

Millennium Challenge Corporation

Standard Bidding Documents: Procurement of Small Works



REDUCING POVERTY THROUGH GROWTH

Introduction

[This section is only for the information of the MCA Entity/Employer, and should be removed when finalizing Bidding Documents prior to their release.]

This Standard Bidding Document (“SBD”) for the Procurement of Small Works has been prepared by the Millennium Challenge Corporation (“MCC”) for use by the Millennium Challenge Account Entities (“MCA Entities”) receiving funding from MCC for projects involving Small Works, which are defined as construction contracts having a value of from USD 1 million up to USD 10 million. This SBD is consistent with the MCC Program Procurement Guidelines.¹

This SBD is to be used to prepare bidding documents for the procurement of admeasurement (unit price or unit rate) as well as fixed price works through Competitive Bidding (“CB”). Fixed price contracts are used in particular for buildings and other forms of construction where the works are well defined and are unlikely to change in quantity or specification, and where encountering difficult or unforeseen site conditions (for example, hidden foundation problems) is unlikely. The main text refers to admeasurement contracts where a bill of quantities is used. Alternative clauses are supplied for use with fixed price contracts where priced activity schedules are used.²

This SBD has been prepared based on the assumption that pre-qualification has not taken place before bidding. However, it can also be used with pre-qualification, with relatively minor modifications. Pre-qualification is not a mandatory requirement of MCC. When pre-qualification is adopted, the process of pre-qualification shall follow the procedure indicated in *Standard Pre-qualification Documents: Procurement of Works*, issued by MCC.

Bidding documents prepared in accordance with this SBD (“Bidding Documents”) will consist of the following sections. The Invitation for Bids (“IFB”) included in this SBD is not a part of the Bidding Documents submitted to potential bidders and is included in this SBD for information purposes only. The IFB is the notice provided for proposed contracts that are advertised as part of a specific Procurement Notice placed either in the local press, on the MCA Entity website, in dgMarket, and/or in UN Development Business (“UNDB”). The IFB provides information that enables potential bidders to

¹ The MCC Program Procurement guidelines can be found at: <http://www.mcc.gov/documents/mcc-guidelines-programprocurement.pdf>. In addition, this SBD is based on the “Standard Bidding Documents – Procurement of Works, Smaller Contracts,” May 2004 (Revised May 2007) by the International Bank for Reconstruction and Development/The World Bank. All rights reserved. For further information, please visit <http://worldbank.org>.

² Fixed price contracts should be used for Works that can be defined in their full physical and qualitative characteristics before bids are called, or where the risks of substantial design variations are minimal—usually construction of buildings or a series of small structures, such as pumps or school blocks. In such fixed price contracts, priced “Activity Schedules” are used, to enable payments to be made as “activities” are completed. Payments can also be made on the basis of percentage completion of each activity.

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decide whether to participate. In addition to a summary description of the works, the IFB should also indicate any important security requirements, bid evaluation criteria, or qualification requirements.

Section I Instructions to Bidders (“ITB”)

This section provides information to help potential bidders prepare their bids; it also provides information on the submission, opening, and evaluation of bids and on the award of contracts. Section I contains provisions that are to be used in Bidding Documents without modification.

Section II Bid Data Sheet (“BDS”)

This section includes provisions that are specific to each procurement and that supplement Section I, Instructions to Bidders.

Section III Evaluation and Qualification Criteria

This section specifies the qualifications required of the bidder and the criteria to be used to evaluate the bid.

Section IV Bid Forms

This section contains the forms which are to be completed by a bidder and submitted as part of its bid.

Section V Form of Agreement and General Conditions of Contract (“GCC”)

This section contains the form of the contract agreement and the standard terms and conditions of contract to be used by MCA Entities for the procurement of small works.

Section VI Form of Special Conditions of Contract (“SCC”) and Annex to Contract

This section contains the form of those clauses of the contract that supplement the GCC and that are to be completed by MCA Entities for each procurement of small works. This Section also includes an Annex to the contract (Annex A: Additional Provisions) that contains clauses required to be included in all contracts supported by MCC funding. The text and clauses of Annex A to the form of contract may not be modified.

Section VII Security Forms

This section contains forms, some of which are used in the bid and some of which, once completed, will form part of the contract. Certain of the forms are only to be completed by the successful bidder after contract award.

In addition to the foregoing, a typical set of Bidding Documents will contain:

Section VIII Bill of Quantities or Activity Schedule

This section contains an itemized listing of the quantities of works or of the activities to be performed. Quantities given in the Bill of Quantities are estimated and provisional, based on the Specifications and Drawings,

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and are given to enable bidders to prepare priced bids. Similarly, the activities indicated in the Activity Schedule describe the main work steps to be completed and are given to enable bidders to prepare fixed price bids.

Section IX Specifications and Performance Requirements

This section sets out a description of the scope of the works and presents a clear statement of the required standards for materials, plant, supplies, and workmanship to be provided. The Specifications and Performance Requirements will also present the environmental, health and safety requirements to be satisfied by the contractor in executing the works. The Specifications should reference applicable standards and codes.

Section X Drawings

This section contains construction drawings in sufficient detail to allow bidders to understand the type and complexity of the work involved and to develop bids.

Sections VIII-X describe the works to be performed (the “Works Requirements”) and may be bound with Sections I through VII or may comprise one or more separate volumes.

In preparing for a small works procurement, the MCA Entity (called “the Employer” in this SBD, the Bidding Documents and the contract) will prepare the BDS (Section II), SCC (Section VI), and Sections VIII, IX, X detailing the Works Requirements before issuing the Bidding Documents. In so doing, the MCA Entity should provide the information specified in the italicized notes inside brackets. The footnotes included in this SBD should not be incorporated in the Bidding Documents when issued.

INVITATION FOR BIDS
IFB/[Procurement Method]/[IFB number]

[MCA Entity]
On Behalf of:
The Government of [Country]
[Millennium Challenge Account Entity] -
Program

Funded by
THE UNITED STATES OF AMERICA
THROUGH
THE MILLENNIUM CHALLENGE
CORPORATION

[TITLE OF SMALL WORKS PROJECT]

[DATE]

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Invitation for Bids

[City, Country]

[Month, Day, Year]

CB#: [MCA Entity/the Employer][Method, Number]

Project Ref: [Project Name]

1. The Millennium Challenge Corporation (“MCC”) and the Government of the [Country] (the “Government” or “[Go_]”) have entered into a Millennium Challenge Compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in [Country] (the “Compact”) in the amount of approximately [Amount] USD (“MCC Funding”). The Government, acting through [full legal name of the MCA Entity] (the “Employer”), intends to apply a portion of the MCC Funding to eligible payments under a contract for which this Invitation for Bids (“IFB”) is issued. Any payments made under the proposed contract will be subject, in all respects, to the terms and conditions of the Compact and related documents, including restrictions on the use of MCC funding and conditions to the disbursement of MCC funding. No party other than the Government and the Employer shall derive any rights from the Compact or have any claim to the proceeds of MCC Funding.
2. The Compact program includes **[provide the best available brief description of the general and specific goals and strategies of the Compact program, the general areas of focus and the specific projects proposed, the expected duration, and other background information that would be helpful to potential bidders]**.
3. This IFB follows the General Procurement Notice for this project that appeared in **[publication]**, **[issue number]**, on **[date]**.
4. The Employer now invites sealed bids (“Bids”) from eligible and qualified entities or persons (“Bidders”) to provide the works referenced above (the “Works”). **[Insert brief description of the Project.]** More details on the requirements are provided in the Bill of Quantities³, Specifications and Performance Requirements, and Drawings.
5. This IFB is open to all eligible and qualified Bidders who wish to respond to the relevant bidding documents (the “Bidding Documents”). Qualification requirements, as more fully described in Section III, include: **[insert brief indication of requirements or reference to Section III]**.

³ In fixed price contracts, delete “Bill of Quantities” and replace with “Activity Schedule”.

6. **[ADD IF REQUIRED]** The Works, and the contract expected to be awarded, are divided into the following lots: **[describe lots]**
7. A contractor will be selected under a competitive bidding method, the evaluation procedure for which is described in the Bidding Documents, in accordance with the “MCC Program Procurement Guidelines” which are provided on the MCC website at www.mcc.gov. Bidders should note that MCC procurement procedures and guidelines are similar to the World Bank procurement procedures and guidelines, but there are significant differences. It is a Bidder’s responsibility to fully understand MCC program procurement procedures and guidelines.
8. The Bidding Documents include the following Sections:

Section I Instructions to Bidders (“ITB”)

This section provides information to help Bidders prepare their Bids; it also provides information on the submission, opening, and evaluation of Bids and on the award of the proposed contract.

Section II Bid Data Sheet (“BDS”)

This section includes provisions that are specific to the procurement and that supplement Section I, Instructions to Bidders.

Section III Evaluation and Qualification Criteria

This section specifies the qualifications required of the Bidder and the criteria to be used to evaluate the Bids.

Section IV Bid Forms

This section contains the forms which are to be completed by a Bidder and submitted as part of its Bid.

Section V Form of Agreement and General Conditions of Contract (“GCC”)

This section contains the form of the contract agreement and the standard terms and conditions of the proposed contract.

Section VI Form of Special Conditions of Contract (“SCC”) and Annex to Contract

This section contains the form of those clauses of the proposed contract that supplement the GCC. This Section also includes an Annex (Annex A: Additional Provisions) that forms part of the proposed contract and contains clauses required to be included in all contracts supported by MCC funding.

Section VII Security Forms

This section contains forms, some of which are used in the Bid and some of which, when and if completed, will form part of the

proposed contract. Certain of these forms will only be completed by the successful Bidder if the contract is awarded.

Section VIII [Bill of Quantities] OR [Activity Schedule]⁴

This section contains an itemized listing of the quantities of the Works. Quantities given are estimated and provisional, based on the Specifications and Drawings, and are given to enable Bidders to prepare priced Bids.

OR

This section contains an itemized listing of the activities to be performed. The activities indicated describe the main work steps to be completed and are given to enable Bidders to prepare fixed price Bids.

Section IX Specifications and Performance Requirements

This section sets out a description of the scope of the Works and presents the required standards for materials, plant, supplies, and workmanship to be provided. This section also presents the environmental, health and safety requirements to be satisfied by the contractor in executing the Works.

Section X Drawings

This section contains construction drawings to allow Bidders to understand the type and complexity of the Works and to prepare Bids.

9. The Bidding Documents will be placed on the Employer's website at **[website address]** from the date of issue and prospective Bidders interested in submitting a Bid should submit an e-mail, giving full contact details of the prospective Bidder, to **[e-mail address of MCA Entity and/or its procurement agent]**.
10. **[ADD IF REQUIRED]** A pre-bid meeting will be held at the time and date if so specified in the BDS. If a pre-bid meeting is held, attendance is strongly advised for all prospective Bidders or their representatives but is not mandatory.
11. The deadline for submission of Bids is **[time]** (local time) on **[date]**. Bids must be delivered to the address below at or before the time specified above. Late bids will be rejected. Bidders should be aware that distance and customs formalities may require longer than expected delivery time.

[Address for submission of Bids]

⁴ Use heading and descriptive text relevant to the type of procurement.

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12. All Bids must be accompanied by a bid security (if required) in the manner and amount specified in the BDS.
13. Bids will be opened in the presence of Bidders' representatives who choose to attend at **[time]** (local time) on the submission date, at **[location]**.

[Name of authorized individual]

[MCA Entity]

[Address]

[Telephone number]

[Fax number]

[E-mail address]

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Section I Instructions to Bidders

A. General

Definitions

- (a) “associate” means any entity or person with whom the Bidder associates in order to provide any part of the Works.
- (b) “BDS” means the Bid Data Sheet in Section II of these Bidding Documents used to reflect specific requirements and/or conditions.
- (c) “Bid” means a bid for the provision of the Works submitted by a Bidder in response to these Bidding Documents.
- (d) “Bid Security” means the security a Bidder may be required to furnish as part of its Bid in accordance with ITB Clause 17.
- (e) “Bidder” means any eligible entity or person, including any associate of such eligible entity or person, that submits a Bid.
- (f) “Bidding Documents” means Sections I – X of these documents, including any amendments that may be made, prepared by the Employer for the selection of the Contractor.
- (g) [“Bill of Quantities” means the priced and completed Bill of Quantities forming part of the Bid.]⁵
- (h) “Compact” means the Millennium Challenge Compact **identified in the BDS.**
- (i) “confirmation” means confirmation in writing.
- (j) “Contract” means the contract proposed to be entered into between the Employer and the Contractor, including all of the documents specified in GCC Sub-Clause 2.3 and any attachments, appendices, and all documents incorporated by reference therein.
- (k) “Contract Price” means the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.
- (l) “Contractor” means the entity or person, including any associate, that provides the Works to the Employer under the Contract.
- (m) “day” means a calendar day.

⁵ In fixed price contracts, delete “Bill of Quantities” and replace with “Activity Schedule” and move the term to the appropriate place (alphabetically) in this list of defined terms.

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- (n) “Employer” means the entity **identified in the BDS**, the party with which the Contractor signs the Contract for the provision of the Works.
- (o) “Fraud and Corruption” means any of those actions defined in the GCC (including the phrases “coercive practice,” “collusive practice,” “corrupt practice,” “fraudulent practice,” “obstructive practice,” and “prohibited practice” as defined in GCC Sub-Clause 1.1), according to which action may be taken against the Bidder, the Contractor, the Employer, or any of their respective personnel.
- (p) “GCC” means the General Conditions of Contract.
- (q) “Government” means the government **identified in the BDS**.
- (r) “Instructions to Bidders” or “ITB” means this Section I of these Bidding Documents, including any amendments, which provides Bidders with information needed to prepare their Bids.
- (s) “Intended Completion Date” means the date on which it is intended that the Contractor shall complete the Works as **specified in BDS 1.2**.
- (t) “in writing” means communicated in written form (e.g., by mail, e-mail or facsimile) delivered with proof of receipt.
- (u) “Letter of Acceptance” has the meaning given the term in ITB Sub-Clause 34.1.
- (v) “MCC” means the Millennium Challenge Corporation, a United States Government corporation, acting on behalf of the United States Government.
- (w) “MCC Funding” means the funding MCC has made available to the Government under the terms of the Compact.
- (x) “Project Manager” means the person named in the SCC (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager under the terms of the Contract) who is responsible for supervising the execution of the Works and administering the Contract.
- (y) “SCC” means the Special Conditions of Contract.
- (z) “Subcontractor” means any person or entity with whom a Bidder intends to sub-contract any part of the Works.
- (aa) “Taxes” has the meaning given the term in the Compact.
- (bb) “Technical Proposal” has the meaning given the term in

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ITB Sub-Clause 5.1.

(cc) “Works” means what the Contract requires the Contractor to construct, install, and turn over to the Employer.

1. Scope of Bid
 - 1.1 The Employer invites Bids for the provision of the Works, as **described in the BDS** and the SCC. The name and identification number of the Contract are **provided in the BDS** and the SCC.
 - 1.2 The successful Bidder shall be expected to complete the Works by the Intended Completion Date **specified in the BDS** and SCC 1.1 (dd).
 - 1.3 Throughout these Bidding Documents, except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and the feminine means the masculine and vice versa.
2. Source of Funds; Compact Terms and Conditions
 - 2.1 MCC and the Government have entered into the Compact. The Government, acting through the Employer, intends to apply a portion of the proceeds of the MCC Funding to eligible payments under the Contract. Payments under the Contract will be subject, in all respects, to the terms and conditions of the Compact and related documents, including restrictions on the use of MCC Funding and conditions to disbursements. No party other than the Government and the Employer shall derive any rights from the Compact or have any claim to any proceeds of the MCC Funding. The Compact and related documents are available at www.mcc.gov or at the website of the Employer.
3. Fraud and Corruption
 - 3.1 MCC requires that all beneficiaries of MCC funding, including the Employer and any bidders, suppliers, contractors, subcontractors and consultants under any MCC-funded contracts, observe the highest standards of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Employer:
 - (a) will reject a Bid if it determines that the Bidder recommended to be selected as the Contractor has, directly or through an agent, engaged in Fraud and Corruption in competing for the Contract;
 - (b) has the right to sanction a Bidder or Contractor, including declaring the Bidder or Contractor ineligible, either indefinitely or for a stated period of time, to be awarded an MCC-funded contract if at any time it determines that the Bidder or Contractor has, directly or through an agent, engaged in Fraud and Corruption in competing for, or in

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executing, such a contract; and

- (c) has the right to require that a provision be included in the Contract requiring the Contractor to permit the Employer, MCC, or any designee of MCC, to inspect its accounts, records and other documents relating to the submission of a Bid or performance of the Contract, and to have such accounts and records audited by auditors appointed by MCC or by the Employer with the approval of MCC.

In addition, MCC has the right to cancel the portion of MCC Funding allocated to the Contract if it determines at any time that representatives of a beneficiary of the MCC Funding engaged in Fraud and Corruption during the selection process or the execution of the Contract, without the Employer or the beneficiary having taken timely and appropriate action satisfactory to MCC to remedy the situation.

MCC may also invoke, on its own behalf, any of the rights identified for the Employer in this ITB Sub-Clause 3.1 above.

4. Eligible Bidders, Materials, Equipment, and Services

- 4.1 A Bidder may be a natural person, private entity, government-owned entity (subject to ITB Sub-Clause 4.4) or any combination of such entities supported by a letter of intent to enter into an agreement or under an existing agreement in association in the form of a joint venture or a consortium.
- 4.2 A Bidder, and all parties constituting the Bidder, may have the nationality of any country, subject to the restrictions specified in the paragraphs below.
- 4.3 Bidders and Contractors shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Contractor found to have a conflict of interest may have its contract terminated. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:
 - (a) they have at least one controlling partner in common; or
 - (b) they have the same legal representative for purposes of this bid; or
 - (c) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or
 - (d) they participate in more than one Bid in this bidding process;

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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 provision does not limit the inclusion of the same subcontractor in more than one Bid; or

- (e) they are, or have been associated in the past, with any person or entity which has been engaged to provide consulting services for the preparation of the design, specifications, or other documents to be used for the procurement and provision of the Works expected to be contracted for under these Bidding Documents; or
- (f) they or any of their affiliates has been hired (or is proposed to be hired) by the Employer as Project Manager for the Contract; or
- (g) they are themselves, or have a business or family relationship with, a member of the Employer's board of directors or staff or with the Procurement Agent or Fiscal Agent (as defined in the Compact or related agreements) hired by the Employer who is directly or indirectly involved in any part of (i) the preparation of these Bidding Documents, (ii) the Bid selection process, or (iii) supervision of the Contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to MCC throughout the process of preparing the Bidding Documents and awarding and executing the Contract.

Bidders and the Contractor have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of the Employer, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Bidder or Contractor or the termination of the Contract.

Eligibility of
Government – owned
Entities

- 4.4 Government-owned entities in the Employer's country shall be eligible only if they can establish that they (a) are legally and financially autonomous, (b) operate under commercial law, and (c) are not a dependent agency of the Employer.

Continued Eligibility

- 4.5 Bidders shall provide such evidence of their continued eligibility, in a manner satisfactory to the Employer, as the Employer may reasonably request.

Ineligibility and
Debarment

- 4.6 Bidders and the Contractor (including their associates, if any, Subcontractors, and any of their respective personnel and affiliates) shall not be any person or entity under a declaration of ineligibility for Fraud and Corruption in accordance with ITB Sub-Clause 3.1 above or that has been declared ineligible for

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participation in a procurement in accordance with the procedures set out in the MCC Program Procurement Guidance paper entitled “Excluded Parties Verification Procedures in MCA Entity Program Procurements” that can be found on MCC’s website at www.mcc.gov. This would also remove from eligibility for participation in a procurement any firm that is organized in or has its principal place of business or a significant portion of its operations in any country that is subject to sanction or restriction by law or policy of the United States. Those countries that are subject to sanction or restriction by law or policy of the United States as of the date of these Bidding Documents are **specified in the BDS**. However, the countries subject to these sanctions and restrictions are subject to change from time to time and it is necessary to refer to the websites identified in the guidance paper referenced above for the most current listing of sanctioned and restricted countries.

4.7 A Bidder or Contractor (including their associates, if any, Subcontractors, and any of their respective personnel and affiliates) not otherwise made ineligible for a reason described in ITB Sub-Clause 4.6 above shall be excluded if:

- (a) as a matter of law or official regulation, the Government prohibits commercial relations with the country of the Bidder, the Contractor, their associates, Subcontractors or their personnel;
- (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Government prohibits any import of goods from the country of the Bidder, its associates or their personnel or any payments to persons or entities in such country; or
- (c) such Bidder, Contractor, associate, Subcontractor or personnel are otherwise deemed ineligible by MCC pursuant to any policy or guidance that may, from time to time, be in effect as posted on the MCC website at www.mcc.gov.

Eligible Materials,
Equipment and Services

4.8 The materials, equipment and services to be supplied under the Contract may have their origin in any country subject to the same restrictions specified for Bidders and their associates and personnel set forth in ITB 4.6 and 4.7. At the Employer’s request, Bidders shall provide evidence of the origin of materials, equipment and services.

4.9 For purposes of ITB 4.8 above, “origin” means the place where the materials and equipment are mined, grown, cultivated, produced, manufactured or processed, and from which the

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services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized article results that differs substantially in its basic characteristics, purposes or utility from its underlying components.

- 4.10 The origin of materials, equipment and services is distinct from the nationality of the Bidder or Contractor.
 - 4.11 Country of origin for major items of plant, materials, goods and services to be provided under the Contract must be indicated in the Technical Proposal included in Section IV, Bid Forms.
 - 4.12 Bidders must also satisfy the eligibility criteria contained in the MCC Program Procurement Guidelines governing MCC-funded procurements. In the case where a Bidder intends to join with an associate or sub-contract part of the Contract, then such associate or Subcontractor shall also be subject to the eligibility criteria set forth in these Bidding Documents and the MCC Program Procurement Guidelines.
5. Qualifications of the Bidder
- 5.1 All Bidders shall submit completed Bid Forms (Section IV), including a technical proposal which provides environmental and social plans, health and safety plans, work plan, preliminary description of the proposed work method and schedule, including drawings and charts, as necessary (the “Technical Proposal”).
 - 5.2 In the event that pre-qualification of potential Bidders has been undertaken, only Bids from pre-qualified Bidders shall be considered for award of Contract. These qualified Bidders should submit with their Bids any information updating their original pre-qualification applications or, alternatively, confirm in their Bids that the originally submitted pre-qualification information remains essentially correct as of the date of Bid submission. The update or confirmation should be provided by completing Section IV Bid Forms.
 - 5.3 If the Employer has not undertaken pre-qualification of potential Bidders, all Bidders shall include the following information and documents with their Bids in Section IV Bid Forms, unless otherwise **stated in the BDS**:
 - (a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business of the Bidder; written power of attorney of the signatory of the Bid to commit the Bidder;
 - (b) reports on the financial standing of the Bidder, such as profit

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and loss statements and auditor's reports for the past five years;

- (c) evidence of adequacy of working capital to perform the Contract (access to line(s) of credit and availability of other financial resources);
- (d) authority to seek references from the Bidder's bankers;
- (e) information regarding any litigation, current or during the last five years, in which the Bidder was/is involved, the parties concerned, the disputed amounts, and awards;
- (f) total monetary value of construction works performed for each of the last five years;
- (g) experience in works of a similar nature and size for each of the last five years, and details of work under way or contractually committed; and clients who may be contacted for further information on those contracts;
- (h) major items of construction equipment proposed to carry out the Contract;
- (i) qualifications and experience of key site management and technical personnel proposed for the Contract;
- (j) proposals for sub-contracting components of the Works amounting to more than 10 percent of the Contract Price. The ceiling for subcontractor participation is **stated in the BDS**.

5.4 Bids submitted by a joint venture of two or more entities shall comply with the following requirements, unless otherwise **stated in the BDS**:

- (a) the Bid shall include all the information listed in ITB Sub-Clause 5.3 above for each joint venture member;
- (b) the Bid shall be signed so as to be legally binding on all members;
- (c) all members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
- (d) one of the members shall be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all members of the joint venture;
- (e) the execution of the entire Contract, including payment, shall be done exclusively with the member in charge; and
- (f) a copy of the joint venture or similar agreement entered into by the members shall be submitted with the Bid; or a letter of

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intent to execute a joint venture or similar 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.

5.5 To qualify for award of the Contract, Bidders shall meet the following minimum qualifying criteria:

- (a) an average annual financial amount of construction work as stipulated in sub-factor 3.2 of Section III, Evaluation and Qualification Criteria;
- (b) experience as prime contractor in the construction of at least the number of works of a nature and complexity equivalent to the Works over the period stipulated in sub-factor 4.2 of Section III, Evaluation and Qualification Criteria (to comply with this requirement, works cited should be at least 70 percent complete);
- (c) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment **listed in the BDS**;
- (d) a contract manager with five years' experience in works of an equivalent nature and volume, including no less than three years as manager;
- (e) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than the amount stipulated in sub-factor 3.3 of Section III, Evaluation and Qualification Criteria; and
- (f) the other minimum qualifying criteria set forth in Section III, Evaluation and Qualification Criteria.

A consistent history of litigation or arbitration awards against the Bidder or any member of a joint venture may result in disqualification.

5.6 The figures for each of the members of a joint venture shall be added together to determine the Bidder's compliance with the minimum qualifying; however, for a joint venture to qualify, its members must meet the minimum qualifying criteria set forth in Section III, Evaluation and Qualification Criteria. Failure to comply with this requirement shall result in rejection of the joint venture's Bid. Subcontractors' experiences and resources shall not be taken into account in determining the Bidder's compliance with the qualifying criteria, unless otherwise **stated in the BDS**.

6. One Bid per Bidder 6.1 Each Bidder shall submit only one Bid, either individually or as a member of a joint venture. A Bidder who submits or participates

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in more than one Bid (other than as a subcontractor or in cases of alternatives that have been permitted or requested) shall cause all the proposals with the Bidder's participation to be disqualified.

7. Cost of Bidding 7.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall, in no case, be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
8. Pre-bid Meeting and Site Visit 8.1 The Bidder's designated representative is invited to attend a pre-bid meeting, if **provided for in the BDS**. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage. Non-attendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.
- 8.2 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 acquired the Bidding Documents in accordance with ITB 9.3. 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 issuance of an addendum pursuant to ITB 11 and not through the minutes of the pre-bid meeting.
- 8.3 A site visit will be organized by the Employer if so **specified in the BDS**. The costs of participating in the pre-bid meeting and the site visit shall be at the Bidder's own expense.
- 8.4 If no site visit is organized, the Bidder is advised to visit and examine the site of Works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the Bid and entering into a contract for construction of the Works. The costs of visiting the site shall be at the Bidder's own expense. If permission is required to gain access to the site, the Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon the premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.

B. Bidding Documents

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9. Contents of Bidding Documents
- 9.1 The set of Bidding Documents comprises the documents listed below and addenda issued in accordance with ITB Clause 11:
- Part I —Bidding Procedures
- Section I. Instructions to Bidders (ITB)
- Section II. Bid Data Sheet (BDS)
- Section III. Evaluation and Qualification Criteria
- Section IV. Bid Forms
- Part II – Forms of Contract and Securities
- Section V. Form of Agreement and General Conditions of Contract (GCC)
- Section VI. Form of Special Conditions of Contract (SCC) and Additional Provisions Annex to the Contract
- Section VII. Securities Forms
- Part III -- Works Requirements
- Section VIII. Bill of Quantities⁶
- Section IX. Specifications and Performance Requirements
- Section X. Drawings
- 9.2 The Invitation for Bids issued by the Employer is not part of the Bidding Documents.
- 9.3 The Employer is not responsible for the completeness of the Bidding Documents and their addenda, if they were not obtained directly from the Employer.
- 9.4 The Bidder is expected to examine all instructions, forms, terms, and specifications, inclusive of environmental, social and health and safety requirements, in the Bidding Documents. Failure to furnish all information or documentation required by the Bidding Documents may result in the rejection of the Bid.

⁶ In fixed price contracts, delete “Bill of Quantities” and replace with “Activity Schedule”.

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10. Clarification of Bidding Documents
- 10.1 A prospective Bidder requiring any clarification of the Bidding Documents may notify the Employer in writing at the Employer's address **indicated in the BDS**. The Employer will respond to any request for clarification received earlier than the number of days **indicated in the BDS** prior to the deadline for submission of Bids. Copies of the Employer's response will be forwarded to all prospective Bidders who have acquired the Bidding Documents directly from it. Alternatively, and if so **indicated in the BDS**, the response may be posted at the Employer's website, including a description of the inquiry, but without identifying its source. Prospective Bidders are responsible for visiting this website and obtaining clarifications in relation to the Bidding Documents.
11. Amendment of Bidding Documents
- 11.1 Before the deadline for submission of Bids, the Employer may modify the Bidding Documents by issuing addenda.
- 11.2 Any addendum thus issued shall become part of the Bidding Documents and shall be forwarded by the Employer to all prospective Bidders who have acquired the Bidding Documents directly from it. Alternatively, and if so **indicated in the BDS**, the addendum may be posted at the Employer's website. Prospective Bidders are responsible for visiting this website and obtaining addenda in relation to the Bidding Documents and shall acknowledge receipt of each addendum in writing to the Employer.
- 11.3 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 submission of Bids, in accordance with ITB Sub-Clause 21.2 below.

C. Preparation of Bids

12. Language of Bid
- 12.1 The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Employer, shall be written in English and, at the discretion of the Employer, in another language if so **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 English, in which case, for purposes of interpretation of the Bid, such translation shall govern. Bidders should understand that, for all documents provided, the English version prevails.

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13. Documents
Comprising the
Bid
- 13.1 The Bid submitted by the Bidder shall comprise the following:
- (a) The Bid (in the format indicated in Section IV);
 - (b) Bid Security, in accordance with ITB Clause 17, if required;
 - (c) priced Bill of Quantities;⁷
 - (d) Qualification Information Form and Documents;
 - (e) Technical Proposal;
 - (f) alternative offers where invited;
 - (g) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 19.2; and
 - (h) any other materials required to be completed and submitted by Bidders, as **specified in the BDS**.
- 13.2 In addition to the requirements under ITB 13.1, Bids submitted by a joint venture shall include those documents specified in, and otherwise comply with the requirements of, ITB 5.4.
14. Bid Prices
- 14.1 The Contract shall be for the Works, as described in ITB Sub-Clause 1.1, based on the priced Bill of Quantities⁸ submitted by the Bidder.
- 14.2 The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities.⁹ Items for which no rate or price is entered by the Bidder shall not be paid for by the Employer when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities.¹⁰ Corrections, if any, shall be made by crossing out, initialing, dating and rewriting.
- 14.3 GCC Clause 49 of the form of Contract (Section V) sets forth the tax provisions applicable to any Bid and to performance of the Contract. Bidders should review and consider this clause carefully in preparing their Bid.
- 14.4 The rates and prices¹¹ quoted by the Bidder shall be subject to adjustment during the performance of the Contract if **provided**

⁷ *In fixed price contracts, delete “priced Bill of Quantities” and replace with “priced Activity Schedule.”*

⁸ *In fixed price contracts, delete “priced Bill of Quantities” and replace with “priced Activity Schedule.”*

⁹ *In fixed price contracts, delete “rates and”; delete “described in the Bill of Quantities” and replace with “described in the drawings and specifications and listed in the Activity Schedule.”*

¹⁰ *In fixed price contracts, delete “rate or”; delete “rates and”; delete “Bill of Quantities” and replace with “Activity Schedule.”*

¹¹ *In fixed price contracts, delete “rates and prices” and replace with “fixed price.”*

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for in the BDS and SCC and the provisions of Clause 47 of the GCC. The Bidder shall submit with the Bid all the information required under the SCC and GCC Clause 47.

- 14.5 If so **indicated in the BDS**, Bids are being invited for individual lots or for any combination of lots (packages). Bidders wishing to offer any price reduction for the award of more than one lot shall specify in their Bid the price reductions applicable to each package, or alternatively, to individual lots within the package. Price reductions or discounts shall be submitted in accordance with ITB 14.4, provided the Bids for all lots are submitted and opened at the same time.
15. Currencies of Bid and Payment 15.1 The currency(ies), or combinations thereof, of the Bid and payments shall be as **specified in the BDS**.
16. Bid Validity 16.1 Bids shall remain valid for the period **specified in the BDS**.
- 16.2 In exceptional circumstances, prior to the expiration of the Bid validity period, the Employer may request Bidders to extend the period of validity of their Bids for a specified additional period. The request and the Bidders' responses shall be made in writing. If a Bid Security is requested in accordance with ITB Clause 17, it shall also be extended up to 28 days after the deadline of the extended Bid validity period. A Bidder may refuse the request without forfeiting the Bid Security. A Bidder agreeing to the request shall not be required or permitted to modify its Bid, except at the discretion of the Employer.
17. Bid Security 17.1 If required in the BDS, the Bidder shall furnish, as part of its Bid, a Bid Security in original form as **specified in the BDS**. If a Bidder is bidding on multiple lots or is submitting alternative Bids, only one Bid Security is required for all lots and for both base and alternative Bids.
- 17.2 The Bid Security (if required) shall be in the amount and currency **specified in the BDS**, and shall:
- (1) at the Bidder's option, be in the form of either an irrevocable letter of credit or an unconditional bank guarantee from a banking institution;
 - (2) be issued by a reputable institution selected by the Bidder and located in any eligible country (as determined in accordance with ITB 4); if the institution issuing the bank guarantee is located outside the Employer's country, it shall have a correspondent financial institution located in the

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Employer's country, acceptable to Employer, to make it enforceable;

- (3) be substantially in accordance with one of the forms of Bid Security included in Section VII, Security Forms, or other form approved by the Employer prior to Bid submission; in either case, the form must include the complete name of the Bidder;
- (4) be payable promptly upon written demand by the Employer in case the conditions listed in ITB Sub-Clause 17.5 are invoked;
- (5) be submitted in its original form; copies shall not be accepted;
- (6) remain valid for a period of 28 days beyond the validity period of the Bids, as extended, if applicable, in accordance with ITB Sub-Clause 16.2.

17.3 Any Bid not accompanied by a substantially responsive Bid Security (if required) in accordance with ITB Sub-Clause 17.1 shall be rejected by the Employer as non-responsive.

17.4 The Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's furnishing of the performance security in accordance with GCC 56 as described in ITB 35.

17.5 The Bid Security may be forfeited:

- (a) if a Bidder withdraws its Bid during the period of Bid validity specified by the Bidder on the Bid Submission Sheet, except as provided in ITB Sub-Clause 16.2; or
- (b) if the Bidder does not accept the correction of its Bid Price pursuant to ITB Sub-Clause 28.
- (c) if the successful Bidder fails within the specified time to:
 - (i) sign the Contract; or
 - (ii) furnish the required performance security.

17.6 The Bid Security of a joint venture must be in the name of the joint venture that submits the Bid. If the joint venture has not been legally constituted at the time of bidding, the Bid Security shall be in the names of all future members as named in the letter of intent or similar agreement in connection with the formation of the joint venture.

18. Alternative

18.1 Alternative Bids shall not be considered, unless specifically

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Proposals by
Bidders

allowed in the BDS. If so allowed, ITB Sub-Clauses 18.1 and 18.2 shall govern, and the **BDS shall specify** which of the following options shall be allowed:

- (a) Option One. A Bidder may submit alternative Bids with the base Bid and the Employer shall only consider the alternative Bids offered by the Bidder whose Bid for the base case was determined to be the lowest-evaluated Bid, or
- (b) Option Two. A Bidder may submit an alternative Bid with or without a Bid for the base case. All Bids received, for the base case, as well as alternative Bids meeting the specifications and performance requirements pursuant to Section IX, shall be evaluated on their own merits.

18.2 Alternative Bids shall provide all information necessary for a complete evaluation of the alternative by the Employer, including design calculations, technical specifications, breakdown of prices, proposed construction methods and other relevant details.

19. Format and
Signing of Bid

19.1 The Bidder shall prepare one original set of the documents comprising the Bid as described in ITB 13 and clearly mark it **ORIGINAL**. Alternative Bids, if permitted in accordance with ITB 18, shall be clearly marked **ALTERNATIVE**. In addition, the Bidder shall submit copies of the Bid, in the language(s) and number **specified in the BDS** and clearly mark each one **COPY**. In the event of any discrepancy between the original and the copies, the original shall prevail.

19.2 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.

19.3 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.

19.4 The Bidder shall furnish information as described in the Form of Bid in Section IV on commissions or gratuities, if any, paid or to be paid to agents relating to this Bid, or to Contract execution if the Bidder is awarded the Contract.

D. Submission of Bids

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20. Submission, Sealing, and Marking of Bids
- 20.1 Bidders may always submit their Bids by mail or by hand. When so **specified in the BDS**, Bidders shall have the option of submitting their Bids electronically. Bidders submitting Bids electronically shall follow the procedures **specified in the BDS**. For Bids submitted in hard copy, the Bidder shall seal the original and all copies of the Bid in two inner envelopes and one outer envelope, duly marking the inner envelopes as “ORIGINAL” and “COPIES.”
- 20.2 The inner and outer envelopes shall:
- (a) bear the name and address of the Bidder;
 - (b) be addressed to the Employer at the address **provided in the BDS**;
 - (c) bear the name and identification number of the Contract as **defined in the BDS section 1.1** and SCC; and
 - (d) provide a warning not to open before the specified time and date for Bid opening as **defined in the BDS**.
- 20.3 If the envelopes are not sealed and marked as above, the Employer shall assume no responsibility for the misplacement or premature opening of the Bid.
21. Deadline for Submission of Bids
- 21.1 Bids shall be delivered to the Employer at the address specified above no later than the time and date **specified in the BDS**.
- 21.2 The Employer may, at its discretion, extend the deadline for submission of Bids by issuing an addendum in accordance with ITB Clause 11, in which case all rights and obligations of the Employer and the Bidders previously subject to the original deadline shall then be subject to the new deadline.
22. Late Bids
- 22.1 Any Bid received by the Employer after the deadline prescribed in ITB Clause 21 shall be declared late, rejected, and returned unopened to the Bidder.
23. Withdrawal, Substitution, and Modification of Bids
- 23.1 A Bidder may withdraw, substitute or modify its Bid after it has been submitted by giving notice in writing before the deadline for Bid submission prescribed in ITB Clause 21, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB Clause 13.
- 23.2 Each Bidder’s withdrawal, substitution or modification notice shall be prepared, sealed, marked, and delivered in accordance with ITB Clauses 19 and 20 (except that withdrawal notices do

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not require copies), with the outer and inner envelopes additionally marked “WITHDRAWAL,” “SUBSTITUTION,” or “MODIFICATION”, as appropriate.

- 23.3 Bids requested to be withdrawn in accordance with ITB Sub-Clause 23.2 shall be returned unopened to the Bidders.
- 23.4 No Bid may be withdrawn, substituted or modified after the deadline for submission of Bids.
- 23.5 Bidders may only offer discounts to, or otherwise modify the prices of their Bids, by submitting Bid modifications in accordance with this clause or included in the initial Bid.

E. Bid Opening and Evaluation

24. Bid Opening

- 24.1 The Employer shall open the Bids, including modifications made pursuant to ITB Clause 23, in the presence of the Bidders’ representatives who choose to attend at the time and in the place **specified in the BDS**. Any specific opening procedures required, if electronic bidding is permitted in accordance with ITB Sub-Clause 20.1, shall be as **specified in the BDS**.
- 24.2 First, e-mail files and 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, e-mail files and 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. E-mail files and envelopes marked **MODIFICATION** shall be opened and read out with the corresponding Bid. No Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Bid opening. Only Bids that are opened and read out at Bid opening shall be considered further.
- 24.3 All other e-mail files and envelopes shall then be opened one at a time, and the official shall read aloud: the name of the Bidder and whether there is a modification; the Bid price(s), including any

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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. No Bid shall be rejected at Bid opening except for late Bids, in accordance with ITB 22. Substitution Bids and modifications submitted pursuant to ITB Clause 23 that are not opened and read out at Bid opening shall not be considered for further evaluation regardless of the circumstances. Late, withdrawn and substituted Bids shall be returned un-opened to Bidders.

- 24.4 The Employer shall prepare minutes of the Bid opening, including the information disclosed, to those present, in accordance with ITB Sub-Clause 24.3.
25. Confidentiality; Undue Influence
- 25.1 Information relating to the examination, clarification, evaluation, and comparison of Bids and recommendations for the award of a Contract shall not be disclosed to Bidders or any other persons not officially concerned with such process until publication of the award to the successful Bidder has been announced pursuant to ITB Sub-Clause 34.4. The undue use by any Bidder of confidential information related to the process may result in the rejection of its Bid and may subject the Bidder to the provisions of the Government's, the Employer's and MCC's anti-fraud and corruption policies.
- 25.2 Any effort by a Bidder to influence the Employer's processing of Bids or award decisions may result in the rejection of its Bid. Notwithstanding the above, from the time of Bid opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the bidding process, it should do so in writing.
26. Clarification of Bids
- 26.1 To assist in the examination, evaluation, and comparison of Bids, the Employer may, at its discretion, ask any Bidder for clarification of the Bidder's Bid. The request for clarification and the response shall be in writing, but no change in the price or substance of the Bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Bids in accordance with ITB Clause 28.
27. Examination of Bids and Determination of Responsiveness
- 27.1 Prior to the detailed evaluation of Bids, the Employer shall determine whether each Bid (a) meets the eligibility criteria defined in ITB Clause 4; (b) has been properly signed; (c) is accompanied by the Bid Security, if required; and (d) is substantially responsive to the requirements of the Bidding

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Documents.

- 27.2 A substantially responsive Bid is one which conforms to all the terms, conditions, and specifications of the Bidding Documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the Works; (b) which limits in any substantial way, inconsistent with the Bidding Documents, the Employer's rights or the Bidder's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other Bidders presenting substantially responsive Bids.
- 27.3 If a Bid is not substantially responsive, it shall be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.
28. Correction of Arithmetic Errors
- 28.1 Provided that the Bid is substantially responsive, the Employer shall correct arithmetical errors on the following basis:
- (a) if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;¹²
 - (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.¹³
- 28.2 If the Bidder that submitted the lowest-evaluated Bid does not accept the correction of errors, its Bid shall be rejected and the Bid Security may be forfeited in accordance with ITB Sub-Clause 17.5(b).
29. Currency for Bid Evaluation
- 29.1 For evaluation and comparison purposes, the currency(ies) of the Bids shall be converted into a single currency **as specified in the**

¹² In fixed price contracts, delete paragraph (a) and renumber the other paragraphs in this ITB clause accordingly.

¹³ In fixed price contracts, delete "and (b)".

BDS.

30. Evaluation and Comparison of Bids
- 30.1 The Employer shall evaluate and compare only the Bids determined to be substantially responsive in accordance with ITB Clause 27.
- 30.2 In evaluating the Bids, the Employer shall determine for each Bid the evaluated Bid price by adjusting the Bid price as follows:
- (a) making any correction for errors pursuant to ITB Clause 28;
 - (b) excluding provisional sums and the provision, if any, for contingencies in the Bill of Quantities,¹⁴ but including daywork, where priced competitively;
 - (c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with ITB Clause 18;
 - (d) (making appropriate adjustments to reflect discounts or other price modifications offered in accordance with ITB Sub-Clause 23.5; and
 - (e) the evaluation factors indicated in Section III, Evaluation and Qualification Criteria.
- 30.3 The Employer shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive Bid is qualified to perform the Contract satisfactorily. The determination shall be based upon an examination of the documentary evidence of a Bidder's qualifications submitted by a Bidder and the qualification criteria indicated in Section III, Evaluation and Qualification Criteria.
- 30.4 The Employer reserves the right to accept or reject any variation, deviation, or unsolicited alternative offer. Variations, deviations, and unsolicited alternative offers and other factors which are in excess of the requirements of the Bidding Documents or otherwise result in unsolicited benefits for the Employer shall not be taken into account in Bid evaluation.
- 30.5 The estimated effect of any price adjustment conditions under GCC Clause 51, during the period of implementation of the Contract, shall not be taken into account in Bid evaluation.
- 30.6 In the case of several lots, pursuant to ITB Sub-Clause 30.2(d), the Employer shall determine the application of discounts so as to

¹⁴ *In fixed price contracts, delete "Bill of Quantities" and replace with "Activity Schedule."*

Section I Instructions to Bidders

minimize the combined cost of all the lots.

- 30.7 If the Bid, which results in the lowest evaluated Bid price, is seriously unbalanced or front loaded in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analyses for any or all items of the Bill of Quantities¹⁵ to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the Employer may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.
- 30.8 At any time during the evaluation process, the Employer reserves the right to conduct a verification of market-reasonableness of the prices offered, and a negative determination (either unreasonably high or unreasonably low) could be a reason for rejection of the Bid at the discretion of the Employer. The Bidder shall not be permitted to revise its Bid after this determination.
- 30.9 In accordance with the MCC Program Procurement Guidelines, the Bidder's past performance on MCC-funded contracts will be considered as a criterion in the Employer's evaluation of the Bid.
31. No Preference for Domestic Bidders
- 31.1 A margin of preference for domestic Bidders shall not apply in Bid evaluation.

F. Award of Contract

32. Award Criteria
- 32.1 Subject to ITB Clause 33, and prior to the expiration of the period of Bid validity, the Employer will award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the Bidding Documents and who has offered the lowest evaluated Bid price, provided that such Bidder has been determined to be (a) eligible in accordance with the provisions of ITB Clause 4, (b) qualified in accordance with the provisions of ITB Clause 5 and (c) otherwise determined qualified to perform the Contract.

¹⁵ In fixed price contracts, delete "Bill of Quantities" and replace with "Activity Schedule".

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33. Employer's Right to Accept any Bid and to Reject any or all Bids
- 33.1 Subject only to MCC's Program Procurement Guidelines and notwithstanding ITB Clause 32, the Employer reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all Bids, at any time prior to the award of Contract, without thereby incurring any liability to any Bidder or any obligation to inform the affected Bidder or Bidders of the grounds for the Employer's action.
34. Notification of Award and Signing of Agreement
- 34.1 The Bidder whose Bid has been accepted shall be notified of the award by the Employer in writing prior to the expiration of the Bid validity period using a letter of acceptance substantially in the form set out in Section IV of these Bidding Documents (the "Letter of Acceptance").
- 34.2 The Letter of Acceptance shall constitute the formation of the Contract, subject to the Bidder furnishing the Performance Security in accordance with ITB Clause 35 and signing the Contract in accordance with ITB Sub-Clause 34.3.
- 34.3 The Contract will constitute all agreements between the Employer and the successful Bidder as described in GCC Clause 2.3. Promptly after providing the successful Bidder with the Letter of Acceptance, and after providing for the time period for Bid Challenges, the Employer will send the successful Bidder the Agreement. Within 21 days of receipt, the successful Bidder shall sign the Contract and deliver it to the Employer.¹⁶
- 34.4 The Employer will 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.
- 34.5 After publication of the award, unsuccessful Bidders may request in writing to the Employer for a debriefing seeking explanations for the failure of their Bids. The Employer shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB Sub-Clause 34.4, requests of the Employer in writing the grounds on which its Bid

¹⁶ In each country in which this form is used, it would be prudent to review the formalities of contract execution under applicable local laws (e.g., do the parties need to sign on the same day? is the use of counterpart signature pages allowed?) and add any additional language to this instruction as may be appropriate.

Section I Instructions to Bidders

was not selected.

35. Performance Security
- 35.1 Within 21 days after receipt of the Letter of Acceptance, the successful Bidder shall deliver to the Employer a Performance Security in accordance with the terms of GCC Clause 56, using for that purpose the form of Performance Bank Guarantee included in Section VII of these Bidding Documents, or another form acceptable to the Employer. A foreign institution providing the Performance Security shall (a) be from an eligible country determined in accordance with ITB 4, (b) have a correspondent financial institution located in the Employer's country and (c) be acceptable to the Employer..
- 35.2 Failure of the successful Bidder to comply with the requirements of ITB Sub-Clauses 34.3 and 35.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Bid Security.
- 35.3 Upon the successful Bidder's signing of the Contract and furnishing of the Performance Security pursuant to GCC Clause 56, as described in ITB Sub-Clause 35.1, the Employer shall promptly notify the name of the winning Bidder to each unsuccessful Bidder and shall discharge the Bid Securities of the unsuccessful Bidders pursuant to ITB Sub-Clause 17.4.
36. Advance Payment and Security
- [Please refer to MCC Program Procurement Guidance entitled "MCC Guidance on Contract Payments." Advance payments in MCC funded contracts are made only on an exceptional basis and all such exceptions must be granted by MCC. Only if an exception has been granted will the following text for ITB Sub-Clause 36.1 be used.]**
- 36.1 The Employer will provide an Advance Payment on the Contract Price as stipulated in the GCC, subject to a maximum amount, as **stated in the BDS**. The Advance Payment shall be guaranteed by a Security. Section VII, "Security Forms", provides a Bank Guarantee for Advance Payment form.
- [If an exception is not granted and no advance payments are to be made, ITB Clause 36 should read: Reserved.]**
37. Adjudicator
- 37.1 The Employer proposes the person **named in the BDS** to be appointed as Adjudicator under the Contract, at an hourly fee **specified in the BDS**, plus reimbursable expenses. If the Bidder disagrees with this proposal, the Bidder should so state in the Bid. If, in the Letter of Acceptance, the Employer has not agreed on the appointment of the Adjudicator, the Adjudicator shall be

Section I Instructions to Bidders

appointed by the Appointing Authority **designated in the BDS** and the SCC at the request of either party.

38. Bid Challenge System
- 38.1 Bidders may challenge the results of a Bid according to the rules established in the bid challenge system developed by the Employer and approved by MCC. The rules and provisions of the bid challenge system are as published on the Employer website **indicated in the BDS**.
39. Compact Conditionalities
- 39.1 Bidders are advised to examine and consider carefully the provisions that are set forth in Annex A to the Contract as these are a part of the Government's and the Employer's obligations under the Compact and related documents which, under the terms of the Compact and related documents, are required to be transferred onto any Bidder, Contractor or Subcontractor who partakes in procurement or subsequent contracts in which MCC funding is involved.
- 39.2 The provisions set forth in Annex A to the Contract apply during the bidding procedures as well as throughout the performance of the Contract.

Section II. Bid Data Sheet

A. General	
Definitions	<p>“Compact” means the Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Government, entered into on [date], as may be amended from time to time.</p> <p>“Employer” means [full legal name of the MCA Entity].</p> <p>“Government” means the government of [country].</p>
ITB 1.1	<p>The Works for which the Bidding Documents have been issued is: [insert brief description of the Works]</p> <p>The number and identification of lots (contracts) comprising this IFB is: [insert information].</p>
ITB 1.2	The Intended Completion Date of the Works is: [insert date] .
ITB 4.6	<p>As of the date of these Bidding Documents, the countries that are subject to sanction or restriction by law or policy of the United States include [Cuba, Iran, North Korea, Sudan and Syria].</p> <p>[The list of countries must be confirmed and updated as necessary each time this SBD is used in a specific procurement. For example, at the time this version of this SBD was finalized, it was expected North Korea would be removed from the list.]¹⁷</p>
ITB 5.318	The information required from Bidders in ITB Sub-Clause 5.3 is modified as follows: [list any additions or deletions to list in ITB Sub-Clause 5.3; otherwise list “none”] .
ITB 5.3(j)	The ceiling for subcontractor participation is: [insert the percentage]
ITB 5.4	The qualification data required from Bidders in ITB Sub-Clause 5.4 are modified as follows: [list any additions or deletions to list in ITB Sub-Clause 5.4; otherwise list “none”] .
ITB 5.4(c)	If the Bidder is a joint venture or consortium, all members [shall / shall not] be jointly and severally liable.

¹⁷ This list is subject to revision. Please check with the relevant attorney in the MCC Office of General Counsel prior to the use of this form in any specific Bidding Document.

¹⁸ Delete if pre-qualification has been conducted.

Section II Bid Data Sheet

ITB 5.5(c)	The essential equipment to be made available for the Contract by the successful Bidder shall be: [insert equipment list] .
ITB 5.6	Subcontractors' experience and resources [shall / shall not] be taken into account.
ITB 8.1	A pre-bid meeting [shall / shall not] take place. [insert date/time/place of the pre-bid meeting visit if to be held]
ITB 8.3	A site visit [shall / shall not] be organized. [insert date/time/place of the site visit if to be organized]
B. Bidding Documents	
ITB 10.1	<p>For purposes of clarification, the Employer's address is:</p> <p>Attention: Street Address: City: Country: Facsimile number: E-mail address:</p> <p>The minimum number of days prior to the deadline for submission of Bids to receive any request for clarification: [insert number of days]</p> <p>The minimum number of days prior to the deadline for submission of Bids that the Employer will respond: [insert number of days]</p> <p>The responses [shall / shall not] be posted on the Employer's website.</p> <p>If posted, the website is: [insert website address]</p>
ITB 11.2	<p>Addenda [shall / shall not] be posted on the Employer's website.</p> <p>If posted, the website is: [insert website address].</p>
C. Preparation of Bids	
ITB 12.1	Bids shall be submitted in the following languages: ["English" or "English and [another language]"] .
ITB 13.1(h)	The Bidder shall submit with its Bid the following additional documents: [insert details here]
ITB 14.4	The prices quoted by the Bidder shall be: [insert "subject/not subject"] to adjustment after [insert number of months] .

Section II Bid Data Sheet

	<p>If prices shall be subject to adjustment, the indices and weightings for the price adjustment formulae will be set by the Bidder as specified in the Schedule of Adjustment Data of the Technical Proposal in Section IV, Bid Forms.</p>
ITB 14.5	<p>Bids [are/are not] being invited for lots.</p> <p>If Bids are being invited for lots, the individual lots and permitted combinations are as follows:</p> <p>[Insert relevant information.]</p> <p>If Bids are permitted for multiple lots, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria.</p>
ITB 15.1	<p>The currency(ies) of the Bid shall be as follows: [insert details here].</p> <p>The currency(ies) of the payment shall be as follows: [insert details here].</p>
ITB 16.1	<p>The Bid validity period shall be [insert number of days] days from the deadline for Bid submission.</p>
ITB 17.1	<p>A Bid Security [is/is not] required.</p> <p>If required, the form of the Bid Security shall be [insert details here].</p>
ITB 17.2	<p>The amount and currency of the Bid Security shall be [insert details here].</p>
ITB 18.1	<p>Alternative Bids [are/are not] permitted.</p> <p>If permitted, the following option shall be allowed: [Option One/Two].</p>
ITB 19.1	<p>In addition to the original of the Bid, the number of required copies is: XXXX in English and XXXX in [specify other language].</p>
ITB 19.2	<p>The written confirmation of authorization to sign on behalf of the Bidder shall consist of: [insert details here].</p>
<p>D. Submission of Bids</p>	
ITB 20.1	<p>Bidders [have / do not have] the option of submitting their Bids electronically.</p> <p>If Bidders have the option of submitting their Bids electronically, the electronic bidding submission procedures shall be:</p> <p>A Bid submitted electronically shall be transmitted by e-mail in a PDF form document to the following address:</p>

Section II Bid Data Sheet

	<p>[insert e-mail address of Employer]</p> <p>Any Bid submitted electronically must be received at this address before the deadline for submission of bids specified in ITB Sub-Clause 21.1.</p> <p>Bidders are advised that the Employer is not responsible for any delays or defects in the receipt or download of any Bid submitted electronically.</p> <p>If a Bid is submitted electronically, a hard copy must be submitted by post or by hand within five (5) business days after the deadline for submission of Bids, following the instructions at ITB Clause 20.</p> <p>In the event of any differences between the electronic version and the hard copy of a Bid, the electronic version shall control and shall be considered valid and binding upon the Bidder.</p> <p>All Bids submitted in electronic form shall bear in the title of the e-mail the specific identification of the bidding process, indicated in ITB Sub-Clause 1.1.</p> <p>Immediately after transmitting the electronic file by e-mail, the Bidder shall print a copy of the e-mail that transmitted the file, showing the date and time the file was transmitted. The printed e-mail shall be sent by facsimile to the facsimile number provided in ITB 20.2(b). The subject title of the facsimile cover sheet should read "Evidence of E-mailed Bid".</p>
<p>ITB 20.2(b)</p>	<p>For Bid submission purposes only, the submission address is :</p> <p>Attention: Street Address: City: Country: Facsimile:</p>
<p>ITB 21.1</p>	<p>The deadline for Bid submission is:</p> <p>Date: Time:</p>
<p>E. Bid Opening and Evaluation</p>	
<p>ITB 24.1</p>	<p>The Bid opening shall take place at:</p> <p>Street Address: City: Country: Date: Time:</p>

Section II Bid Data Sheet

	Procedure for electronic opening:
ITB 29.1	<p>The currency that shall be used for Bid evaluation and comparison is: [insert details here].</p> <p>The basis for conversion shall be: [Specify the source for the exchange rate, such as the Central Bank rate, a published rate that is widely available, etc.]</p>
F. Award of Contract	
ITB 35.1	The form, amount and currency of the Performance Security shall be [insert details here] .
ITB 36.1	The Advance Payment shall be limited to [insert percentage] percent of the Contract Price.
ITB 37.1	<p>The Adjudicator proposed by the Employer is [insert name and address].</p> <p>The hourly fee for this proposed Adjudicator shall be [insert amount and currency].</p> <p>The biographical data of the proposed Adjudicator is as follows:</p> <p>[provide relevant information, such as education, experience, age, nationality, and present position].</p> <p>The Appointing Authority is [insert complete legal name and address]</p>
ITB 38.1	The details of the Bid Challenge System can be found at [insert web address] .

Section III. Evaluation and Qualification Criteria

This Section contains criteria that the Employer will use to qualify Bidders. To demonstrate its qualifications, the Bidder shall provide all the information requested in the forms included in Section IV, Bid Forms.

A. Evaluation

In addition to the criteria listed in ITB 5, 27 and 30, the following criteria shall apply:

1. Adequacy of Technical Proposal, in accordance with ITB 5.1 and 27.2, will be evaluated as follows:

.....
.....
.....

2. Adequacy of Environmental, Social, Health and Safety Plans, in accordance with ITB 5.1 and 27.2, will be evaluated as follows:

.....
.....
.....

3. Alternative Proposals, if permitted under ITB 18.1, will be evaluated as follows:

.....
.....
.....

4. Multiple Lots and Discounts, if permitted under ITB 23.5 and 30.2(d), will be evaluated as follows:

.....
.....
.....

B. Qualification

Sub-Factor	Requirement	1. Eligibility Criteria			
		Single Entity	Bidder		
			Joint Venture or Association		
			All members combined	Each member	At least one member
1.1 Nationality	Nationality in accordance with ITB 4.2.	Must meet requirement	Existing or intended joint venture must meet requirement	Must meet requirement	N / A
1.2 Conflict of Interest	No conflicts of interests as described in ITB 4.3.	Must meet requirement	Existing or intended joint venture must meet requirement	Must meet requirement	N / A
1.3 Ineligibility	Not having been deemed ineligible based on any of the criteria set forth in ITB 4.	Must meet requirement	Existing or intended joint venture must meet requirement	Must meet requirement	N / A
Government Owned Entity	Compliance with conditions of ITB 4.4.	Must meet requirement	Must meet requirement	Must meet requirement	N / A

Section III Evaluation and Qualification Criteria

Sub-Factor	2. Historical Contract Non-Performance				
	Requirement	Bidder			
		Single Entity	Joint Venture or Association		
			All members combined	Each member	At least one member
History of Non-performing Contracts	Non-performance of a contract did not occur within last 5 years prior to the deadline for Bid submission, based on all information on fully settled disputes or litigation. A fully settled dispute or litigation is one that has been resolved in accordance with the dispute resolution mechanism under the respective contract, and where all appeal instances available to the Bidder have been exhausted.	Must meet requirement by itself or as member to past or existing joint venture	N / A	Must meet requirement by itself or as member to past or existing joint venture	N / A
Failure to Sign a Contract	Failure to sign a contract after submitting a bid security has not occurred in the past 5 years. Any deviation should be explained in the Contract Non-Performance form.	Must meet requirement	Must meet requirement	Must meet requirement	N / A
Pending Litigation	All pending litigation shall in total not represent more than 10% of the Bidder's net worth and shall be treated as resolved against the Bidder.	Must meet requirement by itself or as member to past or existing joint venture	N / A	Must meet requirement by itself or as member to past or existing joint venture	N / A

Section III Evaluation and Qualification Criteria

	3. Financial Situation				
	Requirement	Bidder			
		Single Entity	Joint Venture or Association		
	All members combined		Each member	At least one member	
Historical Financial Performance	Submission of audited financials or, if not required by the law of the Bidder's country, other financial statements acceptable to the Employer, for the last 5 years to demonstrate the current soundness of the Bidder's financial position and its prospective long term profitability.	Must meet requirement	N / A	Must meet requirement	N / A
3.2 Average Annual Construction Turnover	Minimum average annual turnover of USD[XXX]19 million or equivalent, calculated as total certified payments received for contracts in progress or completed, within last 5 years.	Must meet requirement	Must meet requirement	Must meet 25% of the requirement	Must meet 40% of the requirement

¹⁹ Insert the appropriate dollar amount.

Section III Evaluation and Qualification Criteria

	3. Financial Situation				
	Requirement	Bidder			
		Single Entity	Joint Venture or Association		
	All members combined		Each member	At least one member	
3.3 Financial Resources	Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet: (i) the following cash-flow requirement: cash flow amount of USD[XXX]20 million or equivalent. (ii) the overall cash flow requirements for this contract and its current commitments.	Must meet requirement	Must meet requirement	Must meet 25% of the requirement	Must meet 40% of the requirement

²⁰ Insert the appropriate dollar amount.

Section III Evaluation and Qualification Criteria

Sub-Factor	4. Experience				
	Requirement	Bidder			
		Single Entity	Joint Venture or Association		
	All members combined		Each member	At least one member	
4.1 General Construction Experience	Experience under contracts in role of contractor, subcontractor, or management contractor for at least the last 5 years prior to Bid submission deadline, and with activity in at least 9 months each year.	Must meet requirement	N / A	Must meet 25% of the requirement	Must meet 40% of the requirement
4.2 Similar Construction Experience	Participation as contractor, management contractor, or subcontractor in at least [XXX] ²¹ contracts within the last 5 years, each with a value of at least USD [XXX] ²² or equivalent, that have been completed and are similar to proposed Works.	Must meet requirement	Must meet requirements for all characteristics	N / A	Must meet requirement for one characteristic
4.3 Specific Construction Experience in Key Activities	For the above or other contracts executed during the period in 4.2 above, minimum experience in following key activities:	Must meet requirements	Must meet requirements	N / A	Must meet the following requirements: 55% of the requirements.

²¹ Insert the appropriate number of contracts.

²² Insert the appropriate dollar amount.

Section III Evaluation and Qualification Criteria

Sub-Factor	4. Experience				
	Requirement	Bidder			
		Single Entity	Joint Venture or Association		
			All members combined	Each member	At least one member
				

Section IV. Bid Forms

1. Contractor’s Bid

[The Bidder shall fill in and submit this Bid form with the Bid. If the Bidder objects to the Adjudicator proposed by the Employer in the Bidding Documents, it should so state in its Bid, and present an alternative candidate, together with the candidate’s daily fees and biographical data, in accordance with ITB Clause 37.]

[date]

Identification No and Title of Contract: **[insert identification number and title of the Contract]**

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

Having examined the Bidding Documents, including addenda **[insert list]**, we offer to execute the **[name and identification number of Contract]** in accordance with the form of Contract accompanying this Bid for the Contract Price of **[insert amount in numbers]**, **[insert amount in words]** **[insert name of currency]**.

The Contract shall be paid in the following currencies:

Currency	Percentage payable in currency	Rate of exchange: one USD equals [insert local]	Inputs for which USD is required
(a)			
(b)			

The Advance Payment requested is:

Amount	Currency
(a)	
(b)	

Our Bid shall be valid for the period of time in accordance with ITB Sub-Clause 16.1, from the date fixed for Bid submission deadline in accordance with ITB Sub-Clause 21.1, and it shall remain binding upon us and may be accepted at any time before the expiration of that period. We hereby confirm that this Bid complies with the Bid Security as required by the Bidding Documents and specified in the BDS.

If our Bid is accepted, we commit to obtain a Performance Security in accordance with GCC Clause 56 and as described in ITB Clause 35 for the due performance of the Contract.

We accept the appointment of *[insert name proposed in Bid Data Sheet]* as the Adjudicator.

Section IV Bid Forms

[or]

We do not accept the appointment of *[insert name proposed in Bid Data Sheet]* as the Adjudicator, and propose instead that *[insert name]* be appointed as Adjudicator, whose daily fees and biographical data are attached.

We, including any subcontractors or suppliers for any part of the Contract, have nationalities from eligible countries in accordance with ITB 4.

We have no conflict of interest in accordance with ITB 4.3.

Our firm, its affiliates or subsidiaries—including any subcontractors or suppliers for any part of the Contract—has not been declared ineligible by the Government of the United States or the World Bank, or under the Employer’s country laws or official regulations or as otherwise provided in ITB 4.

We are aware of, and will comply with, the rules on prohibited activities, restricted parties and eligibility requirements of prohibited source provisions in accordance with applicable US law, regulations and policy and other requirements as summarized in Annex A to the form of Contract (Additional Provisions) shown in Section VI of the Bidding Documents.

Commissions or gratuities, if any, paid or to be paid by us to agents relating to this Bid, and to Contract execution if we are awarded the Contract, are listed below:

Name and address of agent	Amount and Currency	Purpose of Commission or gratuity
_____	_____	_____
_____	_____	_____
_____	_____	_____

(if none, state “none”)

We understand and agree that this Bid and your written acceptance of it shall constitute a binding Contract between us. We understand that you are not bound to accept the lowest or any Bid you receive.

Authorized Signature:
Name and Title of Signatory:
Name of Bidder:
Address:

2. Qualification Information

[The information to be filled in by Bidders in the following pages shall be used for purposes of qualification or for verification of pre-qualification as provided for in ITB Clause 5. This information shall not be incorporated in the Contract. Attach additional pages as necessary. Pertinent sections of attached documents should be translated into English. If used for pre-qualification verification, the Bidder should fill in updated information only.]

- | | |
|--|--|
| 1. Individual Bidders or Individual Members of Joint Ventures/ Consortia | <p>1.1 Constitution or legal status of Bidder: <i>[attach copy]</i></p> <p style="padding-left: 40px;">Place of registration: <i>[insert]</i></p> <p style="padding-left: 40px;">Principal place of business: <i>[insert]</i></p> <p style="padding-left: 40px;">Power of attorney of signatory of Bid: <i>[attach]</i></p> <p>1.2 Annual amounts of construction works performed during the last <i>[insert number pursuant to Section III, Sub-Clause 3.2]</i> years <i>[insert amounts in United States Dollar equivalent]</i>.</p> <p>1.3 Number [insert number pursuant to Section III, Sub-Clauses 4.1 and 4.2] of works of a nature and amount similar to the Works performed as prime contractor over the last [insert number pursuant to Section III, Sub-Clauses 4.1 and 4.2] years. [The amounts should be indicated in the same currency used for Item 1.2 above. Also list details of work under way or committed, including expected completion date(s).]</p> |
|--|--|

Project name and country	Name of client and contact person	Type of work performed and year of completion	Value of contract (USD)
(a)			
(b)			

- 1.4 Major items of Contractor’s Equipment proposed for carrying out the Works. **[List all information requested below. Refer also to ITB Sub-Clause 5.3.]**

Item of equipment	Description, make, and age	Condition (new, good, poor) and number	Owned, leased (from whom?), or to be purchased (from

Section IV Bid Forms

	(years)	available	whom?)
(a)			
(b)			

1.5 Qualifications and experience of key personnel proposed for administration and execution of the Contract. ***[Attach biographical data. Refer also to ITB Sub-Clause 5.3 (i) and GCC Sub-Clause 9.1.]***

Position	Name	Years of experience (general)	Years of experience in proposed position
(a)			
(b)			

1.6 Financial reports for the last 5 years: balance sheets, profit and loss statements, auditors' reports, etc. *[List below and attach copies.]*

1.7 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of support documents.

1.8 Name, address, and telephone, telex, and facsimile numbers of banks that may provide references if contacted by Employer.

1.9 Information on current litigation(s) in which the Bidder is involved.

Other party(ies)	Cause of dispute	Amount involved
(a)		
(b)		

2. Joint Ventures/ Consortia

2.1 The information listed in Items 1.1-1.9 above shall be provided for each member of the joint venture or consortium.

2.2 Attach the power of attorney of the signatory(ies) of the Bid authorizing signature of the Bid on behalf of the joint venture/consortium.

Section IV Bid Forms

- 2.3 Attach the agreement or letter of intent (or similar agreement) among all members of the joint venture/consortium (and which is legally binding on all members), which shows that:
 - (a) all members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
 - (b) one of the members shall be nominated as the Representative, authorized to incur liabilities, and receive instructions for and on behalf of any and all members of the joint venture/consortium; and
 - (c) the execution of the entire Contract, including payment, shall be done exclusively with the member in charge.
3. Additional Requirements
 - 3.1 Bidders should provide any additional information required in the BDS.

3. Technical Proposal

[The information to be filled in by Bidders in the following pages shall be used for purposes of establishing responsiveness in accordance with ITB Clause 27. With the exception of item 2.1 below, this information shall not be incorporated in the Contract. Attach additional pages as necessary.]

1. Environmental, Health and Safety Requirements
 - 1.1 The Contractor will be required to carry out the Works in accordance with the site-specific Environmental Management Plan (“EMP”), to be prepared by it following Contract award, and approved by the Project Manager. Bidders shall demonstrate that they possess a high level of Environmental and Social (“E&S”) management expertise and can successfully manage the E&S risks associated with the implementation of the Works, as follows:
 - (a) Provide examples of site-specific E&S management plans developed by the Bidder for similar work over the last 5 years;
 - (b) Demonstrate a successful record implementing effective E&S mitigation measures on similar projects over the last 5 years;
 - (c) Describe proposed E&S staffing, roles and responsibilities, and management structure;
 - (d) Describe the proposed approach to managing E&S impacts during implementation of the Works, including a description of the mitigation measures that will be used and international E&S standards that may be applicable; provide enough detail to demonstrate an understanding of the critical E&S issues related to the Works; and
 - (e) Provide 2 references regarding the Bidder’s development of site-specific EMPs and successful implementation of E&S mitigation measures.
 - 1.2 The Contractor will be required to carry out the Works in accordance with the site-specific Health and Safety Plan to be developed by it following Contract award, and approved by the Project Manager. Bidders shall demonstrate that they possess a high level of Health and Safety (“H&S”) management expertise and can successfully manage the H&S risks related to the implementation of the Works. To demonstrate, they shall provide the following:

Section IV Bid Forms

- (a) Provide examples of H&S management plans developed by the Bidder for similar work over the last 5 years;
- (b) Demonstrate a successful record implementing effective H&S mitigation measures on similar projects over the last 5 years;
- (c) Describe proposed H&S staffing, roles and responsibilities, and management structure;
- (d) Describe the proposed approach to managing H&S impacts during implementation of the Works, including a summary of mitigation measures that will be used and international H&S standards that may be applicable; provide enough detail to demonstrate an understanding of the critical H&S issues related to the Works; and
- (e) Provide 2 references regarding the Bidder’s development of H&S plans and successful implementation of H&S mitigation measures.

- 2. Program
 - 2.1 Proposed work program (work method and schedule). Descriptions, drawings, and charts, as necessary, to comply with the requirements of the Bidding Documents.

- 3. Resources
 - 3.1 Equipment. Same as item 1.4 on Qualification Information Form.
 - 3.2 Key Personnel. Same as item 1.5 on Qualification Information Form.
 - 3.3 Subcontractors. Provide information on proposed sub-contracts and firms involved. Refer to GCC Clause 7 of the form of Contract in Section V.

Sections of the Works	Value of sub-contract	Subcontractor (name and address)	Experience in similar work
(a)			
(b)			

- 4. Country of Origin
 - 4.1 The country(ies) of origin of major items of plant, materials, goods and services proposed to be provided is(are) as follows:

Table of Plant and Materials

Section IV Bid Forms

Item	Country of Origin
Plant (list all major items)	
Material (list all major items)	
Equipment (list all major items)	
Goods (list all major items)	
Services (list all major items)	

5. Price Adjustment 5.1 The proposed indices and weightings to be used for the price adjustment formula are as follows:

Schedule of Adjustment Data

Index code	Index description	Source of index	Base value and date	Related source currency in type/amount	Equivalent in USD	Weighting
	Nonadjustable	--	--	--	--	A: <u> </u> ** .
	Adjustable					B:
Total						1.00

4. Letter of Acceptance

[letterhead paper of the Employer]

[The Letter of Acceptance shall be the basis for formation of the Contract as described in ITB Clauses 34 and 35. This Standard Form of Letter of Acceptance shall be filled in and sent to the successful Bidder only after evaluation of Bids has been completed, subject to any review by MCC as required.]

[insert date]

Identification No and Title of Contract: [insert identification number and title of the Contract]

To: [insert name and address of the Contractor]

This is to notify you that your Bid dated [insert date] for execution of the [insert name of the Contract and identification number, as given in the Bidding Documents] for the Contract Price of the equivalent²³ of [insert amount in numbers and words] [insert name of currency], as corrected and modified²⁴ in accordance with the Instructions to Bidders is hereby accepted by the Employer.

[insert one of the following (a) or (b) options]²⁵

- (a) We accept that [insert name proposed by Bidder] be appointed as the Adjudicator.²⁶
- (b) We do not accept that [insert name proposed by Bidder] be appointed as Adjudicator, and by sending a copy of this Letter of Acceptance to [insert name of the Appointing Authority], we are hereby requesting [insert name], the Appointing Authority, to appoint the Adjudicator in accordance with ITB Clause 37.1.²⁷

You are hereby instructed to (a) proceed with the execution of the said Works in accordance with the Contract (b) sign and return the attached Agreement, and (c) forward the performance security pursuant to GCC Sub-Clause 56.1 within 21 days after receipt of this Letter of Acceptance.

Authorized Signature:

Name and Title of Signatory:

[insert proper name of the Employer]

Attachment: Agreement

²³ Delete "of the equivalent" if the Contract Price is expressed wholly in one currency.

²⁴ Delete "corrected and" or "and modified" if not applicable.

²⁵ Delete this entire section if the Adjudicator originally proposed by the Employer is accepted by the Bidder.

²⁶ To be used only if the Contractor disagrees in the Bid with the Adjudicator proposed by the Employer in the Instructions to Bidders, and has accordingly offered another candidate.

²⁷ To be used only if the Contractor disagrees in the Bid with the Adjudicator proposed by the Employer in the ITB, has accordingly offered another candidate, and the Employer does not accept the counterproposal.

Section V. Agreement and General Conditions of Contract

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Contract	¡Error! Marcador no definido.
A. General	¡Error! Marcador no definido.
B. Time Control	¡Error! Marcador no definido.
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D. Cost Control	¡Error! Marcador no definido.
E. Finishing the Contract	¡Error! Marcador no definido.

Section V Agreement and General Conditions of Contract

Agreement

This CONTRACT AGREEMENT (this “Contract”) is made as of the [day] of [month], [year], between [full legal name of the Employer] (the “Employer”), on the one part, and [full legal name of the Contractor] (the “Contractor”), of the other part.

RECITALS

WHEREAS

- (a) The Millennium Challenge Corporation (“MCC”) and the Government of [Country] (the “Government”) have entered into a Millennium Challenge Compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in [Country] on [insert date] (the “Compact”) in the amount of approximately [insert amount] (“MCC Funding”). The Government, acting through the Employer, intends to apply a portion of the proceeds of MCC Funding to eligible payments under this Contract. Payments made under this Contract will be subject, in all respects, to the terms and conditions of the Compact and related documents, including restrictions on the use, and conditions to disbursement, of MCC Funding. No party other than the Government, the Employer and MCC shall derive any rights from the Compact or have any claim to the proceeds of MCC Funding; and.
- (b) The Employer invited bids for the performance of certain works and related services identified in this Contract and has accepted a bid by the Contractor for the supply of those works and related services for the amount set forth in the this Contract.

NOW, THEREFORE, the parties to this Contract agree as follows:

1. .In consideration of the payments to be made by the Employer to the Contractor as set forth in this Contract, the Contractor hereby covenants with the Employer to provide the Works (as defined in this Contract) and to remedy defects therein in conformity in all respects with the provisions of this Contract.
2. Subject to the terms of this Contract, the Employer hereby covenants to pay the Contractor in consideration of the provision of the Works, the Contract Price (as defined in this Contract) or such other sum as may become payable under the provisions of this Contract at the times and in the manner prescribed by this Contract.

IN WITNESS whereof the parties hereto have caused this Contract to be executed in accordance with the laws of [Country] as of the day, month and year first indicated above.

For [full legal name of
the Employer]:
Signature

Name

For [full legal name of
the Contractor]:
Signature

Name

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Witnessed By:

Witnessed By:

General Conditions of Contract²⁸

A. General

1. Definitions
- 1.1 Capitalized terms used in this Contract and not otherwise defined have the meanings given such terms in the Compact or related document. Unless the context otherwise requires, the following words whenever used in this Contract have the following meanings:
- (a) “Adjudicator” means the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in GCC Clauses 24 and 25.
 - (b) “Agreement” means that portion of this Contract entitled Agreement that is signed by authorized representatives of the Employer and the Contractor.
 - (c) “Applicable Law” means the laws and any other instruments having the force of law in the Employer’s country, that from time to time are in force and effect.
 - (d) “Appointing Authority” means the person or entity **identified in SCC Sub-Clause 26.1** and any successor Appointing Authority appointed pursuant to the terms of this Contract.
 - (e) “Bid” means the bid for the construction of the Works submitted by the Contractor and accepted by the Employer and that forms a part of this Contract.
 - (f) “Bill of Quantities” means the priced and completed Bill of Quantities forming part of the Bid.²⁹
 - (g) “Certificate of Completion” means the certificate to be issued by the Project Manager upon completion of the Works, in accordance with GCC Clause 59.
 - (h) “coercive practice” means impairing or harming or threatening to impair or harm, directly or indirectly, persons or their property, to influence their participation in a procurement process, or affect the execution of a contract.
 - (i) “collusive practice” means a scheme or arrangement

²⁸ The form can be used directly for smaller admeasurement contracts and, with the modifications noted in the footnotes, it can be adapted for fixed price contracts.

²⁹ In fixed price contracts, delete “Bill of Quantities” and replace with “Activity Schedule” and move the term to the appropriate place (alphabetically) in this list of defined terms.

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between two or more parties, with or without the knowledge of the Employer, designed to establish prices at artificial, noncompetitive levels or to otherwise deprive the Employer of the benefits of free and open competition.

- (j) “Compact” has the meaning given such term in the recital clauses to the Agreement.
- (k) “Compensation Events” means those events defined as such in GCC Clause 48.
- (l) “Completion Date” means the date of completion of the Works as certified by the Project Manager, in accordance with GCC Clause 59.
- (m) “Contract” means this agreement between the Employer and the Contractor to execute, complete, and maintain the Works and consists of the documents listed in GCC Sub-Clause 2.3, as the same may be amended, modified, or supplemented from time to time in accordance with the terms hereof and thereof.
- (n) “Contract Price” means the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of this Contract.
- (o) “Contractor” has the meaning given such term in the initial paragraph of the Agreement.
- (p) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of a public official (including Employer and MCC staff and employees of other organizations taking or reviewing selection decisions) in the selection process or in contract execution or the making of any payment to any third party, in connection with or in furtherance of a contract, in violation of (i) the United States Foreign Corrupt Practices Act of 1977, as amended (15 USC 78a et seq.) (“FCPA”), or any other actions taken that otherwise would be in violation of the FCPA if the FCPA were applicable, or (ii) any Applicable Law.
- (q) “day” means a calendar day.
- (r) “Dayworks” means varied work inputs subject to payment on a time basis for the Contractor’s employees and Equipment, in addition to payments for associated Materials and Plant.
- (s) “Defect” means any part of the Works not completed in accordance with this Contract.

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- (t) “Defects Liability Certificate” means the certificate issued by the Project Manager upon correction of Defects by the Contractor.
- (u) “Defects Liability Period” means the period **specified in SCC Sub-Clause 39.1** and calculated from the Completion Date.
- (v) “Drawings” means calculations and other information provided or approved by the Project Manager for the execution of this Contract.
- (w) “EMP” has the meaning given such term in GCC Sub-Clause 19.1.
- (x) “Employer” has the meaning given such term in the initial paragraph of the Agreement.
- (y) “Equipment” means the Contractor’s machinery and vehicles brought temporarily to the Site to construct the Works.
- (z) “Force Majeure” has the meaning given such term in GCC Sub-Clause 67.1.
- (aa) “fraudulent practice” means any act or omission, including any misrepresentation, in order to influence (or attempt to influence) a selection process or the execution of a contract to obtain a financial or other benefit or to avoid (or attempt to avoid) an obligation;
- (bb) “GCC” means the General Conditions of Contract;
- (cc) “Government” has the meaning given such term in the recital clauses to the Agreement.
- (dd) “HSP” has the meaning given such term in GCC Sub-Clause 19.1.
- (ee) “Initial Contract Price” means the Contract Price listed in the Letter of Acceptance.
- (ff) “Intended Completion Date” means the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is **specified in the SCC**. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.
- (gg) “Letter of Acceptance” means the letter, dated as **specified in the SCC** from the Employer to the Contractor notifying the Contractor that its Bid has been accepted and that forms an integral part of this Contract.

Section V Agreement and General Conditions of Contract

- (hh) “Materials” means all supplies, including consumables, used by the Contractor for incorporation in the Works.
- (ii) “MCC” has the meaning given such term in the recital clauses to the Agreement.
- (jj) “MCC Funding” has the meaning given such term in the recital clauses to the Agreement.
- (kk) “month” means a calendar month and “monthly” refers to a calendar month.
- (ll) “obstructive practice” means:
 - (i) destroying, falsifying, altering or concealing evidence material to the investigation or making false statements to investigators in order to impede an investigation into allegations of a corrupt, fraudulent, coercive, collusive, or prohibited practice; and threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, and
 - (ii) acts intended to impede the exercise of the inspection and audit rights of MCC provided under the Compact and related agreements.
- (mm) “Payment Certificate” means the certificate issued by the Project Manager in accordance with GCC Clause 46.
- (nn) “Performance Security” means the security to be provided by the Contractor in accordance with GCC Clause 56.
- (oo) “Plant” means any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
- (pp) “Program” has the meaning given such term in GCC Sub-Clause 31.1.
- (qq) “prohibited practice” means any action that violates Section E (Compliance with Anti-Corruption, Anti-Money Laundering and Terrorist Financing Statutes and Other Restrictions) of Annex A to this Contract.
- (rr) “Program” has the meaning given such term in GCC Sub-Clause 31.1.
- (ss) “Project Manager” means the person **named in the SCC** (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering this Contract.

Section V Agreement and General Conditions of Contract

- (tt) “SCC” means Special Conditions of Contract.
- (uu) “Schedule of Key Personnel” means the schedule of key personnel employed by the Contractor, described in GCC Clause 9.
- (vv) “Schedule of Other Contractors” means the schedule of other contractors working on the Site, described in GCC Clause 8.
- (ww) “Site” means the area **defined as such in the SCC**.
- (xx) “Site Investigation Reports” means those that were included in the bidding documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.
- (yy) “Site Possession Dates” means a date on which the Employer is to give possession of all or part of the Site to the Contractor in accordance with GCC Clause 21.
- (zz) “Specifications” means the specifications of the Works included as part of this Contract and any modification or addition made or approved by the Project Manager.
- (aaa) “Start Date” means the date **specified in the SCC** as the latest date by which the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.
- (bbb) “Subcontractor” means a person or corporate body who has a contract with the Contractor to carry out a part of the work in this Contract, which includes work on the Site.
- (ccc) “Tax” and “Taxes” have the meanings given such terms in the Compact or related agreement.
- (ddd) “Temporary Works” means those works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
- (eee) “Variation” means an instruction given by the Project Manager which varies the Works.
- (fff) “Works” means what this Contract requires the Contractor to construct, install, and turn over to the Employer, **as defined in the SCC**.

2. Interpretation

2.1 In interpreting this Contract, unless otherwise indicated:

- (i) “confirmation” means confirmation in writing;
- (ii) “in writing” means communicated in written form (e.g., by

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mail, e-mail, or facsimile) delivered with proof of receipt;

(iii) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular;

(iv) the feminine means the masculine and vice versa;

(v) headings are for convenience only and have no other significance; and

(vi) the Project Manager shall provide instructions clarifying queries about the interpretation of this Contract.

2.2 If sectional completion is **specified in the SCC**, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).

2.3 The following documents are each deemed to form an integral part of this Contract and shall be interpreted in the following order of priority:

(a) Agreement,

(b) Letter of Acceptance,

(c) Bid,

(d) SCC and Annex A to this Contract entitled “Annex A: Additional Provisions,”

(e) GCC,

(f) Specifications,

(g) Drawings,

(h) Bill of Quantities,³⁰ and

(i) any other document **listed in the SCC** as forming part of this Contract.

3. Language and Law

3.1 This Contract has been executed in the language(s) **specified in the SCC**. If the Contract is executed in both the English and another language, the English language version shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

³⁰ In fixed price contracts, delete “Bill of Quantities” and replace with “Activity Schedule.”

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- 3.2 This Contract, its meaning and interpretation and the relation between the parties shall be governed by Applicable Law.
4. Project Manager's Decisions 4.1 Except where otherwise specifically stated, the Project Manager shall decide contractual matters between the Employer and the Contractor in the role representing the Employer.
5. Delegation 5.1 The Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.
6. Communications 6.1 Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Subject to Applicable Law, any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the party to whom the communication is addressed, or when delivered to such party at the address **specified in the SCC**, or sent by confirmed facsimile or confirmed email, in either case if sent during normal business hours of the recipient party.
- 6.2 A party may change its address for receiving notice under this Contract by giving the other party notice in writing of such change to the address **specified in SCC 6.1**.
7. Subcontracting 7.1 The Contractor may sub-contract with the approval of the Project Manager, but may not assign this Contract without the approval of the Employer in writing. Sub-contracting shall not alter the Contractor's obligations under this Contract.
8. Other Contractors 8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as **referred to in the SCC**. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.
9. Personnel 9.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as **referred to in the SCC**, to carry out the functions stated in such schedule or other personnel approved by the Project Manager. The Project Manager shall 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 Schedule of Key Personnel.

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- 9.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in this Contract.
10. Employer's and Contractor's Risks
- 10.1 The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.
11. Employer's Risks
- 11.1 From the Start Date until the Defects Liability Certificate has been issued, the following are Employer's risks:
- (a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to
 - (i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works; or
 - (ii) negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.
 - (a) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in the Employer's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.
- 11.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer's risk except loss or damage due to
- (a) Defect which existed on the Completion Date,
 - (b) an event occurring before the Completion Date, which was not itself an Employer's risk, or
 - (c) the activities of the Contractor on the Site after the Completion Date.
12. Contractor's Risks
- 12.1 From the Start Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer's

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risks are Contractor's risks.

13. Insurance
- 13.1 The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles **stated in the SCC** for the following events which are due to the Contractor's risks:
- (a) loss of or damage to the Works, Plant, and Materials;
 - (b) loss of or damage to Equipment;
 - (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with this Contract; and
 - (d) personal injury or death.
- 13.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.
- 13.3 If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due from the Contractor to the Employer.
- 13.4 Alterations to the terms of an insurance shall not be made without the approval of the Project Manager.
- 13.5 Both parties shall comply with any conditions of the insurance policies.
14. Eligibility;
Source of
Equipment,
Material and
Services
- 14.1 The Contractor and its Subcontractors, including their respective personnel and affiliates, shall at all times during the term of this Contract have the nationality of a country or territory eligible, in accordance with the Compact, the MCC Program Procurement Guidelines and Annex A to this Contract ("Eligible Countries"). The Contractor or a Subcontractor and their respective personnel and affiliates shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.

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- 14.2 All Equipment, Materials, Plant and any services to be incorporate in or required for the Works shall have their origin in Eligible Countries.
- 14.3 For the purpose of this GCC Clause 14, “origin” means the place where the Equipment, Material sor Plant have been mined, grown, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics, purposes or utility from its underlying components. With respect to any services, the term “origin” means the place from which the services are supplied.
15. Queries about the Special Conditions of Contract
- 15.1 The Project Manager shall clarify queries on the SCC.
16. Contractor to Construct the Works
- 16.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.
17. The Works to Be Completed by the Intended Completion Date
- 17.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and shall complete the Works by the Intended Completion Date.
18. Approval by the Project Manager
- 18.1 The Contractor shall submit Specifications and Drawings showing any proposed Temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings.
- 18.2 The Contractor shall be responsible for the design of any Temporary Works.
- 18.3 The Project Manager’s approval shall not alter the Contractor’s responsibility for the design of any Temporary Works.
- 18.4 The Contractor shall obtain approval of third parties to the design of any Temporary Works, where required.
- 18.5 All Drawings prepared by the Contractor for the execution of any Temporary Works or the Works, are subject to prior approval by the Project Manager before their use.

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19. Safety and Environment

19.1 The Contractor shall, as soon as practicable following the signature of this Contract, prepare and deliver to the Project Manager for its approval a site-specific environmental management plan (“EMP”) and a site-specific health and safety plan (“HSP”).

19.2 The Contractor shall, throughout the execution and completion of the Works, and remedying of the Defects therein:

- (a) have full regard for the safety of persons entitled to be upon the Site and keep the Site (so far as the same is under its control) and the Works (so far as the same are not occupied by the Employer) in an orderly state appropriate to the avoidance of danger to such persons;
- (b) provide and maintain at the Contractor’s own costs all lights, guards, fencing, warning signs and watching, when and where necessary or required by the Project Manager or by duly constituted authority, for the protection of the Works or for the safety and convenience of the public or others;
- (c) notify the Project Manager and Employer within 48 hours or as soon as reasonably possible after the occurrence of any accident which has resulted in a disability or loss of human life or which has or which could reasonably be foreseen to have a material impact on the environment and shall submit to the Project Manager and Employer no later than 30 days after the occurrence of such an event, a summary report thereof;
- (d) take all reasonable steps to protect the environment on and off the Site and to limit damage to people and property resulting from pollution, noise and other results from the Contractor’s operations;
- (e) ensure that emissions, surface discharges and effluent from the Contractor’s activities shall not exceed the values indicated in the Specifications and shall not exceed the values prescribed by Applicable Law;
- (f) ensure the adequate disposal of construction and excavation wastes;
- (g) restore the Site to original conditions or to a state after the completion of the Works as set out in the Specifications;
and
- (h) complete the work in compliance with the MCC’s Environmental Guidelines and apply the recommendations

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of the project environmental assessment or impact study and the EMP and HSP, each in the form approved by the Project Manager in accordance with GCC Sub-Clause 19.1 in respect of health, safety, security and protection of the environment, as described in the Specifications.

20. Discoveries 20.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.
21. Possession of the Site 21.1 The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part of the Site is not given by the Site Possession Date(s) **stated in the SCC**, the Employer shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.
22. Access to the Site 22.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with this Contract is being carried out or is intended to be carried out.
23. Instructions, Inspections and Audits 23.1 The Contractor shall carry out all instructions of the Project Manager which comply with the Applicable Law where the Site is located.
- 23.2 The Contractor shall permit MCC and/or persons appointed by MCC to inspect the Site and/or the accounts and records of the Contractor and any Subcontractors relating to the performance of this Contract, and to have such accounts and records audited by auditors appointed by MCC, if so required by MCC in accordance with the provisions of the Annex to this Contract entitled "Additional Provisions."
24. Disputes 24.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by this Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision.
25. Procedure for Disputes 25.1 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.
- 25.2 The Adjudicator shall be paid by the hour at the rate **specified in the SCC**, together with reimbursable expenses of the types **specified in the SCC**, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is

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reached by the Adjudicator. Either party may refer a decision of the Adjudicator to arbitration within 14 days of the Adjudicator's written decision in accordance with GCC Sub-Clause 25.1. If neither party refers the dispute to arbitration within the above 14 days, the Adjudicator's decision shall be final and binding.

25.3 The arbitration shall be conducted in accordance with the terms **specified in the SCC** and the arbitration procedures published by the institution named and in the place **specified in the SCC**.

25.4 MCC has the right to be an observer of any arbitration proceeding arising under this Contract, at its sole discretion, but does not have the obligation to observe any arbitration proceeding. Whether or not MCC is an observer to any arbitration arising under this Contract, the Employer shall provide MCC with written English transcripts of any arbitration proceedings or hearings and a copy of the reasoned written award within 14 days after (a) each such proceeding or hearing or (b) the date on which any such award is issued. The acceptance by MCC of the right to be an observer to the arbitration shall not constitute consent by MCC to the jurisdiction of the courts or any other organism of the Employer's or the Contractor's countries or any other jurisdiction or to the jurisdiction of any arbitral panel or other body.

26. Replacement of Adjudicator 26.1 Should the Adjudicator resign or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of this Contract, a new Adjudicator shall be jointly appointed by the Employer and the Contractor. If the Employer and the Contractor cannot reach agreement as to the appointment of such new Adjudicator within 28 days, either party may then request that the Appointing Authority **designated in the SCC** appoint a new Adjudicator and such replacement Adjudicator shall be designated by the Appointing Authority within 14 days of receipt of such request.

27. Conflict of Interest 27.1 The Contractor shall not engage, and shall cause its personnel as well as any Subcontractors and their personnel not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.

28. Commissions and Fees 28.1 The Contractor shall disclose any commissions or fees that may have been paid or, at any time during the execution of this

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Contract are paid, to agents, representatives, or commission agents with respect to the selection process or performance of this Contract. The information disclosed must include at least the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee.

29. Confidentiality
- 29.1 Each of the parties shall treat the details of this Contract as private and confidential, except to the extent necessary to carry out their respective obligations under this Contract or to comply with Applicable Laws. The parties shall not publish or disclose any particulars of the Works prepared by the other party without the previous agreement of the other. However, the Contractor shall be permitted to disclose any publicly available information, or, with the prior consent of the Employer in writing, information otherwise reasonably required to establish its qualifications to compete for other projects. If any dispute arises as to the necessity of any publication or disclosure of the details of this Contract, the same shall be referred to the Employer whose determination shall be final. The Contractor shall ensure that the requirements imposed on the Contractor by this Sub-Clause apply equally to all of its personnel and each Subcontractor and its personnel.
- 29.2 The Contractor shall disclose, and shall cause its personnel as well as any Subcontractor and its personnel to disclose, all such confidential and other information as may be reasonably required in order to verify the Contractor's compliance with this Contract and to allow for this Contract's proper implementation.
30. Entire Agreement
- 30.1 This Contract contains all of the covenants, stipulations and provisions agreed to by the parties. No agent or representative of either party has the authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth in this Contract.

B. Time Control

31. Program
- 31.1 Within the time **stated in the SCC**, after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a program showing the general methods, arrangements, order, and timing for all the activities in the Works (the "Program").
- 31.2 An update of the Program shall be a Program showing the

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actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.

- 31.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period **stated in the SCC**. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount **stated in the SCC** from the next Payment Certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted and approved by the Project Manager.
- 31.4 The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Project Manager for approval again at any time. A revised Program shall show the effect of any Variation and Compensation Events.
32. Extension of the Intended Completion Date
- 32.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work in a manner that would cause the Contractor to incur additional cost. The Project Manager shall also extend the Intended Completion Date if it determines an event of Force Majeure has occurred in accordance with GCC Clause 67.
- 32.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of (a) the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation or (b) the Contractor or the Employer asking the Project Manager for a decision on the occurrence of an event of Force Majeure. In each case, such request is to be in writing and shall be supplemented by full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.
33. Acceleration
- 33.1 When the Employer wants the Contractor to finish before the Intended Completion Date, the Project Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date shall be adjusted accordingly and

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confirmed by both the Employer and the Contractor.

- 33.2 If the Contractor's priced proposals for an acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation.
34. Delays Ordered by the Project Manager 34.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.
35. Management Meetings 35.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 35.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.
36. Early Warning 36.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.
- 36.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

C. Quality Control

37. Identifying Defects 37.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a

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Defect and to uncover and test any work that the Project Manager considers may have a Defect.

38. Tests
- 38.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specifications to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.
39. Correction of Defects
- 39.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is **defined in the SCC**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.
- 39.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice of Defect.
40. Uncorrected Defects
- 40.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice of Defect, the Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.

D. Cost Control

41. Bill of Quantities³¹
- 41.1 The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.
- 41.2 The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item.
42. Changes in the Quantities³²
- 42.1 If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25

³¹ In fixed price contracts, delete "Bill of Quantities" and replace with "Activity Schedule," and replace GCC Sub-Clauses 41.1 and 41.2, with the following:

41.1 The Contractor shall provide updated Activity Schedules within 14 days of being instructed to do so by the Project Manager. The activities on the Activity Schedule shall be coordinated with the activities on the Program.

41.2 The Contractor shall show delivery of Materials to the Site separately on the Activity Schedule if payment for Materials on Site shall be made separately.

³² In fixed price contracts, delete "Bill of Quantities" and replace with "Activity Schedule," and replace entire GCC Clause 42 (42.1 through 42.3) with the following:

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percent, provided the change exceeds one percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change.

42.2 The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Employer.

42.3 If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.

43. Variations 43.1 All Variations shall be included in updated Programs³³ produced by the Contractor.

44. Payments for Variations 44.1 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.

44.2 If the work in the Variation corresponds with an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in GCC Sub-Clause 42.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.³⁴

44.3 If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.

42.1 The Activity Schedule shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor's own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule.

³³ In fixed price contracts, add "and Activity Schedules" after "Programs."

³⁴ In fixed price contracts, delete this GCC Sub-Clause 44.2 entirely and renumber the following sub-clauses accordingly.

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- 44.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation from being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.
- 44.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning in accordance with GCC Clause 36.
45. Cash Flow Forecasts
- 45.1 When the Program³⁵ is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in this Contract, converted as necessary using the exchange rates provided for in this Contract.
46. Payment Certificates
- 46.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- 46.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor which certified amount shall be set forth in a Payment Certificate issued by the Project Manager.
- 46.3 The value of work executed shall be determined by the Project Manager.
- 46.4 The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed.³⁶
- 46.5 The value of work executed shall include the valuation of Variations and Compensation Events.
- 46.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.
47. Payments
- 47.1 Payments shall be adjusted for deductions for advance payments and retention, if any. The Employer shall pay, or cause to be paid to, the Contractor the amounts certified by the Project Manager within 28 days of the date of each Payment

³⁵ In fixed price contracts, add "or Activity Schedule" after "Program."

³⁶ In fixed price contracts, replace this paragraph with the following: "The value of work executed shall comprise the value of completed activities in the Activity Schedule."

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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 rate of interest for each of the relevant currencies **as indicated in the SCC**.

47.2 If an amount certified is increased in a later Payment Certificate or as a result of an award by the Adjudicator or in arbitration in accordance with GCC Clause 25, the Contractor shall be paid interest on the delayed payment. Such interest shall be calculated from the date on which the increased amount would have been paid in the absence of dispute at the rate provided for in GCC Sub-Clause 47.1.

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

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

48. Compensation Events

48.1 The following shall be "Compensation Events":

- (a) The Employer does not give access to a part of the Site by the Site Possession Date pursuant to GCC Sub-Clause 21.1.
- (b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under this Contract.
- (c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
- (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
- (e) The Project Manager unreasonably does not approve a sub-contract to be let.
- (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.

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- (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
- (h) Other contractors (other than Subcontractors), public authorities, utilities, or the Employer does not work within the dates and other constraints stated in this Contract, and they cause delay or extra cost to the Contractor.
- (i) The advance payment, if any, is delayed.
- (j) The effects on the Contractor of any of the Employer's Risks.
- (k) The Project Manager unreasonably delays issuing a Certificate of Completion.

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

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

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

49. Tax³⁷

49.1 Except as may be exempted pursuant to the terms of the Compact or another agreement related to the Compact, available in English at the website **specified in the SCC**, the Contractor, its Subcontractors, and their respective personnel may be subject to certain Taxes on amounts payable by the Employer

³⁷ This GCC Sub-Clause 49 may need to be modified to address unique tax arrangements in some countries. In situations in which a potential issue exists, the relevant MCC OGC attorney is to be consulted before finalizing a form of contract based on this Standard Bidding Document.

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under this Contract in accordance with Applicable Law (now or hereinafter in effect). The Contractor, each Subcontractor and their respective personnel shall pay all Taxes levied under Applicable Law. In no event shall the Employer be responsible for the payment or reimbursement of any Taxes. In the event that any Taxes are imposed on the Contractor, any Subcontractor or their respective personnel, the Contract Price shall not be adjusted to account for such Taxes.

- 49.2 The Contractor, any Subcontractor and their respective personnel, and their eligible dependents, shall follow the usual customs procedures of the Employer's country in importing property into the Employer's country.
- 49.3 If the Contractor, any Subcontractor or any of their respective personnel, or any of their eligible dependents, do not withdraw but dispose of any property in the Employer's country upon which customs duties or other Taxes have been exempted, the Contractor, the Subcontractor or such personnel or eligible dependents, as the case may be, (a) shall bear such customs duties and other Taxes in conformity with Applicable Law, or (b) shall reimburse such customs duties and Taxes to the Employer if such customs duties and Taxes were paid by the Employer at the time the property in question was brought into the Employer's country.
- 49.4 Without prejudice to the rights of the Contractor under this GCC Clause 49, the Contractor, any Subcontractor and their respective Personnel will take reasonable steps as requested by the Employer or the Government with respect to the determination of the Tax status described in this GCC Clause 49.
- 49.5 If the Contractor, any Subcontractor, or any of their respective personnel, is required to pay Taxes that are exempt under the Compact or a related agreement, the Contractor shall promptly notify the Employer (or such agent or representative designated by the Employer) of any such Taxes paid, and the Contractor shall cooperate with, and take such actions as may be requested by the Employer, MCC, or either of their agents or representatives, in seeking the prompt and proper reimbursement of such Taxes.
- 49.6 The Employer shall use reasonable efforts to ensure that the Government provides the Contractor, any Subcontractor, and their respective personnel, the exemptions from taxation applicable to such persons or entities, in accordance with the

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terms of the Compact or related agreement.

50. Currencies 50.1 Where payments are made in currencies other than the currency of the Employer's country **specified in the SCC**, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's Bid.

51. Price Adjustment 51.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC**. If so provided, the amounts certified in each Payment Certificate, before deducting for the advance payment, if any, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

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

where:

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

A_c and B_c are coefficients³⁸ **specified in the SCC**, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency "c;" and

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

51.2 Adjustment shall be made for the first time during the term of this Contract at the time **specified in the SCC**.

51.3 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.

52. Retention 52.1 The Employer shall retain from each payment due to the Contractor the proportion **stated in the SCC** until completion of the whole of the Works.

³⁸ The sum of the two coefficients A_c and B_c should be 1 (one) in the formula for each currency. Normally, both coefficients shall be the same in the formulae for all currencies, since coefficient A, for the nonadjustable portion of the payments, takes account of fixed cost elements or other nonadjustable components. The sum of the adjustments for each currency are added to the Contract Price.

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- 52.2 On completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of the Defects Liability Period have been corrected.
- 52.3 On completion of the whole Works, the Contractor may substitute retention money with an “on demand” bank guarantee in a form and issued by a bank acceptable to the Employer.
53. Liquidated Damages
- 53.1 The Contractor shall pay liquidated damages to the Employer at the rate per day **stated in the SCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the SCC**. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor’s liabilities.
- 53.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next Payment Certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC Sub-Clause 51.1.
54. Bonus
- Reserved. [Provisions with respect to the payment of bonuses may only be included in this Contract with the prior approval of MCC (please refer to MCC Program Procurement Guidelines Part 1, Section 1.A, Paragraph 2.41).]**³⁹
55. Advance Payment
- 55.1 The Employer shall make an advance payment to the Contractor of the amounts **stated in the SCC** by the date **stated in the SCC**, against provision by the Contractor of an unconditional bank guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. Such unconditional bank guarantee shall remain effective until the advance payment has been repaid, but the

³⁹ If MCC approves a bonus provision, the following should be inserted in GCC Clause 54:

54.1 The Contractor shall be paid a bonus calculated at the rate per calendar day **stated in the SCC** for each day (less any days for which the Contractor is paid for acceleration) that the Completion Date is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete.

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amount of such guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest shall not be charged on the advance payment.

55.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of this Contract. The Contractor shall demonstrate that the advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager in form and substance acceptable to the Project Manager.

55.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, bonuses, if any, or liquidated damages.

56. Securities

56.1 The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in the amount **specified in the SCC**, in a form and by a bank acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 days from the date of issue of the Certificate of Completion.

57. Dayworks

57.1 If applicable, the Dayworks rates in the Contractor's Bid shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.

57.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.

57.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

58. Cost of Repairs

58.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Liability Periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

E. Finishing the Contract

59. Completion 59.1 The Contractor shall request the Project Manager to issue a Certificate of Completion of the Works, and the Project Manager shall do so upon deciding that the work is completed.
60. Taking Over 60.1 The Employer shall take over the Site and the Works within seven days of the Project Manager's issuing a Certificate of Completion.
61. Final Account 61.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under this Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the final account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a Payment Certificate.
62. Drawings,
Operating and
Maintenance
Manuals 62.1 "As built" Drawings shall be supplied by the Contractor to the Project Manager, in form and substance satisfactory to the Project Manager, by the date **stated in the SCC**.
- 62.2 If operating and maintenance manuals are required, the Contractor shall supply them to the Project Manager, in form and substance satisfactory to the Project Manager, by the date **stated in the SCC**.
- 62.3 If the Contractor does not supply the Drawings and/or manuals by the dates **stated in the SCC**, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount **stated in the SCC** from payments due to the Contractor.
63. Termination 63.1 The Employer or the Contractor may terminate this Contract if the other party causes a fundamental breach of this Contract.
- 63.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:
- (a) the Contractor stops work for 28 days when no stoppage of

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work is shown on the current Program and the stoppage has not been authorized by the Project Manager;

- (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;
- (c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 84 days of the date of the Project Manager's issuance of a Payment Certificate;
- (e) the Project Manager gives notice that failure to correct a particular Defect is a fundamental breach of this Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
- (f) the Contractor does not maintain a Performance Security, which is required in accordance with GCC Clause 56;
- (g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as **defined in the SCC**;
- (h) the Contractor, in the judgment of the Employer, has, directly or through an agent, engaged in any coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices (each as defined in GCC Clause 1.1) in competing for or in the performance of this Contract or another MCC-funded contract; and
- (i) the Contractor, in the judgment of the Employer or MCC, fails to perform its obligations relating to the use of funds set out in Annex to this Contract entitled "Annex: Additional Provisions" (which such termination will obligate the Contractor to repay any and all funds so misused within a maximum of 30 days after termination).

63.3 When either party to this Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under GCC Sub-Clause 63.2, the Project Manager shall decide whether the breach is fundamental or not.

63.4 In addition to termination of this Contract for a fundamental breach in accordance with GCC Sub-Clauses 63.1 through 63.3, if the execution of substantially all of the Works in progress is prevented for a continuous period of days as **specified in the**

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SCC (or for multiple periods that total more than the days as **specified in the SCC** due to the same event) by reason of an event of Force Majeure as determined by the Project Manager in accordance with GCC Clause 67, then either party may give the other party a notice of termination of this Contract. In this event, the termination shall take effect seven days after such notice of termination is given and the Contractor shall proceed in accordance with GCC Sub-Clause 63.6

63.5 In addition to termination of this Contract for a fundamental breach in accordance with GCC Sub-Clauses 63.1 through 63.3, or resulting from an event of Force Majeure in accordance with GCC Sub-Clause 63.4, the Employer may terminate this Contract for convenience or upon termination or suspension of the Compact.

63.6 If this Contract is terminated for any reason, the Contractor shall (a) stop work immediately, (b) make the Site safe and secure, (c) hand over any Drawings, Specifications, other documents, Materials, Plant, and other work for which the Contractor has received payment (and all Materials, Plant, Equipment, Temporary Works, and Works in accordance with GCC Clause 66), and (d) leave the Site as soon as reasonably possible.

64. Fraud and Corruption; Measures to be Taken

64.1 MCC requires that the Employer and any other beneficiaries of MCC funding, including bidders, suppliers, contractors, and subcontractors under any MCC-funded contracts, observe the highest standards of ethics during the procurement and execution of such contracts. In addition to any remedy the Employer may have pursuant to GCC Sub-Clause 63.2(h) or otherwise under the terms of this Contract or Applicable Law, the provisions of this GCC Clause 64 shall also apply.

64.2 MCC and the Employer may pursue sanction of the Contractor, including declaring the Contractor ineligible, either indefinitely or for a stated period of time, to be awarded an MCC-funded contract if at any time it determines that the Contractor has, directly or through an agent, engaged in any coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices (each as defined in GCC Clause 1.1) in competing for, or in the performance of, this Contract or another MCC-funded contract.

64.3 MCC may cancel the portion of the MCC Funding allocated to this Contract if it determines at any time that representatives of the Employer, the Contractor or any other beneficiary of the MCC Funding were engaged in any coercive, collusive, corrupt,

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fraudulent, obstructive or prohibited practices (each as defined in GCC Clause 1.1) during the selection process or the performance of this Contract, without the Employer, the Contractor or such other beneficiary having taken timely and appropriate action satisfactory to MCC to remedy the situation.

64.4 MCC may also require the Employer to invoke any of its rights under this Contract or Applicable Law in any such situation.

64.5 Should any employee of the Contractor be determined to have engaged in any coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices (each as defined in GCC Clause 1.1) during the competition for or the performance of this Contract, then that employee shall be removed in accordance with GCC Sub-Clause 9.1, regardless of whether the Employer or MCC exercise any other of their rights under this Contract (including termination) or Applicable Law.

65. Payment upon Termination

65.1 If this Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments, if any, received up to the date of the issue of such certificate and less the percentage to apply to the value of the work not completed, as **indicated in the SCC**. Additional liquidated damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.

65.2 If this Contract is terminated for the Employer's convenience, suspension or termination of the Compact, or because of a fundamental breach of Contract by the Employer, or as the result of an event of Force Majeure, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments, if any, received up to the date of the certificate.

66. Property

66.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer if this Contract is terminated because of the Contractor's default.

67. Force Majeure

67.1 For the purposes of this Contract, "Force Majeure" means an event or condition that (a) is not reasonably foreseeable and is

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beyond the reasonable control of a party, and is not the result of any acts, omissions or delays of the party relying on such Force Majeure (or any third person over whom such party has control, including any Subcontractor), (b) is not an act, event or condition the risks or consequence of which such party has expressly agreed to assume under this Contract, (c) could not have been prevented, remedied or cured by such party's reasonable diligence, and (d) makes such party's performance of its obligations under this Contract impossible or so impractical as to be considered impossible under the circumstances. Such events may include, but are not restricted to, acts of the Government in its sovereign capacity, wars or revolutions, terrorism, fires, floods, earthquakes, epidemics, quarantine restrictions, freight embargoes, and strike or lockout by persons other than the Contractor, any Subcontractor, or any of their personnel.

- 67.2 The failure of a party to fulfill any of its obligations under this Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure; provided that the party affected by such an event has (a) taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, (b) informed the other party as soon as practicable (and in no event later than seven days following the occurrence) about the occurrence of an event giving rise to a claim of Force Majeure, and (c) has made a request to the Project Manager with respect to the claim of Force Majeure in accordance with CGG Clause 32.2.
- 67.3 Subject to GCC Sub-Clause 67.6, a party affected by an event of Force Majeure shall continue to perform its obligations under this Contract as far as is reasonably practical, and shall take all reasonable measures to minimize and otherwise mitigate the consequences of any event of Force Majeure.
- 67.4 A party affected by an event of Force Majeure shall provide evidence of the nature and cause of such event in accordance with GCC Clause 32 and GCC Sub-Clause 67.2, and shall similarly give written notice of the restoration of normal conditions as soon as practicable.
- 67.5 If a party is prevented from performing any of its obligations under this Contract as the result of an event of Force Majeure and is otherwise in compliance with each of its obligations under GCC Clause 32 and this GCC Clause 67, such party shall be entitled to an extension of the Intended Completion Date in

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accordance with GCC Clause 32.

67.6 If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this GCC Clause 67, such additional or broader force majeure events, circumstances or provisions shall in no way excuse the Contractor's non-performance under this Contract or otherwise entitle the Contractor to relief under this GCC Clause 67.

68. MCC Required Provisions;
Flow Through Provisions

68.1 For the avoidance of doubt, the parties to this Contract agree and understand that the provisions set forth in Annex A to this Contract reflect certain requirements of the Government and the Employer under the terms of the Compact and related documents that are required to be transferred onto any contractor, subcontractor or associate who partakes in procurement or subsequent contracts in which MCC funding is involved and that, as with the other clauses under this Contract, the provisions of Annex A are binding obligations under this Contract.

68.2 In any sub-contract or sub-award entered into by the Contractor, as permitted by the terms of this Contract, the Contractor shall ensure the inclusion of all the provisions contained in Annex A in any agreement related to such sub-contract or sub-award.

Section VI. Special Conditions of Contract and Additional Provisions Annex to the Contract

Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement and / or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

A. General	
GCC 1.1 (d)	The Appointing Authority is [insert name and address of Appointing Authority] .
GCC 1.1 (ff)	The Intended Completion Date for the whole of the Works shall be [insert date] . [If different dates are specified for completion of the Works by section (“sectional completion” or milestones), these dates should be listed here.]
GCC 1.1 (gg)	The date of the Letter of Acceptance is [insert date of Letter of Acceptance has been signed]
GCC 1.1 (ss)	The Project Manager is [insert name, address, and name of Project Manager and its authorized representative] .
GCC 1.1 (ww)	The Site is located at [insert address of Site] and is defined in drawings No. [insert numbers] .
GCC 1 (aaa)	The Start Date shall be [insert date] .
GCC 1.1 (ff)	The Works consist of [insert brief summary, including relationship to other contracts under the project] .
GCC 2.2	Sectional Completions are: [insert nature and dates, if appropriate] .
GCC 2.3(i)	The following documents also form an integral part of this Contract: [list documents, if any] .
GCC 3.1	This Contract shall be executed in the English language Yes [<input type="checkbox"/>] No [<input type="checkbox"/>] and in the [local language] Yes [<input type="checkbox"/>] No [<input type="checkbox"/>].
GCC 6.1	For notices that are served on the Employer, the address shall be: [insert complete address, including e-mail]

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	For notices that are served on the Contractor, the address shall be: [insert complete address, including e-mail]
GCC 8.1	Schedule of Other Contractors: [insert Schedule of Other Contractors, if appropriate] .
GCC 9.1	Schedule of Key Personnel: [insert Schedule of Key Personnel] .
GCC 13.1	The minimum insurance amounts and deductibles shall be: <ul style="list-style-type: none"> (a) for the Works, Plant and Materials: [insert amounts]. (b) for loss or damage to Equipment: [insert amounts]. (c) for loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract [insert amounts]. (d) for personal injury or death: <ul style="list-style-type: none"> (i) of the Contractor’s employees: [insert amount]. (ii) of other people: [insert amount].
GCC 21.1	The Site Possession Date(s) shall be: [insert location(s) and date(s)] .
GCC 25.2	Fees and types of reimbursable expenses to be paid to the Adjudicator: [insert hourly fees and reimbursable expenses] .
GCC 25.3	<p>[For smaller contracts, the institution is usually from the Employer’s country. For larger contracts, and contracts that are likely to be awarded to international contractors, it is recommended that the arbitration procedure of an international institution be adopted.]</p> <p>The institution whose arbitration procedures shall be used is: [insert name of arbitration institution selected].</p> <p>[For larger contracts with international contractors, it is recommended to select one institution among those listed below; insert the corresponding wording.]</p> <p><i>“United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules:</i></p> <p>Sub-Clause 25.3—Any dispute, controversy, or claim arising out of or relating to this Contract, or breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.”</p> <p>or</p>

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	<p><i>“Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC):</i></p> <p>Sub-Clause 25.3—All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules.”</p> <p>or</p> <p><i>“Rules of Arbitration Institute of the Stockholm Chamber of Commerce:</i></p> <p>Sub-Clause 25.3—Any dispute, controversy, or claim arising out of or in connection with this Contract, or the breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.”</p> <p>or</p> <p><i>“Rules of the London Court of International Arbitration:</i></p> <p>Sub-Clause 25.3—Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity, or termination shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which rules are deemed to be incorporated by reference to this Clause.”</p> <p>The place of arbitration shall be: [insert city and country].</p>
GCC 26.1	Appointing Authority for the Adjudicator: [insert name of Appointing Authority] .
B. Time Control	
GCC 31.1	The Contractor shall submit for approval a Program for the Works within [number] days from the date of the Letter of Acceptance.
GCC 31.3	<p>The period between Program updates is [insert number] days.</p> <p>The amount to be withheld for late submission of an updated Program is [insert amount].</p>
C. Quality Control	

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GCC 39.1	The Defects Liability Period is: [insert number] days. ⁴⁰
D. Cost Control	
GCC 47.1	<p>The interest rate on payments in United States Dollars shall be: [insert rate].</p> <p>The interest rate on payments in the currency of the Employer’s country shall be: [insert rate].</p>
GCC 49.1	Copies of the Compact and other agreements relevant to the Tax treatment of MCC Funding may be found at [insert link to documents on Employer’s website] .
GCC 50.1	The currency of the Employer’s country is: [insert name of currency of the Employer’s country] .
GCC 51.1	<p>This Contract [insert “is” OR “is not”] subject to price adjustment in accordance with GCC Clause 51. If this Contract is subject to price adjustment, the following information regarding coefficients applies.</p> <p>The coefficients for adjustment of prices are:</p> <ul style="list-style-type: none"> (a) For currency [insert name of local currency]: <ul style="list-style-type: none"> (i) [insert percentage] percent nonadjustable element (coefficient A). (ii) [insert percentage] percent adjustable element (coefficient B). (b) For United States Dollars: <ul style="list-style-type: none"> (i) [insert percentage] percent nonadjustable element (coefficient A). (ii) [insert percentage] percent adjustable element (coefficient B). <p>The Index I for local currency shall be [insert index].</p> <p>The Index I for United States Dollars shall be [insert index].</p> <p>[These proxy indices shall be the same as those proposed by the Contractor in the Technical Proposal, subject to acceptance by the</p>

⁴⁰ The Defects Liability Period is usually limited to 12 months, but could be less in very simple projects.

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	Employer.]
GCC 51.2	Price adjustments shall be made [insert number of months] months into this Contract and shall be repeated at [insert number of months] month intervals thereafter.
GCC 52.1	The proportion of payments retained is: [insert percentage] . ⁴¹
GCC 53.1	The liquidated damages for the whole of the Works are [insert percentage of the final Contract Price] per day. The maximum amount of liquidated damages for the whole of the Works is [insert percentage] of the final Contract Price. ⁴²
GCC 54.1	Reserved. ⁴³
GCC 55.1	The Advance Payments shall be: [insert amount(s)] and shall be paid to the Contractor no later than [insert date(s)] . ⁴⁴
GCC 56.1	The Performance Security amount is [insert amount(s) denominated in the types and proportions of the currencies in which the Contract Price is payable] ⁴⁵ in the form of: (a) Unconditional Bank Guarantee; or (b) Irrevocable Letter of Credit.
E. Finishing the Contract	
GCC 62.1	The date by which “as built” Drawings are required is [insert date] .
GCC 62.2	The date by which operating and maintenance manuals are required is [insert date] .
GCC 62.3	The amount to be withheld for failing to produce “as built” Drawings and/or operating and maintenance manuals by the date required in GCC Sub-Clauses 62.1 and 62.2 is [insert amount in local currency] .

⁴¹ It is recommended that 10 percent of the payments be retained.

⁴² Usually liquidated damages are set at a dollar amount per day, and the total amount is not to exceed between 5 percent and 10 percent of the Contract Price. If Sectional Completion and Damages per Section have been agreed, the latter should be specified here.

⁴³ If GCC Clause 54 allows for payment of a bonus, “Reserved” should be deleted and the following should be inserted in its place:

The bonus for the whole of the Works is *[insert percentage of final Contract Price]* per day.

The maximum amount of bonus for the whole of the Works is *[insert percentage]* of the final Contract Price.

⁴⁴ It is advised that the Advance Payment not exceed 10 percent of the Contract Price.

⁴⁵ It is advised that the Performance Security be in the amount of 10 percent of the Contract Price.

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GCC 63.2 (g)	The maximum number of days is: [insert number; consistent with GCC Sub-Clause 53.1 on liquidated damages] .
GCC 63.4	The number of continuous days is: [insert number of days] . The number of days (for multiple periods but due to the same event) is: [insert number of days] .
GCC 65.1	The percentage to apply to the value of the work not completed, representing the Employer's additional cost for completing the Works, is [insert percentage] .

Annex A: Additional Provisions

Capitalized terms that are used but not defined in this Annex shall have the meaning given to them in the GCC or in the Compact or related agreements.

The Employer is responsible for the oversight and management of the implementation of the Compact on behalf of the Government and intends to apply a portion of the proceeds of the Compact to eligible payments under this Contract, provided that (a) such payments will only be made at the request of and on behalf of the Employer and as authorized by the Fiscal Agent, (b) MCC shall have no obligations to the Contractor under the Compact or this Contract, (c) such payments will be subject, in all respects, to the terms and conditions of the Compact, and (d) no party other than the Government and the Employer shall derive any rights from the Compact or have any claim to MCC Funding.

A. MCC Status; Reserved Rights; Third-Party Beneficiary

1. MCC Status. MCC is a United States Government corporation acting on behalf of the United States Government in the implementation of the Compact. As such, MCC has no liability under this Contract, and is immune from any action or proceeding arising under or relating to this Contract. In matters arising under or relating to this Contract, MCC is not subject to the jurisdiction of the courts or any other juridical or other body of any jurisdiction.

2. MCC Reserved Rights.

(a) Certain rights are expressly reserved to MCC under this Contract, the Compact and other related Compact documents, including the right to approve the terms and conditions of this Contract, as well as any amendments or modifications hereto, and the right to suspend or terminate this Contract.

(b) MCC, in reserving such rights under this Contract, the Compact or other related Compact documents, has acted solely as a funding entity to assure the proper use of United States Government funds, and any decision by MCC to exercise or refrain from exercising these rights shall be made as a funding entity in the course of funding the activity and shall not be construed as making MCC a party to this Contract.

(c) MCC may, from time to time, exercise its rights, or discuss matters related to this Contract with the Parties or the Government, as appropriate, jointly or separately, without thereby incurring any responsibility or liability to any party.

(d) Any approval (or failure to approve) or exercise of (or failure to exercise) any rights by MCC shall not bar the Government, the Employer, MCC or any other person or entity from asserting any right against the Contractor, or relieve the Contractor of any liability which the Contractor might otherwise have to the Government, the Employer, MCC, or any other person or entity. For the purposes

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of this clause (d), MCC shall be deemed to include any MCC officer, director, employee, affiliate, contractor, agent or representative.

3. Third-Party Beneficiary. MCC shall be deemed to be a third-party beneficiary under this Contract.

B. Limitations on the Use or Treatment of MCC Funding

The use and treatment of MCC Funding in connection with this Contract does not, and shall not, violate any limitations or requirements specified in the Compact or any other relevant agreement or Implementation Letter or applicable law or United States Government policy. A summary of the applicable provisions referenced in this paragraph may be found on the MCC website at www.mcc.gov/guidance/compact/funding_limitations.pdf.⁴⁶

C. Procurement

The Contractor shall ensure that all procurements of goods, services or works under, related to or in furtherance of this Contract shall be consistent with the general principles set forth in the Compact and in the MCC Program Procurement Guidelines from time to time in effect as posted on the MCC website at www.mcc.gov. The Contractor shall comply with the eligibility requirements related to prohibited source or restricted party provisions in accordance with U.S. law, regulations and policy, applicable World Bank policies or guidelines and in accordance with other eligibility requirements as may be specified by MCC or the Employer. A summary of the applicable provisions referenced in this paragraph may be found on the MCC website at www.mcc.gov/guidance/compact/procurement_awards_provisions.pdf.⁴⁷

D. Reports and Information; Access; Audits; Reviews

1. Reports and Information. The Contractor shall maintain such books and records and provide such reports, documents, data or other information to the Employer in the manner and to the extent required by the Compact or related documents and as may be reasonably requested by the Employer from time to time in order to comply with its reporting requirements arising under the Compact or related documents. MCC may freely use any information it receives in any report or document provided to it in any way that MCC sees fit. The provisions of the Compact and **[insert references to related documents]**⁴⁸ that are applicable to the Government in this regard shall apply, *mutatis mutandis*, to the Contractor as if the Contractor were the Government under the Compact. A summary of the applicable provisions referenced in this paragraph may be found on the MCC website at www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf.⁴⁹

⁴⁶ Prior to finalizing this as part of a specific contract, confirm that this remains the proper link.

⁴⁷ Prior to finalizing this as part of a specific contract, confirm that this remains the proper link.

⁴⁸ Language citing the specific sections of the relevant compact and other agreements related to the particular country in connection with which this form of contract is used in a procurement should be inserted here.

⁴⁹ Prior to finalizing this as part of a specific contract, confirm that this remains the proper link.

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2. Access; Audits and Reviews. Upon MCC's request, the Contractor shall permit such access, audits, reviews and evaluations as provided in the Compact or related documents. The provisions of the Compact and **insert references to related documents**⁵⁰ that are applicable to the Government with respect to access and audits shall apply, *mutatis mutandis*, to the Contractor as if the Contractor were the Government under the Compact. A summary of the applicable provisions referenced in this paragraph may be found on the MCC website at www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf.⁵¹

3. Application to Providers. The Contractor shall ensure the inclusion of the applicable audit, access and reporting requirements in its contracts or agreements with other providers in connection with this Contract. A summary of the applicable requirements may be found on the MCC website at www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf.⁵²

E. Compliance with Anti-Corruption, Anti-Money Laundering and Terrorist Financing Statutes and Other Restrictions

1. The Contractor shall ensure that no payments have been or will be made by the Contractor to any official of the Government, the Employer, or any third party (including any other government official) in connection with this Contract in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. 78a et seq.) (the "FCPA") or that would otherwise be in violation of the FCPA if the party making such payment were deemed to be a United States person or entity subject to the FCPA, or similar statute applicable to this Contract, including any local laws. The Contractor affirms that no payments have been or will be received by any official, employee, agent or representative of the Contractor in connection with this Contract in violation of the FCPA or that would otherwise be in violation of the FCPA if the party making such payment were deemed to be a United States person or entity subject to the FCPA, or similar statute applicable to this Contract, including any local laws.

2. The Contractor shall not provide material support or resources directly or indirectly to, or knowingly permit MCC Funding to be transferred to, any individual, corporation or other entity that the Contractor knows, or has reason to know, commits, attempts to commit, advocates, facilitates, or participates in any terrorist activity, or has committed, attempted to commit, advocated, facilitated or participated in any terrorist activity, including, but not limited to, the individuals and entities (i) on the master list of Specially Designated Nationals and Blocked Persons maintained by the U.S. Department of Treasury's Office of Foreign Assets Control, which list is available at www.treas.gov/offices/enforcement/ofac, (ii) on the consolidated list of individuals and entities maintained by the "1267 Committee" of the United Nations Security Council, (iii) on the list maintained on www.epls.gov or (iv) on such other list as the Employer may request from time to time. For purposes of this provision, "material support and resources" includes currency, monetary instruments or other financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or

⁵⁰ Language citing the specific sections of the relevant compact and other agreements related to the particular country in connection with which this form of contract is used in a procurement should be inserted here.

⁵¹ Prior to finalizing this as part of a specific contract, confirm that this remains the proper link.

⁵² Prior to finalizing this as part of a specific contract confirm that this remains the proper link.

Section VI Special Conditions of Contract and Additional Provisions Annex to the Contract

identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

3. The Contractor shall ensure that its activities under this Contract comply with all applicable U.S. laws, regulations and executive orders regarding money laundering, terrorist financing, U.S. sanctions laws, restrictive trade practices, boycotts, and all other economic sanctions promulgated from time to time by means of statute, executive order, regulation or as administered by the Office of Foreign Assets Control of the United States Treasury Department or any successor governmental authority, including, 18 U.S.C. § 1956, 18 U.S.C. § 1957, 18 U.S.C. § 2339A, 18 U.S.C. § 2339B, 18 U.S.C. § 2339C, 18 U.S.C. § 981, 18 U.S.C. § 982, Executive Order 13224, 15 C.F.R. Part 760, and those economic sanctions programs enumerated at 31 C.F.R. Parts 500 through 598 and shall ensure that its activities under this Contract comply with any policies and procedures for monitoring operations to ensure compliance, as may be established from time to time by MCC, the Employer, the Fiscal Agent, or the Bank, as may be applicable. The Contractor shall verify, or cause to be verified, appropriately any individual, corporation or other entity with access to or recipient of funds, which verification shall be conducted in accordance with the procedures set out in the MCC Program Procurement Guidance paper entitled “Excluded Parties Verification Procedures in Purchaser Program Procurements” that can be found on MCC’s website at www.mcc.gov. The Contractor shall (A) conduct the monitoring referred to in this paragraph on at least a quarterly basis, or such other reasonable period as the Employer or MCC may request from time to time and (B) deliver a report of such periodic monitoring to the Employer with a copy to MCC.

4. Other restrictions on the Contractor shall apply as set forth in the Compact or related documents with respect to any activities in violation of other applicable U.S. laws, regulations, executive orders or policies, any misconduct injurious to MCC or the Employer, any activity contrary to the national security interests of the United States or any other activity that materially and adversely affects the ability of the Government or any other party to effectively implement, or ensure the effective implementation of, the Program or any Project or to otherwise carry out its responsibilities or obligations under or in furtherance of the Compact or any related document or that materially and adversely affects the Program assets or any Permitted Account.

F. Publicity, Information and Marking

1. The Contractor shall cooperate with the Employer and the Government to provide the appropriate publicity to the goods, works and services provided under this Contract, including identifying Program activity sites and marking Program assets as goods, works and services funded by the United States, acting through MCC, all in accordance with the MCC Standards for Corporate Marking and Branding, available on the MCC website at [\[http://www.mcc.gov/documents/mcc-marking-corporate-v2.pdf\]](http://www.mcc.gov/documents/mcc-marking-corporate-v2.pdf)⁵³ provided, however, that any press release or announcement regarding MCC or the fact that MCC is funding the Program or any other publicity materials referencing MCC, shall be subject to MCC’s prior written approval and must be consistent with any instructions provided by MCC from time to time in relevant Implementation Letters.

⁵³ Prior to finalizing this as part of a specific contract, confirm that this remains the proper link.

2. Upon the termination or expiration of the Compact, the Contractor shall, upon MCC's request, cause the removal of any such markings and any references to MCC in any publicity materials.

G. Insurance

The Contractor shall obtain insurance, performance bonds, guarantees or other protections appropriate to cover against risks or liabilities associated with performance of this Contract. The Contractor shall be named as payee on any such insurance and the beneficiary of any such performance bonds and guarantees. The Employer and, at MCC's request MCC, shall be named as additional insureds on any such insurance or other guarantee, to the extent permissible under applicable laws. The Contractor shall ensure that any proceeds from claims paid under such insurance or any other form of guarantee shall be used to replace or repair any loss or to pursue the procurement of the covered goods, works and services; provided, however, that at MCC's election, such proceeds shall be deposited in an account as designated by the Employer and acceptable to MCC or as otherwise directed by MCC.

H. Conflict of Interest

1. The Contractor shall ensure that no officer, director, employee, affiliate, contractor, subcontractor, agent, advisor or representative of the Contractor participates in the selection, award, administration or oversight of a contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding in connection with this Contract, in which (i) the entity, the person, members of the person's immediate family or household or his or her business partners, or organizations controlled by or substantially involving such person or entity, has or have a financial or other interest or (ii) the person or entity is negotiating or has any arrangement concerning prospective employment, unless such person or entity has first disclosed in writing to the parties under this Contract and MCC the conflict of interest and, following such disclosure, the parties to this Contract agree in writing to proceed notwithstanding such conflict. The Contractor shall ensure that none of its officers, directors, employees, affiliates, contractors, subcontractors, agents, advisors or representatives involved in the selection, award, administration, oversight or implementation of any contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding in connection with this Contract shall solicit or accept from or offer to a third party or seek or be promised (directly or indirectly) for itself or for another person or entity any gift, gratuity, favor or benefit, other than items of *de minimis* value and otherwise consistent with such guidance as MCC may provide from time to time. The Contractor shall ensure that none of its officers, directors, employees, affiliates, contractors, subcontractors, agents, advisors or representatives engage in any activity which is, or gives the appearance of being, a conflict of interest in connection with this Contract. Without limiting the foregoing, the Contractor shall comply, and ensure compliance, with the applicable conflicts of interest and ethics policies of the Employer as provided by the Employer to the Contractor.

I. Inconsistencies

In the event of any conflict between this Contract and the Compact and/or the **[Disbursement Agreement or the Procurement Agreement/Program Implementation Agreement]**, the term(s) of the Compact and/or the **[Disbursement Agreement or the Procurement Agreement/Program Implementation Agreement]**⁵⁴ shall prevail.

J. Other Provisions

The Contractor shall abide by such other terms or conditions as may be specified by the Employer or MCC in connection with this Contract.

K. Flow-Through Provisions

In any sub-contract or sub-award entered into by the Contractor, as permitted by this Contract, the Contractor shall ensure the inclusion of all the provisions contained in paragraphs (A) through (J) above.

⁵⁴ The appropriate agreement in connection with the particular country for which this form is being used is to be referenced here.

Section VII. Security Forms⁵⁵

⁵⁵ Samples of acceptable forms of Bid, Performance, and Advance Payment Securities are provided in Section VII. Bidders shall not complete the Performance and Advance Payment Security forms at this stage of the procurement process. Only the successful Bidder shall be required to provide these two securities.

Form of Bid Security (Bank Guarantee)

*[If required, the **bank/Bidder** shall fill in this Bank Guarantee form in accordance with the instructions indicated in brackets.]*

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

Beneficiary: _____ *[Name and Address of the Employer]*

Date: _____

BID GUARANTEE No.: _____

We have been informed that *[name of the Bidder]* (hereinafter called the "Bidder") has submitted to you its Bid dated (hereinafter called the "Bid") for the execution of *[name of Contract]* under Invitation for Bids No. *[IFB number]*.

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

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

- (a) has withdrawn its Bid during the period of Bid validity specified by the Bidder in its Bid; or
- (b) having been notified of the acceptance of its Bid by you during the period of Bid validity, (i) has failed or refused to execute the Contract or (ii) has failed or refused to furnish the performance security, in accordance with the Instructions to Bidders.

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

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

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

[signature(s)]

Performance Bank Guarantee

(Unconditional)

*[The **bank/successful Bidder** providing the Guarantee shall fill in this form in accordance with the instructions indicated in brackets, if the Employer requires this type of security.]*

[insert bank's name, and address of issuing branch or office]

Beneficiary: *[insert name and address of the Employer]*

Date: *[insert date]*

PERFORMANCE GUARANTEE No.: *[insert Performance Guarantee number]*

We have been informed that *[insert name of Contractor]* (hereinafter called the "Contractor") has entered into Contract No. *[insert reference number of the Contract]* dated with you, for the execution of *[insert name of Contract and brief description of Works]* (hereinafter called the "Contract").

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

At the request of the Contractor, we *[insert name of bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures] ([insert amount in words]),⁵⁶* such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire no later than twenty-eight days from the date of issuance of the Taking-Over Certificate, calculated based on a copy of such Certificate which shall be provided to us, or on the *[insert number day of [insert month], [insert year],⁵⁷* whichever

⁵⁶ The Guarantor (bank) shall insert an amount representing the percentage of the Contract Price specified in the Contract and denominated in the currency(ies) of the Contract.

⁵⁷ Insert the date twenty-eight days after the expected Completion date. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this Guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the Guarantee. In preparing this Guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this Guarantee for a period not to exceed [six months][one year], in response to the Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the Guarantee."

Section VII Security Forms

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

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

[signature(s) of an authorized representative(s) of the bank]

Bank Guarantee for Advance Payment

*The **bank/successful Bidder** providing the Guarantee shall fill in this form in accordance with the instructions indicated in brackets, if an Advance Payment is to be provided under the Contract.*

[insert bank's name, and address of issuing branch or office]

Beneficiary: *[insert name and address of the Employer]*

Date: *[insert date]*

ADVANCE PAYMENT GUARANTEE No.: *[insert number]*

We have been informed that *[insert name of Contractor]* (hereinafter called the "Contractor") has entered into Contract No. *[insert reference number of the Contract]* dated *[insert date]* with you, for the execution of *[insert name of Contract and brief description of Works]* (hereinafter called the "Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment is to be made against an advance payment guarantee in the sum or sums indicated below.

At the request of the Contractor, we *[insert name of bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures] ([insert amount in words]⁵⁸)* upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than the costs of mobilization in respect of the Works.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Contractor on its account number *[insert account number]* at *[insert name and address of bank]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the Interim Payment Certificate indicating that eighty (80) percent of the Contract Price has been certified for payment, or on the *[insert*

⁵⁸ The Guarantor shall insert an amount representing the amount of the advance payment and denominated in the currency(ies) of the advance payment as specified in the Contract.

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number] day of [*insert month*], [*insert year*],⁵⁹ whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

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

[insert signature(s) of authorized representative(s) of bank]

⁵⁹ 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: "We agree to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Employer's written request for such extension, such request to be presented to us before the expiry of the guarantee."

Section VIII. Bill of Quantities^{60,61}

⁶⁰ In fixed price contracts, the “Bill of Quantities” is prepared for information; it is not contractual. The contractual document prepared by the Bidder shall be a “Schedule of Activities.”

⁶¹ Insert the Bill of Quantities. The objectives of the Bill of Quantities are: (a) to provide sufficient information on the quantities of Works to be performed to enable Bids to be prepared efficiently and accurately; and (b) when a Contract has been entered into, to provide a priced Bill of Quantities for use in the periodic valuation of Works executed. In order to attain these objectives, Works should be itemized in the Bill of Quantities in sufficient detail to distinguish between the different classes of Works, or between Works of the same nature carried out in different locations or in other circumstances which may give rise to different considerations of cost.

Section IX. Specifications & Performance Requirements⁶²

⁶² Insert here a list of the Specifications. The actual Specifications and Performance Requirements should be attached to this section or annexed in a separate volume. A set of precise and clear Specifications is a prerequisite for Bidders to respond realistically and competitively to the requirements of the Employer without qualifying or conditioning their Bids. In the context of Competitive Bidding, the Specifications must be drafted to present a clear statement of the required standards of workmanship, materials, and performance of the works, goods and services to be procured.

Section X. Drawings⁶³

⁶³ Insert here a list of Drawings. The actual Drawings, including site plans, should be attached to this section or annexed in a separate volume.