 1. Start Date and Completion | * 1. Subject to GC Sub-Clause 10.2, the Contractor shall start the Works and Services within the period specified in the PC. Upon request from the Contractor, the Employer shall confirm in writing the Start Date, after verifying that works and services have started on the Site.   2. The Contractor shall not carry out mobilization to the Site unless the Project Manager gives approval, an approval that shall not be unreasonably delayed, to the measures the Contractor proposes to address environmental and social risks and impacts, which at a minimum shall include applying the Management Strategies and Implementation Plans (MSIPs) and Code of Conduct for Contractor’s Personnel submitted as part of the Bid and agreed as part of the Contract.   The Contractor shall submit, to the Project Manager for its approval any additional MSIPs as are necessary to manage the ES risks and impacts of ongoing Works. These MSIPs collectively comprise the Contractor’s Environmental and Social Management Plan (C-ESMP). The Contractor shall review the C-ESMP, periodically (but not less than every six (6) months), and update it as required to ensure that it contains measures appropriate to the Works. The updated C-ESMP shall be submitted to the Project Manager for its approval   * 1. The Contractor shall attain the required Service Levels and the Completion of the Rehabilitation and Improvement Works (or of a part where a separate time for Completion of such part is specified in the Contract) within the time schedules included in the PC and the Specifications, or within such extended time to which the Contractor shall be entitled under GC Clause 64 hereof. | |
| 1. Contractor’s Responsibilities | * 1. The Contractor shall design and carry out the Works and Services (including associated purchases and/or subcontracting) necessary to comply with the requirements established in the Specifications with due care and diligence in accordance with the Contract.   2. The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the Works and Services required, including any data and tests provided by the Employer, and on the basis of information that the Contractor could have obtained from a visual inspection of the Site and of other data readily available to it relating to the Road as of the date twenty-eight (28) days prior to Bid submission. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Works and Services.   3. The Contractor shall acquire in its name all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country of the Employer that are necessary for the performance of the Contract, including, without limitation, visas for the Contractor’s Personnel and entry permits for all imported Contractor’s Equipment. The Contractor shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Employer under GC Sub-Clause 14.3 hereof and that are necessary for the performance of the Contract.   4. The Contractor shall comply with all laws in force in the country of the Employer and where the Works and Services are carried out. The laws will include all local, state, national or other laws that affect the performance of the Contract and bind upon the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to GC Sub-Clause 14.1 hereof.   5. Any Plant, Material and Services that will be incorporated in or be required for the Works and Services and other supplies shall have their origin in an eligible Country as defined under the Bank’s procurement guidelines.   6. The Contractor shall keep, and shall make all reasonable efforts to cause its Subcontractors and subconsultants to keep, accurate and systematic accounts and records in respect of the Goods in such form and details as will clearly identify relevant time changes and costs.   7. Stakeholder Engagement   The Contractor shall provide relevant contract- related information, as the Employer and/or Project Manager may reasonably request to conduct Stakeholder engagements.  “Stakeholder” refers to individuals or groups who:   * + - 1. are affected or likely to be affected by the Contract; and       2. may have an interest in the Contract.   The Contractor may also directly participate in Stakeholder engagements, as the Employer and/or Project Manager may reasonably request   * 1. Suppliers (other than Subcontractors)      1. *Forced Labor*: The Contractor shall take measures to require its suppliers (other than Subcontractors) not to employ or engage forced labor including trafficked persons as described in GC Sub-Clause 19.2.13. If forced labor/trafficking cases are identified, the Contractor shall take measures to require the suppliers to take appropriate steps to remedy them. Where the supplier does not remedy the situation, the Contractor shall within a reasonable period substitute the supplier with a supplier that is able to manage such risks.      2. *Child Labor:* The Contractor shall take measures to require its suppliers (other than Subcontractors) not to employ or engage child labor as described in GC Sub-Clause 19.2.14. If child labor cases are identified, the Contractor shall take measures to require the suppliers to take appropriate steps to remedy them. Where the supplier does not remedy the situation, the Contractor shall within a reasonable period substitute the supplier with a supplier that is able to manage such risks.      3. *Serious Safety Issues:* The Contractor, including its Subcontractors, shall comply with all applicable safety obligations, including as stated in GC Sub-Clause 26.2. The Contractor shall also take measures to require its suppliers (other than Subcontractors) to introduce procedures and mitigation measures to address safety issues related to their personnel. If serious safety issues are identified, the Contractor shall take measures to require the suppliers to take appropriate steps to remedy them. Where the supplier does not remedy the situation, the Contractor shall within a reasonable period substitute the supplier with a supplier that is able to manage such risks.      4. *Obtaining natural resource materials in relation to supplier:* The Contractor shall obtain natural resource materials from suppliers that can demonstrate, through compliance with the applicable verification and/ or certification requirements, that obtaining such materials is not contributing to the risk of significant conversion or significant degradation of natural or critical habitats such as unsustainably harvested wood products, gravel or sand extraction from river beds or beaches.      5. *If* a supplier cannot continue to demonstrate that obtaining such materials is not contributing to the risk of significant conversion or significant degradation of natural or critical habitats, the Contractor shall within a reasonable period substitute the supplier with a supplier that is able to demonstrate that they are not significantly adversely impacting the habitats   2. Pursuant to paragraph 1.16 (e) of Appendix A to the General Conditions, the Contractor shall permit and shall cause its agents (where declared or not), subcontractors, subconsultants, service providers, suppliers, and personnel, to permit, the Bank and/or persons appointed by the Bank to inspect the Site and/or the accounts and records relating to the 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 66.1 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). | |
| 1. Subcontracting | * 1. The Contractor may subcontract activities listed in the PC. Any other activity under the Contract may be subcontracted only when approved by the Project Manager. Submission by the Contractor for the Project Manager’s approval, for addition of any Subcontractor not named in the Contract, shall also include the Subcontractor’s declaration in accordance with Appendix D- Sexual exploitation and Abuse (SEA) and/or Sexual Harassment (SH) Performance Declaration. The Contractor may not assign the entire Contract without the approval of the Employer in writing.   2. The Contractor shall require that its Subcontractors execute the Works in accordance with the Contract, including complying with the relevant ES requirements and the obligations set out in GC Sub-Clause 18.3.2.   3. Subcontracting shall not alter the Contractor’s obligations nor relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any Subcontractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor, his agents, servants or workmen.   4. Notwithstanding GC Sub-Clause 12.1, the Contractor may subcontract under his own responsibility and without prior approval of the Employer the small Works and Services also listed in the PC.   5. Where practicable, the Contractor shall give fair and reasonable opportunity for contractors from the Country to be appointed as Subcontractors | |
| 1. Assignment of Contract | * 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. | |
| 1. Employer’s Responsibilities | * 1. The Employer shall apply due diligence to ensure the accuracy of all information and/or data to be supplied to the Contractor as described in the Specifications, except when otherwise expressly stated in the Contract.   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 corresponding Specifications. The Employer shall give full possession of and accord all rights of access thereto on or before the date(s) specified in the PC.   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, when such authorities or undertakings require the Employer to obtain them in the Employer’s name, are necessary for the execution of the Contract, and are specified in the corresponding Specifications.   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.   5. The Employer shall be responsible for the continued operation of the Road after Completion, in accordance with GC Sub-Clause 28, and shall be responsible for facilitating the Guarantee Test(s) for the Road, in accordance with GC Sub-Clause 20.   6. All costs and expenses involved in the performance of the obligations under this GC Clause 14 shall be the responsibility of the Employer, save those to be incurred by the Contractor with respect to the performance of Guarantee Tests, in accordance with GC Sub-Clause 20. | |
| 1. Confidential Information | * 1. The Employer and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this GC Clause 15.   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 Road. 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 and Equipment, construction or such Works and Services as are required for the performance of the Contract.   3. The obligation of a party under GC Sub-Clauses 15.1 and 15.2 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; and  (d) is required in response to a request by the Bank   * 1. The above provisions of this GC Clause 15 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 Works and Services or any part thereof.   2. The provisions of this GC Clause 15 shall survive termination, for whatever reason, of the Contract. | |
| C. Execution of Works and Services | | |
| 1. Representa­tives | * 1. Project Manager   If the Project Manager is not named in the Contract, then within fourteen (14) days of the issuance of the Letter of Acceptance by the Employer, 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 the Works and Services. 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 period 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.  The Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.   * 1. Road Manager   16.2.1 If the Road Manager is not named in the Contract, then the Contractor shall appoint the Road Manager before the Start Date 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 Road Manager shall be deemed to have been approved. If the Employer objects to the appointment within fourteen (14) days giving the reason therefore, then the Contractor shall appoint a replacement within fourteen (14) days of such objection, and the foregoing provisions of this GC Sub-Clause 16.2.1 shall apply thereto.  16.2.2 The Road Manager shall represent and act for the Contractor at all times during the period of the Contract and shall give to the Project Manager all the Contractor’s notices, instructions, information and all other communications under the Contract. The Road Manager shall be in charge of the day-to-day management of the works and services to be provided under the contract on behalf of the Contractor, and shall have legal and all other faculties to take all necessary decisions related to the execution of 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 Road Manager or, in its absence, its deputy, except as herein otherwise provided.  The Contractor shall not revoke the appointment of the Road Manager 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 Road Manager, pursuant to the procedure set out in GC Sub-Clause 16.2.1.  16.2.3 The Road Manager 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 to the Project Manager signed by the Road Manager, 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 Project Manager.  Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GC Sub-Clause 16.2.3 shall be deemed to be an act or exercise by the Road Manager.  16.2.4 From the Start Date until Completion, the Road Manager shall supervise all work and services 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 Road Manager is absent from the Site, a suitable person shall be appointed to act as his or her deputy. | |
| 1. Work Program | * 1. Contractor’s Organization   The Contractor shall supply to the Project Manager a chart showing the proposed organization to be established by the Contractor for carrying out the Works and Services. The chart shall include the identities of the Key Personnel together with the curricula vitae of such Key Personnel to be employed as included in the Contractor’s Bid. The Contractor shall promptly inform the Project Manager in writing of any revision or alteration of such an organization chart.   * 1. Program of Performance   Not later than the Start Date, the Contractor shall prepare and supply to the Project Manager a Program of Performance of the Contract, made in the form specified in the Specifications and showing the sequence in which it proposes to design and carry out the Rehabilitation and Improvement Works, 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 of Rehabilitation and Improvement Works in accordance with the Contract. The Contractor shall update and revise the Program as and when appropriate, but without modification in the Times for Completion given in the PC and any extension granted in accordance with GC Clause 64, and shall supply all such revisions to the Project Manager. The Project Manager shall confirm acceptance or rejection of the submitted initial Program of Performance within thirty (30) days after its submission, while for the updated or revised Programs of Performance this time is reduced to fourteen (14) days after their submission. In case the Project Manager rejects or makes comments on a submitted Program of Performance, the Contractor shall submit the revised Program within fourteen (14) days of the receipt of the comments. If no further comments are received within two weeks, the Program shall be deemed as accepted/approved even if a written approval has not been issued by the Project Manager.   * 1. Contractor’s Reports   17.3.1 Progress Reports: The Contractor shall monitor progress of works and other activities specified in the program referred to in GC Sub-Clause 17.2 above, and submit a Monthly Progress Report to the Project Manager every month together with his Monthly Statement. The progress report shall be in a form acceptable to the Project Manager in accordance with the Specifications. Unless otherwise stated in the Specifications, each progress report shall include the Environmental and Social (ES) metrics set out in Appendix B.  17.3.2 Immediate Reports: In addition to the progress reports, the Contractor shall inform the Project Manager immediately of any allegation, incident or accident in the Site, which has or is likely to have a significant adverse effect on the environment, the affected communities, the public, Employer’s Personnel, Project Manager’s personnel or Contractor’s Personnel. This includes, but is not limited to, any incident or accident causing fatality or serious injury; significant adverse effects or damage to private property; or any allegation of SEA and/or SH. In case of SEA and/or SH, while maintaining confidentiality as appropriate, the type of allegation (sexual exploitation, sexual abuse or sexual harassment), gender and age of the person who experienced the alleged incident should be included in the information. The Contractor, upon becoming aware of the allegation, incident or accident, shall also immediately inform the Project Manager of any such incident or accident on the Subcontractors’ or suppliers’ premises relating to the Works which has or is likely to have a significant adverse effect on the environment, the affected communities, the public, Employer’s Personnel, or Contractor’s, its Subcontractors’ and suppliers’ personnel. The notification shall provide sufficient detail regarding such incidents or accidents. The Contractor shall provide full details of such incidents or accidents to the Project Manager within the timeframe agreed with the Project Manager.  The Contractor shall require its Subcontractors and suppliers (other than Subcontractors) to immediately notify the Contractor of any incidents or accidents referred to in this Sub- Clause.   * 1. Progress of Execution   If at any time the Contractor’s actual progress falls behind the program referred to in GC Sub-Clause 17.2, or it becomes apparent that it will so fall behind, the Contractor shall prepare and supply 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 Works and Execution of Services activities within the Time for Completion under GC Sub-Clause 10.2, any extension thereof entitled under GC Sub-Clause 64, or any extended period as may otherwise be agreed upon between the Employer and the Contractor.   * 1. Work Procedures   The Contract shall be executed in accordance with the Contract Documents and the procedures given in the Specifications. | |
| 1. Execution of Works | * 1. Setting Out/Supervision/Labor   18.1.1 *Bench Mark.* The Contractor shall be responsible for the true and proper setting-out of the Works 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 execution of the Works, any error shall appear in the position, level or alignment of the Works, 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.  18.1.2 *Contractor’s Supervision.* The Contractor shall give or provide all necessary supervision during the execution of the Works, and the Road Manager or its deputy shall be on the Site to provide full-time supervision of the execution. 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.   * 1. Contractor’s Equipment   18.2.1 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 informing the Project Manager.  18.2.2 Unless otherwise specified in the Contract, upon completion of the Works and Services, the Contractor shall remove from the Site all Equipment brought by the Contractor onto the Site and any surplus materials remaining thereon.  18.2.3 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.   * 1. Site Regulations and Safety   18.3.1 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 as applicable, but shall not be limited to the Code of Conduct for the Contractor’s Personnel, rules in respect of security, safety, traffic control, accident response, gate control, sanitation, medical care, and fire prevention.  18.3.2 The Contractor shall have a Code of Conduct for the Contractor’s Personnel.  The Contractor shall take all necessary measures to ensure that each Contractor’s Personnel is made aware of the Code of Conduct including specific behaviors that are prohibited, and understands the consequences of engaging in such prohibited behaviors.  These measures include providing instructions and documentation that can be understood by the Contractor’s Personnel and seeking to obtain that person’s signature acknowledging receipt of such instructions and/or documentation, as appropriate.  The Contractor shall also ensure that the Code of Conduct is visibly displayed in multiple locations on the Site and any other place where the Works will be carried out, as well as in areas outside the Site accessible to the local community and project affected people. The posted Code of Conduct shall be provided in languages comprehensible to Contractor’s Personnel, Employer’s Personnel and the local community.  The Contractor’s Management Strategy and Implementation Plans shall include appropriate processes for the Contractor to verify compliance with these obligations.   * 1. Access to site for Other Contractors   18.4.1 The Contractor shall, upon written request from the Employer or the Project Manager, give site access to other contractors employed by the Employer on or near the site.   * 1. Site Clearance   18.5.1 *Site Clearance in Course of Execution*: In the course of carrying out the Contract, the Contractor shall keep the Site reasonably free from all unnecessary obstruction, store or remove any surplus materials, clear away any wreckage, rubbish or temporary works from the Site, and remove any Contractor’s Equipment no longer required for execution of the Contract.  18.5.2 *Clearance of Site after Completion*: After Completion of all parts of the Works and Services, the Contractor shall clear away and remove all wreckage, rubbish and debris of any kind from the Site, and shall leave the Site and the Road clean and safe.   * 1. Watching and Lighting   The Contractor shall provide and maintain at its own expense all lighting, fencing, and watching when and where necessary for the proper execution and the protection of the Works and Services, for the protection of his own installations and his equipment, for the safety of the owners and occupiers of adjacent property and for the safety of the public.   * 1. Security of the Site   The Contractor shall be responsible for the security of the Site, and for keeping unauthorized persons off the Site.  Authorized persons shall be limited to the Contractor’s Personnel, Employer’s Personnel and to any other personnel identified as authorized personnel (including the Employer’s other contractors on the Site), by a Notice from the Employer or the Project Manager to the Contractor.  The Contractor shall (i) conduct appropriate background checks on any personnel retained to provide security; (ii) train the security personnel adequately (or determine that they are properly trained) in the use of force (and where applicable, firearms), and appropriate conduct towards Contractor’s Personnel, Employer’s Personnel and affected communities; and (iii) require the security personnel to act within the applicable laws and any requirements set out in the Specification.  The Contractor shall not permit any use of force by security personnel in providing security except when used for preventive and defensive purposes in proportion to the nature and extent of the threat.  In making security arrangements, the Contractor shall also comply with any additional requirements stated in the Specification.   * 1. Access to the Site   The Contractor shall allow the Project Manager and any person authorized by the Project Manage access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.   * 1. Management Meetings   18.9.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised by either the Contractor or the Employer.  18.9.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either during or after the management meeting and stated in writing to all who attended the meeting. | |
| 1. Staff and Labor | * 1. The Contractor shall employ the Key Personnel named in the Contractor’s Bid, to carry out the functions stated in the Specifications or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of Key Personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Contractor’s Bid.   2. Labor   19.2.1 *Engagement of Staff and Labor*. The Contractor shall provide and employ on the Site for the execution of the Works and Services such skilled, semi-skilled and unskilled labor as is necessary for the proper and timely execution of the Contract. The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labor with appropriate qualifications and experience from sources within the Country.  The Contractor shall provide the Contractor’s Personnel information and documentation that are clear and understandable regarding their terms and conditions of employment. The information and documentation shall set out their rights under relevant labor laws applicable to the Contractor’s Personnel (which will include any applicable collective agreements), including their rights related to hours of work, wages, overtime, compensation and benefits, as well as those arising from any requirements in the Specification. The Contractor’s Personnel shall be informed when any material changes to their terms or conditions of employment occur.  *19.2.2 Conditions of Labor*. The Contractor shall inform the Contractor’s Personnel about:   1. any deduction to their payment and the conditions of such deductions in accordance with the applicable laws or as stated in the Specification; and 2. their liability to pay personal income taxes in the Country in respect of such of their salaries, wages, allowances and any benefits as are subject to tax under the laws of the Country for the time being in force.   The Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such laws.  Where required by applicable laws or as stated in the Specification, the Contractor shall provide the Contractor’s Personnel written notice of termination of employment and details of severance payments in a timely manner. The Contractor shall have paid the Contractor’s Personnel (either directly or where appropriate for their benefit) all due wages and entitlements including, as applicable, social security benefits and pension contributions, on or before the end of their engagement/ employment.  19.2.3 The Contractor shall at its own expense provide the means of repatriation to and the Contractor’s Personnel employed on the Contract at the Site to their various home countries. 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.  19.2.4 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.  19.2.5 *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. If stated in the Specification, the Contractor shall give access to or provide services that accommodate the physical, social and cultural needs of the Contractor’s Personnel. The Contractor shall also provide similar facilities for the Employer’s Personnel if stated in the Specifications.  19.2.6 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. The Contractor shall provide the Contractor’s Personnel annual holiday and sick, maternity and family leave, as required by applicable laws or as stated in the Specification.  19.2.7 *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.  19.2.8 *Supply of Water*. The Contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor’s Personnel.  *19.2.9 Measures against Insect and Pest Nuisance*. The Contractor shall at all times take the necessary precautions to protect the Contractor’s Personnel employed on the Site from insect and pest nuisance, and to reduce the danger to their health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.  19.2.10 *Alcoholic Liquor or Drugs*. The Contractor shall not, otherwise than in accordance with the laws of the Country, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift, barter or disposal thereto by Contractor’s Personnel.  19.2.11 *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.  19.2.12 *Funeral Arrangements.* The Contractor shall be responsible, to the extent required by local regulations, for making any funeral arrangements for any of its local employees who may die while engaged upon the Works and Services.  19.2.13 *Forced Labor.* The Contractor, including its Subcontractors, shall not employ or engage forced labor. Forced labor consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty, and includes any kind of involuntary or compulsory labor, such as indentured labor, bonded labor or similar labor-contracting arrangements.  No persons shall be employed or engaged who have been subject to trafficking. Trafficking in persons is defined as the recruitment, transportation, transfer, harboring or receipt of persons by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation.  19.2.14 *Child Labor.* The Contractor, including its Subcontractors, shall not employ or engage a child under the age of 14 unless the national law specifies a higher age (the minimum age).  The Contractor, including its Subcontractors, shall not employ or engage a child between the minimum age and the age of 18 in a manner that is likely to be hazardous, or to interfere with, the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral, or social development.  The Contractor including its Subcontractors, shall only employ or engage children between the minimum age and the age of 18 after an appropriate risk assessment has been conducted by the Contractor with the Project Manager’s approval. The Contractor shall be subject to regular monitoring by the Project Manager that includes monitoring of health, working conditions and hours of work.  Work considered hazardous for children is work that, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety, or morals of children. Such work activities prohibited for children include work:   1. with exposure to physical, psychological or sexual abuse; 2. underground, underwater, working at heights or in confined spaces; 3. with dangerous machinery, equipment or tools, or involving handling or 4. transport of heavy loads; 5. in unhealthy environments exposing children to hazardous substances, agents, or processes, or to temperatures, noise or vibration damaging to health; or 6. under difficult conditions such as work for long hours, during the night or in confinement on the premises of the employer.   19.2.15 *Employment Records of Workers.* The Contractor shall keep complete and accurate records of the employment of labor at the Site. The records shall include the names, ages, genders, hours worked, and wages paid to all workers. These records shall be summarized on a monthly basis and submitted to the Project Manager.  19.2.16 *Workers’ Organizations.* In countries where the relevant labor laws recognize workers’ rights to form and to join workers’ organizations of their choosing and to bargain collectively without interference, the Contractor shall comply with such laws. In such circumstances, the role of legally established workers’ organizations and legitimate workers’ representatives will be respected, and they will be provided with information needed for meaningful negotiation in a timely manner. Where the relevant labor laws substantially restrict workers’ organizations, the Contractor shall enable alternative means for the Contractor’s Personnel to express their grievances and protect their rights regarding working conditions and terms of employment. The Contractor shall not seek to influence or control these alternative means. The Contractor shall not discriminate or retaliate against the Contractor’s Personnel who participate, or seek to participate, in such organizations and collective bargaining or alternative mechanisms. Workers’ organizations are expected to fairly represent the workers in the workforce.  19.2.17 *Non-Discrimination and Equal Opportunity.* The Contractor shall not make decisions relating to the employment or treatment of Contractor’s Personnel on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment of Contractor’s Personnel on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to any aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, job assignment, promotion, termination of employment or retirement, and disciplinary practices.  Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination. The Contractor shall provide protection and assistance as necessary to ensure non-discrimination and equal opportunity, including for specific groups such as women, people with disabilities, migrant workers and children (of working age in accordance with GC Sub-Clause 19.2.14).  19.2.18 *Contractor’s Personnel Grievance Mechanism.* The Contractor shall have a grievance mechanism for Contractor’s Personnel, and where relevant the workers’ organizations stated in GC Sub-Clause 19.2.16, to raise workplace concerns. The grievance mechanism shall be proportionate to the nature, scale, risks and impacts of the Contract. The mechanism shall address concerns promptly, using an understandable and transparent process that provides timely feedback to those concerned in a language they understand, without any retribution, and shall operate in an independent and objective manner.  The Contractor’s Personnel shall be informed of the grievance mechanism at the time of engagement for the Contract, and the measures put in place to protect them against any reprisal for its use. Measures will be put in place to make the grievance mechanism easily accessible to all Contractor’s Personnel.  The grievance mechanism shall not impede access to other judicial or administrative remedies that might be available, or substitute for grievance mechanisms provided through collective agreements.  The grievance mechanism may utilize existing grievance mechanisms, providing that they are properly designed and implemented, address concerns promptly, and are readily accessible to such project workers. Existing grievance mechanisms may be supplemented as needed with Contract-specific arrangements.  19.2.19 *Training of Contractor’s Personnel.* The Contractor shall provide appropriate training to relevant Contractor’s Personnel on ES aspects of the Contract, including appropriate sensitization on prohibition of SEA, and health and safety training.  As stated in the Specification or as instructed by the Project Manager, the Contractor shall also allow appropriate opportunities for the relevant Contractor’s Personnel to be trained on ES aspects of the Contract by the Employer’s Personnel.  The Contractor shall provide training on SEA, including its prevention, to any of its personnel who has a role to supervise other Contractor’s Personnel.   * 1. Removal of Personnel   The Project Manager may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works and Services, including the Key Personnel (if any), who:   1. persists in any misconduct or lack of care; 2. carries out duties incompetently or negligently; 3. fails to comply with any provision of the Contract; 4. persists in any conduct which is prejudicial to safety, health, or the protection of the environment; 5. based on reasonable evidence, is determined to have engaged in Fraud and Corruption during the execution of the Works; 6. has been recruited from the Employer’s Personnel; 7. undertakes behavior which breaches the Code of Conduct for Contractor’s Personnel (ES).   If appropriate, the Contractor shall then promptly appoint (or cause to be appointed) a suitable replacement with equivalent skills and experience.  Notwithstanding any requirement from the Project Manager to remove or cause to remove any person, the Contractor shall take immediate action as appropriate in response to any violation of (a) through (g) above. Such immediate action shall include removing (or causing to be removed) from the Site or other places where the Works are being carried out, any Contractor’s Personnel who engages in (a), (b), (c), (d), (e) or (g) above or has been recruited as stated in (f) above.   * 1. Work at Night and on Holidays   19.4.1 Unless otherwise provided in the Contract, if and when the Contractor considers it necessary to carry out work at night or on public holidays so as to meet the Service Levels and the Time for Completion, and requests the Employer’s consent thereto (if such consent is needed), the Employer shall not unreasonably withhold such consent. | |
| 1. Test and Inspection | * 1. The Contractor shall at its own expense carry out on the Site all such tests and/or inspections as are specified in the Specifications, and in accordance with the procedures described in the Specifications.   2. The Employer and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection.   3. For tests to be carried out on the initiative of the Contractor, whenever the Contractor is ready to carry out any such test and/or inspection, he shall give a reasonable advance notice of such test and/or inspection in accordance with the Specifications and of the place and time thereof to the Project Manager. The Contractor shall provide the Project Manager with a signed report of the results of any such test and/or inspection.   4. If the Employer or Project Manager (or their designated representatives) fails to attend a scheduled test and/or inspection, or if it is agreed between the parties that such persons shall not attend, 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 signed report of the results thereof.   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 impedes the progress of the works 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.   6. If Rehabilitation Works, Improvement Works or Emergency Works fail to pass any test and/or inspection, the Contractor shall either rectify or replace such works and shall repeat the test and/or inspection upon giving a notice under GC Sub-Clause 20.3.   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 Works and Services, or part of them, that cannot be settled between the parties within a reasonable period of time, it may be referred to the DRB (or DRE) for determination in accordance with GC Sub-Clause 6.1.   8. The Contractor agrees that neither the execution of a test and/or inspection of the Works and Services or any part of them, nor the attendance by the Employer or the Project Manager, nor the issue of any test certificate pursuant to GC Sub-Clause 20.4, shall release the Contractor from any other responsibilities under the Contract.   9. No part 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 part 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.   10. The Contractor shall uncover any part of the Works 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 Works or foundations have been covered up at the Site after compliance with the requirement of GC Sub-Clause 20.9 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. | |
| 1. Rehabilitation Works | * 1. If so indicated in the PC, specific Rehabilitation Works shall be carried out explicitly in accordance with the Specifications and as specified in the bidding document and in the Contractor’s Bid. | |
| 1. Improvement Works | * 1. If so indicated in the PC, Improvement Works are required and will consist of a set of interventions that add new characteristics to the roads in response to new traffic and safety or other conditions. Improvement Works quantities were offered at unit prices included in the Bill of Quantities.   2. The execution of Improvement Works shall be requested by the Project Manager, who will issue a Work Order defining the requested works to be carried out by the Contractor, based on the activities priced in the Bill of Quantities. The Work order shall specify the activities to be carried out and the corresponding price. The Road Manager shall confirm his acceptance by signing the Work Order. | |
| 1. Maintenance Services | * 1. Maintenance Services are those activities necessary for keeping the Road in compliance with the Performance Standards pursuant to GC Clause 24. Maintenance Services shall include all activities required to achieve and keep the Road Performance Standards and Service Levels. These Services will be remunerated by Lump-Sum amount for the period of the contract paid in monthly payments during the entire Contract period. | |
| 1. Performance Standards | * 1. The Contractor shall carry out the Maintenance Services to achieve and keep the Road complying with the Service Levels and other performance standards defined in the Specifications. He will carry out all Works in accordance with the performance standards and other requirements indicated in the Specifications. | |
| 1. Contractor’s Self-Control of Quality and Safety | * 1. The Contractor shall, throughout the execution and completion of the Works and Services, maintain a System which shall ensure that the work methods and procedures are adequate and safe at all times and do not pose any avoidable risks and dangers to the health, safety and property of the workers and agents employed by him or any of his subcontractors, of road users, of persons living in the vicinity of the roads under contract, and any other person who happens to be on or along the roads under contract. The Contractor shall monitor road safety incidents and accidents to identify negative safety issues, and establish and implement necessary measures to resolve them.   2. The Contractor shall establish, within his own organizational structure, a specific unit staffed with qualified personnel, whose task is to verify continuously the degree of compliance by the Contractor with the required Service Levels. That unit will also be responsible for the generation and presentation of the information needed by the contractor for the documentation required as defined in the Specifications. The unit will be responsible for maintaining a detailed and complete knowledge of the condition of the Road and to provide to the Road Manager all the information needed in order to efficiently manage and maintain the Road. The unit shall also carry out, in close collaboration with the Project Manager, the verifications on the Service Levels.   3. The Contractor’s Self-Control Unit mentioned in GC Sub-Clause 25.2 shall report the level of compliance with the required Service Levels in the standard format presented in the Specifications. | |
| 1. Health, Safety Protection of the Environment, Archaeological and Geological Findings | * 1. The Contractor shall, throughout the design, execution and completion of the Works and Services, and the remedying of any defects therein be responsible for the safety of all activities on Site.   2. The Contractor shall:  1. comply with all applicable health and safety regulations and Laws; 2. comply with all applicable health and safety obligations specified in the Contract; 3. take care for the health and safety of all persons entitled to be on the Site and other places, if any, where the Works are being executed; 4. appoint a Safety Officer at the Site, with qualifications acceptable to the Project Manager, responsible for maintaining safety and protection against accidents; this person shall have the authority to issue instructions and take protective measures to prevent accidents; 5. provide and maintain at his own cost all guardrails, fencing, warning signs and watching, when and where necessary or required by GC Sub-Clause 18.3 of the Contract or by any duly constituted authority, for the protection of the Works and Services or for the safety and convenience of his workers and road users, the public or others; 6. provide health and safety training of Contractor’s Personnel as appropriate and maintain training records; 7. actively engage the Contractor’s Personnel in promoting understanding, and methods for, implementation of health and safety requirements, as well as in providing information to Contractor’s Personnel, training on occupational safety and health, and provision of personal protective equipment without expense to the Contractor’s Personnel; 8. put in place workplace processes for Contractor’s Personnel to report work situations that they believe are not safe or healthy, and to remove themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to their life or health. 9. Contractor’s Personnel who remove themselves from such work situations shall not be required to return to work until necessary remedial action to correct the situation has been taken. Contractor’s Personnel shall not be retaliated against or otherwise subject to reprisal or negative action for such reporting or removal; 10. where the Employer’s Personnel, any other contractors employed by the Employer, and/or personnel of any legally constituted public authorities and private utility companies are employed in carrying out, on or near the site, of any work not included in the Contract, collaborate in applying the health and safety requirements, without prejudice to the responsibility of the relevant entities for the health and safety of their own personnel; and 11. establish and implement a system for regular (not less than six-monthly) review of health and safety performance and the working environment.   Subject to GC Sub-Clause 10.2, the Contractor shall submit to the Project Manager for its approval a health and safety manual which has been specifically prepared for the Works, the Site and other places (if any) where the Contractor intends to execute the Works.  The health and safety manual shall be in addition to any other similar document required under applicable health and safety regulations and laws.  The health and safety manual shall set out all the health and safety requirements under the Contract,   1. which shall include at a minimum: 2. the procedures to establish and maintain a safe working environment without risk to health at all workplaces, machinery, equipment and processes under the control of the Contractor, including control measures for chemical, physical and biological substances and agents; 3. details of the training to be provided, records to be kept; 4. the procedures for prevention, preparedness and response activities to be implemented in the case of an emergency event (i.e. an unanticipated incident, arising from both natural and man-made hazards, typically in the form of fire, explosions, leaks or spills, which may occur for a variety of different reasons including failure to implement operating procedures that are designed to prevent their occurrence, extreme weather or lack of early warning); 5. remedies for adverse impacts such as occupational injuries, deaths, disability and disease; 6. the measures to be taken to avoid or minimize the potential for community exposure to water-borne, water-based, water-related, and vector-borne diseases, 7. the measures to be implemented to avoid or minimize the spread of communicable diseases (including transfer of Sexually Transmitted Diseases or Infections (STDs), such as HIV virus) and non-communicable diseases associated with the execution of the Works, taking into consideration differentiated exposure to and higher sensitivity of vulnerable groups. This includes taking measures to avoid or minimize the transmission of communicable diseases that may be associated with the influx of temporary or permanent Contract-related labor; 8. the policies and procedures on the management and quality of accommodation and welfare facilities if such accommodation and welfare facilities are provided by the Contractor in accordance with GC Sub-Clause 19.2.5; and 9. any other requirements stated in the Specification.    1. Protection of the environment   The Contractor shall take all necessary measures to:   * + 1. protect the environment (both on and off the Site); and     2. limit damage and nuisance to people and property resulting from pollution, noise and other results of the Contractor’s operations and/ or activities.   The Contractor shall ensure that emissions, surface discharges, effluent and any other pollutants from the Contractor’s activities shall exceed neither the values indicated in the Specifications, nor those prescribed by applicable laws.  In the event of damage to the environment, property and/or nuisance to people, on or off Site as a result of the Contractor’s operations, the Contractor shall agree with the Project Manager the appropriate actions and time scale to remedy, as practicable, the damaged environment to its former condition. The Contractor shall implement such remedies at its cost to the satisfaction of the Project Manager.   * 1. Archaeological and Geological Findings   All fossils, coins, articles of value or antiquity, structures, groups of structures, and other remains or items of geological, archaeological, paleontological, historical, architectural or religious interest found on the Site shall be placed under the care and custody of the Employer. The Contractor shall:   1. take all reasonable precautions, including fencing-off the area or site of the finding, to avoid further disturbance and prevent Contractor’s Personnel or other persons from removing or damaging any of these findings; 2. train relevant Contractor’s Personnel on appropriate actions to be taken in the event of such findings; and 3. implement any other action consistent with the requirements of the Specifications and relevant laws.   The Contractor shall, as soon as practicable after discovery of any such finding, notify the Project Manager of such discoveries and carry out the Project Manager’s instructions for dealing with them. | |
| 1. Work Orders for Improvement Works and Emergency Works | * 1. Improvement Works and Emergency Works shall be executed by the Contractor on the basis of Work Orders issued by the Project Manager.   2. Work Orders shall be issued in writing and shall include the date on which the Work Order was issued and the signature of the Project Manager. Two copies of the Work Order shall be transmitted by the Project Manager to the Contractor, who shall immediately countersign one copy, including the date of acceptance, and return it to the Project Manager.   3. If the Contractor has any objection to a Work Order, the Road Manager shall notify the Project Manager of his reasons for such objection within ten (10) days) of the date of issuing the Work Order. Within five (5) days of the Road Manager’s objection, the Project Manager shall cancel, modify or confirm the Work Order in writing. | |
| 1. Taking Over Procedures | * 1. When the whole of the Works and Services have been substantially completed and have satisfactorily passed any Tests on Completion prescribed by the Contract, the Contractor may give a notice to that effect to the Project Manager, accompanied by a written undertaking to finish with due expedition any outstanding work during the Defect Liability Period. Such notice and undertaking shall be deemed to be a request by the Contractor for the Project Manager to issue a Taking-Over Certificate in respect of the Works and Services. The Project Manager shall, within twenty-one (21) days of the date of delivery of such notice, either issue to the Contractor a Taking-Over Certificate, stating the date on which the Works and Services were substantially completed in accordance with the Contract, or give instructions in writing to the Contractor specifying all the conditions to be complied with and all the work which is required to be done by the Contractor before the issue of such Certificate. The Project Manager shall also notify the Contractor of any defects in the Works and Services affecting substantial completion that may appear after such instructions and before completion of Taking-Over Certificate within twenty-one (21) days of completion, to the satisfaction of the Project Manager, of the Works and Services so specified and remedying any defects so notified.   2. Similarly, in accordance with the procedure set out in GC Sub-Clause 28.1, the Contractor may request and the Project Manager shall issue a Taking-Over Certificate in respect of:   (a) any Section in respect of which a separate Time for Completion is provided in the contract, or in a Change Order or a Work Order,  (b) any substantial part of the Works and Services which has been both completed to the satisfaction of the Project Manager and, otherwise than as provided for in the Contract, occupied or used by the Employer, or  (c) any part of the Works and Services which the Employer has elected to occupy or use prior to completion (where such prior occupation or use is not provided for in the Contract or has not been agreed by the Contractor as a temporary measure). | |
| 1. Emergency Works | * 1. The need for execution of Emergency Works is jointly identified by the Employer and the Contractor and the starting of the execution of Emergency Works shall always require a Work Order issued by the Project Manager.   2. The execution of Emergency Works shall be requested by the Contractor based on losses or damages occurred as a result of natural phenomena (such as strong storms, flooding or earthquakes) with imponderable consequences, or on the possibility of damages or losses occurring, or the safety of individuals, works, services or equipment being at risk as result of the natural phenomena. In order to characterize the Emergency Works, the Contractor shall forward a Technical Report to the Project Manager requesting the execution of Emergency Works and characterizing the situation. On the basis of the said report, and of his own judgment of the situation, the Project Manager may issue a Work Order to the Contractor.   3. The Employer or even Government authorities may declare an Emergency Situation on the basis of local legislation. In those cases, the Project Manager may issue a Work Order for Emergency Works to the Contractor even without a request by the Contractor.   4. 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 necessary in order to prevent damage to the Road. 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 therefore. 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. | |
| 1. Quality of materials used by Contractor | * 1. The quality of materials used by the Contractor for the execution of the Contract shall be in compliance with the requirements of the Specifications. If the Contractor is of the opinion that materials of higher quality than those stated in the Specifications need to be used in order to ensure compliance with the Contract, he shall use such better materials, without being entitled to higher prices or remunerations.   2. Under no circumstances may the Contractor make any claim based on the insufficient quality of materials used by him, even if the material used was authorized by the Project Manager.   3. The Contractor shall carry out at his own cost the laboratory and other tests that he needs to verify if materials to be used comply with the Specifications, and shall keep records of such tests. If requested by the Project Manager, the Contractor shall hand over the results of the tests. | |
| 1. Signaling and demarcation of work zones and bypasses | * 1. To ensure the safety of road users, including non-motorized road users and pedestrians, the Contractor is responsible to install and maintain at his cost the adequate signaling and demarcation of work sites, which in addition must comply with the applicable legislation.   2. If the execution of services and works under the contract is likely to interfere with traffic, the Contractor shall take at his cost the measures necessary to limit such interference to the strict minimum, or any danger to the workers or others. For that purpose, he is entitled to install, within the right-of-way of the road, temporary bypasses, structures or other modifications to be used by traffic during the execution of works and services. The Contractor shall notify the Project Manager of any such temporary installations.   3. If the execution of Works and Services by the Contractor makes it necessary to temporarily close a road section, and a traffic detour has to be implemented over other public roads or streets, the Contractor shall be responsible for the adequate signaling of the detour, under the same conditions as stated in GC Sub-Clause 31.1.   4. The Contractor shall inform the local authorities and the local police about such activities to be carried out by him which may cause any significant interruptions or changes to the normal traffic patterns. He shall also request any authorizations that may be required by law. Such requests and information shall be made in writing and at least seven (7) days before the beginning of such activities. Upon request from the Contractor, the Employer shall assist the Contractor in obtaining any necessary authorizations from the local authorities and/or the local police. | |
| D. Allocation of Risks | | |
| 1. Employer’s Risks | * 1. From the Start Date until the Completion Date, the following are Employer’s risks insofar as they directly affect the execution of the Works and Services included in this Contract:   (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;  (b) rebellion, revolution, insurrection, military or usurped power, or civil war;  (c) ionizing radiations, contamination by radioactivity from any nuclear fuel, or any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;  (d) riot, commotion or disorder, unless solely restricted to employees of the Contractor or of his Subcontractors and arising from the conduct of the Works and Services;  (e) loss or damage due to the use or occupation by the Employer of any unfinished Section or part of the Works, except as may be provided for in the Contract;  (f) any operation of the forces of nature against which an experienced contractor could not reasonably have been expected to take precautions.   * 1. The Employer carries the risk of damages to the road assets that are caused by vehicle accidents, theft, act of vandalism, third-party interventions, or any other event outside the control and responsibility of the Contractor, requiring large-scale restoration and repairs, provided that the Contractor has performed its obligations for such events as stated in the Specifications. Small-scale restorations or repairs of such damage are however to be carried out and paid for by the Contractor as part of his Maintenance Services, up to the maximum cost per event and a maximum total amount per year as stated in the PC. | |
| 1. Contractor’s Risks | * 1. The Employer carries the risks which this Contract states are Employer’s risks, and the remaining risks are the Contractor’s risks. | |
| 1. Loss of or Damage to Property; Accident or Injury to Workers; Indemnifica­tion | * 1. Subject to GC Sub-Clause 34.3, 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 arising in connection with the execution 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.   2. If any proceedings are brought or any claim is made against the Employer that might subject the Contractor to liability under GC Sub-Clause 34.1, 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.   * 1. 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 Works not yet taken over, that is caused by fire, explosion or any other perils, in excess of the amount recoverable from insurances procured under GC Clause 35, provided that such fire, explosion or other perils were not caused by any act or failure of the Contractor.   2. The party entitled to the benefit of an indemnity under this GC Clause 34 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. | |
| 1. Insurance | * 1. To the extent specified in the PC, 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 PC. 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) *Loss of or damage to the Plant and Materials*  Covering loss or damage occurring prior to Completion.  (b) *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 Works and Services.  (c) *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.  (d) *Workers’ Compensation*  In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.  (e) *Employer’s Liability*  In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.  (f) *Other Insurances*  Such other insurances as may be specifically agreed upon by the parties.   * 1. The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GC Sub-Clause 35.1, except for the Third Party Liability, Workers’ Compensation and Employer’s Liability Insurances, and the Contractor’s Subcontractors shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GC Sub-Clause 35.1 except for the Cargo Insurance During Transport, Workers’ Compensation and Employer’s Liability Insurances. All insurer’s rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.   2. The Contractor shall 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.   3. 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.   4. If the Contractor fails to take out and/or maintain in effect the insurances referred to in GC Sub-Clause 35.1, 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.   5. Unless otherwise provided in the Contract, the Contractor shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GC Clause 35, 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. | |
| 1. Unforeseen Conditions | * 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 Road (including any data and tests provided by the Employer), and on the basis of information that it could have obtained from a visual inspection of the Site or other data readily available to it relating to the Road, 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 and Equipment 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 Equipment 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;  (d) the additional cost and expense that the Contractor is likely to incur.  On receiving any notice from the Contractor under this GC Sub-Clause 36.1, the Project Manager 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.   * 1. Any reasonable additional cost and expense incurred by the Contractor in following the instructions from the Project Manager to overcome such physical conditions or artificial obstructions referred to in GC Sub-Clause 36.1 shall be paid by the Employer to the Contractor as an addition to the Contract Price.   2. If the Contractor is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in GC Sub-Clause 36.1, the Time for Completion shall be extended in accordance with GC Clause 64. | |
| 1. Change in Laws and Regulations | * 1. If, after the date twenty-eight (28) days prior to the date of Bid submission, in the country where the Site is located, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the PC. | |
| 1. Force Majeure | * 1. “Force Majeure” shall mean any event beyond the reasonable control of the Employer or of the Contractor, as the case may be, insofar as they directly affect the execution of the Services and Works included in this Contract 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, 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.   * 1. 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.   2. The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party’s performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with GC Clause 64.   3. The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either party’s right to terminate the Contract under GC Sub-Clause 38.6.   4. 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;  (b) give rise to any claim for damages or additional cost or expense occasioned thereby;  if and to the extent that such delay or nonperformance is caused by the occurrence of an event of Force Majeure.   * 1. If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other, but without prejudice to either party’s right to terminate the Contract under GC Clause 59.   2. In the event of termination pursuant to GC Sub-Clause 38.6, the rights and obligations of the Employer and the Contractor shall be as specified in GC Sub-Clauses 59.1.2 and 59.1.3.   3. Notwithstanding GC Sub-Clause 38.5, Force Majeure shall not apply to any obligation of the Employer to make payments to the Contractor herein. | |
| E. Guarantees and Liabilities | | |
| 1. Completion Time Guarantee and Liability | * 1. The Contractor guarantees that it shall attain specified Service Levels and the Completion of Rehabilitation, Improvement and Emergency Works (or a part of such works for which a separate time for completion is specified) within the time schedules specified in the PC, the Specifications or in Work Orders or Change Orders, pursuant to GC Sub-Clause 10.2, or within such extended time to which the Contractor shall be entitled under GC Clause 64 hereof.   2. If the Contractor fails to attain specified Service Levels within the contractually agreed time schedules as given in the Specifications, the contractor shall receive reduced payments for Maintenance Services, for such default and not as a penalty, in accordance with the Specifications.   3. If the Contractor fails to attain the Completion of Rehabilitation and Improvement Works (or a part for which a separate time for completion is specified in the PC Clause 39.1) within the contractually required time schedules, the contractor shall pay to the Employer liquidated damages for such default and not as a penalty, in accordance with the PC and the Specifications.   4. The payment reductions and liquidated damages indicated in GC 39.2 and 39.3 shall be the only monies due from the Contractor for such defaults, and they will be applied for every day of delay, in accordance with the PC and the Specifications. The aggregate amount of such liquidated damages and payment reductions shall in no event exceed the “aggregate liability” in accordance with GC Clause 42. The payment or deduction of such sums shall not relieve the Contractor from his obligation to complete the Works and Services, or from any other of his obligations and liabilities under the Contract. | |
| 1. Performance Guarantee and Liability | * 1. The Contractor guarantees that during the Tests or Inspections for Rehabilitation and Improvement Works, and for Emergency Works, the Road and all parts thereof shall be in compliance with the applicable requirements stated in the corresponding Specifications.   2. If, for reasons attributable to the Contractor, the requirements stated in the Specifications 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 Road or any part thereof as may be necessary to meet the requirements. The Contractor shall notify the Employer upon completion of the necessary changes, modifications and/or additions, and shall request the Employer to repeat the Test or Inspection until the requirements have been met. If the Contractor eventually fails to meet the applicable requirements, the Employer may consider termination of the Contract, pursuant to GC Sub-Clause 59.2.2. | |
| 1. Defect Liability | * 1. The Contractor warrants that the Works and Services or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Works and Services executed.   2. The Defect Liability Period shall be as stated in the PC.   If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Works and Services 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, at its discretion, determine) such defect as well as any damage to the Road 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 Road arising out of or resulting from improper operation or maintenance of the Road by the Employer after taking over.   * 1. The Contractor’s obligations under this GC Clause 41 shall not apply to   (a) any works or materials that 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;  (c) any other materials supplied or any other work executed by or on behalf of the Employer, except for the work executed by the Employer under GC Sub-Clause 41.6;  (d) any provisional or temporary Emergency Works designated as such in the corresponding Work Order and which are meant to be replaced later by permanent works.   * 1. 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.   2. The Employer shall afford the Contractor all necessary access to the Site to enable the Contractor to perform its obligations under this GC Clause 41. The Contractor may remove from the Site any Plant and Equipment that are defective if the nature of the defect is such that repairs cannot be expeditiously carried out at the Site.   3. If the Contractor fails to commence the work necessary to remedy such defect or any damage to the Road 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.   4. If the Road 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 Road or such part, as the case may be, shall be extended by a period equal to the period during which the Road or such part cannot be used because of any of the aforesaid reasons.   5. Except as provided in GC Clauses 40 and 41, 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 Road or any part thereof, the Plant and Equipment, design or engineering or work executed that appear after completion of the Works and Services, except where such defects are the result of the gross negligence, fraud, criminal or willful action of the Contractor. | |
| 1. Limitation of Liability | * 1. Except in cases of criminal negligence or willful misconduct,   (a) the Contractor shall not be liable to the Employer, 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, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer and  (b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed the limit specified in the PC. | |
| 1. Liability for Damages through Traffic Accidents and Traffic Interruptions | * 1. The Contractor cannot be held liable for losses or damages of any kind arising out of traffic accidents on the roads included in the Contract, unless those traffic accidents have been caused directly by potholes or other major defects of the Road covered by the Contract he failed to repair in a timely manner, criminal acts, willful misconduct or gross negligence of the Contractor.   2. Under no circumstances can the Contractor be held liable for losses or damages of any kind and to anyone arising out of interruptions of traffic or traffic delays on the road included in the Contract, including any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs. | |
| F. Payment | | |
| 1. Contract Price | * 1. The Contract Price shall be as specified in the Form of Contract Agreement to be paid in the currencies indicated in the PC.   2. Unless indicated otherwise in the PC, and except in the event of a Change as provided for in the Contract, the Contract Price shall be:  1. For Rehabilitation Works, a firm lump sum not subject to any alteration, to be paid according to work progress; 2. For Maintenance Services, a firm lump sum to be paid in monthly installments; 3. For Improvement Works, the total price stated in the Bill of Quantities for this item; 4. For Emergency Works, the Provisional Sum reserved for this purpose.    1. 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. | |
| 1. Advance Payment | * 1. The Employer shall make advance payment to the Contractor of the amounts and by the date stated in the PC, against provision by the Contractor of Advance Payment Security as per GC Sub-Clause 53.2. Interest will not be charged on the advance payment.   2. The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for the execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.   3. The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works and Services on a payment basis as indicated in the PC. | |
| 1. Bill of Quantities | * 1. The Bill of Quantities shall contain items for Groups of Activities which include the provision of Maintenance Services and Works. The Bill of Quantities for Works shall include, where applicable, the lump-sum and unit prices for Rehabilitation Works and Improvement Works, and unit rates for Emergency Works.   2. Maintenance Services shall be measured and billed separately and will be remunerated by lump-sum amount for the period of the contract, and paid in monthly payments during the entire Contract period. The values for remuneration of the Maintenance Services are those stated in the Bill of Quantities.   3. Rehabilitation Works will be remunerated by Lump-Sum amount, however, indicating the quantities of measurable required outputs to be executed. Payments will be made in accordance with the progress in the execution of those measured outputs paid for completed works outputs. The prices shall be those stated in the Bill of Quantities.   4. Improvement Works will be paid by the Employer after completion in compliance with the requirements. Payments will be made according to the product unit price using the prices included in the Bill of Quantities.   5. Each Emergency Work Order issued by the Project Manager shall include the expected work types and quantities, the applicable unit rates as per the Contractor’s bid and the resulting total price for the works to be performed. The proposals for Emergency Works will be submitted by the Contractor to the Project Manager in each emergency pursuant to GC Clauses 29 and 61 and will be prepared based on the Specifications and on the unit prices included in the Bill of Quantities for Emergency Works, and will remunerate all Emergency Activities. Once completed, Emergency Works will be paid on the basis of the actual volume of work inputs as verified by the Project Manager.   6. The Bill of Quantities is used to calculate the Contract Price. The amounts for Maintenance Services and Rehabilitation Works are the Lump-Sum prices offered in the Contractor’s Bid. The Improvement Works amount included in the Contract is an estimate on the basis of the unit prices included in the Contractor’s Bid. The Provisional Sum included in the Contract Price is for use if and when authorized by the Employer for Emergency Works and contingencies. | |
| 1. Measurement | * 1. Maintenance Services will not be measured in volume; however, its payment will be affected by compliance with the Performance Standards pursuant to GC Clause 24. Maintenance Services shall be billed in monthly amounts as per the monthly lump-sum rates stated in the Bill of Quantities . Payments will be made with Reductions if the Performance Standards are not achieved, as defined in the Specifications. The Reductions for non-compliance with the Performance Standards will be applied on a daily basis for the period during which the Road does not achieve the Performance Standards, in accordance with the methodology stated in the Specifications.   2. Rehabilitation Works will be measured on the basis indicated in the PC, based on the quantity of actual work outputs as defined in the Specifications and completed by the Contractor in compliance with the Specifications. The prices shall be those stated in the Bill of Quantities.   3. Improvement Works will be measured on the basis indicated in the PC and in accordance with the unit of measurement used for product unit price included in the Bill of Quantities. The prices shall be those stated in the Bill of Quantities.   4. Emergency Works shall be measured and shall be billed in accordance with the provisions of the Work Order for each specific Emergency Work as approved by the Employer. | |
| 1. Price Adjustments | * 1. Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the PC. If so provided, the amounts certified in each payment certificate, after deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:   Pc = Ac + Bc Imc/Ioc  where:  Pc is the adjustment factor for the portion of the Contract Price payable in a specific currency “c”  Ac and Bc are coefficients[[38]](#footnote-39) specified in the PC, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency “c”, and  Imc is the index prevailing at the end of the month being invoiced and Ioc is the index prevailing twenty-eight (28) days before Bid opening for inputs payable; both in the specific currency “c”.   * 1. If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs. | |
| 1. Monthly Statement and Payments | * 1. The Contractor shall submit to the Project Manager a Monthly Statement of the estimated value for the corresponding month of all Maintenance Services and all Rehabilitation, Improvement and Emergency Works, in the format indicated in the Specifications.   2. The Project Manager shall check the Contractor’s Monthly Statement and certify within fourteen (14) days the amount to be paid to the Contractor.   3. The value of Maintenance Services executed shall be certified by the Project Manager taking into account the monthly rates included in the Bill of Quantities for Maintenance Services and the achievement of the Performance Standards for the Maintenance Services adjusted for any payment reductions in accordance with GC Sub-Clause 47.1.   4. The value of Works executed shall be certified by the Project Manager taking into account the quantities of products executed and the prices in the Bill of Quantities.   5. The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.   6. If the Contractor was, or is, failing to perform any ES obligations or work under the Contract, the value of this work or obligation, as determined by the Project Manager, may be withheld until the work or obligation has been performed, and/or the cost of rectification or replacement, as determined by the Project Manager, may be withheld until rectification or replacement has been completed. Failure to perform includes, but is not limited to the following:  1. failure to comply with any ES obligations or work described in the Works’ Requirements which may include: working outside site boundaries, excessive dust, failure to keep public roads in a safe usable condition, damage to offsite vegetation, pollution of water courses from oils or sedimentation, contamination of land e.g. from oils, human waste, damage to archeology or cultural heritage features, air pollution as a result of unauthorized and/or inefficient combustion; 2. failure to regularly review C-ESMP and/or update it in a timely manner to address emerging ES issues, or anticipated risks or impacts; 3. failure to implement the C-ESMP e.g. failure to provide required training or sensitization; 4. failing to have appropriate consents/permits prior to undertaking Works or related activities; 5. failure to submit ES report/s (as described in Appendix B), or failure to submit such reports in a timely manner; 6. failure to implement remediation as instructed by the Project Manager within the specified timeframe (e.g. remediation addressing non-compliance/s). | |
| 1. Payments | * 1. Payments shall be adjusted for deductions for advance payments, retention, liquidated damages and reductions for not achieving Performance Standards for Maintenance Services. The Employer shall pay the Contractor the amounts certified by the Project Manager in accordance with GC Clause 49, within twenty-eight (28) days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial overdraft borrowing for each of the currencies in which payments are made. The source of the interest rate is stated in the PC.   2. If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute. The interest rate shall be determined as per GC Sub-Clause 50.1.   3. Unless otherwise stated, all payments and deductions will be paid or charged in the proportions of currencies comprising the Contract Price.   4. Items of the Works for which no rate or price has been entered in the Bill of Quantities will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract. | |
| 1. Retention and Reductions | * 1. The Employer shall retain the percentage indicated in the PC from each payment due to the Contractor for Rehabilitation Works and Improvement Works, except for the types of works specified in the PC. The payments for Maintenance Services will not be subject to retentions, unless indicated in the PC.   2. When the substantial completion of Rehabilitation and Improvement Works(or of separate parts of such works) is achieved, half the total amount retained for those works shall be repaid to the Contractor and the other half when the Certificate of Completion for those works has been issued by the Project Manager..   3. Reduction of monthly payments for Maintenance Services due to non-compliance with the Service Levels will be made as indicated in GC Sub-Clause 47.1. The amount of Reduction for the days in which the Road was not complying with the Performance Standards will not be paid or repaid, even after the Contractor re-establishes compliance with the required Service Levels. | |
| 1. Taxes and Duties | * 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 Works and Services in and outside of the country where the Site is located.   2. 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.   3. For the purpose of the Contract, it is agreed that the Contract Price specified in the Form of Contract Agreement is based on the taxes, duties, levies and charges prevailing at the date twenty-eight (28) days prior to the date of Bid submission in the country where the Site is located (hereinafter called “Tax”). 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 the Contract, which was or will be assessed on the Contractor, Subcontractors or their employees in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction therefrom, as the case may be, in accordance with GC Clause 37 hereof. | |
| 1. Securities | * 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.   * 1. Advance Payment Security   53.2.1 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 corresponding PC to the Contract Agreement, and in the same currency or currencies.  53.2.2 The security shall be in the form provided in the bidding document or in another form acceptable to the Employer. The amount of the security shall be reduced in proportion to the value of the Works and Services 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.   * 1. Performance Security   53.3.1 The Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a security for the due performance of the Contract, and if so specified in the PC an environmental and social (ES) performance security, in the amounts specified in the PC.  53.3.2 The 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 one of the forms of guarantees provided in the bidding document, as stipulated by the Employer in the PC, or in another form acceptable to the Employer.  53.3.3 The security shall automatically become null and void, twelve (12) months after Completion of all Works and Services under the Contract, provided however, that if the Defect Liability Period has been extended on any part of the Works pursuant to GC Sub-Clause 41.8 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. | |
| 1. Certificate of Completion | * 1. When the Rehabilitation Works, Improvement Works or Emergency Works (or specific parts thereof) have been completed, in accordance with the Contract, the Contractor shall request the Project Manager to issue a Certificate of Completion for those works. The Project Manager will issue the Certificate of Completion if and when the corresponding criteria established in the Specifications have been fulfilled. | |
| 1. Final Completion Report | * 1. On completion of the entire contract and after the end of any remaining Defect Liability Period for works or parts thereof, the Contractor shall prepare the Final Completion Report as per the requirements stated in the Specifications.   2. If the Final Completion Report is not submitted by the Contractor, the amount to be deducted in the Final Payment Certificate is stated in the PC. | |
| 1. Final Statement | * 1. The Contractor shall provide to the Project Manager a detailed Final Statement of the total amount that the Contractor considers payable under the Contract, at the completion of all works and services under the contract, or at the end of any remaining Defect Liability Period under the contract, whichever occurs later. The Project Manager shall certify any final payment that is due to the Contractor within fifty-six (56) days of receiving the Contractor’s account if it is correct and complete. If it is not, the Project Manager shall issue within fifty-six (56) days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue the Final Payment Certificate. | |
| 1. Discharge | * 1. Upon submission of the Final Statement, the Contractor shall give to the Project Manager, a written discharge confirming that the total of the Final Statement represents full and final settlement of all monies due to the Contractor arising out of or in respect of the Contract. Provided that such discharge shall become effective only after payment due under the Final Payment Certificate issued pursuant to Sub-Clause 55 has been made and the performance security referred to in Sub-Clause 53.3, if any, has been returned to the Contractor. | |
| G. Remedies | | |
| 1. Suspension | * 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 therefore. The Contractor shall thereupon suspend performance of such obligation (except those obligations necessary for the care or preservation of the Site and Works) until ordered in writing to resume such performance by the Project Manager.   If, by virtue of a suspension order given by the Project Manager, other than by reason of the Contractor’s default or breach of the Contract, the Contractor’s performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Project Manager requiring that the Employer shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GC Sub-Clause 63.1, 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 as termination of the Contract under GC Sub-Clause 59.1, provided that the value of the works or services affected by the suspension is higher than 15 percent of the total contract price.   * 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 Contract, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GC Sub-Clause 50.1, 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 failure to obtain any governmental permit under the Employer’s responsibility and necessary for the execution and/or completion of the Works and Services,  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 for Rehabilitation Works, Improvement Works and Emergency Works, indicating which specific works are to be affected by such reduction.   * 1. If the Contractor’s performance of its obligations is suspended or the rate of progress for specific works is reduced pursuant to this GC Clause 58, then the Time for Completion for those works shall be extended in accordance with GC Sub-Clause 64, 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.   2. During the period of suspension, the Contractor shall not remove from the Site any Plant and Equipment or any Contractor’s Equipment, without the prior written consent of the Employer. | |
| 1. Termination | * 1. Termination for Employer’s Convenience   59.1.1 The Employer may at any time terminate the Contract for any reason by giving the Contractor a notice of termination that refers to this GC Sub-Clause 59.1.  59.1.2 Upon receipt of the notice of termination under GC Sub-Clause 59.1.1, 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 Works and Services 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 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.  (d) In addition, the Contractor, subject to the payment specified in GC Sub-Clause 59.1.3, shall  (i) deliver to the Employer the parts of the Works 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 Works and Services and to the Plant and Equipment as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors  (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 Works.  59.1.3 In the event of termination of the Contract under GC Sub-Clause 59.1.1, the Employer shall pay to the Contractor the following amounts:  (a) the Contract Price, properly attributable to the parts of the works and services 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 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) the costs incurred by the Contractor in protecting and leaving the Site in a clean and safe condition pursuant to paragraph (a) of GC Sub-Clause 59.1.2,  (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.   * 1. Termination for Contractor’s Default   59.2.1 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 therefore to the Contractor, referring to this GC Sub-Clause 59.2:  (a) if the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt;  (b) if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of GC Clause 13;  (c) if the Contractor, in the judgment of the Employer has engaged in Fraud and Corruption, as defined in paragraph 1.16 of Appendix A to the GC, in competing for or in executing the Contract.  59.2.2 If the Contractor  (a) has abandoned or repudiated the Contract  (b) has without valid reason failed to commence work on the Road promptly or has suspended (other than pursuant to GC Sub-Clause 58.2) 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, such failure being defined in the PC, or persistently neglects otherwise 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 Works and Services in the manner specified in the program furnished under GC Clause 17 at rates of progress that give reasonable assurance to the Employer that the Contractor can attain completion of the works and services by the Time for Completion as extended,  then the Employer may, without prejudice to any other rights it may possess under the Contract, give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Employer may terminate the Contract forthwith by giving a notice of termination to the Contractor that refers to this GC Sub-Clause 59.2.  59.2.3 Upon receipt of the notice of termination under GC Sub-Clauses 59.2.1 or 59.2.2, the Contractor shall, either immediately or upon such date as is specified in the notice of termination,   1. 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 Works and Services 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 based on the Employer’s written request,  (c) 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 Works and Services.  59.2.4 The Contractor shall be entitled to be paid the Contract Price attributable to the Works and Services executed as of the date of termination, and the costs, if any, incurred in protecting and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of GC Sub-Clause 59.2.3. 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.   * 1. Termination by Contractor   59.3.1 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 GC Clause 50, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GC Sub-Clause 50.2, 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 under the Employer’s responsibility and necessary for the execution and/or completion of the Works and Services,  then the Contractor may give a notice to the Employer thereof, and if the Employer has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Contractor is still unable to carry out any of its obligations under the Contract for any reason attributable to the Employer within twenty-eight (28) days of the said notice, the Contractor may by a further notice to the Employer referring to this GC Sub-Clause 59.3.1, forthwith terminate the Contract.  59.3.2 The Contractor may terminate the Contract forthwith by giving a notice to the Employer to that effect, referring to this GC Sub-Clause 59.3.2, 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.  59.3.3 If the Contract is terminated under GC Sub-Clauses 59.3.1 or 59.3.2, 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 Road 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 Personnel from the Site.  (d) In addition, the Contractor, subject to the payment specified in GC Sub-Clause 59.3.4, shall  (i) deliver to the Employer the parts of the Road 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 Road and to the Plant and Equipment as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors,  (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 Works and Services.  59.3.4 If the Contract is terminated under GC Sub-Clauses 59.3.1 or 59.3.2, the Employer shall pay to the Contractor all payments specified in GC Sub-Clause 59.1.3, 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.  59.3.5 Termination by the Contractor pursuant to this GC Sub-Clause 59.3 is without prejudice to any other rights or remedies of the Contractor that may be exercised in lieu of or in addition to rights conferred by GC Sub-Clause 59.3.   * 1. In this GC Clause 59, 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 Contract. | |
| H. Provisional Sum | | | |
| 1. Provisional Sum | | * 1. “Provisional Sum” means a sum included in the Contract for use when authorized by the Employer for Emergency Works and for contingencies, which sum may be used, in whole or in part, or not at all, on the instructions of the Employer. The Contractor shall be entitled to only such amounts in respect of the work, supply or contingencies to which such Provisional Sums relate as the Project Manager shall determine in accordance with this Clause. | |
| 1. Use of Provisional Sum for Emergency Works | | * 1. After detecting a situation which in the opinion of the Contractor justifies the execution of Emergency Works or otherwise as defined in GC Clause 29, the Contractor shall submit a Technical Report to the Project Manager characterizing the situation, and state estimated works quantities to correct the emergency situation, and a price quotation for the Emergency Works to be carried out. The price quotation shall be based on the Specifications stated in Section VII using the unit prices included in the Bill of Quantities for Emergency Works.   2. If the execution of the Emergency Works require any activity not priced in the Bill of Quantities, the Contractor will use the price breakdowns included in the Contractor’s Bid in order to form the unit prices of the unpriced items to be included in the Price Quotation of the Emergency Works, all in accordance with methodology stated in the Specifications.   3. Upon receiving the request for Emergency Works including a Price Quotation, the Project Manager may issue a Work Order in accordance with GC Sub-Clause 29.2 for execution of the Emergency Works with a payment Schedule agreed with the Contractor. The cost of these Works will be covered from the amounts included in the Provisional Sum. | |
| 1. Use of Provisional Sum for Contingen­cies | | * 1. The use of the Provisional Sum to cover for Contingencies will be done under the control and initiative of the Project Manager in accordance with the conditions of the Contract. | |
| I. Change in Contract Elements | | | |
| 1. Change in Assignments to Contractor | | * 1. Introducing a Change   63.1.1 If so indicated in the PC, 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 Assignments to the Contractor (hereinafter called “Change”), provided that such Change falls within the general scope of the Assignment and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Works and Services and the technical compatibility of the Change envisaged with the nature of the Works and Services as specified in the Contract.  63.1.2 If so indicated in the PC, the Contractor may from time to time during its performance of the Contract propose to the Employer (with a copy to the Project Manager) any Change that the Contractor considers necessary or desirable to improve the quality, efficiency or safety of the Works and Services. The Employer may at its discretion approve or reject any Change proposed by the Contractor.  63.1.3 Notwithstanding GC Sub-Clauses 63.1.1 and 63.1.2, 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.  63.1.4 The procedure on how to proceed with and execute Changes is specified in GC Sub-Clauses 63.2 and 63.3.   * 1. Changes Originating from Employer   63.2.1 If the Employer proposes a Change pursuant to GC Sub-Clause 63.1.1, 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) sufficient ES information to enable an evaluation of ES risks and impacts of the Change.  (f) effect on any other provisions of the Contract  63.2.2 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.  63.2.3 Upon receipt of the Employer’s instruction to proceed under GC Sub-Clause 63.2.2 (a), the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GC Sub-Clause 63.2.1.  63.2.4 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.  63.2.5 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith, and with all other Change Orders that have already become binding upon the Contractor under this GC Clause 63, would be to increase or decrease the Contract Price as originally set forth in 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.  63.2.6 Upon receipt of the Change Proposal, the Employer and the Contractor shall mutually agree upon all matters therein contained. Within fourteen (14) days after such agreement, the Employer shall, if it intends to proceed with the Change, issue the Contractor with a Change Order.  If the Employer is unable to reach a decision within fourteen (14) days, it shall notify the Contractor with details of when the Contractor can expect a decision.  If the Employer decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Contractor accordingly. Under such circumstances, the Contractor shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Contractor in its Estimate for Change Proposal submitted in accordance with GC Sub-Clause 63.2.2.  63.2.7 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 Adjudicator in accordance with the provisions of GC Sub-Clause 6.1.   * 1. Changes Originating from Contractor   63.3.1 If the Contractor proposes a Change pursuant to GC Sub-Clause 63.1.2, the Contractor shall submit to the Project Manager a written “Application for Change Proposal,” giving reasons for the proposed Change and including the information specified in GC Sub-Clause 63.2.1.  Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in GC Sub-Clauses 63.2.6 and 63.2.7. However, should the Employer choose not to proceed, the Contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal. | |
| 1. Extension of Time for Completion and Additional Payments | | * 1. The Time(s) for Completion specified in the PC 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 Works and Services as provided in GC Clause 63,  (b) any occurrence of Force Majeure as provided in GC Clause 38 and unforeseen conditions as provided in GC Clause 36,  (c) any suspension order given by the Employer under GC Clause 58,  (d) any changes in laws and regulations as provided in GC Clause 37, or  (e) any default or breach of the Contract by the Employer, or any activity, act or omission of any other contractors employed by the Employer, or  (f) 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.   * 1. If the Contractor considers itself to be entitled to any extension of the Time for Completion and/or any additional payment, for the reasons described in GC Sub-Clause 64.1 or under any other clause of these Conditions, or otherwise in connection with the Contract, the Contractor shall give 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 any liability in connection with the claim. Otherwise, within 42 days after the Contractor has become 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 submit to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and the extension of time and/or amount of additional payment claimed. The Project Manager shall respond to the fully detailed claim within 42 days of receipt, with approval, or with disapproval and detailed explanation.   2. In the event that the Contractor does not accept the Employer’s estimate of a fair and reasonable time extension or additional payment, the Contractor shall be entitled to refer the matter to an Adjudicator, pursuant to GC Sub-Clause 6.1.   3. The Contractor shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract. | |
| 1. Release from Performance | | * 1. If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made. | |
| J. FRAUD AND CORRUPTION | | | |
| 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 Appendix A to the GC.   2. The Employer requires the Contractor to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the Bidding process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee. | |

**APPENDIX A TO GENERAL CONDITIONS**

**Bank’s Policy- Corrupt and Fraudulent Practices**

***(Text in this Particular Conditions - Part C*** ***shall not be modified)***

**Guidelines for Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers, dated January 2011:**

“**Fraud and Corruption:**

1.16 It is the Bank’s policy to require that Borrowers (including beneficiaries of Bank loans), bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standard of ethics during the procurement and execution of Bank-financed contracts.[[39]](#footnote-40) In pursuance of this policy, the Bank:

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

(i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;[[40]](#footnote-41);

(ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;[[41]](#footnote-42)

(iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;[[42]](#footnote-43)

(iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;[[43]](#footnote-44)

(v) "obstructive practice" is:

(aa) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or

(bb) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under paragraph 1.16(e) below.

(b) will reject a proposal for award if it determines that the bidder recommended for award, or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;

(c) will declare misprocurement and cancel the portion of the loan allocated to a contract if it 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 or the implementation of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;

(d) will sanction a firm or individual, at any time, in accordance with the prevailing Bank’s sanctions procedures,[[44]](#footnote-45) including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Bank-financed contract; and (ii) to be a nominated[[45]](#footnote-46) sub-contractor, consultant, supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract;

(e) will require that a clause be included in bidding documents and in contracts financed by a Bank loan, requiring bidders, suppliers and contractors, and their sub-contractors, agents, personnel, consultants, service providers, or suppliers, to permit the Bank to inspect all accounts, records, and other documents relating to the submission of bids and contract performance, and to have them audited by auditors appointed by the Bank.”

**APPENDIX B**

**Environmental and Social (ES)**

**Metrics for Progress Reports**

***[Note to Employer: the following metrics may be amended to reflect the specifics of the Contract. The Employer shall ensure that the metrics provided are appropriate for the Works and impacts/key issues identified in the environmental and social assessment]***

*Metrics for regular reporting:*

1. *environmental incidents or non-compliances with contract requirements, including contamination, pollution or damage to ground or water supplies;*
2. *health and safety incidents, accidents and injuries that require treatment;*
3. *interactions with regulators: identify agency, dates, subjects, outcomes (report the negative if none);*
4. *status of all permits and agreements:*
5. work permits: number required, number received, actions taken for those not received;
6. status of permits and consents:

* *list areas/facilities with permits required (quarries, asphalt & batch plants), dates of application, dates issued (actions to follow up if not issued), dates submitted to resident engineer (or equivalent), status of area (waiting for permits, working, abandoned without reclamation, decommissioning plan being implemented, etc.);*
* *list areas with landowner agreements required (borrow and spoil areas, camp sites), dates of agreements, dates submitted to resident engineer (or equivalent);*
* *identify major activities undertaken in each area in the reporting period and highlights of environmental and social protection (land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation);*
* *for quarries: status of relocation and compensation (completed, or details of activities and current status in the reporting period).*

1. *health and safety supervision:*
2. safety officer: number days worked, number of full inspections & partial inspections, reports to construction/project management;
3. number of workers, work hours, metric of PPE use (percentage of workers with full personal protection equipment (PPE), partial, etc.), worker violations observed (by type of violation, PPE or otherwise), warnings given, repeat warnings given, follow-up actions taken (if any);
4. *worker accommodations:*
5. number of expats housed in accommodations, number of locals;
6. date of last inspection, and highlights of inspection including status of accommodations’ compliance with national and local law and good practice, including sanitation, space, etc.;
7. actions taken to recommend/require improved conditions, or to improve conditions.
8. *HIV/AIDS: provider of health services, information and/or training, location of clinic, number of non-safety disease or illness treatments and diagnoses (no names to be provided);*
9. *gender (for expats and locals separately): number of female workers, percentage of workforce, gender issues raised and dealt with (cross-reference grievances or other sections as needed);*
10. *training:*
11. number of new workers, number receiving induction training, dates of induction training;
12. number and dates of toolbox talks, number of workers receiving Occupational Health and Safety (OHS), environmental and social training;
13. number and dates of HIV/AIDS sensitization and/or training, no. workers receiving training (in the reporting period and in the past); same questions for gender sensitization, flag person training.
14. number and date of SEA/SH sensitization and/or training, number of workers receiving training on code of conduct (in the reporting period and in the past), etc.
15. *environmental and social supervision:*
16. environmentalist: days worked, areas inspected and numbers of inspections of each (road section, work camp, accommodations, quarries, borrow areas, spoil areas, swamps, forest crossings, etc.), highlights of activities/findings (including violations of environmental and/or social best practices, actions taken), reports to environmental and/or social specialist/construction/site management;
17. sociologist: days worked, number of partial and full site inspections (by area: road section, work camp, accommodations, quarries, borrow areas, spoil areas, clinic, HIV/AIDS center, community centers, etc.), highlights of activities (including violations of environmental and/or social requirements observed, actions taken), reports to environmental and/or social specialist/construction/site management; and
18. community liaison person(s): days worked (hours community center open), number of people met, highlights of activities (issues raised, etc.), reports to environmental and/or social specialist /construction/site management.
19. *Grievances: list new grievances (e.g. allegations of SEA/SH) received in the reporting period and unresolved past grievances by date received, complainant, how received, to whom referred to for action, resolution and date (if completed), data resolution reported to complainant, any required follow-up (Cross-reference other sections as needed):*
20. Worker grievances;
21. Community grievances
22. *Traffic and vehicles/equipment:*
23. traffic accidents involving project vehicles & equipment: provide date, location, damage, cause, follow-up;
24. accidents involving non-project vehicles or property (also reported under immediate metrics): provide date, location, damage, cause, follow-up;
25. overall condition of vehicles/equipment (subjective judgment by environmentalist); non-routine repairs and maintenance needed to improve safety and/or environmental performance (to control smoke, etc.).
26. *Environmental mitigations and issues (what has been done):*
27. dust: number of working bowsers, number of waterings/day, number of complaints, warnings given by environmentalist, actions taken to resolve; highlights of quarry dust control (covers, sprays, operational status); % of rock/ spoil lorries with covers, actions taken for uncovered vehicles;
28. erosion control: controls implemented by location, status of water crossings, environmentalist inspections and results, actions taken to resolve issues, emergency repairs needed to control erosion/sedimentation;
29. quarries, borrow areas, spoil areas, asphalt plants, batch plants: identify major activities undertaken *in the reporting period* at each, and highlights of environmental and social protection: land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation;
30. blasting: number of blasts (and locations), status of implementation of blasting plan (including notices, evacuations, etc.), incidents of off-site damage or complaints (cross-reference other sections as needed);
31. spill cleanups, if any: material spilled, location, amount, actions taken, material disposal (report all spills that result in water or soil contamination;
32. waste management: types and quantities generated and managed, including amount taken offsite (and by whom) or reused/recycled/disposed on-site;
33. details of tree plantings and other mitigations required undertaken *in the reporting period*;
34. details of water and swamp protection mitigations required undertaken *in the reporting period*.
35. *compliance:*
36. compliance status for conditions of all relevant consents/permits, for the Work, including quarries, etc.): statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance;
37. compliance status of C-ESMP/ESIP requirements: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
38. compliance status of SEA/SH prevention and response action plan: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
39. compliance status of Health and Safety Management Plan re: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
40. other unresolved issues from previous reporting periods related to environmental and social: continued violations, continued failure of equipment, continued lack of vehicle covers, spills not dealt with, continued compensation or blasting issues, etc. Cross-reference other sections as needed.

**APPENDIX C**

**General Conditions of Dispute Review Board Agreement**

1. Definitions

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

the “Employer”;

the “Contractor”; and

the “Member” who is defined in the Dispute Review Board Agreement as being one of the three persons who are jointly called the “Dispute Review 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”. 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 Review Board Agreement, it shall take effect on the date when the Employer, the Contractor and each of the Other Members (if any) have respectively each signed a Dispute Review Board agreement.

This employment of the Member is a personal appointment. At any time, the Member may give not less than 35 days’ notice of resignation to the Chairman of the Dispute Review Board and the Other Members. The Dispute Review 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:

1. has at least a bachelor’s degree in relevant disciplines such as law, engineering, construction management or contract management;
2. has at least ten years of experience in contract administration/management and dispute resolution, out of which at least five years of experience as an arbitrator or adjudicator in construction-related disputes;
3. has received formal training as an adjudicator from an internationally recognized organization;
4. has experience and/or is knowledgeable in the type of work which the Contractor is to carry out under the Contract;
5. has experience in the interpretation of construction and/or engineering contract documents; and
6. is fluent in the language for communications of the Contract (or the language as agreed between the Employer, the Contractor and the Dispute Review Board).

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 Review 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 Review Board Agreement;

(c) have disclosed in writing to the Employer, the Contractor and the Other Members (if any), before entering into the Dispute Review 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 Review Board Agreement, be employed as a consultant or otherwise by the Employer, the Contractor or the Project Manager, except as may be agreed in writing by the Employer, the Contractor and the Other Members (if any);

(e) comply with the annexed procedural rules and with GC Clause 6;

(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 Review 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 Dispute Review Board’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 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 Dispute Review Board under GC Clause 6, 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

Unless the Employer and the Contractor agree otherwise, the Member shall be paid as follows, in the currency named in the Dispute Review 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.

(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 Employer’s country).

The retainer and daily fees shall be as specified in the Dispute Review 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 Review Board Agreement became effective.

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

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

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

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the Dispute Review 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 Dispute Review Board; and without prejudice to the Employer’s rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in accordance with GC Sub-Clause 50.1.

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 Review 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 Review 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 Review 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 , for proceedings or decisions (if any) of the Dispute Review Board 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 Review 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.

**Dispute Review Board Procedures**

1. Unless otherwise agreed by the Employer and the Contractor, the Dispute Review Board shall visit the site and/or hold meetings with the parties at intervals of not more than 140 days, including at 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 Dispute Review Board, 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 meeting and site visit shall be as agreed jointly by the Dispute Review Board, the Employer and the Contractor, or in the absence of agreement, shall be decided by the Dispute Review Board. The purpose of the meetings and site visits is to enable the Dispute Review Board to become and remain acquainted with the progress of the execution of the Contract 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 and meetings shall be attended by the Employer, the Contractor and the Project Manager and shall be coordinated by the Employer in co-operation with the Contractor. The Contractor shall ensure the provision of appropriate safety equipment, any needed security controls, site transport, conference facilities and secretarial and copying services (that may be needed for face-to-face meetings) and remote conference facilities that may be needed. At the conclusion of each site visit and before leaving the site, the Dispute Review Board 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 Dispute Review Board one copy of all documents which the Dispute Review Board may request, including Contract documents, progress reports, Change orders, Work Orders, certificates and other documents pertinent to the performance of the Contract. All communications between the Dispute Review Board and the Employer or the Contractor shall be copied to the other party.

5. If any dispute is referred to the Dispute Review Board in accordance with GC Clause 6, the Dispute Review Board shall proceed in accordance with GC Clause 6 and these Dispute Review Procedures. Subject to the time allowed to give notice of a decision and other relevant factors, the Dispute Review Board shall:

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

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

6. The Dispute Review Board 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 Dispute Review Board 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 Dispute Review Board 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 Dispute Review Board, among other things, to:

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

(b) decide upon the Dispute Review Board’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 Dispute Review Board Procedures,

(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 Dispute Review Board so consider necessary and the Parties agree, a suitable expert/s (including legal and technical expert(s)) at the cost of the Parties to give advice on a specific matter/s relevant to the dispute.

9. The Dispute Review Board shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the Dispute Review Board shall make and give its decision in accordance with GC Clause 6, or as otherwise agreed by the Employer and the Contractor in writing.

The Dispute Review Board shall:

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

(b) endeavor 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) such failure has been caused by exceptional circumstances, of which the other Members, the Employer and the Contractor have received a notification from the Member;

(ii) otherwise agreed by the Employer and the Contractor in writing.

**APPENDIX C**

**General Conditions of Dispute Review Expert Agreement**

Definitions

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

the “Employer”;

the “Contractor”; and

the “Dispute Review Expert (DRE)”

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 review Expert Agreement, which incorporates this Appendix. In the Dispute Review Expert 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 Review Expert Agreement, it shall take effect when the Employer, the Contractor and the DRE have each signed the Dispute Review Expert Agreement, or

At any time, the DRE may give not less than 70 days’ notice of resignation to the Employer and to the Contractor, and the Dispute Review Expert Agreement shall terminate upon the expiry of this period.

3. Warranties

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

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

* + 1. has at least a bachelor’s degree in relevant disciplines such as law, engineering, construction management or contract management;
    2. has at least ten years of experience in contract administration/management and dispute resolution, out of which at least five years of experience as an arbitrator or adjudicator in construction-related disputes;
    3. has received formal training as an adjudicator from an internationally recognized organization;
    4. has experience and/or is knowledgeable in the type of work which the Contractor is to carry out under the Contract;
    5. has experience in the interpretation of contract documentation; and
    6. is fluent in the language for communications defined in the Contract.

4. General Obligations of the DRE

The DRE shall:

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

(c) have disclosed in writing to the Employer and the Contractor, before entering into the Dispute Review Expert 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 Review Expert 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 and the Contractor);

(e) comply with the annexed procedural rules and with GC Clause 6;

(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 Dispute Review Expert, 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 Review Expert 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 DRE’s activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer, and the Contractor; 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.

5. General Obligations of the Employer and the Contractor

The Employer, the Contractor, the Employer’s Personnel and the Contractor’s Personnel shall not request advice from or consultation with the DRE regarding the Contract, otherwise than in the normal course of the DRE’s activities under the Contract and the DRE 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 DRE that the DRE shall not, except as otherwise agreed in writing by the Employer, the Contractor and the DRE:

(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 DRE’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 DRE 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 DRE under GC Clause 6, which will require the DRE 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 DRE. No account shall be taken of any other payments due or paid to the DRE.

6. Payment

The DRE shall be paid as follows, in the currency named in the Dispute Review Expert 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 Review Expert Agreement becomes effective; until the last day of the calendar month in which the Certificate of Contract Completion is issued for the whole of the Works and Services.

With effect from the first day of the calendar month following the month in which Certificate of Contract Completion is issued for the whole of the Works and Services, 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 DRE resigns or the DRE 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 DRE’s home and the Site;

(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 business class or equivalent, hotel and subsistence and other direct travel expenses) incurred in connection with the DRE’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 DRE(unless a national or permanent resident of the Country).

The retainer and daily fees shall be as specified in the DRE 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 DRE, at each anniversary of the date on which the DRE 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 DRE 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 DRE’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 DRE the amount to which he/she is entitled under the Dispute Review Expert Agreement, the Employer shall pay the amount due to the DRE and any other amount which may be required to maintain the operation of the DRE; and without prejudice to the Employer’s rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in accordance with GC Sub-Clause 50.1.

If the DRE does not receive payment of the amount due within 70 days after submitting a valid invoice, the DRE 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 DRE Agreement by giving 42 days’ notice to the DRE; or (ii) the DRE may resign as provided for in Clause 2.

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

If the Employer or the Contractor fails to comply with the DRE Agreement, the DRE 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 DRE. However, a notice by the Employer or the Contractor, but not by both, shall be of no effect.

8. Default of the DRE

If the DRE 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 DRE, for proceedings or decisions (if any) of the DRE 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 DRE 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.

**Dispute Review Expert (DRE) Procedures**

1. Unless otherwise agreed by the Employer and the Contractor, the DRE 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 DRE, 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 DRE, the Employer and the Contractor, or in the absence of agreement, shall be decided by the DRE. The purpose of site visits is to enable the DRE to become and remain acquainted with the progress of the Works and Services 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 coordinated 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 DRE 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 DRE one copy of all documents which the DRE may request, including Contract documents, progress reports, Change orders, Work Orders, certificates and other documents pertinent to the performance of the Contract. All communications between the DRE and the Employer or the Contractor shall be copied to the other Party. If the DRE 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 DRE in accordance with GC Clause 6, the DRE shall proceed in accordance with GC Clause 6 and these Procedures. Subject to the time allowed to give notice of a decision and other relevant factors, the DRE 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.

1. The DRE 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.
2. Except as otherwise agreed in writing by the Employer and the Contractor, the DRE 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 DRE is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.
3. The Employer and the Contractor empower the DRE, among other things, to:
4. establish the procedure to be applied in deciding a dispute,
5. decide upon the DRE’s own jurisdiction, and as to the scope of any dispute referred to it,
6. 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,
7. take the initiative in ascertaining the facts and matters required for a decision,
8. make use of its own specialist knowledge, if any,
9. decide upon the payment of financing charges in accordance with the Contract,
10. decide upon any provisional relief such as interim or conservatory measures,
11. open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute, and
12. appoint, should the DRE 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.
13. The DRE shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DRE shall make and give its decision in accordance with GC Clause 6, or as otherwise agreed by the Employer and the Contractor in writing.

**APPENDIX D**

**Sexual Exploitation and Abuse (SEA) and/or Sexual Harassment (SH) Performance Declaration for Subcontractors**

*[The following table shall be filled in by each subcontractor proposed by the Contractor, that was not named in the Contract]*

Subcontractor’s Name: *[insert full name]*Date: *[insert day, month, year]*Contract reference *[insert contract reference]*Page *[insert page number]* of *[insert total number]* pages

|  |
| --- |
| **SEA and/or SH Declaration** |
| We:  🞎 (a) have not been subject to disqualification by the Bank for non-compliance with SEA/ SH obligations.  🞎 (b) are subject to disqualification by the Bank for non-compliance with SEA/ SH obligations.  🞎 (c) had been subject to disqualification by the Bank for non-compliance with SEA/ SH obligations. An arbitral award on the disqualification case has been made in our favor.  🞎 (d) had been subject to disqualification by the Bank for non-compliance with SEA/ SH obligations for a period of two year. We have subsequently demonstrated that we have adequate capacity and commitment to comply with SEA /SH obligations.  🞎 (e) had been subject to disqualification by the Bank for non-compliance with SEA/ SH obligations for a period of two year. We have attached specific evidence demonstrating that we have adequate capacity and commitment to comply with SEA/SH obligations. |
| **[*If (c) above is applicable*, *attach evidence of an arbitral award reversing the findings on the issues underlying the disqualification.]*** |
| ***[If (d) or ( e) above are applicable, provide the following information:]*** |
| Period of disqualification: From: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ To: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| If previously provided on another Bank financed works contract, details of evidence that demonstrated adequate capacity and commitment to comply with SEA/SH obligations (**as per (d) above)**  Name of Employer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name of Project: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Contract description: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Brief summary of evidence provided: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Contact Information: (Tel, email, name of contact person): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| As an alternative to the evidence under (d), other evidence demonstrating adequate capacity and commitment to comply with SEA/SH obligations (**as per (e) above) )** *[attach details as appropriate].*  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

Name of the Subcontractor

Name of the person duly authorized to sign on behalf of the Subcontractor \_\_\_\_\_\_\_

Title of the person signing on behalf of the Subcontractor \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

Countersignature of authorized representative of the Contractor:

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

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

|  |
| --- |
| Section IX. Particular Conditions (PC) |

The following Particular Conditions shall supplement the GC. They are to be completed by the Employer and presented as part of the bidding Documents. Whenever there is a conflict, the provisions herein shall prevail over those in the GC.

**Reference to GC clauses**

|  |  |
| --- | --- |
| **1.** | The site is the area *[insert description of* ***site location****]*  The name of the Project Manager is *[insert the* ***name*** *of the person appointed by the Employer as Project Manager].* |
| **3.** | The following documents also form part of the Contract: *[list the following and any other relevant documents]*   1. the ES Management Strategies and Implementation Plans; and 2. Code of Conduct (ES). |
| **4.** | The language of the Contract and the law governing the Contract is *[insert* ***language****]* |
| **5.** | The address of the Employer is: *[insert exact* ***street address****, including* ***telephone*** *and* ***fax numbers****, and* ***E-Mail address****]*  The address of the Contractor is: *[insert exact* ***street address****, including* ***telephone*** *and* ***fax numbers****, and* ***E-Mail address****]* |
| **6.** | Dispute Resolution Method used: *[insert either* ***DRB*** *or* ***DRE****]* |
| **6.1.2** | The Appointing Authority is: *[insert* ***name****]* |
| 6.2.3 | Arbitration Proceedings shall be conducted in accordance with the following rules of procedure: *[insert which* ***set of rules*** *is to be used]* |
| **10.1** | The Start Date shall be not later than *[insert* ***number****]* days after the issuance of the Letter of Acceptance by the Employer.  *[The recommended number of days is between 45 and 60, depending on local circumstances.]* |
| **10.2** | The Time Schedule for the achievement of specific Service Levels is: *[insert* ***date*** *or indicate in which section or annex of the Contract the Time Schedule is presented]* |
| **12.1** | The Contractor is specifically allowed to subcontract the following activities: *[list* ***specific major activities*** *or* ***works*** *required under the contract]* |
| **12.2** | The Contractor may subcontract under his own responsibility and without prior approval of the Employer the following Works and Services provided they do not represent more than *[insert* ***number****]* percentage of the contract value: *[list the* ***generic description of Works and Services*** *allowed to be subcontracted]*  ***Note:*** *Under normal circumstances, the Contractor should be allowed to subcontract without prior approval of the Employer all the small works related to normal and recurrent maintenance services. However, the Contractor should normally not be allowed to subcontract the management and self-control activities.* |
| **14.2** | The Employer shall give full possession of and access to the Site on *[insert* ***date*** *here]* |
| **21.** | The Contractor shall carry out the following Rehabilitation Works, which are detailed in the Specifications: *[insert* ***listing of Rehabilitation Works****]* |
| 22. | The Contractor shall carry out the following Improvement Works, which are detailed in the Specifications and Bill of Quantities: *[insert* ***listing of Improvement Work****s]* |
| **32.2** | Small-scale restorations or repairs of damage caused by such events are to be carried out and paid for by the Contractor, up to   1. a maximum cost for restoration or repair of small-scale damages caused by one single event of …………..…..*[insert amount]* ………..…. and 2. a maximum total cost in any one calendar year for the restoration or repair of small-scale damages caused by such events of *………………… [insert amount]* ……………….. .   *[Note: Recommended amounts are: for a) the amount of 1,000 US$ equivalent and for b) the amount of 10,000 US$ equivalent.]* |
| **35.1** | The Contractor shall take out and maintain in effect the following insurances in the sums and deductibles shown below: *[insert* ***list of insurances****, including* ***sums*** *and* ***deductibles*** *of each insurance]* |
| **39.1** | The Time for Completion are the following: *[insert* ***dates*** *or* ***periods*** *for completion of specific activities required by the contract]*  ***Note****: Besides the date for completion of the entire contract, there may be specific times for the completion of Improvement or Rehabilitation Works.* |
| **39.3** | For **Rehabilitation Works**, the liquidated damages are *[insert* ***percentage****]* per calendar day of delay, of the payment normally due for the specific Works for which completion is delayed.  For **Improvement Works**, the liquidated damages are *[insert* ***percentage****]* per calendar day of delay, of the payment normally due for the specific Works for which completion is delayed. |
| **41.2** | The duration of the Defect Liability Period for the works (or any part thereof) shall be either ………………… *[insert duration in months]* ………………… months starting from the date of substantial completion stated in the Taking-Over Certificate, or ……………. *[insert number of months]* ………………. months after the date of completion of the entire contract, whichever occurs first. |
| **42.1** | The aggregate liability of the Contractor to the Employer, excluding payment reductions defined in GC 47.1, shall not exceed the amount of *[insert* ***fixed amount****, or* ***percentage of contract amount****]* |
| **44.1** | The payment of the Contract Price will be made in the following currencies*: [insert* ***currencies*** *and the* ***percentage of each currency****]* |
| 45.1 | The amount of the Advance Payment is *[insert* ***amount*** *or* ***percentage of Contract Price*** *as specified in the Form of Contract]*  The Advance payment will be made by [*insert* ***date*** *or* ***event****]* |
| 45.3 | The Advance payment will be repaid during the *[insert* ***number of payments****]* initial monthly payments at the rate of *[insert* ***percentage****]* percent of the amount advanced in each monthly payment until the repayment of the total amount. |
| **47.2** | Rehabilitation Works will be measured on the following basis: *[indicate]*  ***Note:*** *Rehabilitation Works should normally be measured on the basis of the work outputs for which the contractor has stated lumpsum rates in his bid, such as completed sections of rehabilitated road. The PC may also refer to the Specifications, where a more detailed description of the measurement can be made, especially if payment milestones are used.]* |
| **47.3** | Improvement Works will be measured on the following basis: *[indicate]*  ***Note:*** *Depending on their nature, Improvement Works shall normally be measured on the basis of completed work outputs, or completed output products. The PC may also refer to the Specifications, where a more detailed description of the measurement can be made.]* |
| **48.** | Price adjustment *[indicate if applies / does not apply]*  The coefficients are:  Ac =  Bc = |
| **50.1** | The source for determining the applicable commercial interest rate for overdraft borrowing is …………….. *[insert source]* …………… .  *[Note: The source is typically the website of the Central Bank of the country where the contract is implemented, provided that it shows up-to-date information on overdraft borrowing rates for commercial entities and for the applicable currencies.]* |
| **51.** | The retention for Rehabilitation and Improvement Works is fixed at \_\_\_\_ *[indicate* ***percentage****]* percent.  The retention is not applicable to the following types of Rehabilitation and Improvement Works: \_\_\_\_ *[list* ***types of works****, if any, such as regravelling].* |
| **53.2.1** | The amount of the Advance payment security is the same of the advance payment amount. |
| **53.3.1** | The Performance Security will be in the form of a \_\_\_\_ [*insert either one of “demand guarantee” or “performance bond”*] in the amount(s) of [*insert % figures*] percent of the Accepted Contract Amount and in the same currency (ies) of the Accepted Contract Amount. *[An amount of 5 to 10 percent of the Accepted Contract Amount is commonly specified for a “demand guarantee”. A “performance bond” is an undertaking by a bonding or insurance company (surety) to complete the construction in the event of default by the Contractor, or to pay the amount of the Bond to the* Employer*. An amount of 30 percent of the Accepted Contract Amount is commonly specified for this type of security (see Section X, Contract Forms).]*  [*Delete the following provision if ES Performance Security is not required*.]  The ES Performance Security will be in the form of a “demand guarantee” in the amount(s) of [*insert % figure(s) normally 1% to 3%*] of the Accepted Contract Amount and in the same currency (ies) of the Accepted Contract Amount.  [*The sum of the total “demand guarantees” (Performance Security and ES Performance Security) shall normally not exceed 10% of the Accepted Contract Amount.]* |
| 55.2 | If the required Final Completion Report is not provided in accordance with the Specifications, the amount to be withheld is \_\_\_\_\_\_\_*[state* ***amount****]. [The recommended amount is at least US$ 30,000 equivalent].* |
| **59.2.2(c)** | The condition of persistent failure to execute the contract is given if and when the total amount of payment reductions and liquidated damages applied under the contract reaches \_\_\_\_\_*[insert* ***number****]* percent of the total contract amount.  *[Depending on the type of roads and the structure of the contract, the recommended number could be in the order of 10 – 15 percent of the total contract amount.]* |
| **63.1.1** | The Employer has the right to propose a change in the contract: Yes or No *[Indicate if applicable or not by deleting* ***Yes*** *or* ***No*** *as applicable].* |
| **63.1.2** | Contractor’s right to propose a change in the contract: Yes or No *[Indicate if applicable or not by deleting* ***Yes*** *or* ***No*** *as applicable].* |

|  |
| --- |
| Section X. Contract Forms |

Table of Forms

[Notification of Award 265](#_Toc65243815)

[Contract Agreement 266](#_Toc65243816)

[Performance Security 268](#_Toc65243817)

[Performance Security 270](#_Toc65243818)

[Environmental and Social (ES) Performance Security 272](#_Toc65243819)

[Advance Payment Security 274](#_Toc65243820)

Notification of Award

# Letter of Acceptance

*[letterhead paper of the Employer]*

*[date]*

To: *[name and address of the Contractor]*

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

You are requested to furnish the Performance Security and an Environmental and Social Performance Security ***[Delete ES Performance Security if it is not required under the contract]*** within 28 days in accordance with the Conditions of Contract, using for that purpose one of the Performance Security and the ES Performance Security Form, ***[Delete reference to the ES Performance Security Form if it is not required under the contract]*** included in Section X - Contract Forms, of the Bidding Document.

Authorized Signature:

Name and Title of Signatory:

Name of Agency:

**Attachment: Contract Agreement**

|  |
| --- |
| Contract Agreement |

THIS AGREEMENT made the \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter “the Employer”), of the one part, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter “the Contractor”), of the other part:

WHEREAS the Employer desires that the Works and Services known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein,

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.

2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.

1. the Letter of Acceptance;
2. the Letter of Bid ;
3. the addenda Nos \_\_\_\_\_\_\_\_(if any)
4. the Particular Conditions;
5. the General Conditions;
6. the Specification;
7. the Drawings*;*
8. the completed Schedules; and
9. any other document **listed in the PCC** as forming part of the Contract;

3. In consideration of the payments to be made by the Employer to the Contractor as indicated in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and Services, and to remedy defects therein in conformity in all respects with the provisions of the Contract.

4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and Services, and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on the day, month and year indicated above.

Signed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (for the Employer)

Signed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (for the Contractor)

|  |
| --- |
| Performance Security |

**Option 1: Demand Guarantee**

*Guarantor letterhead or SWIFT identifier code]*

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

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

**PERFORMANCE GUARANTEE No.:** *[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 \_\_\_\_\_\_\_\_\_\_\_ ( ),[[46]](#footnote-47)1 such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary’s complying demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the …. Day of ……, 2… [[47]](#footnote-48)2, and any demand for payment under it must be received by us at this office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
*[signature(s)]*

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

Performance Security

**Option 2: Performance Bond**

By this Bond\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as Principal (hereinafter called “the Contractor”) and\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] as Surety (hereinafter called “the Surety”), are held and firmly bound unto\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] as Obligee (hereinafter called “the Employer”) in the amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Contractor has entered into a written Agreement with the Employer dated the day of , 20 , for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Employer to be, in default under the Contract, the Employer having performed the Employer’s obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

(1) complete the Contract in accordance with its terms and conditions; or

(2) obtain a Bid or bids from qualified Bidders for submission to the Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the lowest responsive Bidder, arrange for a Contract between such Bidder and Employer and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contract Price,” as used in this paragraph, shall mean the total amount payable by Employer to Contractor under the Contract, less the amount properly paid by Employer to Contractor; or

(3) pay the Employer the amount required by Employer to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking-Over Certificate.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators, successors, and assigns of the Employer.

In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this day of 20 .

SIGNED ON on behalf of

By in the capacity of

In the presence of

SIGNED ON on behalf of

By in the capacity of

In the presence of

|  |
| --- |
| Environmental and Social (ES) Performance Security |

**ES Demand Guarantee**

*[Guarantor letterhead or SWIFT identifier code]*

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

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

**ES PERFORMANCE GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter called "the Applicant") has entered into Contract No. \_\_\_\_\_\_\_\_\_\_\_\_\_ dated \_\_\_\_\_\_\_\_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_\_\_\_\_\_\_ ( ),[[48]](#footnote-49)1 such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary’s complying demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its Environmental and Social (ES) obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the …. Day of ……, 2… [[49]](#footnote-50)2, and any demand for payment under it must be received by us at this office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
*[signature(s)]*

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

|  |
| --- |
| Advance Payment Security |

**Demand Guarantee**

*[Guarantor letterhead or SWIFT identifier code]*

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

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

**ADVANCE PAYMENT GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter called “the Applicant”) has entered into Contract No. \_\_\_\_\_\_\_\_\_\_\_\_\_ dated \_\_\_\_\_\_\_\_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum \_\_\_\_\_\_\_\_\_\_\_ ( )is to be made against an advance payment guarantee.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_\_\_\_\_\_\_ ( ) *[[50]](#footnote-51)1* 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 Works; 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 specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the \_\_\_ day of \_\_\_\_\_, 2\_\_\_,[[51]](#footnote-52)2 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 bids are called concurrently for multiple contracts. Add a new para. 3 and renumber paras 3 - 8 as follows: “Bidders may bid for one or several contracts, as further defined in the bidding document. Bidders wishing to offer discounts in case they are awarded more than one contract will be allowed to do so, provided those discounts are included in the Letter of Bid.”* [↑](#footnote-ref-2)
2. *Insert if applicable: “This contract will be jointly financed by [insert name of cofinancing agency]. Bidding process will be governed by the World Bank’s rules and procedures.”* [↑](#footnote-ref-3)
3. *A brief description of the type(s) of Works and Services should be provided, including contract period, location, application of margin of preference and other information necessary to enable potential bidders to decide whether or not to respond to the Invitation. Bidding Documents may require bidders to have specific experience or capabilities; such qualification requirements should also be included in this paragraph.* [↑](#footnote-ref-4)
4. *The office for inquiry and issuance of bidding documents and that for bid submission may or may not be the same.* [↑](#footnote-ref-5)
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-6)
6. *For example, cashier’s check, direct deposit to specified account number, etc.* [↑](#footnote-ref-7)
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.* [↑](#footnote-ref-8)
8. *Substitute the address for bid submission if it is different from address for inquiry and issuance of bidding documents.* [↑](#footnote-ref-9)
9. *Substitute “contracts” where bids are called concurrently for multiple contracts. Add a new para. 3 and renumber paras 3 - 8 as follows: “Bidders may bid for one or several contracts, as further defined in the bidding document. Bidders wishing to offer discounts in case they are awarded more than one contract will be allowed to do so, provided those discounts are included in the Letter of Bid.”* [↑](#footnote-ref-10)
10. *Insert if applicable: “This contract will be jointly financed by [insert name of cofinancing agency]. Bidding process will be governed by the World Bank’s rules and procedures.”* [↑](#footnote-ref-11)
11. *A brief description of the type(s) of Works and Services should be provided, including location, contract period, application of margin of preference and other information necessary to enable potential bidders to decide whether or not to respond to the Invitation. Bidding Documents may require bidders to have specific experience or capabilities; such qualification requirements should also be included in this paragraph.* [↑](#footnote-ref-12)
12. *The office for inquiry and issuance of bidding documents and that for bid submission may or may not be the same.* [↑](#footnote-ref-13)
13. *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-14)
14. *For example, cashier’s check, direct deposit to specified account number, etc.* [↑](#footnote-ref-15)
15. *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.* [↑](#footnote-ref-16)
16. *Substitute the address for bid submission if it is different from address for inquiry and issuance of bidding documents.* [↑](#footnote-ref-17)
17. An individual firm is considered a domestic Bidder for purposes of the margin of preference if it is registered in the country of the Employer, has more than 50 percent ownership by nationals of the country of the Employer, and if it does not subcontract more than 10 percent of the contract price, excluding provisional sums, to foreign contractors. JVs are considered as domestic Bidders and eligible for domestic preference only if the individual member firms are registered in the country of the Employer or have more than 50 percent ownership by nationals of the country of the Employer, and the JV shall be registered in the country of the Borrower. The JV shall not subcontract more than 10 percent of the contract price, excluding provisional sums, to foreign firms. JVs between foreign and national firms will not be eligible for domestic preference. [↑](#footnote-ref-18)
18. Non performance, as decided by the Employer, shall include all contracts where (a) non performance was not challenged by the contractor, including through referral to the dispute resolution mechanism under the respective contract, and (b) contracts that were so challenged but fully settled against the contractor. Non performance shall not include contracts where Employers decision was overruled by the dispute resolution mechanism. Non performance must be based on all information on fully settled disputes or litigation, i.e. dispute or litigation that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the Bidder have been exhausted. [↑](#footnote-ref-19)
19. The Bidder shall provide accurate information on the related Bid Form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the last five years. A consistent history of court/arbitral awards against the Bidder or any member of a joint venture may result in disqualifying the Bidder. [↑](#footnote-ref-20)
20. The Employer may use this information to seek further information or clarifications in carrying out its due diligence [↑](#footnote-ref-21)
21. Substantial completion shall be based on 80% or more works completed under the contract. [↑](#footnote-ref-22)
22. For contracts under which the Bidder participated as a joint venture member or sub-contractor, only the Bidder’s share, by value, shall be considered to meet this requirement [↑](#footnote-ref-23)
23. In the case of JV, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single entity. In determining whether the JV meets the requirement of total number of contracts, only the number of contracts completed by all members each of value equal or more than the minimum value required shall be aggregated. [↑](#footnote-ref-24)
24. Volume, number or rate of production of any key activity can be demonstrated in one or more contracts combined if executed during same time period.  [↑](#footnote-ref-25)
25. The minimum experience requirement for multiple contracts will be the sum of the minimum requirements for respective individual contracts, unless specified otherwise. [↑](#footnote-ref-26)
26. *[Only applies if the Specifications require different Service Level classes for different roads. If there is only one Service Level class for all roads, delete this column.]* [↑](#footnote-ref-27)
27. *[Only applies if the Specifications require a “Minimum Service Level” for a specific road, for the period prior to Rehabilitation Works being completed.]* [↑](#footnote-ref-28)
28. *[Only applies if the Specifications require a “Reduced Service Level” for a specific road, for the period prior to Rehabilitation Works being completed.]* [↑](#footnote-ref-29)
29. If the most recent set of financial statements is for a period earlier than 12 months from the date of Bid, the reason for this should be justified. [↑](#footnote-ref-30)
30. If applicable [↑](#footnote-ref-31)
31. In this context, any action to influence the procurement process or contract execution for undue advantage is improper. [↑](#footnote-ref-32)
32. For the purpose of this sub-paragraph, “*another party*” refers to a public official acting in relation to the procurement process or contract execution. In this context, “*public official*” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions. [↑](#footnote-ref-33)
33. For the purpose of this sub-paragraph, “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution. [↑](#footnote-ref-34)
34. For the purpose of this sub-paragraph, “parties” refers to participants in the procurement process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish bid prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions. [↑](#footnote-ref-35)
35. For the purpose of this sub-paragraph, “party” refers to a participant in the procurement process or contract execution. [↑](#footnote-ref-36)
36. A firm or individual may be declared ineligible to be awarded a Bank financed contract upon: (i) completion of the Bank’s sanctions proceedings as per its sanctions procedures, including, inter alia, cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks, and through the application the World Bank Group corporate administrative procurement sanctions procedures for fraud and corruption; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanctions proceeding. See footnote 14 and paragraph 8 of Appendix 1 of these Guidelines. [↑](#footnote-ref-37)
37. A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding document) is one which has either 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-38)
38. The sum of the two coefficients Ac and Bc should be 1 (one) in the formula for each currency. Normally, both coefficients will be the same in the formulae for all currencies, since coefficient A, for the nonadjustable portion of the payments, is a very approximate figure (usually 0.15) to take account of fixed cost elements or other nonadjustable components. The sum of the adjustments for each currency is added to the Contract Price. [↑](#footnote-ref-39)
39. In this context, any action to influence the procurement process or contract execution for undue advantage is improper. [↑](#footnote-ref-40)
40. For the purpose of this sub-paragraph, “*another party*” refers to a public official acting in relation to the procurement process or contract execution. In this context, “*public official*” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions. [↑](#footnote-ref-41)
41. For the purpose of this sub-paragraph, “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution. [↑](#footnote-ref-42)
42. For the purpose of this sub-paragraph, “parties” refers to participants in the procurement process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish bid prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions. [↑](#footnote-ref-43)
43. For the purpose of this sub-paragraph, “party” refers to a participant in the procurement process or contract execution. [↑](#footnote-ref-44)
44. A firm or individual may be declared ineligible to be awarded a Bank financed contract upon: (i) completion of the Bank’s sanctions proceedings as per its sanctions procedures, including, inter alia, cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks, and through the application the World Bank Group corporate administrative procurement sanctions procedures for fraud and corruption; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanctions proceeding. See footnote 14 and paragraph 8 of Appendix 1 of these Guidelines. [↑](#footnote-ref-45)
45. A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding document) is one which has either 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-46)
46. *1 The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency(cies) of the Contract or a freely convertible currency acceptable to the Beneficiary.* [↑](#footnote-ref-47)
47. *2 Insert the date twenty-eight days after the expected completion date. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”* [↑](#footnote-ref-48)
48. *1 The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency (cies) of the Contract or a freely convertible currency acceptable to the Beneficiary.* [↑](#footnote-ref-49)
49. *2 Insert the date twenty-eight days after the expected completion date. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Beneficiary’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”* [↑](#footnote-ref-50)
50. 1 *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-51)
51. 2 *Insert the expected expiration date of the Time for Completion. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. 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-52)