

**PLANT**

***STANDARD BIDDING DOCUMENT  
UNDER JAPANESE ODA LOANS***

PROCUREMENT OF PLANT DESIGN,  
SUPPLY AND INSTALLATION



***Japan International Cooperation Agency  
(JICA)***

***May 2021***

Version 2.2

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# Revisions

## October 2023

This revision incorporates changes reflecting the issuance of the *Guidelines for Procurement under Japanese ODA Loans, October 2023*. The stipulations regarding corrupt and fraudulent practices in ITB 3.1(c) have been modified accordingly. Editorial enhancements have also been made.

## April 2023

This revision incorporates a change reflecting the revision made in April 2023 on the *Guidelines for Procurement under Japanese ODA Loans, April 2012* regarding one bid per bidder principle stipulated in ITB 4.2(c). Editorial enhancements have also been made.

# Preface

This Standard Bidding Document for Procurement of Plant Design, Supply and Installation (SBD (Plant)) has been prepared by the Japan International Cooperation Agency (JICA) for the use of the Projects financed, in whole or in part, by its Official Development Assistance (ODA) loans.

This SBD (Plant) is intended to be used for the procurement of Plant Design, Supply and Installation through international competitive bidding (ICB), when:

- the contract involves the design, supply, installation and commissioning of specially engineered plant such as turbines, generators, boilers, switchyards, pumping stations, process and treatment plants;
- the value of the plant portion represents the major part of the estimated contract value, (even if the contract involves small portion of civil works);
- the nature and complexity of the plant is such that the completed plant cannot safely be taken over by the Employer without comprehensive testing, pre-commissioning, commissioning and acceptance procedures being followed; and
- the contract is intended to be executed on a single responsibility basis, even if some activities, such as parts of the design or site preparation works, may be carried out by others.

This SBD (Plant) is consistent with the Guidelines for Procurement under Japanese ODA Loans published in April 2012 or October 2023 and its use for such Plant Design, Supply and Installation contracts is **required** under the Guidelines. As this SBD (Plant) reflects recent best practices of public procurement and JICA's policy, its use is also encouraged for contracts under the Guidelines for Procurement published in October 1999 or March 2009.

If the user has questions regarding the use of this SBD (Plant), the appropriate JICA's official should be consulted.

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# Summary Description

This Standard Bidding Document for Procurement of Plant Design, Supply and Installation (SBD (Plant)) includes both Single-Stage Two-Envelope (Option A) and Two-Stage One-Envelope (Option B) bidding procedures to be chosen by the Employer as appropriate to each circumstance. This SBD (Plant) applies either when a prequalification process has taken place before bidding or when a prequalification process has not taken place before bidding. A brief description of this documents is given below.

**Note that throughout this document, the terms “Facilities” and “Plant and Installation Services” are synonymous with the term “Plant Design, Supply and Installation”.**

## SBD for Procurement of Plant Design, Supply, and Installation

### Invitation for Bids (IFB)

A form of “Invitation for Bids” is provided at the beginning of this SBD (Plant).

## PART 1 – BIDDING PROCEDURES

### Option A – Single-Stage Two-Envelope Bidding

#### Section I. Instructions to Bidders (ITB)

This Section specifies the procedures to be followed by the Bidders when preparing and submitting their technical and price Bids. It also provides information on the opening and evaluation of Bids and on the award of the Contract. **Section I contains provisions that are to be used without modification.**

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

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

#### Section III. Evaluation and Qualification Criteria (EQC)

This Section specifies the criteria to determine the lowest evaluated Bid and the qualifications of the Bidder to perform the Contract. Two alternative Section IIIs, Evaluation and Qualification Criteria are provided to address the possibility of

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having or not having prequalification of the Bidders, conducted prior to the bidding process.

**Option B – Two-Stage One-Envelope Bidding (Section I, II and III of Option B are not included in the printed book of the Standard Bidding Document. Copies can be obtained from JICA’s website.**

**[www.jica.go.jp/english/our\\_work/types\\_of\\_assistance/oda\\_loans/oda\\_op\\_info/guide/tender/index.html](http://www.jica.go.jp/english/our_work/types_of_assistance/oda_loans/oda_op_info/guide/tender/index.html)**)

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

This Section specifies the procedures to be followed by the Bidders when preparing and submitting Bids. It also provides information on the opening and evaluation of Bids and on the award of the Contract. **Section I contains provisions that are to be used without modification.**

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

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

**Section III. Evaluation and Qualification Criteria (EQC)**

This Section specifies the criteria to determine the lowest evaluated Bid and the qualifications of the Bidder to perform the Contract. Two alternative Section IIIs, Evaluation and Qualification Criteria are provided to address the possibility of having or not having prequalification of the Bidders, conducted prior to the bidding process.

Section IV and Section V below are to be used either with **Option A – Single-Stage Two-Envelope Bidding** or with **Option B – Two-Stage One-Envelope Bidding**

**Section IV. Bidding Forms**

This Section includes the forms which are to be completed by the Bidders and submitted as part of their Bids.

**Section V. Eligible Source Countries of Japanese ODA Loans**

This Section contains information and provisions as to the Eligible Source Countries applicable for the Bidders, and for the goods and services to be supplied under the Contract, as included in the Loan Agreement with JICA.

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## **PART 2 – EMPLOYER’S REQUIREMENTS**

### **Section VI. Employer’s Requirements**

This Section contains a descriptions of the functional and/or performance specification of the Facilities to be designed and constructed. It shall present, as appropriate, a statement of the required standards for materials, plant, supplies, and workmanship to be provided, such as the scope of Plant and Installation Services, the specifications and the drawings that describe the Facilities, and the Supplementary Information.

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

### **Section VII. General Conditions (GC)**

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

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

This Section consists of Part A, Contract Data, which contains data specific to each contract, and Part B, Specific Provisions, which contains provisions specific to each contract. The contents of this Section supplement the General Conditions.

### **Section IX. Contract Forms**

This Section contains forms which, once completed, will form part of the Contract. The forms for performance security and advance payment security, when required, shall only be completed by the successful Bidder after award of the Contract.

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## Notes for Users (Employers)

- (a) The use of this Standard Bidding Document for Procurement of Plant Design, Supply and Installation (SBD (Plant)) published by JICA is **required** for Plant Design, Supply and Installation contracts to be procured through international competitive bidding (ICB) and financed by Japanese ODA Loans.
- (b) This SBD (Plant) has been prepared as a standard document, which shall be used without suppressing or adding text to the standard sections of the document, which are Section I, Instructions to Bidders (Standard ITB) and Section VII, General Conditions of Contract (Standard GC). **If the ITB and/or GC of the Bidding Document prepared by the Employer contain modifications from the Standard ITB and/or Standard GC included in this SBD (Plant), JICA will not consider them valid and will require Employer to modify the Bidding Document so that the Standard ITB and/or Standard GC, as defined above, shall apply.**
- (c) All information and data particular to each individual contract and required by Bidders in order to prepare responsive Bids must be provided by the Employer in the Bid Data Sheet (Section II), the Evaluation and Qualification Criteria (Section III), the Eligible Source Countries of Japanese ODA Loans (Section V), the Employer's Requirements (Section VI), the Particular Conditions (Section VIII), and the Contract Forms (Section IX).
- (d) When providing the information and data in the Sections described above, the following directions should be observed:
  - (i) Specific details, such as the name of the Employer and the address for Bid submission, should be furnished in the spaces indicated by italicized notes inside brackets.
  - (ii) The footnotes and "boxed" notes and italicized notes in this SBD (Plant), except those applying to forms to be filled out by the Bidders, or instructions and notes for the Bidders, are not part of the Bidding Document, but contain guidance and instructions for the Employer. They shall be deleted from the actual Bidding Document issued to the Bidders.
  - (iii) Where alternative Clauses or texts are shown, select those which best suit the particular contracts and discard the alternative text which is not used.
- (e) Unless specifically agreed with JICA, the Particular Conditions shall not materially alter the provisions of the General Conditions of Contract.
- (f) The process of prequalification (if any) shall follow the procedure specified in the *Standard Prequalification Document under Japanese ODA Loans*, published by JICA. Prequalification is in principle required in advance of bidding for procurement of a large and complex plant design, supply and installation. If there was no prequalification conducted prior to the bidding process, the assessment of the qualification criteria shall be carried out at the bidding stage. Accordingly, there are two alternatives provided for Section III, Evaluation and Qualification Criteria and the Employer shall select the appropriate alternative to be included in the actual Bidding Document.

- (g) The complete set of the draft Bidding Document prepared by the Employer shall be submitted to JICA, for its review and concurrence in accordance with the concerned Loan Agreement, before its issuance to the prospective Bidders.



# Bidding Procedure

## Single-Stage Two-Envelope Bidding

### Documents Structure

I. Bidding Document Issued by Employer	
Section I	- Instructions to Bidders (ITB).
Section II	- Bid Data Sheet (BDS).
Section III	- Evaluation and Qualification Criteria (EQC).
Section IV	- Bidding Forms.
Section V	- Eligible Source Countries of Japanese ODA Loans.
Section VI	- Employer's Requirements.
Section VII	- General Conditions (GC).
Section VIII	- Particular Conditions (PC).
Section IX	- Contract Forms.



II. The Bid Submitted by Bidder	
<u>Technical Bid</u>	
(a)	Letter of Technical Bid, in accordance with ITB 12.1.
(b)	Bid Security, in accordance with ITB 19.
(c)	Power of Attorney, authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2 and ITB 20.3.
(d)	Copy of the JV Agreement, or letter of intent to enter into a JV including a draft agreement in the case of a Bid submitted by a JV in accordance with ITB 4.1.
(e)	Documentary evidence in accordance with ITB 17 establishing the Bidder's eligibility and qualifications to perform the Contract if its Bid is accepted.
(f)	Documentary evidence in accordance with ITB 16.2 establishing that the Plant and Installation Services offered by the Bidder conform to the Bidding Document.
(g)	Technical Proposal in accordance with ITB 16.
(h)	Acknowledgement of Compliance with the Guidelines for Procurement under Japanese ODA Loans (Form ACK), which shall be signed and dated by the Bidder's authorized representative.
(i)	Any other document required in BDS 11.2(i).
<u>Price Bid</u>	
(a)	Letter of Price Bid, in accordance with ITB 12.1.
(b)	Completed Schedules in accordance with ITB 12.1 and ITB 14, including completed Price Schedules, and completed Schedule of Adjustment Data (if any required in accordance with ITB 14.7) but excluding any Schedule(s) required in ITB 11.2.
(c)	Any other document required in BDS 11.3 (c).



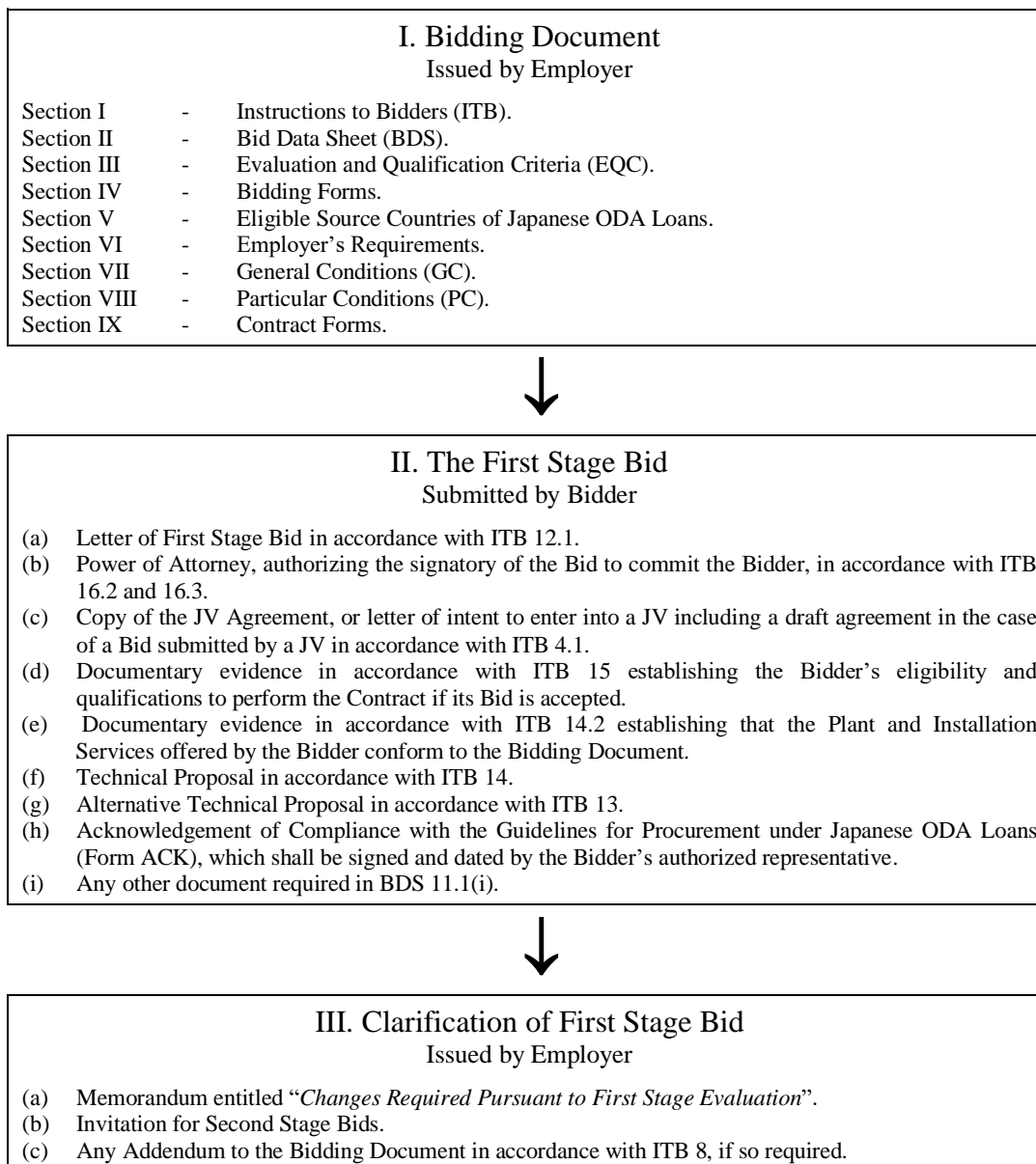
**III. Contract Documents**  
Issued by Employer & submitted by Bidder

- (a) Contract Agreement and the Appendices thereto.
- (b) Letter of Acceptance.
- (c) Letter of Technical Bid.
- (d) Letter of Price Bid.
- (e) Addenda, if any.
- (f) Particular Conditions: Part A – Contract Data.
- (g) Particular Conditions: Part B – Specific Provisions.
- (h) General Conditions.
- (i) Employer's Requirements.
- (j) Other completed Bidding Forms submitted with the Bid.
- (k) Acknowledgment of Compliance with Guidelines for Procurement under Japanese ODA Loans.
- (l) Any other documents forming part of the Contract.

# Bidding Procedure

## Two-Stage One-Envelope Bidding

### Documents Structure



#### IV. The Second Stage Bid Submitted by Bidder

- (a) The Letter of Second Stage Bid in accordance with ITB 29.
- (b) Completed Schedules in accordance with ITB 29.1 and ITB 30, including completed Price Schedules, and completed Schedule of Adjustment Data (if any required in accordance with ITB 30.7).
- (c) Bid Security, in accordance with ITB 33.
- (d) Power of Attorney authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 34.2 and ITB 34.3.
- (e) Updated First Stage Bid, comprising any modifications required to the First Stage Bid as recorded in the Memorandum entitled "Changes Required Pursuant to First Stage Evaluation" in accordance with ITB 28.1(e).
- (f) Documentary evidence regarding any changes that may have occurred between the time of submitting the First and Second Stage Bids that have any material effect on the Bidder's eligibility and qualifications to perform the Contract in accordance with ITB 28.1(f).
- (g) Documentary evidence establishing that any additional or varied facilities to be supplied and installed by the Bidder, in accordance with the requirements of the Memorandum entitled "Changes Required Pursuant to First Stage Evaluation", are technically acceptable in accordance with ITB 28.1(g).
- (h) Details of the proposed subcontractors, including manufacturers, if, as a result of complying with the memorandum "Changes Required Pursuant to First Stage Evaluation", the Bidder proposes to engage any subcontractors or manufacturers additional to or different from those named in its First Stage Bid in accordance with ITB 28.1 (h).
- (i) Any other document required in BDS 28.1(i).



#### V. Contract Documents Issued by Employer & submitted by Bidder

- (a) Contract Agreement and the Appendices thereto.
- (b) Letter of Acceptance.
- (c) Letter of Second Stage Bid.
- (d) Addenda, if any.
- (e) Particular Conditions: Part A – Contract Data.
- (f) Particular Conditions: Part B – Specific Provisions.
- (g) General Conditions.
- (h) Employer's Requirements.
- (i) Other completed Bidding Forms submitted with the Bid.
- (j) Acknowledgment of Compliance with Guidelines for Procurement under Japanese ODA Loans.
- (k) Any other documents forming part of the Contract.

# Invitation for Bids: Following Prequalification

## Notes for the Employer

The Invitation for Bids for contracts, subject to prequalification, is sent only to firms to be qualified in accordance with the Employer's prequalification procedure. This prequalification procedure must be reviewed and concurred by JICA.

Ideally, the Invitation for Bids is sent to the qualified Bidders at the time that the prequalification results are announced. If prequalification is not used, the Invitation for Bids form (without prequalification) shall be used.

When preparing the Invitation for Bids:

- (a) specific details, such as the name of the Employer and the address for Bid submission should be furnished in the spaces indicated by italicized notes inside brackets.
- (b) the footnotes and italicized notes are not part of the actual Invitation for Bids, but contain guidelines and instructions for the Employer. They shall be deleted from the actual Bidding Document to be issued to the Bidders.

The Invitation for Bids is not part of the Bidding Document. However, the Employer shall make sure that its contents are consistent with the information contained in Section II - Bid Data Sheet.



## **Form of Invitation for Bids**

Date : [insert date of issuance of Invitation for Bid]  
IFB No. : [insert Invitation for Bid number]  
Employer : [insert name of Employer]  
Country : [insert country of Employer/ Borrower]  
JICA Loan No.: [insert JICA Loan Agreement number]  
Project Name : [insert name of Project]  
Contract Name: [insert name of Contract]

1. The [insert name of Borrower] has received<sup>1</sup> a loan from the Japan International Cooperation Agency (JICA) towards the cost of [insert name of Project] and intends to apply part of the proceeds towards payments under the contract<sup>2</sup> for [insert name of Contract].
2. The [insert name of Employer] now invites sealed Bids from prequalified eligible Bidders for the design, construction and completion of [insert brief description of the Plant and Installation Services to be procured]<sup>3</sup> (“the Facilities”). International competitive bidding will be conducted in accordance with [insert “Single-Stage Two-Envelope” or “Two-Stage One-Envelope”, as appropriate] Bidding Procedure.
3. Bidding will be conducted through procedures in accordance with the applicable Guidelines for Procurement under Japanese ODA Loans, and is open to all prequalified Bidders from eligible source countries, as defined in the Prequalification Document and in the Bidding Document.
4. Interested prequalified Bidders may obtain further information from and inspect the Bidding Document during office hours at:  
[insert name of office]  
[insert name of person in charge]  
[insert mailing address]  
[insert office hours]  
[insert tel. no., indicate country and city codes]  
[insert fax no., indicate country and city codes]  
[insert email address].
5. The Bidding Document may be purchased by interested prequalified Bidders on the submission of a written application to the address above and upon payment of a non-refundable fee of [insert amount in currency of Employer’s country or in a convertible currency]<sup>4</sup>. The method of payment will be [insert method of payment]<sup>5</sup>. The document will be sent by [insert delivery procedure].
6. Bids must be delivered to the address above<sup>6</sup> on or before [insert time] on [insert date] and must be accompanied by a Bid security<sup>7</sup> of [insert fixed amount].
7. Bids will be opened in the presence of Bidders’ representatives who choose to attend at the offices as specified in the Bidding Document.

[insert name of office]

[insert name of person in charge]

[insert mailing address]

[insert tel. with country and city codes]

[insert fax no. with country and city codes]

[insert email address]

### Notes for the Employer

1. Substitute "has applied for," if appropriate.
2. Substitute "contracts" where Bids are called concurrently for multiple lots. Add a new para. 4 as follows and renumber paras 4 - 7 as follows: "Bidders may submit bids for one lot or more lots, as further defined in the Bidding Document. Bidders wishing to offer discounts in case they are awarded more than one lot will be allowed to do so, provided those discounts are included in the Letter of Price Bid or Letter of Second Stage Bid, as applicable."
3. A brief description of the Plant and Installation Services should be provided, including number of plant, their capacities, location of project, and other information necessary to enable potential Bidders to decide whether or not to respond to the invitation. Bidding Document may require Bidders to have specialized experience or capabilities; such requirements should also be included in this paragraph.
4. The fee, to defray printing and mailing/ shipping costs, should be nominal.
5. For example, cashier's check, direct deposit to a specified account number, etc.
6. Substitute "below" and insert the Employer's address for Bid submission (right below this paragraph), if it is different from its address for issuance of the Bidding Document.
7. Delete the requirement of a security when the Two-Stage One-Envelope Bidding procedure is used, as the security is required only for the Second Stage Bids.



# Invitation for Bids: Without Prequalification

## Notes for the Employer

If Bids are invited openly from firms without using a prequalification procedure, the Invitation for Bids should be issued directly to the public (see the relevant Section of the Guidelines for Procurement under Japanese ODA Loans):

- (a) as an advertisement in at least one newspaper of general circulation in the country of the Borrower/ Employer; and
- (b) with sending a copy of the invitation to JICA.

When preparing the Invitation for Bids:

- (a) specific details, such as the name of the Employer and the address for Bid submission should be furnished in the spaces indicated by italicized notes inside brackets.
- (b) the footnotes and italicized notes are not part of the actual Invitation for Bids, but contain guidelines and instructions for the Employer. They shall be deleted from the actual Bidding Document to be issued to the Bidders.

The Invitation for Bids is not part of the Bidding Document. However, the Employer shall make sure that its contents are consistent with the information contained in Section II - Bid Data Sheet.



## **Form of Invitation for Bids**

Date : [insert date of issuance of Invitation for Bid]  
IFB No. : [insert Invitation for Bid number]  
Employer : [insert name of Employer]  
Country : [insert country of Employer/ Borrower]  
JICA Loan No.: [insert JICA Loan Agreement number]  
Project Name : [insert name of Project]  
Contract Name: [insert name of Contract]

1. The [insert name of Borrower] has received<sup>1</sup> a loan from the Japan International Cooperation Agency (JICA) towards the cost of [insert name of Project] intends to apply part of the proceeds towards payments under the contract<sup>2</sup> for [insert name of Contract].
2. The [insert name of Employer] now invites sealed Bids from eligible Bidders for the design, construction and completion of [insert brief description of the plant and installation services to be procured]<sup>3</sup> (“the Facilities”). International competitive bidding will be conducted in accordance with [insert “Single-Stage Two-Envelope” or “Two-Stage One-Envelope”, as appropriate] Bidding Procedure.
3. Bidding will be conducted through procedures in accordance with the applicable Guidelines for Procurement under Japanese ODA Loans, and is open to all Bidders from eligible source countries, as defined in the Bidding Document.
4. Interested Bidders may obtain further information from and inspect the Bidding Document during office hours at:  
[insert name of office]  
[insert name of person in charge]  
[insert mailing address]  
[insert office hours]  
[insert tel. no. with country and city codes]  
[insert fax no. with country and city codes]  
[insert email address].
5. The Bidding Document may be purchased by interested Bidders on the submission of a written application to the address above and upon payment of a non-refundable fee of [insert amount in currency of Employer’s country or in a convertible currency]<sup>4</sup>. The method of payment will be [insert method of payment]<sup>5</sup>. The document will be sent by [insert delivery procedure].
6. Bids must be delivered to the address above<sup>6</sup> on or before [insert time] on [insert date] and must be accompanied by a Bid security<sup>7</sup> of [insert fixed amount].
7. Bids will be opened in the presence of Bidders’ representatives who choose to attend at the offices as specified in the Bidding Document.

[insert name of office]

[insert name of person in charge with]  
[insert mailing address]  
[insert telephone number with country and city code]  
[insert fax number with country and city code]  
[insert email address]

### Notes for the Employer

1. Substitute "has applied for," if appropriate.
2. Substitute "contracts" where Bids are called concurrently for multiple lots. Add a new para. 4 as follows and renumber paras 4 - 7: "Bidders may submit bid for one or more contracts, as further defined in the Bidding Document. Bidders wishing to offer discounts in case they are awarded more than one lot will be allowed to do so, provided those discounts are included in the Letter of Price Bid or Letter of Second Stage Bid as applicable."
3. A brief description of the Plant and Installation Services should be provided, including number of plant, their capacities, location of project, and other information necessary to enable potential Bidders to decide whether or not to respond to the invitation. Bidding Document may require Bidders to have specialized experience or capabilities; such requirements should also be included in this paragraph.
4. The fee, to defray printing and mailing/ shipping costs, should be nominal.
5. For example, cashier's check, direct deposit to a specified account number, etc.
6. Substitute "below" and insert the Employer's address for Bid submission (right below this paragraph), if it is different from its address for issuance of the Bidding Document.
7. Delete the requirement of a security when the Two-Stage One-Envelope Bidding procedure is used, as the security is required only for the Second Stage Bid.

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# BIDDING DOCUMENT

for

## Procurement of *[insert name of the Facilities]*

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**IFB No.** : *[insert Invitation for Bid number]*

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

**Country** : *[insert name of country of Employer/  
Borrower]*

**JICA Loan No.** : *[insert JICA Loan Agreement number]*

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

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

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#### OPTION B: Two-Stage One-Envelope Bidding

(Section I, II and III of Option B are not included in the printed book of the Standard Bidding Document. Copies can be obtained from JICA's website.

[www.jica.go.jp/english/our\\_work/types\\_of\\_assistance/oda\\_loans/oda\\_op\\_info/guide/tender/index.html](http://www.jica.go.jp/english/our_work/types_of_assistance/oda_loans/oda_op_info/guide/tender/index.html))

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# **PART 1 - BIDDING PROCEDURES**

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**OPTION A:**  
**Single-Stage Two-Envelope Bidding**

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## Section I. Instructions to Bidders

### Notes for the Employer

Section I, Instructions to Bidders, specifies the procedures to be followed by Bidders when preparing and submitting their technical and price Bids. It also provides information on the opening and evaluation of Bids, and on the award of the Contract.

The use of the Standard Instructions to Bidders set forth in Section I of the Standard Bidding Document for the Procurement of Plant Design, Supply and Installation, (hereafter referred to as “Standard ITB”) is **required** in all bidding documents for the Plant Design, Supply and Installation to be procured through International Competitive Bidding (ICB) and financed by Japanese ODA Loans, and they shall be used without modification.

The Instructions to Bidders governing this bidding process are the Standard Instructions to Bidders included in **Option A: Single-Stage Two-Envelope Bidding** of the Standard Bidding Document for the Procurement of Plant Design, Supply and Installation (SBD (Plant)), the latest version.

A copy of the Standard Instructions to Bidders shall be attached to the Bidding Document prepared by the Employer. If the Instructions to Bidders in the Bidding Document contain modifications from the Standard Instructions to Bidders, JICA will not consider them valid and will require the Employer to modify the Bidding Document so that the Standard Instructions to Bidders, as defined above, shall apply.

Any necessary changes, acceptable to JICA, to address specific country and project issues, shall be introduced only through the Bid Data Sheet.

The Instructions to Bidders shall not be part of the Contract.



# Section I. Instructions to Bidders

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## A. General

### 1. Scope of Bid

- 1.1 In connection with the Invitation for Bids **specified in Section II, Bid Data Sheet (BDS)**, the Employer, as **specified in the BDS**, located in the country as **specified in the BDS**, issues this Bidding Document (hereinafter referred to as “Bidding Document”) for the procurement of Plant Design, Supply and Installation as specified in Section VI, Employer’s Requirements.

The name of the Project and the name of the Contract are **specified in the BDS**.

Bids may also be invited for multiple lots of the Project, as **specified in the BDS**. Bids may be submitted either for individual lots or for multiple lots in any combination.

- 1.2 Throughout this Bidding Document:

- (a) the terms “Facilities” and “Plant and Installation Services” are synonymous with the term “Plant Design, Supply and Installation”;
- (b) the term “in writing” means communicated in written form and delivered against receipt;
- (c) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular;
- (d) “day” means calendar day;
- (e) “firm” means a private entity, a state-owned enterprise or institution; and
- (f) “Joint Venture” or “JV” means any combination of two or more firms in the form of a joint venture, consortium, association or other unincorporated grouping under an existing agreement or with the intention to enter into such an agreement supported by a formal letter of intent.

### 2. Source of Funds

- 2.1 The Borrower **specified in the BDS** has received or has applied for a Japanese ODA Loan from the Japan International Cooperation Agency (hereinafter referred to as “JICA”), with the number, in the amount and on the signed date of the Loan Agreement **specified in the BDS**, towards the cost of the Project. The Borrower intends to apply a portion of the proceeds of the Loan to payments under the

Contract(s) for which this Bidding Document is issued.

- 2.2 Disbursement of a Japanese ODA Loan by JICA will be subject, in all respects, to the terms and conditions of the Loan Agreement, including the disbursement procedures and the applicable Guidelines for Procurement under Japanese ODA Loans **specified in the BDS**. No party other than the Borrower shall derive any rights from the Loan Agreement or have any claim to the loan proceeds.
- 2.3 The above Loan Agreement will cover only a part of the project cost. As for the remaining portion, the Borrower, the Project Executing Agency and the Employer will take appropriate measures for finance through other sources **specified in the BDS**.

### **3. Corrupt and Fraudulent Practices**

- 3.1 It is JICA's policy to require that the Bidders and the Contractors, as well as the Borrowers, the Project Executing Agencies and the Employers, under contracts funded with Japanese ODA Loans and other Japanese ODA, to observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, JICA:
  - (a) will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.
  - (b) will recognize a Contractor as ineligible, for a period determined by JICA, to be awarded a contract funded with Japanese ODA Loans if it at any time determines that the Bidder or the Contractor has engaged in any corrupt or fraudulent practice in competing for, or in executing, another contract funded with Japanese ODA Loans or other Japanese ODA. The list of ineligible firms and individuals is available at the electronic address **specified in the BDS**.
  - (c) will recognize a Contractor as ineligible to be awarded a contract funded with Japanese ODA Loans if the Contractor or subcontractor, who has a direct contract with the Contractor, is debarred under the cross debarment decisions by the Multilateral Development Banks. Such period of ineligibility shall not exceed three (3) years from (and including) the date on which the cross debarment is imposed. Notwithstanding the foregoing, taking relevant factors such as the status of the



project financed by Japanese ODA Loans into account, the Borrower may request JICA's concurrence to recognize, and upon obtaining JICA's prior concurrence, may recognize the eligibility of any Contractor or subcontractor so debarred if, in the Borrower's view, the ineligibility of such Contractor or subcontractor would result in a clear and substantial disadvantage to the Borrower.

“Cross debarment decisions by the Multilateral Development Banks” is a corporate sanction in accordance with the agreement among the African Development Bank Group, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank Group and the World Bank Group signed on 9 April, 2010 (as amended from time to time). JICA will recognize the World Bank Group's debarment of which period exceeds one year, imposed after 19 July, 2010, the date on which the World Bank Group started operating cross debarment, as “cross debarment decisions by the Multilateral Development Banks.” The list of debarred firms and individuals is available at the electronic address **specified in the BDS**.

JICA will recognize a Bidder or Contractor as ineligible to be awarded a contract funded with Japanese ODA Loans if the Bidder or Contractor is debarred by the World Bank Group for the period starting from the date of the Invitation for Bid, if prequalification has not been conducted; or the date of Advertisement for Prequalification, if prequalification has been conducted, up to the signing of the contract, unless (i) such debarment period does not exceed one year, (ii) three (3) years have passed since such debarment decision, or (iii) JICA concurs to the eligibility in case of the clear and substantial disadvantage to the Borrower.

If it is revealed that the Contractor was ineligible to be awarded a contract according to above, JICA will, in principle, impose sanctions against the Contractor.

If it is revealed that a subcontractor, who has a direct contract with the Contractor, has been debarred by the World Bank Group as of the subcontract date, JICA will, in principle, require the Borrower to have the Contractor cancel the subcontract immediately, unless (i) such debarment period does not exceed one year, (ii) three (3)

years have passed since such debarment decision, or (iii) JICA concurs to the eligibility in case of the clear and substantial disadvantage to the Borrower. If the Contractor refuses, JICA will require the Borrower to declare invalidity or cancellation of the contract and demand the refund of the relevant proceeds of the loan or any other remedies on the grounds of contractual violation.

3.2 If the Employer determines, based on reasonable evidence, that any Bidder has engaged in any corrupt or fraudulent practice, the Employer may disqualify such Bidder after notifying the grounds of such disqualification.

3.3 Furthermore, the Bidders shall be aware of the provision stated in Clause 6 of the Conditions of Contract.

#### **4. Eligible Bidders**

4.1 The Bidder may be a single firm or a JV. In the case of a JV:

(a) All members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms.

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

(c) A Bid submitted by a JV shall include a copy of the JV Agreement entered into by all members. Alternatively, a formal letter of intent to enter into a JV 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. The JV Agreement or the proposed JV Agreement, as a case may be, shall indicate at least the part(s) of the Plant and Installation Services to be executed by each member.

4.2 The Bidder shall not have a conflict of interest. The Bidder shall be disqualified under any of the circumstances set forth below, where it is determined to have a conflict of interest throughout the bidding/selection process and/or the execution of the Contract unless the conflict has been resolved in a manner acceptable to JICA.

(a) A firm shall be disqualified from providing goods or non-consulting services resulting from or directly related

to consulting services for the preparation or implementation of a project that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm. This provision does not apply to the various firms (consultants, contractors, or suppliers) only due to the reason that those firms together are performing the Contractor's obligations under a turnkey or design and build contract.

- (b) A firm that has a close business relationship with a professional personnel of the Borrower (or the Project Executing Agency, or the Employer), who are directly or indirectly involved in any part of: (i) the preparation of the Prequalification Document (if any prepared) and/ or the Bidding Document for the Contract, (ii) the prequalification evaluation (if any conducted) and/ or the Bid evaluation, or (iii) the supervision of such contract, shall be disqualified.
  - (c) Based on the "One Bid Per Bidder" principle, which is to ensure fair competition, a firm and any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm shall not be allowed to submit more than one Bid, either individually as a single firm or as a member of a JV. However, this does not limit a firm (including its affiliate) participating in one Bid individually or as a member of a JV and at the same time, the firm (including its affiliate) participating in other Bids as a subcontractor but NOT acting as a specialized subcontractor (refer to ITB16.3). A firm (including its affiliate) acting as a specialized subcontractor or as a subcontractor in any Bid may participate in other Bids as a specialized subcontractor or as a subcontractor.
  - (d) A firm having any other form of conflict of interest other than (a) through (c) above shall also be disqualified.
- 4.3 The Bidder shall meet the requirements as to eligibility of the Bidders as specified in Section V, Eligible Source Countries of Japanese ODA Loans.
- 4.4 The Bidder that has been determined to be ineligible by JICA in accordance with ITB 3.1 shall not be eligible to be awarded a Contract.

- 4.5 This bidding is open only to the prequalified Bidders unless **specified in the BDS.**
- 4.6 The Bidder shall provide such evidence of its continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.
- 5. Eligible Goods and Services** 5.1 The goods and services comprising the Plant and Installation Services to be supplied under the Contract and financed by JICA shall meet the requirements specified in Section V, Eligible Source Countries of Japanese ODA Loans.

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

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

### **PART 1 Bidding Procedures**

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

### **PART 2 Employer's Requirements**

- Section VI. Employer's Requirements

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

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

- 6.2 The Invitation for Bids issued by the Employer is not part of the Bidding Document.
- 6.3 Unless obtained directly from the Employer, the Employer is not responsible for the completeness of the Bidding Document, responses to requests for clarification, the minutes of the pre-bid meeting (if any), or addenda to the Bidding Document in accordance with ITB 8. In case of any

contradiction, documents obtained directly from the Employer shall prevail.

6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document, and to furnish with its Bid all information and documentation as is required by the Bidding Document. The information or documentation shall be complete, accurate, current, and verifiable.

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

7.1 The Bidder requiring any clarification of the Bidding Document shall contact the Employer in writing at the Employer's address **specified in the BDS** or raise its enquiries during the pre-bid meeting if provided for in accordance with ITB 7.4. The Employer will respond in writing to any request for clarification, provided that such request is received no later than fourteen (14) days prior to the deadline for submission of Bids. The Employer shall forward copies of its response to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. If so **specified in the BDS**, the Employer shall also promptly publish its response on the Employer's web page **identified in the BDS**. Should the clarification result in changes to the essential elements of the Bidding Document, the Employer shall amend the Bidding Document following the procedure under ITB 8 and ITB 22.2.

7.2 The Bidder is advised to visit and examine the Site where the Plant is to be installed and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the Bid and entering into a Contract for the execution of Plant and Installation Services. The costs of visiting the Site shall be at the Bidder's own expense.

7.3 The Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.

- 7.4 If **so specified in the BDS**, the Bidder's designated representative is invited to attend a pre-bid meeting. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 7.5 The Bidder is requested to submit any questions in writing, to reach the Employer not later than seven (7) days before the meeting.
- 7.6 Minutes of the pre-bid meeting, if applicable, including the text of the questions asked by the Bidders, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3. Any modification to the Bidding Document that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting. Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

## **8. Amendment of Bidding Document**

- 8.1 At any time prior to the deadline for submission of Bids, the Employer may amend the Bidding Document by issuing addenda.
- 8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document from the Employer in accordance with ITB 6.3. If **so specified in the BDS**, the Employer shall also promptly publish the addendum on the Employer's web page in accordance with ITB 7.1.
- 8.3 To give the Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Employer may extend the deadline for the submission of Bids, pursuant to ITB 22.2.

## **C. Preparation of Bids**

### **9. Cost of Bidding**

- 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

### **10. Language of Bid**

- 10.1 The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Employer, shall be written in the language **specified in the**

**BDS.** Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language of Bid, in which case, for purposes of interpretation of the Bid, such translation shall govern.

**11. Documents  
Comprising the  
Bid**

11.1 The Bid shall comprise two envelopes submitted simultaneously, one called the Technical Bid containing the documents listed in ITB 11.2 and the other the Price Bid containing the documents listed in ITB 11.3, both envelopes enclosed together in an outer single envelope.

11.2 The Technical Bid shall comprise the following:

- (a) Letter of Technical Bid, in accordance with ITB 12.1;
- (b) Bid Security, in accordance with ITB 19;
- (c) Power of Attorney, authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2 and ITB 20.3;
- (d) copy of the JV Agreement, or letter of intent to enter into a JV including a draft agreement in the case of a Bid submitted by a JV in accordance with ITB 4.1;
- (e) documentary evidence in accordance with ITB 17 establishing the Bidder's eligibility and qualifications to perform the Contract if its Bid is accepted;
- (f) documentary evidence in accordance with ITB 16.2 establishing that the Plant and Installation Services offered by the Bidder conform to the Bidding Document;
- (g) Technical Proposal in accordance with ITB 16;
- (h) Acknowledgment of Compliance with the Guidelines for Procurement under Japanese ODA Loans (Form ACK), which shall be signed and dated by the Bidder's authorized representative; and
- (i) any other document **required in the BDS.**

11.3 The Price Bid shall comprise the following:

- (a) Letter of Price Bid, in accordance with ITB 12.1;
- (b) completed Price Schedules in accordance with ITB 12.1 and 14, including completed Price Schedules, and completed Schedule of Adjustment Data (if any

required in accordance with ITB 14.7) but excluding any Schedule required in ITB 11.2; and

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

**12. Letters of Bid and Schedules**

12.1 The Bidder shall complete the Letters of Technical Bid and Price Bid and the Schedules, including the Price Schedules, and the Schedule of Adjustment Data (only if required in ITB 14.7), using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.

**13. Alternatives to the Bid Requirement and Alternative Bids**

13.1 **If so specified in the BDS**, alternative times for completion will be permitted, and the method of evaluating different times for completion shall be as specified in Section III, Evaluation and Qualification Criteria.

13.2 **If so specified in the BDS**, alternative Bids will be permitted, and the Bidders, wishing to offer technical alternatives to the Bid requirements, may in addition to the substantially responsive Bid (hereinafter referred to as “Base Bid”) submit an alternative Bid. The alternative Bid shall be complete with all information necessary for a complete evaluation of the alternative by the Employer including drawings, design calculations, technical specifications, breakdown of prices, proposed construction methodology and other relevant details.

Only the alternative Bids, if any, submitted by the Bidder whose Base Bid is determined to be the lowest evaluated Bid under ITB 36.1 shall be considered by the Employer.



**14. Bid Prices and Discounts**

14.1 The prices and discounts (including any price reduction) quoted by the Bidder in the Letter of Price Bid and in the Price Schedule shall conform to the requirements specified below.

14.2 **Unless otherwise specified in the BDS**, Bidders shall quote for the entire Plant and Installation Services on a “single responsibility” basis such that the total Bid Price covers all the Contractor’s obligations mentioned in or to be reasonably inferred from the Bidding Document in respect of the design, manufacture, including procurement and subcontracting (if any), delivery, construction, installation and completion of the Plant. This includes all requirements under the Contractor’s responsibilities for testing, pre-commissioning and commissioning of the Plant; the operation, maintenance and training services and such other items and services as may be specified in the Bidding Document, all in accordance with the requirements of the Conditions of Contract.

Items against which no price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed to be covered by the prices for other items.

14.3 The Bidder shall give a breakdown of the prices in the manner and detail called for in the Price Schedules included in Section IV, Bidding Forms. In the Schedules, Bidders shall give the required details and a breakdown of their prices as follows:

- (a) Plant Supplied from Abroad (Schedule No. 1): The price of the Plant shall be quoted on CIP-named place of destination basis as **specified in the BDS**.
- (b) Plant Supplied from Within the Employer’s country (Schedule No. 2): The price of the Plant shall be quoted on an EXW Incoterm basis (such as “ex-works,” “ex-factory,” “ex-warehouse” or “off-the-shelf,” as applicable), and includes sales tax and all other taxes payable in the Employer’s country on the Plant as of the Base Date, if the Contract is awarded to the Bidder.
- (c) Design Services (Schedule No. 3).
- (d) Installation and Other Services (Schedule No. 4): The price shall be quoted separately and shall include rates or prices for local transportation to named place of final destination as **specified in the BDS**, insurance and other services incidental to delivery of the Plant, all labor,

contractor's equipment, temporary works, materials, consumables and all matters and things of whatsoever nature, including operations and maintenance services, the provision of operations and maintenance manuals, training, etc., where identified in the bidding document, as necessary for the proper execution of the installation and other services, including all taxes, duties, levies and charges payable in the Employer's country as of the date twenty-eight (28) days prior to the deadline for submission of Bids (the Base Date).

- (e) Mandatory Spare Parts (Schedule No 5) : The price shall be quoted separately as specified in either subparagraph (a) or (b) above in accordance with the origin of the spare parts.
  - (f) Recommended Spare Parts (Schedule No. 6) : The price shall be quoted separately as specified in either subparagraph (a) or (b) above in accordance with the origin of the spare parts.
- 14.4 The latest edition (as of the Base Date) of Incoterms, published by the International Chamber of Commerce shall govern.
- 14.5 The price to be quoted in the Letter of Price Bid, in accordance with ITB 12.1, shall be the total price of the Bid, excluding any discounts offered. Absence of the total bid price in the Letter of Price Bid may result in the rejection of the Bid.
- 14.6 The Bidder shall quote any discounts and the methodology for their application in the Letter of Price Bid, in accordance with ITB 12.1.
- 14.7 **Unless otherwise specified in the BDS** and the corresponding Appendix of the Contract Agreement and/or the Conditions of Contract, the rates and prices quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the relevant provisions of the Contract. In such a case, the Bidder shall furnish the indices and/or weightings for the price adjustment formulae in the Schedule of Adjustment Data and the Employer may require the Bidder to justify its proposed indices and weightings.
- 14.8 **If so specified in BDS 1.1**, Bids are being invited for multiple lots. The Bidders wishing to offer any discounts (including price reduction) for the award of more than one lot shall

specify in their Letter of Price Bid, discounts applicable to such award. Discounts shall be submitted in accordance with ITB 14.6, provided that the Bids for all lots are opened at the same time.

14.9 **Unless otherwise provided in the BDS**, all duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the Base Date, shall be included in the rates and prices and the total Bid Price submitted by the Bidder.

14.10 The exact amounts and currencies of the Specified Provisional Sums and the contingency allowance, if any, shall be indicated in the completed Price Schedule **as specified in the BDS**. The Bidder shall be aware of the provisions stated in Sub-Clause 39.4 of the Conditions of Contract.

**15. Currencies of Bid and Payment**

15.1 The currency(ies) of the Bid shall be **as specified in the BDS**. Payment of the Contract Price shall be made in the currency or currencies in which the Bid Price is expressed in the Bid of the successful Bidder.

15.2 The Bidder may be required by the Employer to justify, to the Employer's satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Schedule of Adjustment Data are reasonable.

**16. Technical Proposal and Subcontractors**

16.1 The Bidder shall furnish as part of the Technical Bid, a Technical Proposal, including a design methodology, statement of work methods, equipment, personnel, schedule, safety plan, and any other information as stipulated in Section IV, Bidding Forms in sufficient detail to demonstrate substantial responsiveness of the Bidder's proposal to meet the Employer's Requirements and the completion time.

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

- (a) a detailed description of the essential technical and performance characteristics of the Plant and Installation Services, including the functional guarantees of the proposed Plant and Installation Services, in response to the Employer's Requirements. The functional guarantees of the proposed Plant and Installation Services shall be as stated in the applicable form in

## Section IV, Bidding Forms;

- (b) a list giving full particulars, including available sources, of all spare parts (i.e. Mandatory Spare Parts and Recommended Spare Parts (if required)), special tools, etc., necessary for the proper and continuing functioning of the plant for the period **specified in the BDS**, after the Operational Acceptance of the Facilities in accordance with the provisions of the Contract; and
  - (c) adequate evidence demonstrating the substantial responsiveness of the Plant and Installation Services to the Employer's Requirements. The Bidder shall note that standards for workmanship, materials and equipment designated by the Employer in the Bidding Document are intended to be descriptive (establishing standards of quality and performance) only and not restrictive. The Bidder may substitute alternative standards, brand names and/or catalogue numbers in its Technical Proposal, provided that it demonstrates to the Employer's satisfaction that the substitutions are substantially equivalent or superior to the standards designated in the Employer's Requirements.
- 16.3 The Bidder may propose to subcontract any of the key activities for which experience of proposed subcontractors has been evaluated at the Prequalification stage, or otherwise indicated in Section III, Evaluation and Qualification Criteria 2.4.2(b) (specialized subcontractor). In such a case,
- (a) the Bidder may list one or more subcontractor(s) against any of the key activities. Quoted rates and prices will be deemed to apply whichever subcontractor is appointed by the Contractor, and no adjustment of the rates and prices will be permitted;
  - (b) the Bidder shall clearly identify the proposed specialized subcontractor(s) in Form ELI-3, Form EXP-2(b) and Form MAN in Section IV, Bidding Forms and submit the List of Subcontractors, as part of its Technical Proposal, listing out all subcontractors so proposed including information establishing compliance with the requirements specified by the Employer;
  - (c) substitution of the proposed subcontractor(s) shall not be allowed after the Bid submission deadline date prescribed by the Employer in accordance with ITB 22.1;

- (d) if the evaluation of the Price Bid is directly adjusted by the subcontractor's(s') qualifications, services and/or product(s) in Section III. Evaluation and Qualification Criteria (e.g. the Price Bid is adjusted by a performance of subcontractor's Plant), only one subcontractor or combination of subcontractors shall be proposed; and
- (e) if the prequalification process was conducted prior to the bidding process, the Bidder shall name and list out in the List of Subcontractors, the same specialized subcontractor(s) whose experience in the key activities was evaluated in the prequalification, except only for such changes as are explicitly approved by the Employer in accordance with ITB 17.2.

The Bidder may also propose to subcontract major items of the Plant as listed by the Employer in Section III, Evaluation and Qualification Criteria 1.1.3. In such a case, sub-clauses (a) and (b) provided above in this ITB 16.3 shall be applied except submission of Form EXP-2(b) in Section IV, Bidding Forms.

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

17.1 In accordance with Section III, Evaluation and Qualification Criteria:

- (a) if the prequalification process was conducted prior to the bidding process, the Bidder shall provide in the corresponding information sheets included in Section IV, Bidding Forms, updated information on any assessed aspect to establish that the Bidder continues to meet the criteria used at the time of prequalification, and
- (b) if the prequalification process was not conducted prior to the bidding process, the Bidder shall provide the information requested in the corresponding information sheets included in Section IV, Bidding Forms.

The aforementioned Evaluation and Qualification Criteria contains, among other things, the requirements as to eligibility specified in ITB 4.

17.2 Any change in the structure or formation of a Bidder after being prequalified and invited to bid (including, in the case of a JV, any change in the structure or formation of any member thereto) shall be subject to the written approval of the Employer prior to the deadline for submission of Bids. Such approval shall be denied if:

- (a) such change has not taken place by the free choice of the firms involved;
- (b) as a consequence of the change, the Bidder no longer substantially meets the qualification criteria set forth in the Prequalification Document; or
- (c) in the opinion of the Employer, the change may result in a substantial reduction in competition.

Any such change should be submitted to the Employer not later than twenty-eight (28) days before the Bid submission deadline.

### **18. Period of Validity of Bids**

- 18.1 Bids shall remain valid for the period **specified in the BDS** after the Bid submission deadline date prescribed by the Employer in accordance with ITB 22.1. A Bid valid for a shorter period shall be rejected by the Employer as non-responsive.
- 18.2 In exceptional circumstances, prior to the expiration of the Bid validity period, the Employer may request the Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. The Bid Security shall also be extended for twenty-eight (28) days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its Bid, except as provided in ITB 18.3.
- 18.3 If the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial Bid validity period, the Contract Price shall be determined as follows:
- (a) In the case of fixed price contracts, the Contract Price shall be the Bid Price adjusted by the factor **specified in the BDS**.
  - (b) In the case of adjustable price contracts, no adjustment shall be made.

In any case, Bid evaluation shall be based on the Bid Price without taking into consideration the effect of the adjustment indicated in the above paragraph.

### **19. Bid Security**

- 19.1 The Bidder shall furnish as part of its Technical Bid, a Bid Security in the amount and currency **specified in the BDS**.
- 19.2 The Bid Security shall be a demand guarantee in any of the

following forms at the Bidder's option:

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

from a reputable source. If the unconditional guarantee is issued by a non-bank financial institution located outside the Employer's country, the issuing financial institution shall have a correspondent financial institution located in the Employer's country to make it enforceable. In the case of a bank guarantee, the Bid Security shall be submitted either using the Bid Security Form included in Section IV, Bidding Forms or in another substantially similar format approved by the Employer prior to Bid submission. In either case, the form must include the complete name of the Bidder. The Bid Security shall be valid for twenty-eight (28) days beyond the original validity period of the Bid, or beyond any period of extension if requested under ITB 18.2.

19.3 Any Bid not accompanied by a substantially responsive Bid Security shall be rejected by the Employer as non-responsive.

19.4 The Bid Security of all Bidders who have been rejected on the grounds of their Technical Bids being substantially non-responsive to the requirements of the Bidding Document, shall be returned as promptly as possible upon the Employer's notification of such rejection pursuant to ITB 25.8.

The Bid Security of all unsuccessful Bidders (other than those referred in the above paragraph) shall be returned as promptly as possible upon the successful Bidder's signing the Contract and furnishing the Performance Security pursuant to ITB 41.

19.5 The Bid Security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required Performance Security.

19.6 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 Letters of Technical Bid and Price Bid, or any extension thereto provided by the Bidder; or
- (b) if the successful Bidder fails to:
  - (i) sign the Contract in accordance with ITB 40; or
  - (ii) furnish a Performance Security in accordance with ITB 41.

19.7 The Bid Security of a JV shall be in the name of the JV that submits the Bid. If the JV has not been legally constituted into a legally enforceable JV at the time of bidding, the Bid Security shall be in the names of all future members as named in the letter of intent referred to in ITB 4.1.

## 20. Format and Signing of Bid

20.1 The Bidder shall prepare one original of the Technical Bid and one original of the Price Bid comprising the documents as described in ITB 11 and clearly mark them "TECHNICAL BID - ORIGINAL" and "PRICE BID - ORIGINAL", as appropriate. Alternative Bids, if permitted in accordance with ITB 13.2, shall be clearly marked "ALTERNATIVE BID - ORIGINAL".

In addition, the Bidder shall submit copies of the Technical and Price Bids, in the number **specified in the BDS** and clearly mark each of them "TECHNICAL BID - COPY", "PRICE BID - COPY" and "ALTERNATIVE BID - COPY", as appropriate.

In the event of any discrepancy between the original and the copies, the original shall prevail.

20.2 The original 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 be in the form of a Power of Attorney included in the Technical Bid. All pages of the Bid where entries or amendments have been made shall be signed or initialed by the person signing the Bid.

20.3 A bid submitted by a JV shall be signed by an authorized representative of the JV accompanied by a Power of Attorney from each member of the JV giving that authorized representative the power to sign on their behalf and legally bind them all. Such power shall also be given by a person duly authorized to do so on behalf of each member evidenced by a Power of Attorney.



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

20.5 The Bidder shall clearly mark "CONFIDENTIAL" any information which they regard as confidential to their business. Such information may include proprietary information, trade secrets, or commercial or financially sensitive information.

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

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

21.1 The Bidder shall enclose:

- (a) in a sealed envelope, duly marked as "TECHNICAL BID - ORIGINAL", all documents comprising the Technical Bid, as described in ITB 11.2;
- (b) in a sealed envelope, duly marked as "PRICE BID - ORIGINAL", all documents comprising the Price Bid, as described in ITB 11.3;
- (c) in sealed envelopes, duly marked as "TECHNICAL BID - COPY", all required copies of the Technical Bid, sequentially numbered;
- (d) in sealed envelopes, duly marked as "PRICE BID - COPY", all required copies of the Price Bid, sequentially numbered; and
- (e) if alternative Bids are permitted in accordance with ITB 13.2, and if relevant:
  - (i) in a sealed envelope marked "ALTERNATIVE BID - ORIGINAL", the alternative Bid; and
  - (ii) in a sealed envelope marked "ALTERNATIVE BID - COPY", all required copies of the alternative Bid, sequentially numbered.

These envelopes (inner envelopes) containing the original and the copies shall then be enclosed in one single envelope (outer envelope).

21.2 The inner and outer envelopes shall be:

- (a) clearly marked with the name and address of the Bidder;
- (b) addressed to the Employer in accordance with ITB

22.1; and

- (c) clearly marked with the specific identification of this bidding process **specified in BDS 1.1.**

21.3 The outer envelopes and the inner envelopes containing the Technical Bid shall be clearly marked with a warning “NOT TO BE OPENED BEFORE THE TIME AND DATE FOR THE OPENING OF TECHNICAL BID”, in accordance with ITB 25.1.

21.4 The inner envelopes containing the Price Bid shall be clearly marked with a warning “NOT TO BE OPENED UNTIL ADVISED BY THE EMPLOYER” in accordance with ITB 25.7.

21.5 The inner envelopes containing the alternative Bids, if any, shall be clearly marked with a warning “NOT TO BE OPENED UNTIL ADVISED BY THE EMPLOYER”, in accordance with ITB 13.2.

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

**22. Deadline for Submission of Bids**

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

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

**23. Late Bids**

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

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

24.1 A Bidder may withdraw, substitute, or modify its Bid – Technical or Price – after it has been submitted and prior to the deadline for submission of Bids, by sending a written notice, duly signed by an authorized representative, and shall include a copy of the Power of Attorney in accordance with ITB 20.2 and ITB 20.3. The corresponding substitution or modification of the Bid must accompany the respective written notice. All notices must be:

- (a) prepared and submitted in accordance with ITB 20 and

ITB 21 (except that withdrawals notices do not require copies), and in addition, the respective outer envelopes shall be clearly marked "WITHDRAWAL", "SUBSTITUTION", or "MODIFICATION"; and

- (b) received by the Employer prior to the deadline prescribed for submission of Bids, in accordance with ITB 22.

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

24.3 No Bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of Bids and the expiration of the period of Bid validity specified by the Bidder on the Letters of Technical Bid and Price Bid or any extension thereof.

## 25. Bid Opening

25.1 Except in the cases specified in ITB 23 and ITB 24, the Employer shall publicly open and read out in accordance with ITB 25.5 all Technical Bids received by the deadline, at the date, time and place **specified in the BDS**, in the presence of the Bidders' designated representatives and anyone who choose to attend. The Price Bids will remain unopened and will be held in custody of the Employer until the time of their opening to be specified in accordance with ITB 25.7. Alternative Bids, if any, shall remain unopened in accordance with ITB 13.2.

If the Technical Bid and the Price Bid are submitted together in one envelope, the Employer may reject the entire Bid.

25.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding Bid shall not be opened, but returned to the Bidder. No Bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at the opening of Technical Bids.

25.3 Second, outer envelopes marked "SUBSTITUTION" shall be opened. The inner envelopes containing the Substitution Technical Bid and/or Substitution Price Bid shall be exchanged for the corresponding envelopes being substituted, which are to be returned to the Bidder unopened. Only the Substitution Technical Bid, if any, shall be opened and read out. Substitution Price Bid will remain unopened in accordance with ITB 25.1. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is

read out at the opening of Technical Bids.

- 25.4 Next, outer envelopes marked "MODIFICATION" shall be opened. No Technical Bid and/or Price Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at the opening of Technical Bids. Only the Technical Bids, both Original as well as Modification, are to be opened and read out at the opening of Technical Bids. Price Bids, both Original as well as Modification, shall remain unopened in accordance with ITB 25.1.
- 25.5 Next, all other envelopes holding the Technical Bids shall be opened one at a time, reading out:
- (a) the name of the Bidder;
  - (b) whether there is a withdrawal, substitution, or modification;
  - (c) whether there is an alternative Bid without opening its envelop;
  - (d) the presence or absence of the Bid Security; and
  - (e) any other details as the Employer may consider appropriate.

Only Technical Bids read out at the opening of Technical Bids shall be considered for evaluation. The Employer shall neither discuss the merits of any Bid nor reject any Bid (except for late Bids, in accordance with ITB 23.1).

- 25.6 The Employer shall prepare a record of the opening of Technical Bids that shall include, as a minimum:
- (a) the name of the Bidder;
  - (b) whether there is a withdrawal, substitution, or modification;
  - (c) whether there is an alternative Bid; and
  - (d) the presence or absence of a Bid Security.

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

to all Bidders who submitted Bids in time, and to JICA.

- 25.7 At the end of the evaluation of the Technical Bids, the Employer will invite the Bidders who have submitted substantially responsive Technical Bids and who have been determined as being qualified for award to attend the opening of the Price Bids. The date, time, and location of the opening of Price Bids will be advised in writing by the Employer. The opening date should allow the Bidders sufficient time to make arrangements for attending the opening of Price Bids.
- 25.8 The Employer will notify, in writing, the Bidders who have been rejected on the grounds of their Technical Bids being substantially non-responsive to the requirements of the Bidding Document and/or who have been determined as being disqualified for award, and return their Price Bids unopened, together with the Bid Security.
- 25.9 The Employer shall conduct the opening of Price Bids of all Bidders who submitted substantially responsive Technical Bids and who have been determined as being qualified for award, in the presence of the Bidders' representatives who choose to attend at the address, date and time specified by the Employer. The Bidders' representatives who are present shall be requested to sign a register evidencing their attendance.
- 25.10 All envelopes containing Price Bids shall be opened one at a time, reading out:
- (a) the name of the Bidder;
  - (b) whether there is a withdrawal, substitution, or modification;
  - (c) the total Bid Price including any discount, and in the case of bidding for multiple lots, the total price for each lot together with the sum of the total price for all lots including any discounts;
  - (d) whether there is an alternative Bid without opening its envelope; and
  - (e) any other details as the Employer may consider appropriate.

Only Price Bids and Price Bid discounts read out and recorded at the opening of Price Bid shall be considered for evaluation. The Employer shall neither discuss the merit of any Price Bid nor reject any Price Bid at the Price Bid opening.

25.11 The Employer shall prepare a record of the opening of Price Bids that shall include, as a minimum:

- (a) the name of the Bidder, and
- (b) the total Bid Price including any discount and alternative Bid; and in the case of bidding for multiple lots, the total price for each lot together with the sum of the total prices for all lots including any discounts; and
- (c) whether there is an alternative Bid.

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

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

### **26. Confidentiality**

26.1 Information relating to the evaluation of Bids and recommendation of Contract award shall not be disclosed to the Bidders or any other persons not officially concerned with the bidding process until information on Contract award is communicated to all Bidders in accordance with ITB 39.

The use by any Bidder of confidential information related to this bidding process may result in the rejection of its Bid.

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

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

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

27.1 To assist in the examination, evaluation, and comparison of the Technical and Price Bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its Bid, giving a reasonable time for a response. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer's request for clarification and the response shall be in writing. No change in the substance of the Technical Bid or prices in the Price Bid, including any voluntary increase or decrease in the prices, shall be sought,

offered, or permitted, except to confirm the correction of arithmetical errors discovered by the Employer in the evaluation of the Price Bids, in accordance with ITB 33.

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

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

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

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

**29. Preliminary  
Examination of  
Technical Bids**

29.1 The Employer shall examine Technical Bids to confirm that all documents and information requested in ITB 11.2 have been provided, and to determine the completeness of each document submitted.

29.2 The Employer shall confirm that the following documents and information have been provided in the Technical Bid. If any of these documents or information is missing, the Bid shall be rejected.

- (a) Letter of Technical Bid;
- (b) Power of Attorney to commit the Bidder;
- (c) Bid Security; and
- (d) Technical Proposal in accordance with ITB 16.

**30. Qualification of  
the Bidders**

30.1 The Bidder shall substantially meet or exceed the specified qualification requirements. The Employer shall determine to its satisfaction whether the Bidders meet the qualification criteria specified in Section III, Evaluation and Qualification Criteria, during the evaluation of Technical Bids. However, if the prequalification process was carried out prior to the bidding process, the Employer may carry out the assessment of the qualification criteria specified in Section III, Evaluation and Qualification Criteria, only for the Bidder who submitted the lowest evaluated and substantially responsive Bid.

30.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 17. For the purposes of this determination, only the qualification of the legal entity(ies) comprising the Bidder shall be considered. In particular, the qualifications of affiliated entities (such as the parent company(ies), group companies, subsidiaries or other affiliates) shall not be considered unless they are parties to the Bidder under a JV in accordance with ITB 4.1 or as specialized subcontractors to be employed in accordance with ITB 16.3 for the key activities listed in Section III, Evaluation and Qualification Criteria 2.4.2(b).

30.3 The Employer reserves the right to waiver minor (nonmaterial) deviations in the qualification criteria if they do not materially affect the technical capability and financial resources of the Bidder to perform the contract.

30.4 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the Bid.

If the assessment of the Bidder's qualification was conducted only for the lowest evaluated Bidder, in accordance with ITB 30.1, and the result of such assessment is negative, the Employer shall proceed to the next lowest evaluated Bid to make a similar determination.

30.5 The subcontractors proposed by the Bidder in its Bid shall meet the eligibility requirements of ITB 4.

Furthermore, if the specialized subcontractor proposed in accordance with ITB 16.3 does not meet the corresponding criteria for the key activities specified in Section III Evaluation and Qualification Criteria 2.4.2(b), the Bidder who proposed such a specialized subcontractor shall be disqualified.

**31. Determination of Responsiveness of Technical Bids**

31.1 The Employer's determination of a Technical Bid's responsiveness is to be based on the contents of the Technical Bid itself, as defined in ITB 11.2.

31.2 For the purposes of this determination, a substantially responsive Technical Bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,



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

31.3 The Employer shall examine the Technical Bid submitted in accordance with ITB 16 and Section III, Evaluation and Qualification Criteria, in particular, to confirm that all requirements of Section VI, Employer's Requirements have been met without any material deviation, reservation or omission. The Recommended Spare Parts, if any, proposed by the Bidder shall not be subject to evaluation.

Should a manufacturer or subcontractor proposed for Section III, Evaluation and Qualification Criteria 1.1.3 be determined to be unacceptable, the Bid will not be rejected, but the Bidder will be required to substitute an acceptable manufacturer or subcontractor without any change to the Bid price. Prior to issuing the Letter of Acceptance, the corresponding Schedule to the Contract Agreement shall be completed, listing the approved manufacturers or subcontractors for each item concerned..

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

**32. Nonmaterial  
Nonconformities**

32.1 Provided that a Technical Bid is substantially responsive, the Employer may waive any nonconformities (deviation, reservation or omission) in the Technical Bid.

32.2 Provided that a Technical Bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the Technical Bid related to documentation requirements. Requesting information or documentation on such nonconformities shall

not be related to any aspect of the Price Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

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

**33. Correction of  
Arithmetical  
Errors**

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

- (a) where there are errors between the total of the amounts given under the column for the price breakdown and the amount given under the Total Price, the total of the amounts given under the column for the price breakdown shall prevail and the amount given under the Total Price will be corrected;
- (b) where there are errors between the total of the amounts of Schedule Nos. 1 to 5 and the amount given in the Grand Summary, the total of the amounts of Schedule Nos. 1 to 5 shall prevail and the amount given in the Grand Summary will be corrected; and
- (c) where there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetical error, in which case the amount in figures shall prevail subject to (a) and (b) above.

33.2 The Bidder shall be requested to accept correction of arithmetical errors. Failure to accept the correction, in accordance with ITB 33.1, shall result in the rejection of the Bid.

- 34. Conversion to Single Currency**
- 34.1 For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted into a single currency as **specified in the BDS**. The Employer will convert the amounts in various currencies in which the Bid Price, corrected pursuant to ITB 33, is denominated to the single currency identified above at the selling rates established for similar transactions by the authority **specified in the BDS** and on the date **stipulated in the BDS**.
- 35. Evaluation of Price Bids**
- 35.1 To evaluate a Price Bid, the Employer shall consider the following:
- (a) the Bid Price, excluding the Specified Provisional Sums and the contingency allowance, if any in the Grand Summary of the Price Schedules;
  - (b) price adjustment for correction of arithmetical errors in accordance with ITB 33.1;
  - (c) price adjustment due to discounts offered in accordance with ITB14.6;
  - (d) the additional evaluation factors specified in Section III, Evaluation and Qualification Criteria;
  - (e) price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 32.3; and
  - (f) converting the amount resulting from applying (a) to (e) above, if relevant, to a single currency in accordance with ITB 34.
- The price for the Recommended Spare Parts if any, stated in the Price Schedule shall not be subject to evaluation.
- 35.2 If price adjustment is allowed in accordance with ITB 14.7, the estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in Bid evaluation.
- 35.3 In the case of bidding for multiple lots, the lowest evaluated price of the lot(s) shall be determined as specified in Section III, Evaluation and Qualification Criteria.
- 36. Comparison of Bids**
- 36.1 The Employer shall compare the evaluated prices of all substantially responsive Bids established in accordance with ITB 35.1 to determine the lowest evaluated Bid.

36.2 If the Bid, which results in the lowest evaluated Bid Price, is seriously unbalanced or front loaded in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analyses for any or all items of the Price Schedules, to demonstrate the internal consistency of those prices with the scope of Plant Design, Supply and Installations, proposed methodology, schedule and any other requirements of the Bidding Document. After evaluation of the price analyses, taking into consideration the terms of payments, the Employer may require that the amount of the Performance Security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.

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

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

For the purposes of this ITB 36.3, an abnormally low Bid is one where the Bid price, in combination with other elements of the Bid, appears so low that it raises material concerns as to the capability of the Bidder to perform the Contract for the offered Bid Price.

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

37.1 The Employer reserves the right to accept or reject any Bid, and to annul the bidding process and reject all Bids at any time prior to Contract award, without thereby incurring any liability to the Bidders. In case of annulment, all Bids submitted and specifically, Bid Securities, shall be promptly returned to the Bidders.

**F. Award of Contract**

**38. Award Criteria**

38.1 Subject to ITB 37.1, the Employer shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated Bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to

be qualified to perform the Contract satisfactorily.

**39. Notification of Award**

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

39.2 After a Contract has been determined to be eligible for financing under Japanese ODA Loans, the following information may be made public by JICA:

- (a) name of each Bidder who submitted a Bid;
- (b) Bid Prices as read out at Bid opening;
- (c) name and address of the successful Bidder; and
- (d) signing date and amount of the Contract.

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

**40. Signing of Contract**

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

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

**41. Performance Security**

41.1 Within twenty-eight (28) days of the receipt of the Letter of Acceptance from the Employer, the successful Bidder shall furnish the Performance Security in accordance with the Conditions of Contract, subject to ITB 36.2, using for that purpose the Performance Security Form included in Section IX, Contract Forms, or another form acceptable to the Employer. If the Performance Security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Bidder to be acceptable to the Employer. A foreign institution providing a bond shall have a correspondent financial institution located in the Employer's country.

41.2 Failure of the successful Bidder to submit the above-

mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security. In that event the Employer may award the Contract to the next lowest evaluated Bidder whose Bid is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.

**42. Notification to Unsuccessful Bidders and Debriefing**

- 42.1 As promptly as possible upon the successful Bidder's signing the Contract and furnishing the Performance Security pursuant to ITB 41, the Employer shall notify all unsuccessful Bidders of the results of the bidding.
- 42.2 After receipt of the Employer's notification pursuant to ITB 42.1 above, the unsuccessful Bidders (including those rejected on the grounds of their Technical Bids not being substantially responsive) may request in writing to the Employer a debriefing seeking an explanation on the grounds on which their Bids were not selected. The Employer shall promptly respond in writing to any unsuccessful Bidder who requests a debriefing in accordance with this Clause.

## Section II. Bid Data Sheet

### Notes for the Employer

Section II, Bid Data Sheet, shall be filled in by the Employer before issuance of the Bidding Document.

The Bid Data Sheet (BDS) contains information and provisions that are specific to each procurement and that supplement Section I, Instructions to Bidders. The Employer must specify in the BDS only the information that the ITB requires to be specified in the BDS. All information shall be provided; **no clause shall be left blank.**

To facilitate the preparation of the BDS, its clauses are numbered with the same numbers as the corresponding ITB clauses.

The following directions should be observed when filling the BDS:

- (a) Specific details, such as the name of the Employer and the address for Bid submission should be furnished in the spaces indicated by italicized notes inside brackets.
- (b) The italicized notes are not part of the actual BDS, but contain guidelines and instructions for the Employer. They shall be deleted from the actual Bidding Document to be issued to the Bidders.
- (c) Where alternative Clauses or texts are shown, select those which best suit the particular contract and delete the alternative text which is not used.





## Bid Data Sheet

<b>A. General</b>									
<b>ITB 1.1</b>	<p>The number of the Invitation for Bids is: <i>[insert Invitation for Bids Number]</i></p> <p>The Employer is: <i>[insert name of Employer]</i> located in <i>[Insert name of country of Employer/ Borrower]</i>.</p> <p>The Project is: <i>[insert name of Project]</i></p> <p>The name of the Contract is: <i>[insert name of Contract]</i></p> <p>The multiple lots of the Project for which the Bids are being invited are: <i>[If the Bids are being invited for multiple lots of the Project, insert “as indicated in the table below” and list out the relevant lot numbers and contract names in the table. Otherwise delete the table entirety and insert “not applicable”.]</i></p> <table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse; text-align: center;"> <thead> <tr> <th style="padding: 2px 10px;">Lot Number</th> <th style="padding: 2px 10px;">Contract Name</th> </tr> </thead> <tbody> <tr> <td style="padding: 2px 10px;"><i>[insert lot number]</i></td> <td style="padding: 2px 10px;"><i>[insert contract name]</i></td> </tr> <tr> <td style="padding: 2px 10px;"><i>[insert lot number]</i></td> <td style="padding: 2px 10px;"><i>[insert contract name]</i></td> </tr> <tr> <td style="padding: 2px 10px;"><i>[insert lot number]</i></td> <td style="padding: 2px 10px;"><i>[insert contract name]</i></td> </tr> </tbody> </table>	Lot Number	Contract Name	<i>[insert lot number]</i>	<i>[insert contract name]</i>	<i>[insert lot number]</i>	<i>[insert contract name]</i>	<i>[insert lot number]</i>	<i>[insert contract name]</i>
Lot Number	Contract Name								
<i>[insert lot number]</i>	<i>[insert contract name]</i>								
<i>[insert lot number]</i>	<i>[insert contract name]</i>								
<i>[insert lot number]</i>	<i>[insert contract name]</i>								
<b>ITB 2.1</b>	<p>The Borrower is: <i>[insert name of Borrower]</i></p> <p>The number of the JICA Loan Agreement is: <i>[insert JICA Loan Agreement number]</i></p> <p>The amount of a Japanese ODA Loan is: <i>[insert amount in Japanese Yen]</i></p> <p>The signed date of the Loan Agreement is: <i>[insert signed date of Loan Agreement]</i></p>								
<b>ITB 2.2</b>	<p>The applicable Guidelines for Procurement under Japanese ODA Loans are those published in: <i>[insert one of the following: October 2023, April 2012, March 2009, or October 1999]</i></p>								
<b>ITB 2.3</b>	<p>The other sources of finance are: <i>[insert other sources of finance]</i></p>								
<b>ITB 3.1(b)</b>	<p>The list of ineligible firms and individuals is available at the JICA’s website: <a href="http://www.jica.go.jp/english/about/organization/corp_gov/index.html">www.jica.go.jp/english/about/organization/corp_gov/index.html</a></p>								
<b>ITB 3.1(c)</b>	<p>The list of debarred firms and individuals is available at the World Bank’s website: <a href="http://www.worldbank.org/debarr">www.worldbank.org/debarr</a></p>								
<b>ITB 4.5</b>	<p>This bidding <i>[select “is” or “is not”, as appropriate]</i> subject to prequalification.</p>								
<b>B. Contents of Bidding Document</b>									

<b>ITB 7.1</b>	<p>For <b>clarification purposes</b> only, the Employer's address is:          Attention: <i>[insert full name of person, if applicable]</i>          Mailing Address: <i>[insert mailing address]</i>          Email: <i>[insert email address(es), if applicable]</i></p> <p>Responses to any request for clarification, if any, <i>[select "will" or "will not", as appropriate]</i> be published on the Employer's web page indicated below.</p> <p>Web Page: <i>[insert the Employer's web page if responses to requests for clarifications will be published on the Employer's web page. Otherwise insert "N/A".]</i></p>
<b>ITB 7.4</b>	<p>A pre-bid meeting <i>[insert "will" or "will not", as appropriate]</i> take place at the following date, time and place:</p> <p><i>[If a Pre-bid meeting will take place, insert the date, time and place information in each space provided below. Otherwise insert "N/A" in each space provided below for the date, time and place.]</i></p> <p>Date : _____          Time : _____          Place : _____</p> <p>A site visit at the time of the pre-bid meeting conducted by the Employer <i>[insert "will be" or "will not be", as appropriate]</i> organized.</p>
<b>ITB 8.2</b>	<p>Addenda, if any, <i>[Select "will" or "will not", as appropriate]</i> be published on the Employer's web page.</p>
<b>C. Preparation of Bids</b>	
<b>ITB 10.1</b>	<p>The language of the Bid is: <i>[insert one of the following: Japanese, English, Spanish or French]</i></p>
<b>ITB 11.2 (i)</b>	<p>The Bidder shall submit the following additional documents in its Technical Bid:</p> <p><i>[List any additional documents not already listed in ITB 11.2 that must be submitted with the Technical Bid. If there is no additional document to be submitted, state "none.".]</i></p>
<b>ITB 11.3 (c)</b>	<p>The Bidder shall submit the following additional documents in its Price Bid:</p> <p><i>[List any additional documents not already listed in ITB 11.3 that must be submitted with the Price Bid. If there is no additional document to be submitted, state "none.".]</i></p>
<b>ITB 13.1</b>	<p>Alternative times for completion <i>[insert "will be" or "will not be", as appropriate]</i> permitted.</p>
<b>ITB 13.2</b>	<p>Alternative Bids <i>[insert "will be" or "will not be", as appropriate]</i> permitted.</p>

<b>ITB 14.2</b>	<p><i>[use one of the following options as appropriate.]</i></p> <p>Bidders shall quote for the entire Plant and Installation Services on a single responsibility basis.</p> <p><i>[or]</i></p> <p>Bidders shall quote for the following components or services on a single responsibility basis: <i>[insert list of components or services]</i></p> <p><i>[and/or]</i></p> <p>The following components or services will be provided under the responsibility of the Employer: <i>[insert list of components or services]</i></p>
<b>ITB 14.3 (a) and (d)</b>	<p>Place of destination: <i>[insert named place of destination as per Incoterm used]</i></p> <p>Final destination(Project site): <i>[insert final destination, if different from named place of destination]</i></p>
<b>ITB 14.7</b>	<p>The prices quoted by the Bidder shall: <i>[insert “be adjustable” or “not to be adjustable; consequently, the Bidder is not required to furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data”, as appropriate.]</i></p> <p><i>[Price adjustment is recommended for contracts with longer duration than 18 months or when local or foreign inflation is expected to be high.]</i></p>
<b>ITB 14.9</b>	<p><i>[This ITB 14.9 shall be consistent with Sub-Clause 14.1 of the Conditions of Contract.]</i></p> <p>In accordance with Sub-Clause 14.2 of the Conditions of Contract, the Plant specified in Price Schedule No.1 shall be exempted from the payment of import duties and taxes upon importation.</p> <p><i>[The Employer shall choose (a) and/or (b) of the following paragraph, as applicable and complete subparagraph, indicating clearly that which taxes, duties and levies are exempted and the relevant exemption categories (as described below) in accordance with the Exchange Notes between the Employer’s country and the Government of Japan, and under the law of the Employer’s country. If none is applicable, delete the following paragraph its entirety.]</i></p> <p>With regard to the Contractor’s liabilities as to duties, taxes and levies, the following shall apply:</p> <p>(a) duties, taxes and levies listed in the table below shall be exempted. Such exempted duties, taxes and levies are fallen into two categories, namely:</p>

- (i) "No Pay" category: The Contractor shall be entitled to exemption from duties, taxes and levies falling into this category, without having to make any payment arising from or out of or in connection with such liabilities.
- (ii) "Pay & Reimburse" category: The Contractor shall be entitled to exemption from duties, taxes and levies, falling into this category, provided that the first makes all payments arising from or out of or in connection with such liabilities and then apply for their reimbursement from the relevant authority, following the procedure prescribed by such authority.

No.	Duty/ Tax/ Levy	Exemption Category
1	[insert duty/ tax/ levy]	[indicate whether "No Pay" or "Pay & Reimburse"]
2	[insert duty/ tax/ levy]	[indicate whether "No Pay" or "Pay & Reimburse"]
3	[insert duty/ tax/ levy]	[indicate whether "No Pay" or "Pay & Reimburse"]
etc.		

(b) duties, taxes and other levies listed below shall be paid by the Employer on behalf of the Contractor:  
 [insert list of duties, taxes and levies]

**ITB 14.10**

[There are the Specified Provisional Sums and contingency allowance.]  
 The Amounts and Currencies of the Specified Provisional Sums shall be as follows:  
 [The Employer shall fill in the table below, Item No, Description, and Local and Foreign currency portions of the Amount for each Provisional Sum as indicated in the Schedule of Specified Provisional Sums in the Price Schedule.]

Item No.	Description	Amount	
		Local	Foreign
1			
2			
3			
etc.			
Total - Specified Provisional Sums			

[Contingency allowance shall be usually calculated by multiplication of the predetermined percentage (to be indicated by the Employer in the Bidding Document) and the base cost (Total of the Schedules plus Provisional Sums, to be derived by the Bidder in its Price Bid). As an alternative to this

	<p><i>percentage addition, a fixed amount can be predetermined by the Employer, based on the estimated contract value, and inserted as a figure (common to each Bidder) in the Bidding Document.</i></p> <p><i>The Employer, as per the guidance given above, may choose, either Option A (i.e.: to insert a determined percentage) or Option B (i.e.: to insert a fixed amount) below, as appropriate, and delete the other.</i></p> <p><i>So as to make Item (D) (i.e.: Add contingency allowance) of the Grand Summary of the Price Schedule consistent with this ITB provision: if Option A is chosen, indicate the relevant percentage in the item description, and if Option B is chosen, insert the relevant local and foreign currency portions of the Amount in the respective 'Amount' columns.]</i></p> <p>Contingency allowance shall be as follows:  <i>[choose one of the following options, as applicable and delete the other.]</i></p> <p><i>[Option A]</i>  <i>[insert the applicable percentage]</i> of the Bid Price in the currency or currencies in which the Bid Price is expressed in the Bid submitted by the Bidder.</p> <p><i>[Option B]</i>  <i>[insert the applicable fixed amount in the applicable currency or currencies]</i>  <i>[If there are no amount allocated in Specified Provisional Sums or contingency allowance in the Price Schedule, delete all above and state "This BDS 14.10 is not applicable.".]</i></p>
<p><b>ITB 15.1</b></p>	<p>The currency(ies) of the Bid shall be as described below:</p> <p>(a) the inputs to the Plant and Installation Services that the Bidder expects to supply from within the Employer's country shall be quoted in <i>[insert the name of the currency of the Employer's country]</i>, referred to as "the local currency", to <i>[insert number of decimal places]</i> decimal place(s); and</p> <p>(b) the inputs to the Plant and Installation Services that the Bidder expects to supply from outside the Employer's country (referred to as "the foreign currency"), shall be quoted in:</p> <p>(i) Japanese Yen (JPY), with no decimal places; and/or</p> <p>(ii) <i>[other international trading currency or currencies, if any]</i> to <i>[insert number of decimal places]</i> decimal place(s).</p>
<p><b>ITB 16.2 (b)</b></p>	<p>The period after the Operational Acceptance, for the Bidder to propose spare parts(i.e. Mandatory Spare Parts and Recommended Spare Parts (if</p>

	required)), special tools, etc: [ <i>insert number of years as appropriate, normally two (2) years.</i> ].
<b>ITB 18.1</b>	<p>The Bid validity period shall be: [<i>insert a number of days required for evaluation, approval and award plus contingency</i>] days.</p> <p>[<i>This period should be realistic, allowing sufficient time to evaluate the Bids, bearing in mind the complexity of the Facilities and the time required for obtaining references, clarifications, clearances, approvals (including JICA's concurrence) and for notification of the award. Normally the validity period should not exceed 120 days.</i>]</p>
<b>ITB 18.3 (a)</b>	<p>[<i>Insert the following only in case of fixed price contract. Delete it in its entirety in case of adjustable price contracts, and state "This BDS 18.3(a) is not applicable."</i>.]</p> <p>The local and foreign currency portions of the Contract price shall be adjusted by using the following formula:</p> $BP_A = BP_0 \left( 1 + \frac{DP \times AF}{365} \right)$ <p>Where:</p> <p>"BP<sub>A</sub>" is the local (or foreign) portion of Bid Price as adjusted for the delay in award of the Contract.</p> <p>"BP<sub>0</sub>" is the local (or foreign) portion of Bid Price as stated in the Letter of Bid.</p> <p>"DP" is the period of delay, calculated as a number of days between the award date and the date, fifty-six (56) days after the expiry date of the initial bid validity period.</p> <p>"AF" is:</p> <p>(a) in case of local currency, the average annual consumer inflation of the Employer's country, calculated from the data officially released by the relevant authority of the Employer's country, responsible for release of such data, considering the period of past three (3) years from the date, one (1) month prior to the award date.</p> <p>(b) in case of foreign currency, the average annual consumer inflation of the country of the foreign currency, calculated from the data officially released by the relevant authority of that country, responsible for release of such data, considering the period of past three (3) years from the date, one (1) month prior to the award date.</p>
<b>ITB 19.1</b>	The amount and currency of the Bid Security shall be: [ <i>Insert amount and currency of the Bid Security. The amount should be between 1.5 % to 2.5% of the estimated contract value.</i> ]

<b>ITB 19.2 (d)</b>	Other types of acceptable securities: <i>[insert names of other acceptable securities. Insert "none" if no other forms of Bid Securities besides those listed in ITB 19.2 (a) through (c) are acceptable.]</i>
<b>ITB 20.1</b>	In addition to the original of the Bid, the number of copies is: <i>[insert number of copies]</i>
<b>D. Submission and Opening of Bids</b>	
<b>ITB 22.1</b>	<p>For <b><u>Bid submission purposes</u></b> only, the Employer's address is:  Attention: <i>[insert full name of person, if applicable]</i>  Mailing Address: <i>[insert mailing address]</i></p> <p><b>The deadline for Bid submission is:</b>  Date: <i>[insert day, month, and year, e.g., 15 June, 2018]</i>  Time: <i>[insert time, and identify if a.m. or p.m., e.g. 10:30 a.m.]</i></p>
<b>ITB 25.1</b>	<p>The Technical Bid opening shall take place at:  Mailing Address: <i>[insert mailing address]</i>  Date: <i>[insert day, month, and year, e.g., 15 June, 2018]</i>  Time: <i>[insert time, and identify if a.m. or p.m. e.g., 10:30 a.m.]</i>  <i>[The date should be the same as that given for the deadline for submission of Bids (ITB 22).]</i></p>
<b>E. Evaluation, and Comparison of Bids</b>	
<b>ITB 34.1</b>	<p>The currency that shall be used for Bid evaluation and comparison purposes to convert all Bid Prices expressed in various currencies into a single currency is: <i>[insert Japanese Yen or another single currency]</i></p> <p>The source of exchange rate shall be: <i>[insert name of the source of exchange rates (e.g., the Central Bank in the Employer's country).]</i></p> <p>The date for the exchange rate shall be: <i>[insert day, month and year, e.g., 15 June 2018, a date not earlier than thirty (30) days prior to, nor later than, the date of Technical Bid opening, specified in ITB 25.1]</i></p>





## **Section III. Evaluation and Qualification Criteria (Option I: Following Prequalification)**

### **Notes for the Employer**

This Section specifies the criteria to determine the lowest evaluated Bid and the qualifications of the Bidder to perform the Contract. No other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms.

The notes entitled “*Notes for the Employer*”, “boxed” notes and italicized notes are not part of the actual Evaluation and Qualification Criteria, but contain guidelines and instructions for the Employer. They shall be deleted from the actual Bidding Document to be issued to the Bidders.

The “*Notes for the Bidders*” contained in this Section III should be included in the actual Bidding Document to be issued to the Bidders.



# **Evaluation and Qualification Criteria (Following Prequalification)**

## **1 Evaluation**

### **1.1 Evaluation of Technical Bid**

The evaluation of the Technical Bids consists of the following:

- (a) assessment of the qualification of the Bidder to perform the Contract satisfactorily in accordance with ITB 30. The qualification criteria for the purpose of this assessment have been described in detail under item 2 (*Qualification*) below.
- (b) determination of the substantial responsiveness of the Technical Bid in accordance with ITB 31. The evaluation criteria for the purpose of this determination have been described hereinunder.

Determination of the substantial responsiveness of the Technical Bid includes, among other things, an assessment of the adequacy of the Bidder's Technical Proposal, during which the Bidder's technical capacity to complete the Facilities will be assessed in terms of the following. Based on such assessment, the Employer will determine whether the Technical Proposal is substantially responsive to the requirements stipulated in Section VI, Employer's Requirements.

- (i) overall completeness and compliance with the Employer's Requirements.
- (ii) conformity of the Plant and Installation Services offered with specified performance criteria, including conformity with the specified minimum (or maximum, as the case may be) acceptable levels corresponding to each functional guarantee, as indicated in the Employer's Requirements and in this Section.
- (iii) suitability of the Plant and Installation Services offered in relation to the environmental and climatic conditions prevailing at the site.
- (iv) quality, function and operation of any process control concept included in the Bid.
- (v) type, quantity and long-term availability of mandatory and recommended spare parts and maintenance services.
- (vi) mobilization of key construction equipment and personnel in execution of the Plant and Installation Services.
- (vii) adequately supervising and controlling of the execution of the Plant and Installation Services by the appropriate allocation of staff.
- (viii) planning and scheduling of all work activities in such a manner that the Facilities will be completed on time and meet with all Contract requirements, mainly the compliance with the time schedule called for in the corresponding Appendix to the Contract Agreement, as evidenced by a milestone schedule provided in the Technical Proposal.
- (ix) execution of the Plant and Installation Services fully in accordance with all Contract requirements including but not limited to work methods, material

sourcing, etc.

- (x) carrying out all operations for the execution of the Plant and Installation Services safely and in an environmentally friendly manner.
- (xi) conformity of subcontractors proposed in accordance with the items listed in Sub-Factor 1.1.3 below, if applied.

The Bid that does not meet minimum acceptable standards of completeness, consistency and detail, and the specified minimum (or maximum, as the case may be) acceptable levels for the specified functional guarantees, will be rejected.

### 1.1.1 Personnel

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

No.	Position	Minimum Number of Years	
		Similar Positions	Total Work Experience
1			
2			
3			
4			
5			
...			

*Notes for the Employer*

(a) *The positions listed shall be limited to senior positions that are essential to the proper and timely execution of the Plant and Installation Services such as Project Manager, Chief Engineer(s), Design Manager(s) or Section Manager(s) - responsible for major activities. The Employer shall make sure that the number of positions shall be kept to a minimum required for that purpose.*

(b) *One of the key positions shall be a Health and Safety Manager.*

(c) *Insert requirements in case of award for award of multiple lots, if applicable.*

Alternative candidates for key positions shall not be evaluated.

The Bidder shall provide details of the proposed personnel for the Contract together with their experience records in Form PER-1 and Form PER-2 in Section IV, Bidding Forms.

### 1.1.2 Construction Equipment

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

No.	Equipment Type and Required Performance Characteristics	Minimum Requirement (Number of Units)
1		
2		
3		
4		
5		
...		
<p><i>Notes for the Employer:</i></p> <p>(a) <i>The items listed shall be limited to major items of construction equipment that are essential to the proper and timely execution of the Plant and Installation Services, and items that Bidders may not readily be able to purchase, hire, or lease in the required time frame.</i></p> <p>(b) <i>Insert requirements in case of award for multiple lots, if applicable.</i></p>		

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

### 1.1.3 Subcontractor for major item of the Plant

Subcontractors/manufactures for the following major item of the Plant must meet the following minimum criteria, herein listed for that item. Failure to comply with this requirement will result in rejection of the Subcontractor but not the Bidder.

Item No.	Description of Item	Minimum Criteria to be met	Submission Requirements
1			
2			
3			
4			
5			
...			
<p><i>Notes for the Employer:</i></p> <p>(a) <i>The items listed shall be limited to items of paramount importance of which the Employer wishes to confirm adequacy and suitability of the proposed Subcontractors at the bidding stage.</i></p> <p>(b) <i>List the submission requirement not already listed in Form ELI-3 that must be submitted with the Bid so as to prove compliance with the requirements. If there is no additional documents to be submitted, state "none".</i></p>			

In the case of a Bidder who offers to supply and install major items of the Plant under the contract, which the Bidder does not manufacture or otherwise produce, the Bidder shall provide the Manufacturer's authorization, using the form provided in Section IV, Bidding

Forms, showing that the Bidder has been duly authorized by the Manufacturer or producer of the related plant and equipment or component to supply and install that item in the Employer’s country

**1.1.4 Other Evaluation Criteria**

*[If applicable, state other evaluation criteria; otherwise state “N/A”.]*

.....  
.....

**1.2 Evaluation of Price Bid**

In addition to the criteria listed in ITB 35.1 (a) – (c), (e) and (f), the following criteria shall apply.

**1.2.1 Other Evaluation Criteria (ITB 35.1(d))**

The following factors and methods will apply under ITB 35.1 (d):

**(a) Operating and Maintenance Costs**

*[If Operating and Maintenance Costs will be subject to evaluation, then insert the following. Otherwise delete all below and state “N/A”.]*

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

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

- (i) number of years for life cycle *[insert life cycle period in years. The period should not exceed the period before a major overhaul of the Facilities becomes necessary.]*
- (ii) operating costs *[insert fuel and/or other input, unit cost for annual and total operational requirements.]*
- (iii) maintenance costs, including the cost of spare parts for the initial period of operation, and
- (iv) a rate of *[insert rate in words and figures]* percent, to be used to discount to present value all annual future costs calculated under (ii) and (iii) above for the period specified in (i).

**(b) Functional Guarantees of the Plant and Installation Services**

The norms and the minimum/ maximum acceptable levels stated in the Employer’s Requirements for functional guarantees are:

*[insert the requirements stated in the Employer’s Requirements]*

Functional Guarantee	Requirement	
	Norm	Minimum/Maximum Acceptable Level
1.		
2.		
3.		
...		

For the purposes of evaluation: the following shall apply:

If the value(s) of the functional guarantee(s) of the proposed Plant, as provided by the Bidder in Form FUNC:

- (i) meet(s) the Norm specified in the table above, there shall no adjustment to the Bid Price.
- (ii) is/ are within the range between the Norm and the Minimum/ Maximum Acceptable Level in the table above, for each percentage point that the value of the functional guarantee is deviated from the Norm, the Bid Price shall be adjusted using the methodology stated below:

*[state methodology for calculation of adjustment.]*

- (iii) is/are not within the Minimum/ Maximum Acceptable Level in the table above, the Bid shall be rejected.

**(c) Specific Additional Evaluation Criteria**

The following additional evaluation criteria will be used in the evaluation: *[If applicable, insert additional evaluation criteria; Otherwise state “N/A”.]*

.....  
 .....

**1.2.2 Award Criteria for Multiple Lots (ITB 35.3)**

*[Insert the following paragraph in case of bidding for multiple lots, if applicable. Otherwise delete in its entirety and state “N/A”.*

*“If so provided in BDS 1.1, the Bidders have the option to bid for multiple lots of the Project in any combination. Bids for each lot or each combination of lots will then be evaluated taking into account discounts offered, if any, for the award of such multiple lots.*

*The lots will be awarded to the Bidder(s) offering the lowest evaluated cost to the Employer considering such discounts offered, subject to the selected Bidder(s) meeting the required qualification criteria for the award of such multiple lots.”]*

### **1.3 Alternative Times for Completion (ITB 13.1)**

*[If alternative times for completion are not permitted under ITB 13.1, then, insert the following.]*

Time for Completion of the Plant and Installation Services shall be: *[insert number of days indicated in CD8.2 of Section VIII, Particular Conditions]*. No credit will be given for earlier completion.

*[If alternative times for completion are permitted under ITB 13.1, insert the following.]*

Time for Completion of the Plant and Installation Services shall be between *[insert number of days]* (hereinafter referred to as “*Minimum Designated Period*”) and *[Insert number of days]* (hereinafter referred to as “*Maximum Designated Period*”).

The adjustment rate in the event of completion beyond the minimum period shall be *[insert percentage in words and figures (%) for each week of delay from that minimum period]*.

No credit will be given for completion earlier than the Minimum Designated Period. Bids offering a completion date beyond the Maximum Designated Period shall be rejected.



## 2 Qualification

### (I) Qualification of the Bidder but not of Bidder's Affiliates

It is the legal entity or entities comprising the Bidder (which is/are party to the Bidder under a JV or as specialized subcontractors to be employed for the key activities listed in this Section), and not the Bidder's parent company(ies), group companies, subsidiaries or other affiliates, that must satisfy the qualification criteria.

### (II) Exchange Rate for Qualification Criteria

Wherever a Form in Section IV, Bidding Forms, requires the Bidder to state a monetary amount, the Bidder should indicate the USD equivalent using the rate of exchange determined as follows:

- (a) For turnover or financial data required for each year - Exchange rate prevailing on the last day of the respective calendar or fiscal year, as applicable.
- (b) Value of single contract - Exchange rate prevailing on the date of the contract.

Exchange rates shall be taken from the publicly available source **identified in BDS 34.1** or, in case such rates are not available in the source identified above, any other publicly available source acceptable to the Employer. Any error in determining the exchange rates may be corrected by the Employer.

### (III) Update of Information

The Bidder shall continue to meet the criteria used at the time of prequalification. Updating and reassessment of the following information which was previously considered during prequalification will be required:

- (a) Eligibility.
- (b) Historical Contract Non-Performance and Litigation.
- (c) Financial Situation and Capabilities.

The Bidder shall provide updated details for the above by using the relevant forms included in Section IV, Bidding Forms.



## **Section III. Evaluation and Qualification Criteria (Option II: Without Prequalification)**

### **Notes for the Employer**

This Section specifies the criteria to determine the lowest evaluated Bid and the qualifications of the Bidder to perform the Contract. No other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms.

The Employer requires the Bidders to be qualified by meeting pre-defined, precise minimum requirements. The method entails setting pass-fail criteria, which, if not met by the Bidder, results in disqualification. For that purpose, a clear-cut, fail-pass qualification criteria need to be defined and indicated in the Bidding Document to enable the Bidders to make an informed decision whether to pursue a specific contract and, if so, whether to pursue it as a single firm or as a joint venture. The criteria adopted must relate to characteristics that are essential to ensure satisfactory execution of the contract, and must be stated in clear terms.

The notes entitled “*Notes for the Employer*”, “boxed” notes and italicized notes are not part of the actual Evaluation and Qualification Criteria, but contain guidelines and instructions for the Employer. They shall be deleted from the actual Bidding Document to be issued to the Bidders.

The “*Notes for the Bidders*” contained in this Section III should be included in the actual Bidding Document to be issued to the Bidders.



# **Evaluation and Qualification Criteria (Without Prequalification)**

## **1 Evaluation**

### **1.1 Evaluation of Technical Bid**

The evaluation of the Technical Bids consists of the following:

- (a) assessment of the qualification of the Bidder to perform the Contract satisfactorily in accordance with ITB 30. The qualification criteria for the purpose of this assessment have been described in detail under item 2 (*Qualification*) below.
- (b) determination of the substantial responsiveness of the Technical Bid in accordance with ITB 31. The evaluation criteria for the purpose of this determination have been described hereinunder.

Determination of the substantial responsiveness of the Technical Bid includes, among other things, an assessment of the adequacy of the Bidder's Technical Proposal, during which the Bidder's technical capacity to complete the Facilities will be assessed in terms of the following. Based on such assessment, the Employer will determine whether the Technical Proposal is substantially responsive to the requirements stipulated in Section VI, Employer's Requirements.

- (i) overall completeness and compliance with the Employer's Requirements.
- (ii) conformity of the Plant and Installation Services offered with specified performance criteria, including conformity with the specified minimum (or maximum, as the case may be) acceptable levels corresponding to each functional guarantee, as indicated in the Employer's Requirements and in this Section.
- (iii) suitability of the Plant and Installation Services offered in relation to the environmental and climatic conditions prevailing at the site.
- (iv) quality, function and operation of any process control concept included in the Bid.
- (v) type, quantity and long-term availability of mandatory and recommended spare parts and maintenance services.
- (vi) mobilization of key construction equipment and personnel execution of the Plant and Installation Services.
- (vii) adequately supervising and controlling of the execution of the Plant and Installation Services by the appropriate allocation of staff.
- (viii) planning and scheduling of all work activities in such a manner that the Facilities will be completed on time and meet with all Contract requirements, mainly the compliance with the time schedule called for in the corresponding Appendix to the Contract Agreement, as evidenced by a milestone schedule provided in the Technical Proposal.
- (ix) execution of the Plant and Installation Services fully in accordance with all Contract requirements including but not limited to work methods, material

sourcing, etc.

- (x) carrying out all operations for the execution of the Plant and Installation Services safely and in an environmental friendly manner.
- (xi) conformity of subcontractors proposed in accordance with the items listed in Sub-Factor 1.1.3 below, if applied.

The Bid that does not meet minimum acceptable standards of completeness, consistency and detail, and the specified minimum (or maximum, as the case may be) acceptable levels for the specified functional guarantees, will be rejected.

### 1.1.1 Personnel

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

No.	Position	Minimum Number of Years	
		Similar Positions	Total Work Experience
1			
2			
3			
4			
5			
...			
<p><i>Notes for the Employer</i></p> <p>(a) <i>The positions listed shall be limited to senior positions that are essential to the proper and timely execution of the Plant and Installation Services, such as Project Manager, Chief Engineer(s), Design Manager(s) or Section Manager(s) - responsible for major activities. The Employer shall make sure that the number of positions shall be kept to a minimum required for that purpose.</i></p> <p>(b) <i>One of the key positions shall be a Health and Safety Manager.</i></p> <p>(c) <i>Insert requirements for award of multiple lots, if applicable.</i></p>			

Alternative candidates for key positions should not be evaluated.

The Bidder shall provide details of the proposed personnel for the Contract together with their experience records in Form PER-1 and Form PER-2 in Section IV, Bidding Forms.

### 1.1.2 Construction Equipment

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

No.	Equipment Type and Required Performance Characteristics	Minimum Requirement (Number of Units)
1		
2		
3		
4		
5		
<p><i>Notes for the Employer:</i></p> <p>(a) <i>The items listed shall be limited to major items of construction equipment that are essential to the proper and timely execution of the Plant and Installation Services, and items that Bidders may not readily be able to purchase, hire, or lease in the required time frame.</i></p> <p>(b) <i>Insert requirements for award of multiple lots, if applicable.</i></p>		

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

### 1.1.3 Subcontractor for major item of the Plant

Subcontractors/manufactures for the following major item of the Plant must meet the following minimum criteria, herein listed for that item. Failure to comply with this requirement will result in rejection of the Subcontractor but not the Bidder.

Item No.	Description of Item	Minimum Criteria to be met	Submission Requirements
1			
2			
3			
4			
5			
...			
<p><i>Notes for the Employer:</i></p> <p>(a) <i>The items listed shall be limited to items of paramount importance of which the Employer wishes to confirm adequacy and suitability of the proposed Subcontractors at the bidding stage.</i></p> <p>(b) <i>List the submission requirement not already listed in Form ELI-3 that must be submitted with the Bid so as to prove compliance with the requirements. If there is no additional documents to be submitted, state "none".</i></p>			

In the case of a Bidder who offers to supply and install major items of the Plant under the contract, which the Bidder does not manufacture or otherwise produce, the Bidder shall provide the Manufacturer's authorization, using the form provided in Section IV, Bidding

Forms, showing that the Bidder has been duly authorized by the Manufacturer or producer of the related plant and equipment or component to supply and install that item in the Employer's country

#### **1.1.4 Other Evaluation Criteria**

*[If applicable, state other evaluation criteria; otherwise state "N/A".]*

.....

.....

### **1.2 Evaluation of Price Bid**

In addition to the criteria listed in ITB 35.1 (a) – (c), (e) and (f), the following criteria shall apply:

#### **1.2.1 Other Evaluation Criteria (ITB 35.1(d))**

The following factors and methods will apply under ITB 35.1(d):

##### **(a) Operating and Maintenance Costs**

*[If Operating and Maintenance Costs will be subject to evaluation, insert the following. Otherwise, delete all below and state "N/A".]*

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

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

- (i) number of years for life cycle *[insert life cycle period in years. The period should not exceed the period before a major overhaul of the Facilities becomes necessary.]*
- (ii) operating costs *[insert fuel and/or other input, unit cost for annual and total operational requirements.]*
- (iii) maintenance costs, including the cost of spare parts for the initial period of operation, and
- (iv) a rate of *[insert rate in words and figures]* percent, to be used to discount to present value all annual future costs calculated under (ii) and (iii) above for the period specified in (i).

##### **(b) Functional Guarantees of the Plant and Installation Services**

The norms and the minimum/ maximum acceptable levels stated in the Employer's Requirements for functional guarantees are:



*[insert the requirements stated in the Employer’s Requirements]*

Functional Guarantee	Requirement	
	Norm	Minimum/ Maximum Acceptable Level
1.		
2.		
3.		
...		

For the purposes of evaluation, the following shall apply:

If the value(s) of the functional guarantee(s) of the proposed Plant, as provided by the Bidder in Form FUNC:

- (i) meet(s) the Norm specified in the table above, there shall no adjustment to the Bid Price.
- (ii) is/ are within the range between the Norm and the Minimum/ Maximum Acceptable Level in the table above, for each percentage point that the value of the functional guarantee is deviated from the Norm, the Bid Price shall be adjusted using the methodology stated below:

*[state methodology for calculation of adjustment.]*

- (iii) is/are not within the Minimum/ Maximum Acceptable Level in the table above, the Bid shall be rejected.

**(c) Specific Additional Evaluation Criteria**

The following additional evaluation criteria will be used in the evaluation: *[If applicable, insert additional evaluation criteria; otherwise state “N/A”.]*

.....  
 .....

**1.2.2 Award Criteria for Multiple Lots (ITB 35.3)**

*[Insert the following paragraph in case of bidding for multiple lots, if applicable. Otherwise delete in its entirety and state “N/A”.*

*“If so provided in BDS 1.1, the Bidders have the option to bid for multiple lots of the Project in any combination. Bids for each lot or each combination of lots will then be evaluated taking into account discounts offered, if any, for the award of such multiple lots.*

*The lots will be awarded to the Bidder(s) offering the lowest evaluated cost to the Employer considering such discounts offered, subject to the selected Bidder(s) meeting the required qualification criteria for the award of such multiple lots.”]*

### **1.3 Alternative Time for Completion (ITB 13.1)**

*[If alternative times for completion are not permitted under ITB 13.1, then, insert the following.]*

Time for Completion of the Plant and Installation Services shall be: *[insert number of days indicated in CD 8.2 of Section VIII, Particular Conditions]*. No credit will be given for earlier completion.

*[If alternative times for completion are permitted under ITB 13.1, insert the following.]*

Time for Completion of the Plant and Installation Services shall be between *[insert number of days]* (hereinafter referred to as “*Minimum Designated Period*”) and *[insert number of days]* (hereinafter referred to as “*Maximum Designated Period*”).

The adjustment rate in the event of completion beyond the minimum period shall be *[insert percentage in words and figures (%) for each week of delay from that minimum period]*.

No credit will be given for completion earlier than the Minimum Designated Period. Bids offering a completion date beyond the Maximum Designated Period shall be rejected.

## 2 Qualification

### (I) Qualification of the Bidder but not of Bidder's Affiliates

It is the legal entity or entities comprising the Bidder (which is/are party to the Bidder under a JV or as specialized subcontractors to be employed for the key activities listed in this Section), and not the Bidder's parent company(ies), group companies, subsidiaries or other affiliates, that must satisfy the qualification criteria.

### (II) Exchange Rate for Qualification Criteria

Wherever a Form in Section IV, Bidding Forms, requires the Bidder to state a monetary amount, the Bidder should indicate the USD equivalent using the rate of exchange determined as follows:

- (a) For turnover or financial data required for each year - Exchange rate prevailing on the last day of the respective calendar or fiscal year, as applicable.
- (b) Value of single contract - Exchange rate prevailing on the date of the contract.

Exchange rates shall be taken from the publicly available source **identified in BDS 34.1** or, in case such rates are not available in the source identified above, any other publicly available source acceptable to the Employer. Any error in determining the exchange rates may be corrected by the Employer.

### (III) Qualification Criteria for Award of Multiple Lots

*[Insert the following clause in case of bidding for multiple lots. Otherwise state "N/A".*

*"The criteria for qualification are the aggregate minimum requirements, or any other reasonable requirements set forth by the Employer, for the respective lots as specified under Sub-Factors 2.3.2, 2.3.3, 2.4.2(a), and 2.4.2(b) below."*]

## 2.1 Eligibility

Eligibility and Qualification Criteria			Compliance Requirements				Documentation
No.	Factor	Requirement	Single Firm	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
2.1.1	Nationality	Nationality in accordance with ITB 4.3	Must meet requirement	N/A	Must meet requirement	N/A	Forms ELI – 1 and 2 <sup>(i)</sup> with attachments
2.1.2	Conflict of Interest	No conflicts of interest in ITB 4.2	Must meet requirement	N/A	Must meet requirement (ii)	N/A	Letter of Technical Bid
2.1.3	JICA Ineligibility	Not having been declared ineligible by JICA, as described in ITB 4.4	Must meet requirement	N/A	Must meet requirement (ii)	N/A	Letter of Technical Bid Form ACK
<p><u>Notes for the Bidders</u></p> <p>(i) ELI-2 is required only if the Bidder is a JV.</p> <p>(ii) This requirement also applies to subcontractors if proposed by the Bidder under 1.1.3 above and 2.4.2(b) below.</p>							

## 2.2 Historical Contract Non-Performance and Litigation

Eligibility and Qualification Criteria			Compliance Requirements				Documentation
No.	Factor	Requirement	Single Firm	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
2.2.1	History of Non-Performing Contracts	Non-performance of a contract <sup>(i)</sup> did not occur as a result of contractor's default since 1 <sup>st</sup> January [ <i>insert year</i> ]. <sup>1</sup>	Must meet requirement <sup>(ii)</sup>	N/A	Must meet requirement <sup>(ii)</sup>	N/A	Form CON
2.2.2	Pending Litigation	Bidder's financial position and prospective long-term profitability still sound according to criteria established in 2.3.1 below and assuming that all pending litigation will be resolved against the Bidder.	Must meet requirement <sup>(ii)</sup>	N/A	Must meet requirement <sup>(ii)</sup>	N/A	Form CON
2.2.3	Litigation History	No consistent history of court orders <sup>(iii)</sup> against the Bidder since 1 <sup>st</sup> January [ <i>insert year</i> ]. <sup>1</sup>	Must meet requirement <sup>(ii)</sup>	N/A	Must meet requirement <sup>(ii)</sup>	N/A	Form CON

### Notes for the Bidders

(i) Non-performance, as decided by the Employer, shall include all contracts:

- (a) where non-performance was not challenged by the contractor, including through referral to the dispute resolution mechanism under the respective contract, and
- (b) that were so challenged but fully settled against the contractor.

Non-performance shall not include contracts where Employer's decision was overruled by the dispute resolution mechanism. Moreover, non-performance must be based on all information on fully settled disputes or litigation, i.e. dispute or litigation that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the Bidder have been exhausted.

(ii) This requirement also applies to contracts executed by the Bidder as a JV member.

Eligibility and Qualification Criteria			Compliance Requirements			Documentation	
No.	Factor	Requirement	Single Firm	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
		(iii) The Bidder shall provide accurate information on the related Bidding Form about any litigation resulting from contracts completed or ongoing under its execution over the last five (5) years. A consistent history of court orders against the Bidder or any member of a joint venture may result in failure of the Bid.					
<i>Notes for the Employer</i>							
1. Year should usually be (5) five years prior to the Bid submission deadline.							

### 2.3 Financial Situation and Capabilities

Eligibility and Qualification Criteria			Compliance Requirements				Documentation
No.	Factor	Requirement	Single Firm	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
2.3.1	Financial Performance	<p>The financial statements for the last <i>[insert number of years]</i><sup>1</sup> years shall be submitted and must demonstrate the current soundness of the Bidder's financial position and indicate its prospective long-term profitability.</p> <p>As the minimum requirement, a Bidder's net worth calculated as the difference between total assets and total liabilities should be positive.</p>	Must meet requirement	N/A	Must meet requirement	N/A	Form FIN –1 with attachments
2.3.2	Average Annual Turnover	<p>Minimum average annual turnover of USD <i>[insert amount in USD]</i><sup>2</sup>, calculated as total certified payments received for contracts in progress and/ or completed, within the last <i>[insert number of years]</i><sup>3</sup> years, divided by <i>[insert number of years]</i><sup>4</sup> years.</p> <p><i>[insert requirements for award of multiple lots, if</i></p>	Must meet requirement	Must meet requirement	Must meet <i>[insert number]</i> % <sup>5</sup> of the requirement	Must meet <i>[insert number]</i> % <sup>6</sup> of the requirement	Form FIN – 2

Eligibility and Qualification Criteria			Compliance Requirements			Documentation	
No.	Factor	Requirement	Single Firm	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
		<i>applicable.]</i>					
2.3.3	Financial Capabilities	<p>The Bidder shall demonstrate, to the satisfaction of the Employer that it currently (as of the Bid submission deadline), it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as USD [<i>insert amount in USD</i>]<sup>7</sup> for the subject contract(s) net of the Bidder's all other commitments, both current and future.</p> <p><i>[insert requirements for award of multiple lots, if applicable]</i></p>	Must meet requirement	Must meet requirement	N/A	N/A	Form FIN – 3 and FIN – 4



Eligibility and Qualification Criteria			Compliance Requirements			Documentation	
No.	Factor	Requirement	Single Firm	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
<i>Notes for the Employer</i>							
<ol style="list-style-type: none"> <li>1. Time period usually specified is five (5) years; it may be reduced to three (3) years minimum (in agreement with JICA) under special country circumstances, such as to provide opportunity for a newly privatized construction industry with limited period of existence, but with suitable experience, etc.</li> <li>2. The amount stated should normally not be less than twice the estimated annual turnover in the proposed contract (based on a straight-line projection of the Employer's estimated contract value, including contingencies, over the contract duration). The multiplier of 2 may be reduced for very large contracts but in any case, should not be less than 1.5.</li> <li>3. The time period is normally five (5) years or more, but may be reduced to not less than three (3) years (in agreement with JICA) under special country circumstances, such as to provide opportunities for a newly privatized construction industry with only a short record of experience, etc.</li> <li>4. Same number of years as in 3. above.</li> <li>5. Usually not less than 25% of the requirement for each member of a JV.</li> <li>6. Usually not less than 40% of the requirement for one member of a JV.</li> <li>7. Indicate the construction cash flow requirement for a number of months, determined as the total time needed by the Employer to pay a contractor's invoice, allowing for (a) the actual time consumed for construction, from the beginning of the month invoiced, (b) the time needed by the Project Manager to issue the payment approval, (c) the time needed by the Employer to pay the amount certified, and (d) a contingency period of one month to allow for unforeseen delays. The total period should not exceed six (6) months. The assessment of the monthly amount should be based on a straight-line projection of the estimated cash flow requirement over the particular contract period, neglecting the effect of any advance payment and retention monies, but including contingency allowances in the estimated contract cost.</li> </ol>							
$\text{Monthly Amount} = \frac{\text{Estimated Contract Value (inclusive of Taxes and Duties)}}{\text{Contract Period in Months}}$							

## 2.4 Experience

Eligibility and Qualification Criteria			Compliance Requirements				Documentation
No.	Factor	Requirement	Single Firm	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
2.4.1	General Experience	Continuous experience in plant and installation services in the role of prime contractor <sup>(i)</sup> (single firm or JV member) or subcontractor between 1 <sup>st</sup> January [ <i>insert year</i> ] <sup>1</sup> and the Bid submission deadline.	Must meet requirement	N/A	Must meet requirement	N/A	Form EXP –1
2.4.2	Specific Experience	<p>(a) A minimum number of [<i>insert number of contracts</i>]<sup>2</sup> similar contracts, each of minimum value of [<i>insert minimum value</i>]<sup>(iii)</sup> that have been satisfactorily completed<sup>(iii)</sup> as a prime contractor<sup>(i)</sup> (single entity or JV member)<sup>(iv)</sup> between 1<sup>st</sup> January [<i>insert year</i>]<sup>3</sup> and Bid submission deadline.</p> <p>The similarity of the contracts shall be based on the following: [<i>based on Section VI, Employer's Requirements, specify the minimum key requirements in terms of physical size, complexity,</i></p>	Must meet requirement	Must meet requirement <sup>(v)</sup>	N/A	<p>Must meet the following requirements:</p> <p><i>[list the minimum requirements to be met by one member; if there is no such requirement, state "N/A"]</i></p>	Form EXP –2(a) with attachment

Eligibility and Qualification Criteria			Compliance Requirements			Documentation	
No.	Factor	Requirement	Single Firm	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
		<p><i>installation method, technology and/or other characteristics including part of the requirements that may be met by subcontractors, if permitted, in accordance with ITB 16.3]</i></p> <p><i>[Insert requirements for award of multiple lots, if applicable.]<sup>(vii)</sup></i></p>					
		<p>(b) For the above or other contracts completed and under implementation as prime contractor<sup>(i)</sup> (single entity or JV member) or subcontractor<sup>(vi)</sup> between 1<sup>st</sup> January [<i>insert year</i>]<sup>4</sup> and Bid submission deadline, a minimum experience in the following key activities successfully completed<sup>(iii)</sup> [<i>list activities indicating number, output, capacity, or performance level as applicable.</i>]</p> <p><i>[Insert requirements for award of multiple lots, if applicable.]<sup>(vii)</sup></i></p>	<p>Must meet requirement</p> <p>Following activities can be met through a specialized subcontractor:</p> <p><i>[specify activities, which may be met through a specialized subcontractor; if there is no such</i></p>	<p>Must meet requirement<sup>(v)</sup></p> <p>Following activities can be met through a specialized subcontractor:</p> <p><i>[specify activities, which may be met through a specialized subcontractor; if there is no such</i></p>	N/A	<p>Must meet requirement</p> <p>Following requirements shall be met by one member:</p> <p><i>[specify activities which shall be met by one member. If there is no such requirement, then state:</i></p>	<p>Form ELI –3</p> <p>Form EXP –2(b) with attachment</p> <p>Form MAN</p> <p>Schedule of Subcontractors</p>

Eligibility and Qualification Criteria			Compliance Requirements			Documentation	
No.	Factor	Requirement	Single Firm	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
			<i>requirement, state "N/A"]</i>	<i>requirement, then state "N/A"]</i>		"N/A"]	
<u>Notes for the Bidders</u>							
<p>(i) For the purposes of this criterion, a 'management contractor' is also considered as a prime contractor. A firm which takes on the role of contract management is referred herein as 'management contractor'. A management contractor does not normally perform directly the plant and installation services associated with the contract. Rather, it manages the work of other (sub) contractors while bearing full responsibility and risk for price, quality, and timely performance of the contract.</p> <p>(ii) Summation of number of small value contracts (less than the value specified under requirement) to meet the overall requirement will not be accepted.</p> <p>(iii) Completion shall be evidenced by submission of copy of end-user certificates such as Taking-over Certificates and Completion Certificates as required to be submitted as attachment to Form EXP-2(a) or Form EXP-2(b) of Section IV, Bidding Forms.</p> <p>(iv) For contracts under which the Bidder participated as a JV member, only the Bidder's share, by value, shall be considered to meet this requirement.</p> <p>(v) In case of a JV, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single entity. In determining whether the JV meets the requirement of total number of contracts, only the number of contracts completed by all members, each of value equal or more than the minimum value required, shall be aggregated.</p> <p>(vi) For contracts under which the Bidder participated as a JV member or subcontractor, only the Bidder's share, by value and role, shall be considered to meet this requirement.</p> <p>(vii) The minimum experience requirement for award of multiple lots will be the sum of the minimum requirements for respective individual lots.</p>							
<u>Notes for the Employer</u>							
<ol style="list-style-type: none"> <li>1. The time period is usually five (5) years or more, but may be reduced to not less than three (3) years (in agreement with JICA) under special country circumstances, such as to provide opportunities for a newly privatized industry with only a short record of experience.</li> <li>2. The range of contract numbers should be one (1) to three (3), depending on the size, value, nature and complexity of the subject contract, the exposure of the Employer to risk of contractor default, country conditions and history of similar contracts performed in the past.</li> <li>3. The time period is usually five (5) years, and may be extended up to a period of ten (10) years for large-scale projects.</li> </ol>							

Eligibility and Qualification Criteria			Compliance Requirements			Documentation	
No.	Factor	Requirement	Single Firm	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
4. Same as that stipulated in Sub-Factor 2.4.2 (a) above.							



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**OPTION B:  
Two-Stage One-Envelope Bidding**

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## Section I. Instructions to Bidders

### Notes for the Employer

Section I, Instructions to Bidders, specifies the procedures to be followed by the Bidders when preparing and submitting their Bids. It also provides information on the opening and evaluation of Bids, and on the award of the Contract.

The use of the Standard Instructions to Bidders set forth in Section I of the Standard Bidding Document for the Procurement of Plant Design, Supply and Installation (hereafter referred to as “Standard ITB”) is **required** in all bidding documents for the Plant Design, Supply and Installation to be procured through International Competitive Bidding (ICB) and financed by Japanese ODA Loans, and they shall be used without modification.

The Instructions to Bidders governing this bidding process are the Standard Instructions to Bidders included in **Option B: Two-Stage One-Envelope Bidding** of the Standard Bidding Document for the Procurement of Plant Design, Supply and Installation (SBD (Plant)), the latest version.

A copy of the Standard Instructions to Bidders shall be attached to the Bidding Document prepared by the Employer. If the Instructions to Bidders in the Bidding Document contain modifications from the Standard Instructions to Bidders, JICA will not consider them valid and will require the Employer to modify the Bidding Document so that the Standard Instructions to Bidders, as defined above, shall apply.

Any necessary changes, acceptable to JICA, to address specific country and project issues, shall be introduced only through the Bid Data Sheet.

The Instructions to Bidders shall not be part of the Contract.



# Section I. Instructions to Bidders

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## A. General

### 1. Scope of Bid

- 1.1 In connection with the Invitation for Bids **specified in Section II, Bid Data Sheet (BDS)**, the Employer, as **specified in the BDS** located in the country, as **specified in the BDS**, issues this Bidding Document (hereinafter referred to as “Bidding Document”) for the procurement of Plant Design, Supply and Installation as specified in Section VI, Employer’s Requirements.

The name of the Project and the name of the Contract are **specified in the BDS**.

Bids may also be invited for multiple lots of the Project, as **specified in the BDS**. Bids may be submitted either for individual lots or for multiple lots in any combination.

- 1.2 Throughout this Bidding Document:

- (a) the terms “Facilities” and “Plant and Installation Services” are synonymous with the term “Plant Design, Supply and Installation”;
- (b) the term “in writing” means communicated in written form and delivered against receipt;
- (c) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular;
- (d) “day” means calendar day;
- (e) “firm” means a private entity, a state-owned enterprise or institution; and
- (f) “Joint Venture” or “JV” means any combination of two or more firms in the form of a joint venture, consortium, association or other unincorporated grouping under an existing agreement or with the intention to enter into such an agreement supported by a formal letter of intent.

### 2. Source of Funds

- 2.1 The Borrower **specified in the BDS** has received or has applied for a Japanese ODA Loan from the Japan International Cooperation Agency (hereinafter referred to as “JICA”), with the number, in the amount and on the signed date of the Loan Agreement **specified in the BDS**, towards the cost of the Project. The Borrower intends to apply a portion of the proceeds of the Loan to payments under the Contract(s) for which this Bidding Document is issued.

- 2.2 Disbursement of a Japanese ODA Loan by JICA will be subject, in all respects, to the terms and conditions of the Loan Agreement, including the disbursement procedures and the applicable Guidelines for Procurement under Japanese ODA Loans **specified in the BDS**. No party other than the Borrower shall derive any rights from the Loan Agreement or have any claim to the Loan proceeds.
- 2.3 The above Loan Agreement will cover only part of the project cost. As for the remaining portion, the Borrower, the Project Executing Agency and the Employer will take appropriate measures for finance through other sources **specified in the BDS**.

### 3. Corrupt and Fraudulent Practices

- 3.1 It is JICA's policy to require that the Bidders and the Contractors, as well as the Borrowers, the Project Executing Agencies and the Employers, under contracts funded with Japanese ODA Loans and other Japanese ODA, to observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, JICA:
- (a) will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt, or fraudulent practices in competing for the contract in question.
  - (b) will recognize a Contractor as ineligible, for a period determined by JICA, to be awarded a contract funded with Japanese ODA Loans if it at any time determines that the Bidder or the Contractor has engaged in any corrupt or fraudulent practice in competing for, or in executing another contract funded with Japanese ODA Loans or other Japanese ODA. The list of ineligible firms and individuals is available at the electronic address **specified in the BDS**.
  - (c) will recognize a Contractor as ineligible to be awarded a contract funded with Japanese ODA Loans if the Contractor or subcontractor, who has a direct contract with the Contractor, is debarred under the cross debarment decisions by the Multilateral Development Banks. Such period of ineligibility shall not exceed three (3) years from (and including) the date on which the cross debarment is imposed. Notwithstanding the foregoing, taking relevant factors such as the status of the project financed by Japanese ODA Loans into account, the Borrower may request JICA's concurrence to recognize, and upon obtaining JICA's prior concurrence, may

recognize the eligibility of any Contractor or subcontractor so debarred if, in the Borrower's view, the ineligibility of such Contractor or subcontractor would result in a clear and substantial disadvantage to the Borrower.

“Cross debarment decisions by the Multilateral Development Banks” is a corporate sanction in accordance with the agreement among the African Development Bank Group, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank Group and the World Bank Group signed on 9 April, 2010 (as amended from time to time). JICA will recognize the World Bank Group's debarment of which period exceeds one year, imposed after 19 July, 2010, the date on which the World Bank Group started operating cross debarment, as “cross debarment decisions by the Multilateral Development Banks.” The list of debarred firms and individuals is available at the electronic address **specified in the BDS.**

JICA will recognize a Bidder or Contractor as ineligible to be awarded a contract funded with Japanese ODA Loans if the Bidder or Contractor is debarred by the World Bank Group for the period starting from the date of the Invitation for Bid, if prequalification has not been conducted, or the date of the Advertisements for Prequalification, if prequalification has been conducted, up to the signing of the contract, unless (i) such debarment period does not exceed one year, (ii) three (3) years have passed since such debarment decision, or (iii) JICA concurs to the eligibility in case of the clear and substantial disadvantage to the Borrower.

If it is revealed that the Contractor was ineligible to be awarded a Contract according to above, JICA will, in principle, impose sanctions against the Contractor.

If it is revealed that a subcontractor, who has a direct contract with the Contractor, has been debarred by the World Bank Group as of the subcontract date, JICA will, in principle, require the Borrower to have the Contractor cancel the subcontract immediately, unless (i) such debarment period does not exceed one year, (ii) three (3) years have passed since such debarment decision, or (iii) JICA concurs to the eligibility in case of the clear and substantial

disadvantage to the Borrower. If the Contractor refuses, JICA will require the Borrower to declare invalidity or cancellation of the contract and demand the refund of the relevant proceeds of the loan or any other remedies on the grounds of contractual violation.

- 3.2 If the Employer determines, based on reasonable evidence, that any Bidder has engaged in any corrupt or fraudulent practice, the Employer may disqualify such Bidder after notifying the grounds of such disqualification.
- 3.3 Furthermore, the Bidders shall be aware of the provision stated in Sub-Clause 6 of the Conditions of Contract.

#### **4. Eligible Bidders**

- 4.1 The Bidder may be a single firm or a JV. In the case of a JV:
- (a) All members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms.
  - (b) The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution.
  - (c) A Bid submitted by a JV shall include a copy of the JV Agreement entered into by all members. Alternatively, a formal letter of intent to enter into a JV 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. The JV Agreement or the proposed JV Agreement, as the case may be, shall indicate at least the part(s) of the Plant and Installation Services to be executed by each member.
- 4.2 The Bidder shall not have a conflict of interest. The Bidder shall be disqualified under any of the circumstances set forth below, where it is determined to have a conflict of interest throughout the bidding/selection process and/or the execution of the Contract unless the conflict has been resolved in a manner acceptable to JICA.
- (a) A firm shall be disqualified from providing goods or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of a project that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm. This provision does not apply to the various firms (consultants, contractors, or suppliers)



only due to the reason that those firms together are performing the Contractor's obligations under a turnkey or design and build contract.

- (b) A firm that has a close business relationship with a professional personnel of the Borrower (or the Project Executing Agency, or the Employer), who are directly or indirectly involved in any part of: (i) the preparation of the Prequalification Document (if any prepared) and/or the Bidding Document for the Contract, (ii) the prequalification evaluation (if any conducted) and/ or the Bid evaluation, or (iii) the supervision of such contract, shall be disqualified.
- (c) Based on the "One Bid Per Bidder" principle, which is to ensure fair competition, a firm and any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm shall not be allowed to submit more than one Bid, either individually as a single firm or as a member of a JV. However, this does not limit a firm (including its affiliate) participating in one Bid individually or as a member of a JV and at the same time, the firm (including its affiliate) participating in other Bids as a subcontractor but NOT acting as a specialized subcontractor (refer to ITB14.3). A firm (including its affiliate) acting as a specialized subcontractor or as a subcontractor in any Bid may participate in other Bids as a specialized subcontractor or as a subcontractor.
- (d) A firm having any other form of conflict of interest other than (a) through (c) above shall also be disqualified.

4.3 The Bidder shall meet the requirements as to eligibility of the Bidders as specified in Section V, Eligible Source Countries of Japanese ODA Loans.

4.4 The Bidder that has been determined to be ineligible by JICA in accordance with ITB 3.1 shall not be eligible to be awarded a Contract.

4.5 This bidding is open only to the prequalified Bidders unless **specified in the BDS.**

4.6 The Bidder shall provide such evidence of its continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.

## 5. Eligible Goods and Services

5.1 The goods and services comprising the Plant and Installation Services to be supplied under the Contract and financed by JICA shall meet the requirements specified in Section V,

Eligible Source Countries of Japanese ODA Loans.

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

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

### **PART 1 Bidding Procedures**

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

### **PART 2 Employer's Requirements**

- Section VI. Employer's Requirements

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

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

- 6.2 The Invitation for Bids issued by the Employer is not part of the Bidding Document.

- 6.3 Unless obtained directly from the Employer, the Employer is not responsible for the completeness of the Bidding Document, responses to requests for clarification, the minutes of the pre-bid meeting (if any), or addenda to the Bidding Document in accordance with ITB 8. In case of any contradiction, documents obtained directly from the Employer shall prevail.

- 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document, and to furnish with its Bid all information and documentation as is required by the Bidding Document. The information or documentation shall be complete, accurate, current, and verifiable.

- 7. Clarification of Bidding Document, Site Visit, Pre-Bid Meeting** 7.1 The Bidder requiring any clarification of the Bidding Document shall contact the Employer in writing at its Employer's address **specified in the BDS** or raise his enquiries during the pre-bid meeting if provided for in

accordance with ITB 7.4. The Employer will respond in writing to any request for clarification, provided that such request is received no later than fourteen (14) days prior to the deadline for submission of Bids. The Employer shall forward copies of its response to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. If so **specified in the BDS**, the Employer shall also promptly publish its response on the Employer's web page **identified in the BDS**. Should the clarification result in changes to the essential elements of the Bidding Document, the Employer shall amend the Bidding Document following the procedure under ITB 8, ITB 18.2 and ITB 36.2.

- 7.2 The Bidder is advised to visit and examine the Site where the Plant is to be installed and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the Bid and entering into a Contract for execution of Plant and Installation Services. The costs of visiting the Site shall be at the Bidder's own expense.
- 7.3 The Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
- 7.4 If **so specified in the BDS**, the Bidder's designated representative is invited to attend a pre-bid meeting. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 7.5 The Bidder is requested to submit any questions in writing, to reach the Employer not later than seven (7) days before the meeting.
- 7.6 Minutes of the pre-bid meeting, if applicable, including the text of the questions asked by the Bidders, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3. Any modification to the Bidding Document that may become necessary as a result of the pre-bid meeting shall be made by

the Employer exclusively through the issue of an addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting. Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

## **8. Amendment of Bidding Document**

- 8.1 At any time prior to the deadline for submission of Bids, the Employer may amend the Bidding Document by issuing addenda.
- 8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document from the Employer in accordance with ITB 6.3. If so **specified in the BDS**, the Employer shall also promptly publish the addendum on the Employer's web page in accordance with ITB 7.1.
- 8.3 To give the Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Employer may extend the deadline for the submission of Bids, pursuant to ITB 18.2 or ITB 36.2.

## **9. Cost of Bidding**

- 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

## **10. Language of Bid**

- 10.1 The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Employer, shall be written in the language **specified in the BDS**. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language of Bid, in which case, for purposes of interpretation of the Bid, such translation shall govern.

## **C1. First Stage Bids: Preparation**

### **11. Documents Comprising the First Stage Bid**

- 11.1 The First Stage Bid shall comprise the following:
- (a) Letter of First Stage Bid, in accordance with ITB 12.1;
  - (b) Power of Attorney authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 16.2 and 16.3;
  - (c) copy of the JV Agreement, or letter of intent to enter into a JV including a draft agreement, in the case of a Bid submitted by a JV in accordance with ITB 4.1;
  - (d) documentary evidence in accordance with ITB 15 establishing the Bidder's eligibility and qualifications

to perform the Contract if its Bid is accepted;

- (e) documentary evidence in accordance with ITB 14.2 establishing that the Plant and Installation Services offered by the Bidder conform to the Bidding Document;
- (f) Technical Proposal in accordance with ITB 14;
- (g) alternative Technical Proposals in accordance with ITB 13;
- (h) Acknowledgment of Compliance with the Guidelines for Procurement under Japanese ODA Loans (Form ACK), which shall be signed and dated by the Bidder's authorized representative; and
- (i) any other document **required in the BDS**.

First Stage Bids are unpriced Bids and shall contain no prices or Price Schedules or other reference to rates and prices for completing the Facilities. First Stage Bids containing such price information will be rejected.

**12. Letter of First Stage Bid and Attachments**

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

**13. Alternative Technical Proposals**

13.1 The Bidder shall note that they are permitted to propose technical alternatives with their First Stage Bids in addition to or in lieu of the requirements specified in the Bidding Document, provided they can document that the proposed technical alternatives are to the benefit of the Employer, that they fulfil the principal objectives of the Contract, and that they meet the basic performance and technical criteria specified in the Bidding Document.

13.2 Any alternative Technical Proposal submitted by the Bidder as part of their First Stage Bid will be the subject of clarification with the Bidder, pursuant to ITB 26.

**14. Technical Proposal and Subcontractors**

14.1 The Bidder shall furnish as part of the First Stage Bid, a Technical Proposal including a design methodology, statement of work methods, equipment, personnel, schedule, safety plan, and any other information as stipulated in Section IV, Bidding Forms in sufficient detail to demonstrate the substantial responsiveness of the Bidder's proposal to meet the Employer's Requirements and the completion time.

14.2 The documentary evidence of the conformity of the Plant and Installation Services with the Bidding Document may

be in the form of literature, drawings and data, and shall include:

- (a) a detailed description of the essential technical and performance characteristics of the Plant and Installation Services, including the functional guarantees of the proposed Plant and Installation Services, in response to the Employer's Requirements. The functional guarantees of the proposed Plant and Installation Services shall be as stated in the applicable form in Section IV, Bidding Forms;
- (b) a list giving full particulars, including available sources, of all spare parts (i.e. Mandatory Spare Parts and Recommended Spare Parts (if required)), special tools, etc., necessary for the proper and continuing functioning of the plant for the period **specified in the BDS**, after the Operational Acceptance of the Facilities, in accordance with the provisions of the Contract; and
- (c) adequate evidence demonstrating the substantial responsiveness of the Plant and Installation Services to the Employer's Requirements. The Bidder shall note that standards for workmanship, materials and equipment designated by the Employer in the Bidding Document are intended to be descriptive (establishing standards of quality and performance) only and not restrictive. The Bidder may substitute alternative standards, brand names and/or catalogue numbers in its Technical Proposal, provided that it demonstrates to the Employer's satisfaction that the substitutions are substantially equivalent or superior to the standards designated in the Employer's Requirements.

14.3 The Bidder may propose to subcontract any of the key activities for which experience of proposed subcontractors has been evaluated at the Prequalification stage, or otherwise indicated in Section III, Evaluation and Qualification Criteria 2.4.2(b) (specialized subcontractor). In such a case,

- (a) the Bidder may list one or more subcontractor(s) against any of the key activities. Quoted rates and prices will be deemed to apply whichever subcontractor is appointed by the Contractor, and no adjustment of the rates and prices will be permitted;
- (b) the Bidder shall clearly identify the proposed specialized subcontractor(s) in Form ELI-3, Form EXP-2(b) and Form MAN in Section IV, Bidding Forms and submit the List of Subcontractors, as part of its Technical Proposal, listing out all subcontractors so proposed

including information establishing compliance with the requirements specified by the Employer;

- (c) substitution of the proposed subcontractor(s) shall not be allowed after the Bid submission deadline date prescribed by the Employer in accordance with ITB 18.1;
- (d) if the evaluation of the Price Bid is directly adjusted by the subcontractor's(s') qualifications, services and/or product(s) in Section III. Evaluation and Qualification Criteria (e.g. the Price Bid is adjusted by a performance of subcontractor's Plant), only one subcontractor or combination of subcontractors shall be proposed; and
- (e) if the prequalification process was conducted prior to the bidding process, the Bidder shall name and list out in the List of Subcontractors, the same specialized subcontractor(s) whose experience in the key activities was evaluated in the prequalification, except only for such changes as are explicitly approved by the Employer in accordance with ITB 15.2.

The Bidder may also propose to subcontract major items of the Works as listed by the Employer in Section III, Evaluation and Qualification Criteria 1.1.3. In such a case, sub-clauses (a) and (b) provided above in this ITB 14.3 shall be applied except submission of Form EXP-2(b) in Section IV, Bidding Forms.

**15. Documents  
Establishing the  
Qualifications of  
the Bidder**

- 15.1 In accordance with Section III, Evaluation and Qualification Criteria:
- (a) if the prequalification process was conducted prior to the bidding process, the Bidder shall provide in the corresponding information sheets included in Section IV, Bidding Forms, updated information on any assessed aspect to establish that the Bidder continues to meet the criteria used at the time of prequalification, and
  - (b) if the prequalification process was not conducted prior to the bidding process, the Bidder shall provide the information requested in the corresponding information sheets included in Section IV, Bidding Forms.

The aforementioned Evaluation and Qualification Criteria contains, among other things, the requirements as to eligibility specified in ITB 4.

- 15.2 Any change in the structure or formation of a Bidder after being prequalified and invited to bid (including, in the case of a JV, any change in the structure or formation of any member

thereto) shall be subject to the written approval of the Employer prior to the deadline for submission of Bids. Such approval shall be denied if:

- (a) such change has not taken place by the free choice of the firms involved;
- (b) as a consequence of the change, the Bidder no longer substantially meets the qualification criteria set forth in the Prequalification Documents; or
- (c) in the opinion of the Employer, the change may result in a substantial reduction in competition.

Any such change should be submitted to the Employer not later than twenty-eight (28) days before the Bid submission deadline.

## **16. Format and Signing of First Stage Bid**

- 16.1 The Bidder shall prepare one original of the First Stage Bid comprising the documents as described in ITB 11 and clearly mark it "FIRST STAGE BID - ORIGINAL" including alternative Technical Proposal, if any.

In addition, the Bidder shall submit copies of the First Stage Bid, in the number **specified in the BDS** and clearly mark each of them "FIRST STAGE BID – COPY".

In the event of any discrepancy between the original and the copies, the original shall prevail.

- 16.2 The original of the First Stage 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 be in the form of a Power of Attorney included in the First Stage Bid. All pages of the First Stage Bid where entries or amendments have been made shall be signed or initialed by the person signing the First Stage Bid.
- 16.3 A First Stage Bid submitted by a JV shall be signed by an authorized representative of the JV accompanied by a Power of Attorney from each member of the JV giving that authorized representative the power to sign on their behalf and legally bind them all. Such power shall also be given by a person duly authorized to do so on behalf of each member evidenced by a Power of Attorney.
- 16.4 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the First Stage Bid.



- 16.5 The Bidder shall clearly mark “CONFIDENTIAL” any information which they regard as confidential to their business. Such information may include proprietary information, trade secrets, or commercial or financially sensitive information.

## **C2. First Stage Bids: Submission and Opening**

### **17. Sealing and Marking of First Stage Bid**

17.1 The Bidder shall enclose:

- (a) in a sealed envelope, duly marked as “FIRST STAGE BID - ORIGINAL”, all documents comprising the First Stage Bid, as described in ITB 11.1; and
- (b) in sealed envelopes, duly marked as “FIRST STAGE BID - COPY”, all required copies of the First Stage Bid, sequentially numbered.

These envelopes (inner envelopes) containing the original and the copies shall then be enclosed in one single envelope (outer envelope).

17.2 The inner and outer envelopes shall be:

- (a) clearly marked with the name and address of the Bidder;
- (b) addressed to the Employer in accordance with ITB 18.1;
- (c) clearly marked with the specific identification of this bidding process **specified in BDS 1.1**; and
- (d) clearly marked with a warning “NOT TO BE OPENED BEFORE THE TIME AND DATE FOR THE OPENING OF FIRST STAGE BID” in accordance with ITB 21.1.

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

### **18. Deadline for Submission of First Stage Bids**

18.1 First Stage Bids must be received by the Employer at the address and no later than the date and time **specified in the BDS**.

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

**19. Late Bids**

19.1 The Employer shall not consider any First Stage Bid that arrives after the deadline for submission of First Stage Bids, in accordance with ITB 18. Any First Stage Bid received by the Employer after the deadline for submission of First Stage Bids shall be declared late, rejected, and returned unopened to the Bidder.

**20. Substitution and Modification of First Stage Bids**

20.1 A Bidder may substitute or modify its First Stage Bid - after it has been submitted and prior to the deadline for First Stage Bid submission, by sending a written notice, duly signed by an authorized representative, and shall include a copy of the Power of Attorney in accordance with ITB 16.2 and ITB 16.3. The corresponding substitution or modification of the Bid must accompany the respective written notice. All notices must be:

- (a) prepared and submitted in accordance with ITB 16 and ITB 17, and in addition, the respective envelopes shall be clearly marked "FIRST STAGE BID - SUBSTITUTION," "FIRST STAGE BID - MODIFICATION"; and
- (b) received by the Employer prior to the deadline prescribed for submission of Bids, in accordance with ITB 18.

**21. Opening of First Stage Bids**

21.1 Except in the cases specified in ITB 19 and ITB 20, the Employer shall publicly open and read out in accordance with ITB 21.4 all First Stage Bids received by the deadline, at the date, time and place **specified in the BDS**, in the presence of Bidders' designated representatives and anyone who choose to attend.

21.2 First, outer envelopes marked "FIRST STAGE BID - SUBSTITUTION" shall be opened. The inner envelopes containing the Substitution First Stage Bids shall be exchanged for the corresponding envelopes being substituted, which are to be returned to the Bidder unopened. Only the Substitution First Stage Bids, if any, shall be opened and read out. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at the opening of the First Stage Bids.

21.3 Next, outer envelopes marked "FIRST STAGE BID - MODIFICATION" shall be opened. No First Stage Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at the opening of First Stage Bids. Only the First Stage Bids, both Original as well as Modification, are to be opened and read out at the opening.

21.4 Next, all other envelopes holding the First Stage Bids shall

be opened one at a time, reading out:

- (a) the name of the Bidder;
- (b) whether there is a substitution or modification; and
- (c) any other details as the Employer may consider appropriate.

Only First Stage Bids including alternative Technical Proposal read out at the opening of First Stage Bids shall be considered for evaluation. The Employer shall neither discuss the merits of any Bid nor reject any Bid (except for late Bids, in accordance with ITB 19.1).

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

- (a) the name of the Bidder; and
- (b) whether there is substitution, or modification, including any alternative Technical Proposal.

The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders who submitted First-Stage Bids in time, and to JICA.

### **C3. First Stage Bids: Evaluation**

#### **22. Confidentiality**

22.1 Information relating to the evaluation of First and Second Stage Bids and recommendation of Contract award, shall not be disclosed to the Bidders or any other persons not officially concerned with the bidding process until information on Contract award is communicated to all Bidders in accordance with ITB 52.

The use by any Bidder of confidential information related to this bidding process may result in the rejection of its Bid.

22.2 Any attempt by a Bidder to influence the Employer in the evaluation of the First and Second Stage Bids or Contract award decisions may result in the rejection of its Bid.

22.3 Notwithstanding ITB 22.2, from the time of First Stage 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 except clarification meeting in accordance with ITB 26.1.

#### **23. Preliminary**

23.1 The Employer shall examine First Stage Bids to confirm that

**Examination of  
First Stage Bids**

all documents and information requested in ITB 11.1 have been provided, and to determine the completeness of each document submitted.

23.2 The Employer shall confirm that the following documents and information have been provided in the First Stage Bid. If any of these documents or information is missing, the Bid shall be rejected.

- (a) Letter of First Stage Bid;
- (b) Power of Attorney to commit the Bidder; and
- (c) Technical Proposal in accordance with ITB 14.

**24. Qualification of the  
Bidders**

24.1 The Bidder shall substantially meet or exceed the specified qualification requirements. The Employer shall determine to its satisfaction whether Bidders meet the qualification criteria specified in Section III, Evaluation and Qualification Criteria, during the evaluation of First Stage Bids.

24.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 15. For the purposes of this determination, only the qualification of the legal entity(ies) comprising the Bidder shall be considered. In particular, the qualifications of affiliated entities (such as the parent company(ies), group companies, subsidiaries or other affiliates) shall not be considered unless they are parties to the Bidder under a JV in accordance with ITB 4.1 or as specialized subcontractors to be employed in accordance with ITB 14.3 for the key activities listed in Section III, Evaluation and Qualification Criteria 2.4.2(b).

24.3 The Employer reserves the right to waiver minor (nonmaterial) deviations in the qualification criteria if they do not materially affect the technical capability and financial resources of the Bidder to perform the contract.

24.4 An affirmative determination will be a prerequisite for the Employer to invite the Bidder to a clarification meeting in accordance with ITB 26. A negative determination will result in disqualification of the Bidder's First Stage Bid.

24.5 The subcontractors proposed by the Bidder in its Bid shall meet the eligibility requirements of ITB 4.

Furthermore, if the specialized subcontractor proposed in accordance with ITB 14.3 does not meet the corresponding criteria for the key activities specified in Section III Evaluation and Qualification Criteria 2.4.2(b), the Bidder who proposed such a specialized subcontractor shall be

disqualified.

## **25. Evaluation of First Stage Bids**

- 25.1 The Employer will examine the First Stage Bids to determine whether they are complete, whether the documents have been properly signed and whether the First Stage Bids are generally in order. Any First Stage Bids found to be non-responsive will be rejected by the Employer and not included for further consideration.
- 25.2 The Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial omissions in the First Stage Bid related to documentation requirements. Failure of the Bidder to comply with the request may result in the rejection of its Technical Proposal.
- 25.3 The Employer will carry out a detailed technical evaluation of the First Stage Bids not previously rejected as being non-responsive, in order to determine whether the technical aspects are in compliance with the Bidding Document, applying the criteria specified in Section III, Evaluation and Qualification Criteria. The Recommended Spare Parts, if any, proposed by the Bidder shall not be subject to evaluation.
- 25.4 The Employer will also review alternative Technical Proposals, if any, submitted by the Bidder, pursuant to ITB 13, to determine whether such alternatives may constitute an acceptable basis for a Second Stage Bid to be submitted on its own merits.
- 25.5 Should a manufacturer or subcontractor proposed for Section III, Evaluation and Qualification Criteria 1.1.3 be determined to be unacceptable, the Bid will not be rejected, but the Bidder will be required to substitute an acceptable manufacturer or subcontractor without any change to the Bid price through the Memorandum entitled “**Changes Required Pursuant to First Stage Evaluation**” that is issued together with the invitation to submit a Second-Stage Bid.

## **D. Clarification of First Stage Bids**

### **26. Clarification Procedures**

- 26.1 The Employer may conduct clarification meetings with each or any Bidder to clarify any aspects of its First Stage Bid that require explanation and to review any Bidder’s proposed alternative solutions, deviations and/or reservations to the commercial or contractual provisions of the Bidding Document. The Employer may also seek clarifications in writing.

- 26.2 The Employer may bring to the attention of the Bidder any amendments or changes which the Employer may require to be made to the First Stage Bid; however the Employer may not require amendments or changes at variance from the Employers' requirements unless the Employer intends to amend the Bidding Document in accordance with ITB 27.1(a).
- 26.3 The Employer will advise the Bidder of any deviations and/or reservations to the commercial or contractual provisions of the Bidding Document in the First Stage Bid, that are unacceptable and that are to be withdrawn in the Second Stage Bid.
- 26.4 The Employer will also advise the Bidder whether the proposed alternative Technical Proposal, if any, is acceptable, and will identify the degree (if any) to which such an alternative Technical Proposal may be incorporated in the Bidder's Second Stage Bid.
- 26.5 The Employer will issue a Memorandum titled "**Changes Required Pursuant to First Stage Evaluation,**" documenting the clarifications made in writing and/or in a meeting, if any, and including an Annex listing all decisions, and required amendments or changes resulting from the clarification of the First Stage Bid. The Memorandum will be communicated to the Bidder as part of the invitation to submit the Second Stage Bid.

**27. Invitation to  
Submit Second  
Stage Bids**

- 27.1 At the end of the clarification process pursuant to ITB 26 conducted as necessary:
- (a) the Employer may need to issue an amendment to the Bidding Document resulting from the First Stage evaluation and clarification process, with the objective of clarifying the requirements and improving competition without compromising essential project objectives and/or
  - (b) in regard to all Bidders, the Employer will either:
    - (i) invite the Bidder to submit a final updated technical and a commercial Second Stage Bid based on its First Stage Bid taking into account the Bidding Document, if and as amended, and any other modifications as recorded in the Memorandum entitled "**Changes Required Pursuant to First Stage Evaluation**". Bidders will be allowed to submit only one Second Stage Bid, or
    - (ii) notify the Bidder that its Bid has been rejected on the grounds of being non-responsive, or that the Bidder does not meet the minimum qualification

requirements set forth in the Bidding Document.

- 27.2 The deadline for submission of Second Stage Bids will be specified in the Invitation for Second Stage Bids, pursuant to ITB 36.1.
- 27.3 Bidders are not allowed to form JV (s) with other Bidders, nor change the member or structure of the JV if the Bidder in the First Stage was a JV.

## **E1. Second Stage Bid Preparation**

### **28. Documents Comprising the Second Stage Bid**

- 28.1 The Second Stage Bid shall comprise the following:
- (a) Letter of Second Stage Bid, in accordance with ITB 29;
  - (b) completed schedules in accordance with ITB 29.1 and 30, including completed Price Schedules and completed Schedule of Adjustment Data (if any required in accordance with ITB 30.7);
  - (c) Bid Security, in accordance with ITB 33;
  - (d) Power of Attorney authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 34.2 and ITB 34.4;
  - (e) the updated First Stage Bid, comprising any modifications required to the First Stage Bid as recorded in the Memorandum entitled **“Changes Required Pursuant to First Stage Evaluation”**;
  - (f) documentary evidence regarding any changes that may have occurred between the times of submitting the First Stage Bid and the Second Stage Bids that have any material effect on the Bidder’s eligibility and qualifications to perform the Contract if its Bid is accepted;
  - (g) documentary evidence establishing that any additional or varied Facilities to be supplied and installed by the Bidder, in accordance with the requirements of the Memorandum entitled **“Changes Required Pursuant to First Stage Evaluation”**, are technically acceptable.

The documentary evidence of the conformity of the Plant and Installation Services to the requirements of the Memorandum entitled **“Changes Required Pursuant to First Stage Evaluation”** may be in the form of literature, drawings and data. The functional guarantees of any additional or varied Plant and Installation Services shall be as stated in the applicable

form in Section IV, Bidding Forms;

- (h) If, as a result of complying with the Memorandum **“Changes Required Pursuant to First Stage Evaluation”**, the Bidder proposes to engage any subcontractors or manufacturers additional to or different from those named in its First Stage Bid for major items of the Plant as listed by the Employer in Section III, Evaluation and Qualification Criteria 1.1.3, which the Bidder intends to purchase or subcontract, the Bidder shall give details of the proposed subcontractors, including manufacturers, for each of those items. In addition, the Bidder shall include in its bid information establishing compliance with the requirements specified by the Employer for these items; and
- (i) any other documents **required in the BDS**.

**29. Letter of Second Stage Bid and Schedules**

29.1 The Bidder shall complete the Letter of Second Stage Bid and the Schedules, including the Price Schedule and the Schedule of Adjustment Data (only if required in ITB 30.7), using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.

**30. Bid Prices and Discounts**

30.1 The prices and discounts (including any price reduction) quoted by the Bidder in the Letter of Second Stage Bid and in the Price Schedule shall conform to the requirements specified below.

30.2 **Unless otherwise specified in the BDS**, Bidders shall quote for the entire Plant and Installation Services on a “single responsibility” basis such that the total Bid Price covers all the Contractor’s obligations mentioned in or to be reasonably inferred from the Bidding Document in respect of the design, manufacture, including procurement and subcontracting (if any), delivery, construction, installation and completion of the Plant. This includes all requirements under the Contractor’s responsibilities for testing, pre-commissioning and commissioning of the Plant; the operation, maintenance and training services and such other items and services as may be specified in the Bidding Document, all in accordance with the requirements of the General Conditions of Contract.

Items against which no price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed to be covered by the prices for other items.

30.3 The Bidder shall give a breakdown of the prices in the



manner and detail called for in the Price Schedules included in Section IV, Bidding Forms. In the Schedules, Bidders shall give the required details and a breakdown of their prices as follows:

- (a) Plant Supplied from Abroad (Schedule No. 1): The price of the Plant shall be quoted on CIP-named place of destination basis as **specified in the BDS**.
  - (b) Plant Supplied from Within the Employer's country (Schedule No. 2): The price of the Plant shall be quoted on an EXW Incoterm basis (such as "ex-works," "ex-factory" "ex-warehouse" or "off-the-shelf" as applicable), and includes sales tax and all other taxes payable in the Employer's country on the Plant , as of the Base Date, if the Contract is awarded to the Bidder.
  - (c) Design Services (Schedule No. 3).
  - (d) Installation and Other Services (Schedule No. 4) :The price shall be quoted separately and shall include rates or prices for local transportation to named place of final destination as **specified in the BDS**, insurance and other services incidental to delivery of the Plant, all labor, contractor's equipment, temporary works, materials, consumables and all matters and things of whatsoever nature, including operations and maintenance services, the provision of operations and maintenance manuals, training, etc., where identified in the bidding document, as necessary for the proper execution of the installation and other services, including all taxes, duties, levies and charges payable in the Employer's country as of the date twenty-eight (28) days prior to the deadline for submission of Second Stage Bids (the Base Date).
  - (e) Mandatory Spare Parts (Schedule No 5): The price shall be quoted separately specified in either subparagraph (a) or (b) above in accordance with the origin of the spare parts.
  - (f) Recommended Spare Parts (Schedule No. 6) : The price shall be quoted separately specified in either subparagraph (a) or (b) above in accordance with the origin of the spare parts.
- 30.4 The latest edition (as of the Base Date) of Incoterms, published by the International Chamber of Commerce shall govern.
- 30.5 The price to be quoted in the Letter of Second Stage Bid, in accordance with ITB 29.1, shall be the total price of the Bid, Absence of the total bid price in the Letter of Second Stage

Bid may result in the rejection of the Bid.

30.6 The Bidder shall quote any discounts and the methodology for their application in the Letter of Second Stage Bid, in accordance with ITB 29.1.

30.7 **Unless otherwise specified in the BDS** and the corresponding Appendix of the Contract Agreement and/or the Conditions of Contract, the rates and prices quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the relevant provisions of the Contract. In such a case, the Bidder shall furnish the indices and/or weightings for the price adjustment formulae in the Schedule of Adjustment Data and the Employer may require the Bidder to justify its proposed indices and weightings.

30.8 **If so specified in BDS 1.1**, Bids are being invited for multiple lots. The Bidders wishing to offer any discounts (including price reduction) for the award of more than one lot shall specify in their Letter of Second Stage Bid, discounts applicable to such award. Discounts shall be submitted in accordance with ITB 30.6, provided that the Bids for all lots are opened at the same time.

30.9 **Unless otherwise provided in the BDS**, all duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the Base Date, shall be included in the rates and prices and the total Bid Price submitted by the Bidder.

30.10 The exact amounts and currencies of the Specified Provisional Sums and the contingency allowance, if any, shall be indicated in the completed Price Schedule **as specified in the BDS**. The Bidder shall be aware of the provisions stated in Sub-Clause 39.4 of the Conditions of Contract.

### **31. Currencies of Bid and Payment**

31.1 The currency(ies) of the Bid shall be, as **specified in the BDS**. Payment of the Contract Price shall be made in the currency or currencies in which the Bid Price is expressed in the Bid of the successful Bidder.

31.2 The Bidder may be required by the Employer to justify, to the Employer's satisfaction, their local and foreign currency requirements and to substantiate that the amounts included in the unit rates and prices and shown in the Schedule of Adjustment Data are reasonable.

### **32. Period of Validity of Second Stage Bids**

32.1 Second Stage Bids shall remain valid for the period **specified in the BDS** after the Second Stage Bid submission deadline date prescribed by the Employer pursuant to ITB

36.1. A Bid valid for a shorter period shall be rejected by the Employer as non-responsive.

32.2 In exceptional circumstances, prior to the expiration of the validity period of the Second Stage Bid, the Employer may request the Bidders to extend the period of validity of their Second Stage Bids. The request and the responses shall be made in writing. The Bid Security shall also be extended for twenty-eight (28) days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its Bid, except as provided in ITB 32.3.

32.3 If the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial Bid validity, the Contract Price shall be determined as follows:

(a) In the case of fixed price Contracts, the Contract Price shall be the Bid Price adjusted by the factor **specified in the BDS**.

(b) In the case of adjustable price Contracts, no adjustment shall be made.

In any case, Bid evaluation shall be based on the Bid Price without taking into consideration the effect of the adjustment indicated above.

### 33. Bid Security

33.1 The Bidder shall furnish as part of its Second Stage Bid, a Bid Security in the amount and currency **specified in the BDS**.

33.2 The Bid Security shall be a demand guarantee in any of the following forms at the Bidder's option:

(a) an unconditional guarantee issued by a bank or non-bank financial institution (such as an insurance, bonding or surety company);

(b) an irrevocable standby letter of credit;

(c) a cashier's or certified check; or

(d) another security **specified in the BDS**,

from a reputable source. If the unconditional guarantee is issued by a non-bank financial institution located outside the Employer's country, the issuing financing institution shall have a correspondent financial institution located in the Employer's country to make it enforceable. In the case of a bank guarantee, the Bid Security shall be submitted either using the Bid Security Form included in Section IV, Bidding Forms or in another substantially similar format

approved by the Employer prior to Bid submission. In either case, the form must include the complete name of the Bidder. The Bid Security shall be valid for twenty-eight (28) days beyond the original validity period of the Second Stage Bid, or beyond any period of extension if requested under ITB 32.2.

- 33.3 Any Bid not accompanied by a substantially responsive Bid Security shall be rejected by the Employer as non-responsive.
- 33.4 The Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's signing of the Contract and furnishing of the Performance Security pursuant to ITB 54.
- 33.5 The Bid Security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required Performance Security.
- 33.6 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 Letter of Second Stage Bid, or any extension thereto provided by the Bidder; or
  - (b) if the successful Bidder fails to:
    - (i) sign the Contract in accordance with ITB 53; or
    - (ii) furnish a Performance Security in accordance with ITB 54.
- 33.7 The Bid Security of a JV shall be in the name of the JV that submits the Bid. If the JV has not been legally constituted into a legally enforceable JV at the time of Second Stage Bidding, the Bid Security shall be in the names of all future members as named in the letter of intent referred to in ITB 4.1.

**34. Format and  
Signing of Second  
Stage Bid**

- 34.1 The Bidder shall prepare one original of the Second Stage Bid comprising the documents as described in ITB 28 and clearly mark it "SECOND STAGE BID - ORIGINAL".

In addition, the Bidder shall submit copies of the Second Stage Bid, in the number **specified in the BDS** and clearly mark each of them "SECOND STAGE BID - COPY". In the event of any discrepancy between the original and the copies, the original shall prevail.

- 34.2 The original of the Second Stage 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 be in the form of a Power of Attorney included in the Second Stage Bid. All pages of the Second Stage Bid where entries or amendments have been made shall be signed or initialed by the person signing the Second Stage Bid.

- 34.3 A bid submitted by a JV shall be signed by an authorized representative of the JV accompanied by a Power of Attorney from each member of the JV giving that authorized representative the power to sign on their behalf and legally bind them all. Such power shall also be given by a person duly authorized to do so on behalf of each member evidenced by a Power of Attorney.
- 34.4 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Second Stage Bid.
- 34.5 The Bidder shall clearly mark "CONFIDENTIAL" any information which they regard as confidential to their business. Such information may include proprietary information, trade secrets, or commercial or financially sensitive information.

## **E2. Second Stage Bids: Submission and Opening**

### **35. Sealing and Marking of Second Stage Bids**

- 35.1 The bidder shall enclose:
- (a) in a sealed envelope, duly marked as "SECOND STAGE BID - ORIGINAL" all documents comprising the Second Stage Bid, as described in ITB 28.1; and
  - (b) in sealed envelopes, duly marked as "SECOND STAGE BID - COPY", all required copies of the Second Stage Bid, sequentially numbered

These envelopes (inner envelopes) containing the original and the copies shall then be enclosed in one single envelope (outer envelope).

- 35.2 The inner and outer envelopes shall be:
- (a) clearly marked with the name and address of the Bidder;
  - (b) addressed to the Employer in accordance with ITB 36.1;
  - (c) clearly marked with the specific identification of this bidding process **specified in BDS 1.1**; and
  - (d) clearly marked with a warning "NOT TO BE OPENED BEFORE THE TIME AND DATE FOR THE OPENING OF THE

SECOND STAGE BID” in accordance with ITB 39.1.

- 35.3 If all envelopes are not sealed and marked as required, the Employer will assume no responsibility for the misplacement or premature opening of the Second Stage Bid.
- 36. Deadline for Submission of Second Stage Bids**
- 36.1 Second Stage Bids must be received by the Employer at the address and no later than the date and time specified in the Letter of Invitation for Second Stage Bids.
- 36.2 The Employer may, at its discretion, extend the deadline for the submission of Second Stage Bids by amending the Bidding Document in accordance with ITB 8, in which case all rights and obligations of the Employer and the Bidders subject to the previous deadline shall thereafter be subject to the deadline as extended.
- 37. Late Bids**
- 37.1 The Employer shall not consider any Second Stage Bid that arrives after the deadline for submission of Second Stage Bids, in accordance with ITB 36. Any Bid received by the Employer after the deadline for submission of Second Stage Bids shall be declared late, rejected, and returned unopened to the Bidder.
- 38. Withdrawal, Substitution, and Modification of Second Stage Bids**
- 38.1 A Bidder may withdraw, substitute, or modify its Second Stage Bid after it has been submitted and prior to the deadline for submission of the Second Stage Bids by sending a written notice, duly signed by an authorized representative, and shall include a copy of the Power of Attorney in accordance with ITB 34.2 and ITB 34.3. The corresponding substitution or modification of the Second Stage Bid must accompany the respective written notice. All notices must be:
- (a) prepared and submitted in accordance with ITB 34 and ITB 35 (except that withdrawals notices do not require copies), and in addition, the respective outer envelopes shall be clearly marked “SECOND STAGE BID - WITHDRAWAL,” “SECOND STAGE BID - SUBSTITUTION,” “SECOND STAGE BID - MODIFICATION;” and
  - (b) received by the Employer prior to the deadline prescribed for submission of Second Stage Bids, in accordance with ITB 36.
- 38.2 Bids requested to be withdrawn in accordance with ITB 38.1 shall be returned unopened to the Bidders.
- 38.3 No Bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of Second Stage Bids and the expiration of the period of Bid validity specified by the Bidder on the Letter of Second Stage Bid or

any extension thereof.

### **39. Second Stage Bid Opening**

- 39.1 Except in the cases specified in ITB 37 and ITB 38, the Employer shall publicly open and read out in accordance with ITB 39.5 all Second Stage Bids received by the deadline, at the date, time and place specified in the Letter of Invitation for Second Stage Bids, in the presence of the Bidders' designated representatives and anyone who choose to attend.
- 39.2 First, envelopes marked "SECOND STAGE BID - WITHDRAWAL" shall be opened and read out and the envelope with the corresponding Bid shall not be opened, but returned to the Bidder. No Bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at the opening of Second Stage Bids.
- 39.3 Second, outer envelopes marked "SECOND STAGE BID - SUBSTITUTION" shall be opened. The inner envelopes containing the Substitution Second Stage Bid shall be exchanged for the corresponding envelopes being substituted, which are to be returned to the Bidder unopened. Only the Substitution Second Stage Bid, if any, shall be opened and read out. No envelope substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at the opening of the Second Stage Bids.
- 39.4 Next, outer envelopes marked "SECOND STAGE BID - MODIFICATION" shall be opened. No Second Stage Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at the opening of Second Stage Bids. Only the Second Stage Bids, both Original as well as Modification, are to be opened and read out at the opening.
- 39.5 Next, all other envelopes holding the Second Stage Bids shall be opened one at a time, reading out:
- (a) the name of the Bidder;
  - (b) whether there is a withdrawal, substitution, or modification;
  - (c) the total Bid Price including any discounts, and in the case of bidding for multiple lots, the total price for each lot together with the sum of the total price for all lots including any discounts;
  - (d) the presence or absence of the Bid Security; and

- (e) any other details as the Employer may consider appropriate.

Only Bids and Bid discounts read out and recorded at Second Stage Bid opening shall be considered for evaluation. The Employer shall neither discuss the merit of any Bid nor reject any Bid at Second Stage Bid opening except for late Bids, in accordance with ITB 37.1.

39.6 The Employer shall prepare a record of the opening of Second Stage Bids that shall include, as a minimum:

- (a) the name of the Bidder;
- (b) whether there is a withdrawal, substitution, or modification;
- (c) the total Bid Price including any discounts, and in the case of bidding for multiple lots, the total price for each lot together with the sum of the total price for all lots including any discounts; and
- (d) the presence or absence of a Bid Security.

The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders who submitted Second Stage Bids in time, and to JICA.

### **E3. Second Stage Bids: Evaluation and Comparison**

#### **40. Clarification of Second Stage Bids**

40.1 To assist in the examination, evaluation, and comparison of the Second Stage Bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its Bid, giving a reasonable time for a response. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer's request for clarification and the response shall be in writing. No change in the price or substance of the Second Stage Bid including any voluntary increase or decrease in the prices, shall be sought, offered, or permitted, except to confirm the correction of arithmetical errors discovered by the Employer in the evaluation of the Bids, in accordance with ITB 46.

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

#### **41. Deviations, Reservations, and**

41.1 During the evaluation of Second Stage Bids, the following



- Omissions** definitions apply:
- (a) “Deviation” is a departure from the requirements specified in the Bidding Document;
  - (b) “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and
  - (c) “Omission” is the failure to submit part or all of the information or documentation required in the Bidding Document.
- 42. Preliminary Examination of Second Stage Bids**
- 42.1 The Employer shall examine Second Stage Bids to confirm that all documents and information requested in ITB 28.1 have been provided, and to determine the completeness of each document submitted.
- 42.2 The Employer shall confirm that the following documents and information have been provided in the Second Stage Bid. If any of these documents or information is missing, the Bid shall be rejected.
- (a) Letter of Second Stage Bid;
  - (b) Power of Attorney to commit the Bidder;
  - (c) Bid Security;
  - (d) the updated First Stage Bid; and
  - (e) Price Schedules.
- 43. Qualification of the Bidders**
- 43.1 The Employer shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive Bid still meets the qualification criteria specified in Section III, Evaluation and Qualification Criteria.
- 43.2 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the Bid, in which event the Employer shall proceed to the next lowest evaluated Bid to make a similar determination of that Bidder’s qualifications.
- 43.3 The subcontractors proposed by the Bidder in its Bid shall meet the eligibility requirements of ITB 4.
- 44. Determination of Responsiveness of Second Stage Bids**
- 44.1 The Employer’s determination of a Second Stage Bid’s responsiveness is to be based on the contents of the Second Stage Bid itself, as defined in ITB 28.1.
- 44.2 For purposes of this determination, a substantially

responsive Second Stage Bid is one that meets the requirements of the Bidding Document and has properly incorporated all modifications listed in the Memorandum entitled “**Changes Required Pursuant to First Stage Evaluation**”, without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,

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

44.3 The Employer shall carry out a technical evaluation of the Second Stage Bids not previously rejected as being substantially non-responsive, in order to determine whether the technical aspects concerning the modifications to the technically acceptable Bid detailed in the Memorandum entitled “**Changes Required Pursuant to First Stage Evaluation**”, pursuant to ITB 26.5, have been properly addressed and are substantially responsive to the requirements set forth in the Bidding Document. The Recommended Spare Parts, if any, proposed by the Bidder shall not be subject to evaluation.

44.4 The capabilities of additional or different manufacturers or subcontractor proposed in its Bid in compliance with the Memorandum “**Change Required Pursuant to First Stage Evaluation**” will also be evaluated for acceptability in accordance with Section III, Evaluation and Qualification Criteria 1.1.3. Should any such additional or different manufacturers or subcontractor determined to be unacceptable, the Bid will not be rejected, but the Bidder will be required to substitute an acceptable manufacturer or subcontractor without any change to the Bid price. Prior to issuing the Letter of Acceptance, the corresponding Schedule to the Contract Agreement shall be completed, listing the approved manufacturers or subcontractors for each item concerned.

44.5 If a Second Stage Bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Employer and may not subsequently be made

responsive by correction of the material deviation, reservation, or omission.

**45. Nonmaterial  
Nonconformities**

45.1 Provided that a Second Stage Bid is substantially responsive, the Employer may waive any nonconformities (deviation, reservation or omission) in the Second Stage Bid.

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

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

**46. Correction of  
Arithmetical  
Errors**

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

- (a) where there are errors between the total of the amounts given under the column for the price breakdown and the amount given under the Total Price, the total of the amounts given under the column for the price breakdown shall prevail and the amount given under the Total Price will be corrected;
- (b) where there are errors between the total of the amounts of Schedule Nos. 1 to 5 and the amount given in the Grand Summary, the total of the amounts of Schedule Nos. 1 to 5 shall prevail and the amount given in the Grand Summary will be corrected; and
- (c) where there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetical error, in which case the amount in figures shall prevail subject to (a) and (b) above.

46.2 The Bidder shall be requested to accept correction of arithmetical errors. Failure to accept the correction in accordance with ITB 46.1, shall result in the rejection of the Bid.

**47. Conversion to Single Currency**

47.1 For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted into a single currency as **specified in the BDS**. The Employer will convert the amounts in various currencies in which the Bid Price, corrected pursuant to ITB 46, is denominated to the single currency identified above at the selling rates established for similar transactions by the authority **specified in the BDS** and on the date **stipulated in the BDS**.

**48. Financial Evaluation of Second Stage Bids**

48.1 To evaluate a Second Stage Bid, the Employer shall consider the following:

- (a) the Bid Price, excluding the Specified Provisional Sums and contingency allowance, if any in the Grand Summary of the Price Schedules;
- (b) price adjustment for correction of arithmetical errors in accordance with ITB 46.1;
- (c) price adjustment due to discounts offered in accordance with ITB 30.6;
- (d) the additional evaluation factors indicated in Section III, Evaluation and Qualification Criteria
- (e) price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 45.3; and
- (f) converting the amount resulting from applying (a) to (e) above, if relevant, to a single currency in accordance with ITB 47.1.

The price for the Recommended Spare Parts if any, stated in the Price Schedule shall not be subject to evaluation.

48.2 If price adjustment is allowed in accordance with ITB 30.7, the estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in Bid evaluation.

48.3 In the case of bidding for multiple lots, the lowest evaluated price of the lot(s) shall be determined as specified in Section III, Evaluation and Qualification Criteria.

**49. Comparison of Bids**

49.1 The Employer shall compare the evaluated prices of all substantially responsive Second Stage Bids in accordance with ITB 48.1 to determine the lowest evaluated Bid.

49.2 If the Bid, which results in the lowest evaluated Bid Price, is seriously unbalanced or front loaded in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analyses for any or all items of the Price Schedules, to demonstrate the internal consistency of those prices with the scope of Plant Design, Supply and Installations, proposed methodology, schedule and any other requirements of the Bidding Document. After evaluation of the price analyses, taking into consideration the terms of payments, the Employer may require that the amount of the Performance Security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.

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

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

For the purpose of this ITB 49.3, an abnormally low Bid is one where the Bid price, in combination with other elements of the Bid, appears so low that it raises material concerns as to the capability of the Bidder to perform the Contract for the offered Bid Price.

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

50.1 The Employer reserves the right to accept or reject any Bid, and to annul the bidding process and reject all Bids at any time prior to Contract award, without thereby incurring any liability to Bidders. In case of annulment, all Bids submitted and specifically, Bid Securities, shall be promptly returned to the Bidders.

**F. Award of Contract**

**51. Award Criteria**

51.1 Subject to ITB 50.1, the Employer shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated Bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

**52. Notification of**

52.1 Prior to the expiration of the period of Bid validity, the

**Award**

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

52.2 After a Contract has been determined to be eligible for financing under Japanese ODA Loans, the following information may be made public by JICA:

- (a) name of each Bidder who submitted a Bid;
- (b) Bid Prices as read out at Bid opening;
- (c) name and address of the successful Bidder; and
- (d) signing date and amount of the Contract.

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

**53. Signing of Contract**

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

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

**54. Performance Security**

54.1 Within twenty-eight (28) days of the receipt of the Letter of Acceptance from the Employer, the successful Bidder shall furnish the Performance Security in accordance with the Conditions of Contract, subject to ITB 49.2, using for that purpose the Performance Security Form included in Section IX, Contract Forms, or another form acceptable to the Employer. If the Performance Security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Bidder to be acceptable to the Employer. A foreign institution providing a bond shall have a correspondent financial institution located in the Employer's country.

54.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security. In that event the Employer may award the Contract to the next lowest evaluated Bidder whose Bid is substantially responsive and is determined by the Employer to be qualified to perform the

Contract satisfactorily.

**55. Notification to  
Unsuccessful  
Bidders and  
Debriefing**

- 55.1 As promptly as possible upon the successful Bidder's signing the Contract and furnishing the Performance Security pursuant to ITB 54, the Employer shall notify all unsuccessful Bidders of the results of the bidding.
- 55.2 After receipt of the Employer's notification pursuant to ITB 55.1 above, unsuccessful Bidders (including those rejected on the grounds of their First Stage Bid not being substantially responsive) may request in writing to the Employer a debriefing seeking an explanation on the grounds on which their Bids were not selected. The Employer shall promptly respond in writing to any unsuccessful Bidder who requests a debriefing in accordance with this Clause.





## Section II. Bid Data Sheet

### Notes for the Employer

Section II, Bid Data Sheet, shall be filled in by the Employer before issuance of the Bidding Document.

The Bid Data Sheet (BDS) contains information and provisions that are specific to each procurement and that supplement Section I, Instructions to Bidders. The Employer must specify in the BDS only the information that the ITB requires to be specified in the BDS. All information shall be provided; **no clause shall be left blank.**

To facilitate the preparation of the BDS, its clauses are numbered with the same numbers as the corresponding ITB clauses.

The following directions should be observed when filling the BDS:

- (a) Specific details, such as the name of the Employer and the address for Bid submission should be furnished in the spaces indicated by italicized notes inside brackets.
- (b) The italicized notes are not part of the actual BDS, but contain guidelines and instructions for the Employer. They shall be deleted from the actual Bidding Document to be issued to the Bidders.
- (c) Where alternative Clauses or texts are shown, select those which best suit the particular contracts and delete the alternative text which is not used.



## Bid Data Sheet

<b>A. General</b>									
<b>ITB 1.1</b>	<p>The number of the Invitation for Bids is: <i>[insert Invitation for Bids number]</i></p> <p>The Employer is: <i>[insert name of Employer]</i> located in <i>[insert name of country of Employer/ Borrower]</i>.</p> <p>The Project is: <i>[insert name of Project]</i></p> <p>The name of the Contract is: <i>[insert name of Contract]</i></p> <p>The multiple lots of the Project for which the Bids are being invited are: <i>[If the Bids are being invited for multiple lots of the Project, insert “as indicated in the table below” and list out the relevant lot numbers and contract names in the table. Otherwise delete the table entirely and insert “not applicable”.]</i></p> <table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse; text-align: center;"> <thead> <tr> <th style="padding: 2px 10px;">Lot Number</th> <th style="padding: 2px 10px;">Contract Name</th> </tr> </thead> <tbody> <tr> <td style="padding: 2px 10px;"><i>[insert lot number]</i></td> <td style="padding: 2px 10px;"><i>[insert contract name]</i></td> </tr> <tr> <td style="padding: 2px 10px;"><i>[insert lot number]</i></td> <td style="padding: 2px 10px;"><i>[insert contract name]</i></td> </tr> <tr> <td style="padding: 2px 10px;"><i>[insert lot number]</i></td> <td style="padding: 2px 10px;"><i>[insert contract name]</i></td> </tr> </tbody> </table>	Lot Number	Contract Name	<i>[insert lot number]</i>	<i>[insert contract name]</i>	<i>[insert lot number]</i>	<i>[insert contract name]</i>	<i>[insert lot number]</i>	<i>[insert contract name]</i>
Lot Number	Contract Name								
<i>[insert lot number]</i>	<i>[insert contract name]</i>								
<i>[insert lot number]</i>	<i>[insert contract name]</i>								
<i>[insert lot number]</i>	<i>[insert contract name]</i>								
<b>ITB 2.1</b>	<p>The Borrower is: <i>[insert name of Borrower]</i></p> <p>The number of the JICA Loan Agreement is: <i>[insert JICA Loan Agreement number]</i></p> <p>The amount of a Japanese ODA Loan is: <i>[insert amount in Japanese Yen]</i></p> <p>The signed date of the Loan Agreement is: <i>[insert signed date of the Loan Agreement]</i></p>								
<b>ITB 2.2</b>	<p>The applicable Guidelines for Procurement under Japanese ODA Loans are those published in: <i>[insert one of the following: October 2023, April 2012, March 2009, or October 1999]</i></p>								
<b>ITB 2.3</b>	<p>The other sources of finance are: <i>[insert other sources of finance]</i></p>								
<b>ITB 3.1(b)</b>	<p>The list of ineligible firms and individuals is available at the JICA’s <a href="http://www.jica.go.jp/english/about/organization/corp_gov/index.html">www.jica.go.jp/english/about/organization/corp_gov/index.html</a></p>								
<b>ITB 3.1(c)</b>	<p>The list of debarred firms and individuals is available at the World Bank’s website: <a href="http://www.worldbank.org/debarr">www.worldbank.org/debarr</a></p>								

<b>ITB 4.5</b>	This bidding [ <i>select “is” or “is not”, as appropriate</i> ] subject to prequalification.
<b>B. Contents of Bidding Document</b>	
<b>ITB 7.1</b>	<p>For <b>clarification purposes</b> only, the Employer’s address is:  Attention: [<i>insert full name of person, if applicable</i>]  Mailing Address: [<i>insert mailing address</i>]  Email: [<i>insert email address(es), if applicable</i>]  Responses to any request for clarification, if any, [<i>select “will” or “will not”, as appropriate</i>] be published on the Employer’s web page indicated below.  Web Page: [<i>insert the Employer’s web page if responses to requests for clarifications will be published on the Employer’s web page. Otherwise insert “N/A”.</i>]</p>
<b>ITB 7.4</b>	<p>A pre-bid meeting [<i>insert “will” or “will not” as appropriate</i>] take place at the following date, time and place:  [<i>If a pre-bid meeting will take place, insert the date, time and place information in the spaces provided below. Otherwise insert “N/A” in each space provided below for the date, time and place.</i>]  Date : _____  Time : _____  Place : _____  A site visit at the time of the pre-bid meeting conducted by the Employer [<i>insert “will be” or “will not be”, as appropriate</i>] organized.</p>
<b>ITB 8.2</b>	Addenda, if any, [ <i>select “will” or “will not”, as appropriate</i> ] be published on the Employer’s web page.
<b>ITB 10.1</b>	The language of the Bid is: [ <i>insert one of the following: “Japanese”, “English”, “Spanish” or “French”</i> ]
<b>C1. First Stage Bids: Preparation</b>	
<b>ITB 11.1(i)</b>	<p>The Bidder shall submit the following additional documents in its First Stage Bid:  [<i>List any additional documents not already listed in ITB 11.1 that must be submitted with the First Stage Bid. If there is no additional document to be submitted, state “none.”.</i>]</p>
<b>ITB 14.2(b)</b>	The period after the Operational Acceptance, for the Bidders to propose spare parts (i.e. Mandatory Spare Parts and Recommended Spare Parts (if required)), special tools, etc: [ <i>insert number of years as appropriate,</i>

	<i>normally two (2) years</i> ].
<b>ITB 16.1</b>	In addition to the original of the First Stage Bid, the number of copies is: [ <i>insert number of copies</i> ]
<b>C2. First Stage Bids: Submission and Opening</b>	
<b>ITB 18.1</b>	For <b><u>First Stage Bid submission purposes</u></b> only, the Employer's address is: Attention: [ <i>insert full name of person, if applicable</i> ] Mailing Address: [ <i>insert mailing address</i> ]  <b>The deadline for First Stage Bid submission is:</b> Date: [ <i>insert day, month, and year, e.g., 15 June, 2018</i> ] Time: [ <i>insert time, and identify if a.m. or p.m. e.g., 10:30 a.m.</i> ]
<b>ITB 21.1</b>	The First Stage Bid opening shall take place at:  Mailing Address: [ <i>insert street address</i> ] Date: [ <i>insert day, month, and year, e.g., 15 June, 2018</i> ] Time: [ <i>insert time, and identify if a.m. or p.m. e.g., 10:30 a.m.</i> ] [ <i>The date should be the same as those given for the deadline for submission of Bids (ITB 18).</i> ]
<b>E1. Second Stage Bid Preparation</b>	
<b>ITB 28.1(i)</b>	The Bidder shall submit the following additional documents with its Second Stage Bid: [ <i>List any additional document not already listed in ITB 28.1 that must be submitted with the Second Stage Bid. If there is no additional document to be submitted, state "none".</i> ]
<b>ITB 30.2</b>	[ <i>use one of the following options as appropriate.</i> ] Bidders shall quote for the entire Plant and Installation Services on a single responsibility basis. [ <i>or</i> ] Bidders shall quote for the following components or services on a single responsibility basis: [ <i>insert list of components or services</i> ] [ <i>and/or</i> ] The following components or services will be provided under the

	responsibility of the Employer: <i>[insert list of components or services]</i>
<b>ITB 30.3 (a) and (d)</b>	Place of destination: <i>[insert named place of destination as per Incoterm used]</i> Final destination(Project site): <i>[insert final destination, if different from named place of destination]</i>
<b>ITB 30.7</b>	The prices quoted by the Bidder shall: <i>[insert “be adjustable” or “not to be adjustable; consequently, the Bidder is not required to furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data”, as appropriate.]</i>  <i>[Price adjustment is recommended for contracts with longer duration than 18 months or when local or foreign inflation is expected to be high.]</i>
<b>ITB 30.9</b>	<i>[This ITB 30.9 shall be consistent with Sub-Clause 14.1 of the Conditions of Contract.]</i>  In accordance with Sub-Clause 14.2 of the Conditions of Contract, the Plant specified in Price Schedule No.1 shall be exempted from the payment of import duties and taxes upon importation.  <i>[The Employer shall choose (a) and/or (b) of the following paragraph, as applicable and complete subparagraphs, indicating clearly that which taxes, duties and levies are exempted and the relevant exemption categories (as described below), in accordance with the Exchange Notes between the Employer’s country and the Government of Japan, and under the law of the Employer’s country. If none is applicable, delete the following paragraph in its entirety.]</i>  With regard to the Contractor’s liabilities as to duties, taxes and levies, the following shall apply:  (a) duties, taxes and levies listed in the table below shall be exempted. Such exempted duties, taxes and levies are fallen into two categories, namely:  (i) “No Pay” category: The Contractor shall be entitled to exemption from duties, taxes and levies falling into this category, without having to make any payment arising from or out of or in connection with such liabilities.  (ii) “Pay & Reimburse” category: The Contractor shall be entitled to

	<p>exemption from duties, taxes and levies, falling into this category, provided that the first makes all payments arising from or out of or in connection with such liabilities and then apply for their reimbursement from the relevant authority, following the procedure prescribed by such authority.</p> <table border="1" data-bbox="522 420 1422 720"> <thead> <tr> <th>No.</th> <th>Duty/ Tax/ Levy</th> <th>Exemption Category</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>[insert duty/ tax/ levy]</td> <td>[indicate whether "No Pay" or "Pay &amp; Reimburse"]</td> </tr> <tr> <td>2</td> <td>[insert duty/ tax/ levy]</td> <td>[indicate whether "No Pay" or "Pay &amp; Reimburse"]</td> </tr> <tr> <td>3</td> <td>[insert duty/ tax/ levy]</td> <td>[indicate whether "No Pay" or "Pay &amp; Reimburse"]</td> </tr> <tr> <td>etc.</td> <td></td> <td></td> </tr> </tbody> </table> <p>(b) duties, taxes and other levies listed below shall be paid by the Employer on behalf of the Contractor: [insert list of duties, taxes and levies]</p>	No.	Duty/ Tax/ Levy	Exemption Category	1	[insert duty/ tax/ levy]	[indicate whether "No Pay" or "Pay & Reimburse"]	2	[insert duty/ tax/ levy]	[indicate whether "No Pay" or "Pay & Reimburse"]	3	[insert duty/ tax/ levy]	[indicate whether "No Pay" or "Pay & Reimburse"]	etc.													
No.	Duty/ Tax/ Levy	Exemption Category																									
1	[insert duty/ tax/ levy]	[indicate whether "No Pay" or "Pay & Reimburse"]																									
2	[insert duty/ tax/ levy]	[indicate whether "No Pay" or "Pay & Reimburse"]																									
3	[insert duty/ tax/ levy]	[indicate whether "No Pay" or "Pay & Reimburse"]																									
etc.																											
<p><b>ITB 30.10</b></p>	<p>[There are the Specified Provisional Sums and contingency allowance.] The Amounts and Currencies of the Specified Provisional Sums shall be as follows: [The Employer shall fill in the table below, Item No, Description, and Local and Foreign currency portions of the Amount for each Provisional Sum as indicated in the Schedule of Specified Provisional Sums in the Price Schedule.]</p> <table border="1" data-bbox="467 1188 1416 1455"> <thead> <tr> <th rowspan="2">Item No.</th> <th rowspan="2">Description</th> <th colspan="2">Amount</th> </tr> <tr> <th>Local</th> <th>Foreign</th> </tr> </thead> <tbody> <tr> <td>1</td> <td></td> <td></td> <td></td> </tr> <tr> <td>2</td> <td></td> <td></td> <td></td> </tr> <tr> <td>3</td> <td></td> <td></td> <td></td> </tr> <tr> <td>etc.</td> <td></td> <td></td> <td></td> </tr> <tr> <td colspan="2">Total - Specified Provisional Sums</td> <td></td> <td></td> </tr> </tbody> </table> <p>[Contingency allowance shall be usually calculated by multiplication of the predetermined percentage (to be indicated by the Employer in the Bidding Document) and the base cost (Total of the Schedules plus Provisional Sums, to be derived by the Bidder in its Second Stage Bid). As an alternative to this percentage addition, a fixed amount can be predetermined by the Employer, based on the estimated contract value, and inserted as a figure (common to each Bidder) in the Bidding Document.</p> <p>The Employer, as per the guidance given above, may choose, either Option</p>	Item No.	Description	Amount		Local	Foreign	1				2				3				etc.				Total - Specified Provisional Sums			
Item No.	Description			Amount																							
		Local	Foreign																								
1																											
2																											
3																											
etc.																											
Total - Specified Provisional Sums																											

	<p><i>A (i.e.: to insert a determined percentage) or Option B (i.e.: to insert a fixed amount) below, as appropriate, and delete the other.</i></p> <p><i>So as to make Item (D) (i.e.: Add contingency allowance) of the Grand Summary of the Price Schedule consistent with this ITB provision: if Option A is chosen, indicate the relevant percentage in the item description, and if Option B is chosen, insert the relevant local and foreign currency portions of the Amount in the respective 'Amount' columns.]</i></p> <p>Contingency allowance shall be as follows:  <i>[choose one of the following options, as applicable and delete the other.]</i></p> <p><i>[Option A]</i>  <i>[insert the applicable percentage]</i> of the Bid Price in the currency or currencies in which the Bid Price is expressed in the Bid submitted by the Bidder.</p> <p><i>[Option B]</i>  <i>[insert the applicable fixed amount in the applicable currency or currencies]</i>  <i>[If there are no amount allocated in Specified Provisional Sums or contingency allowance in the Price Schedule, delete all above and state "This BDS 30.10 is not applicable.".]</i></p>
<b>ITB 31.1</b>	<p>The currency(ies) of the Bid shall be as described below:</p> <p>(a) the inputs to the Plant and Installation Services that the Bidder expects to supply from within the Employer's country shall be quoted in <i>[insert the name of the currency of the Employer's country]</i>, referred to as "the local currency", to <i>[insert number of decimal places]</i> decimal place(s); and</p> <p>(b) the inputs to the Plant and Installation Services that the Bidder expects to supply from outside the Employer's country (referred to as "the foreign currency requirements"), shall be quoted in:</p> <p>(i) Japanese Yen (JPY), with no decimal places; and/or</p> <p>(ii) <i>[Other international trading currency or currencies, if any]</i> to <i>[insert number of decimal places]</i> decimal place(s).</p>



<b>ITB 32.1</b>	<p>The Second Stage Bid validity period shall be: <i>[insert number of days required for evaluation, approval and award plus contingency]</i> days.</p> <p><i>[This period should be realistic, allowing sufficient time to evaluate the Bids, bearing in mind the complexity of the Facilities and the time required for obtaining references, clarifications, clearances, and approvals (including the JICA's concurrence) and for notification of the award. Normally the validity period should not exceed 120 days.]</i></p>
<b>ITB 32.3(a)</b>	<p><i>[Insert the following only in case of fixed price contract. Delete it in its entirety in case of adjustable price contracts, and state "This BDS 32.3(a) is not applicable.".]</i></p> <p>The local and foreign currency portions of the Contract price shall be adjusted by using the following formula:</p> $BP_A = BP_0 \left( 1 + \frac{DP \times AF}{365} \right)$ <p>Where:</p> <p>"BP<sub>A</sub>" is the local (or foreign) portion of Bid Price as adjusted for the delay in award of the Contract.</p> <p>"BP<sub>0</sub>" is the local (or foreign) portion of Bid Price as stated in the Letter of Bid.</p> <p>"DP" is the period of delay, calculated as a number of days between the award date and the date, fifty-six (56) days after the expiry date of the initial bid validity period</p> <p>"AF" is:</p> <p>(a) in case of local currency, the average annual consumer inflation of the Employer's country, calculated from the data officially released by the relevant authority of the Employer's country, responsible for release of such data, considering the period of past three (3) years from the date, one (1) month prior to the award date.</p> <p>(b) in case of foreign currency, the average annual consumer inflation of the country of the foreign currency, calculated from the data officially released by the relevant authority of that country, responsible for release of such data, considering the period of past three (3) years from the date, one (1) month prior to the award date.</p>
<b>ITB 33.1</b>	<p>The amount and currency of the Bid Security shall be: <i>[insert amount and currency of the Bid Security. The amount should be between 1.5% to 2.5 % of the estimated contract value.]</i></p>
<b>ITB 33.2(d)</b>	<p>Other types of acceptable securities: <i>[insert names of other acceptable</i></p>

	<i>securities. Insert “none” if no other forms of Bid Securities besides those listed in ITB 33.2 (a) through (c) are acceptable.]</i>
<b>ITB 34.1</b>	In addition to the original of the Second Stage Bid, the number of copies is: <i>[insert number of copies]</i> .
<b>E3. Second Stage Bids: Evaluation and Comparison</b>	
<b>ITB 47.1</b>	<p>The currency that shall be used for Bid evaluation and comparison purposes to convert all Bid Prices expressed in various currencies into a single currency is: <i>[insert Japanese Yen or another single currency]</i></p> <p>The source of exchange rate shall be: <i>[insert name of the source of exchange rates (e.g., the Central Bank in the Employer’s country)]</i></p> <p>The date for the exchange rate shall be: <i>[insert day, month and year, e.g., 15 June, 2018), a date not earlier than thirty 30 days prior to, nor later than, the date for Second Stage Bid opening specified in ITB 39.1].</i></p>

## **Section III. Evaluation and Qualification Criteria (Option I: Following Prequalification)**

### **Notes for the Employer**

This Section specifies the criteria to determine the lowest evaluated Bid and the qualifications of the Bidder to perform the Contract . No other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms.

The notes entitled “*Notes for the Employer*”, “boxed” notes and italicized notes are not part of the actual Evaluation and Qualification Criteria, but contain guidelines and instructions for the Employer. They shall be deleted from the actual Bidding Document to be issued to the Bidders.

The “*Notes for the Bidders*” contained in this Section III should be included in the actual Bidding Document to be issued to the Bidder.



# **Evaluation and Qualification Criteria (Following Prequalification)**

## **First Stage Bids**

### **1 Evaluation**

#### **1.1 Evaluation of Technical Bid**

The evaluation of the First Stage Bids consists of the following:

- (a) assessment of the qualification of the Bidder to perform the Contract satisfactorily in accordance with ITB 24. The qualification criteria for the purpose of this assessment have been described in detail under item 2 (*Qualification*) below.
- (b) determination of the substantial responsiveness of the First Stage Bid in accordance with ITB 25. The evaluation criteria for the purpose of this determination have been described hereinunder.

Determination of the substantial responsiveness of the First Stage Bid includes, among other things, an assessment of the adequacy of the Bidder's Technical Proposal, during which the Bidder's technical capacity to complete the Facilities will be assessed in terms of the following. Based on such assessment, the Employer will determine whether the Technical Proposal is substantially responsive to the requirements stipulated in Section VI, Employer's Requirements.

- (i) overall completeness and compliance with the Employer's Requirements.
- (ii) conformity of the Plant and Installation Services offered with specified performance criteria, including conformity with the specified minimum (or maximum, as the case may be) acceptable levels corresponding to each functional guarantee, as indicated in the Employer's Requirements and in this Section.
- (iii) suitability of the Plant and Installation Services offered in relation to the environmental and climatic conditions prevailing at the site.
- (iv) quality, function and operation of any process control concept included in the Bid.
- (v) type, quantity and long-term availability of mandatory and recommended spare parts and maintenance services.
- (vi) mobilization of key construction equipment and personnel in execution of the Plant and Installation Services.
- (vii) adequately supervising and controlling of the execution of the Plant and Installation Services by the appropriate allocation of staff.
- (viii) planning and scheduling of all work activities in such a manner that the Facilities will be completed on time and meet with all Contract requirements, mainly the compliance with the time schedule called for in the corresponding Appendix to the Contract Agreement, as evidenced by a milestone schedule provided in the Technical Proposal.

- (ix) execution of the Plant and Installation Services fully in accordance with all Contract requirements including but not limited to work methods, material sourcing, etc..
- (x) carrying out all operations for the execution of the Plant and Installation Services safely and in an environmental friendly manner.
- (xi) conformity of subcontractors proposed in accordance with the items listed in Sub-Factor 1.1.3 below, if applied.

The Bid that does not meet minimum acceptable standards of completeness, consistency and detail, and the specified minimum (or maximum, as the case may be) acceptable levels for the specified functional guarantees, may be rejected in accordance with ITB 25.1.

### 1.1.1 Personnel

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

No.	Position	Minimum Number of Years	
		Similar Positions	Total Work Experience
1			
2			
3			
4			
5			
...			
<p><i>Notes for the Employer</i></p> <p>(a) <i>The positions listed shall be limited to senior positions that are essential to the proper and timely execution of the Plant and Installation Services, such as Project Manager, Chief Engineer(s), Design Manager(s) or Section Manager(s) - responsible for major activities. The Employer shall make sure that the number of positions shall be kept to a minimum required for that purpose.</i></p> <p>(b) <i>One of the key positions shall be a Health and Safety Manager.</i></p> <p>(c) <i>Insert requirements in case of award for multiple lots, if applicable.</i></p>			

Alternative candidates for key positions shall not be evaluated.

The Bidder shall provide details of the proposed personnel for the Contract together with their experience records in Form PER-1 and Form PER-2 in Section IV, Bidding Forms.

### 1.1.2 Construction Equipment

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

No.	Equipment Type and Required Performance Characteristics	Minimum Requirement (Number of Units)
1		
2		
3		
4		
5		
<p><i>Notes for the Employer:</i></p> <p>(a) <i>The items listed shall be limited to major items of construction equipment that are essential to the proper and timely execution of the Plant and Installation Services, and items that Bidders may not readily be able to purchase, hire, or lease in the required time frame.</i></p> <p>(b) <i>Insert requirements in case of award for multiple lots, if applicable.</i></p>		

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

### 1.1.3 Subcontractor for major item of the Plant

Subcontractors/manufactures for the following major item of the Plant must meet the following minimum criteria, herein listed for that item. Failure to comply with this requirement will result in rejection of the Subcontractor but not the Bidder.

Item No.	Description of Item	Minimum Criteria to be met	Submission Requirements
1			
2			
3			
4			
5			
...			
<p><i>Notes for the Employer:</i></p> <p>(a) <i>The items listed shall be limited to items of paramount importance of which the Employer wishes to confirm adequacy and suitability of the proposed Subcontractors at the bidding stage.</i></p> <p>(b) <i>List the submission requirement not already listed in Form ELI-3 that must be submitted with the Bid so as to prove compliance with the requirements. If there is no additional documents to be submitted, state "none".</i></p>			

In the case of a Bidder who offers to supply and install major items of the Plant under the contract, which the Bidder does not manufacture or otherwise produce, the Bidder shall provide the Manufacturer's authorization, using the form provided in Section IV, Bidding

Forms, showing that the Bidder has been duly authorized by the Manufacturer or producer of the related plant and equipment or component to supply and install that item in the Employer's country

**1.1.4 Other Evaluation Criteria**

*[If applicable, state other evaluation criteria; otherwise state "N/A".]*

.....  
.....



## 2 Qualification

### (I) Qualification of the Bidder but not of Bidder's Affiliates

It is the legal entity or entities comprising the Bidder (which is/are party to the Bidder under a JV or as specialized subcontractors to be employed for the key activities listed in this Section), and not the Bidder's parent company(ies), group companies, subsidiaries, or other affiliates, that must satisfy the qualification criteria.

### (II) Exchange Rate for Qualification Criteria

Wherever a Form in Section IV, Bidding Forms, requires the Bidder to state a monetary amount, the Bidder should indicate the USD equivalent using the rate of exchange determined as follows:

- (a) For turnover or financial data required for each year - Exchange rate prevailing on the last day of the respective calendar or fiscal year, as applicable.
- (b) Value of single contract - Exchange rate prevailing on the date of the contract.

Exchange rates shall be taken from the publicly available source **identified in BDS 47.1** or, in case such rates are not available in the source identified above, any other publicly available source acceptable to the Employer. Any error in determining the exchange rates may be corrected by the Employer.

### (III) Update of Information

The Bidder shall continue to meet the criteria used at the time of prequalification. Updating and reassessment of the following information which was previously considered during prequalification will be required:

- (a) Eligibility.
- (b) Historical Contract Non-Performance and Litigation.
- (c) Financial Situation and Capabilities.

The Bidder shall provide updated details for the above by using the relevant forms included in Section IV, Bidding Forms.

## Second Stage Bids

### 1 Evaluation

#### 1.1 Technical Evaluation

The evaluation of the Second Stage Bids consists of the following:

- (a) assessment of the qualification of the Bidder to perform the Contract satisfactorily, in accordance with ITB 43. The qualification criteria for the purpose of this assessment have been described in detail under item 2 (*Qualification*) below.
- (b) determination of the substantial responsiveness of the Second Stage Bid in accordance with ITB 44. The evaluation criteria for the purpose of this determination have been described hereinunder.

Determination of the substantial responsiveness of the Second Stage Bid includes, among other things, an assessment of the adequacy of the Bidder's Technical Proposal, during which the Bidder's technical capacity to complete the Facilities will be assessed in terms of the following. Based on such assessment, the Employer will determine whether the Technical Proposal is substantially responsive to the requirements stipulated in Section VI, Employer's Requirements.

- (i) overall completeness and compliance with the Employer's Requirements and Memorandum entitled "Change Required Pursuant to First Stage Evaluation".
- (ii) conformity of the Plant and Installation Services offered with specified performance criteria, including conformity with the specified minimum (or maximum, as the case may be) acceptable levels corresponding to each functional guarantee, as indicated in the Employer's Requirements and in this Section.
- (iii) suitability of the Plant and Installation offered in relation to the environmental and climatic conditions prevailing at the site.
- (iv) quality, function and operation of any process control concept included in the Bid.
- (v) type, quantity and long-term availability of mandatory and recommended spare parts and maintenance services.
- (vi) mobilization of key construction equipment and personnel in execution of the Plant and Installation Services.
- (vii) adequately supervising and controlling of the execution of the Plant and Installation Services by the appropriate allocation of staff.
- (viii) planning and scheduling of all work activities in such a manner that the Facilities will be completed on time and meet with all Contract requirements, mainly the compliance with the time schedule called for in the corresponding Appendix to the Contract Agreement, as evidenced by a milestone schedule provided in the Technical Proposal.
- (ix) execution of the Plant and Installation Services fully in accordance with all Contract requirements including but not limited to work methods, material

- sourcing, etc.
- (x) carrying out all operations for the execution of the Plant and Installation Services safely and in an environmental friendly manner.
  - (xi) conformity of subcontractors proposed in accordance with the items listed in Sub-Factor 1.1.3 in the First Stage Bid, if applied.

The Bid that does not meet minimum acceptable standards of completeness, consistency and detail, and the specified minimum (or maximum, as the case may be) acceptable levels for the specified functional guarantees, will be rejected.

## 1.2 Financial Evaluation

In addition to the criteria listed in ITB 48.1 (a) – (c), (e) and (f), the following criteria shall apply:

### 1.2.1 Other Evaluation Criteria (ITB 48.1(d))

The following factors and methods will apply under ITB 48.1(d):

(a) **Operating and Maintenance Costs**

*[If Operating and Maintenance Costs will be subject to evaluation, then insert the following. Otherwise delete all below and state "N/A".]*

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

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

- (i) number of years for life cycle: *[insert life cycle period in years. The period should not exceed the period before a major overhaul of the Facilities becomes necessary.]*
- (ii) operating costs: *[insert fuel and/or other input, unit cost for annual and total operational requirements.]*
- (iii) maintenance costs, including the cost of spare parts for the initial period of operation, and
- (iv) a rate of *[insert rate in words and figures]* percent, to be used to discount to present value all annual future costs calculated under (ii) and (iii) above for the period specified in (i).

(b) **Functional Guarantees of the Plant and Installation Services**

The norms and the minimum/ maximum acceptable levels stated in the Employer’s Requirements for functional guarantees are:

*[insert the requirements stated in the Employer’s Requirements]*

Functional Guarantee	Requirement	
	Norm	Minimum/Maximum Acceptable Level
1.		
2.		
3.		
...		

For the purposes of evaluation: the following shall apply:

If the value(s) of the functional guarantee(s) of the proposed Plant, as provided by the Bidder in Form FUNC:

- (i) meet(s) the Norm specified in the table above, there shall no adjustment to the Bid Price.
- (ii) is/ are within the range between the Norm and the Minimum/ Maximum Acceptable Level in the table above, for each percentage point that the value of the functional guarantee is deviated from the Norm, the Bid Price shall be adjusted using the methodology stated below:

*[state methodology for calculation of adjustment.]*

- (iii) is/are not within the Minimum/ Maximum Acceptable Level in the table above, the Bid shall be rejected.

**(c) Specific Additional Evaluation Criteria**

The following additional evaluation criteria will be used in the evaluation: *[If applicable, insert additional evaluation criteria; otherwise state “N/A”.]*

.....  
 .....

**1.2.2 Award Criteria for Multiple lots (ITB 48.3)**

*[Insert the following paragraph in case of bidding for multiple lots, if applicable. Otherwise delete in its entirety and state “N/A”.*

*“If so provided in BDS 1.1, the Bidders have the option to bid for multiple lots of the Project in any combination. Bids for each lot or each combination of lots will then be evaluated taking into account discounts offered, if any, for the award of such multiple lots.*

*The lots will be awarded to the Bidder(s) offering the lowest evaluated cost to the Employer considering such discounts offered, subject to the selected Bidder(s) meeting the required qualification criteria for the award of such multiple lots.”]*



## **Section III. Evaluation and Qualification Criteria (Option II: Without Prequalification)**

### **Notes for the Employer**

This Section specifies the criteria to determine the lowest evaluated Bid and the qualifications of the Bidder to perform the Contract. No other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms.

The Employer requires the Bidders to be qualified by meeting pre-defined, precise minimum requirements. The method entails setting pass-fail criteria, which, if not met by the Bidder, results in disqualification. For that purpose, a clear-cut, fail-pass qualification criteria need to be defined and indicated in the Bidding Document to enable the Bidders to make an informed decision whether to pursue a specific contract and, if so, whether to pursue it as a single firm or as a joint venture. The criteria adopted must relate to characteristics that are essential to ensure satisfactory execution of the contract, and must be stated in clear terms.

The notes entitled “*Notes for the Employer*”, “boxed” notes and italicized notes are not part of the actual Evaluation and Qualification Criteria, but contain guidelines and instructions for the Employer. They shall be deleted from the actual Bidding Document issued to the Bidders.

The “*Notes for the Bidder*” contained in this Section III should be included in the actual Bidding Document to be issued to the Bidders.





# **Evaluation and Qualification Criteria (Without Prequalification)**

## **First Stage Bids**

### **1 Evaluation**

#### **1.1 Evaluation of Technical Bid**

The evaluation of the First Stage Bids consists of the following:

- (a) assessment of the qualification of the Bidder to perform the Contract satisfactorily in accordance with ITB 24. The qualification criteria for the purpose of this assessment have been described in detail under item 2 (*Qualification*) below.
- (b) determination of the substantial responsiveness of the First Stage Bid in accordance with ITB 25. The evaluation criteria for the purpose of this determination have been described hereinunder.

Determination of the substantial responsiveness of the First Stage Bid includes, among other things, an assessment of the adequacy of the Bidder's Technical Proposal, during which the Bidder's technical capacity to complete the Facilities will be assessed in terms of the following. Based on such assessment, the Employer will determine whether the Technical Proposal is substantially responsive to the requirements stipulated in Section VI, Employer's Requirements.

- (i) overall completeness and compliance with the Employer's Requirements.
- (ii) conformity of the Plant and Installation Services offered with specified performance criteria, including conformity with the specified minimum (or maximum, as the case may be) acceptable levels corresponding to each functional guarantee, as indicated in the Employer's Requirements and in this Section.
- (iii) suitability of the Plant and Installation Services offered in relation to the environmental and climatic conditions prevailing at the site.
- (iv) quality, function and operation of any process control concept included in the Bid.
- (v) type, quantity and long-term availability of mandatory and recommended spare parts and maintenance services.
- (vi) mobilization of key construction equipment and personnel in execution of the Plant and Installation Services.
- (vii) adequately supervising and controlling of the execution of the Plant and Installation Services by the appropriate allocation of staff.
- (viii) planning and scheduling of all work activities in such a manner that the Facilities will be completed on time and meet with all Contract requirements, mainly the compliance with the time schedule called for in the corresponding Appendix to the Contract Agreement, as evidenced by a milestone schedule provided in the Technical Proposal.

- (ix) execution of the Plant and Installation Services fully in accordance with all Contract requirements including but not limited to work methods, material sourcing, etc.
- (x) carrying out all operations for the execution of the Plant and Installation Services safely and in an environmental friendly manner.
- (xi) conformity of subcontractors proposed in accordance with the items listed in Sub-Factor 1.1.3 below, if applied.

The Bid that does not meet minimum acceptable standards of completeness, consistency and detail, and the specified minimum (or maximum, as the case may be) acceptable levels for the specified functional guarantees, may be rejected in accordance with ITB 25.1.

### 1.1.1 Personnel

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

No.	Position	Minimum Number of Years	
		Similar Positions	Total Work Experience
1			
2			
3			
4			
5			
...			
<p><i>Notes for the Employer</i></p> <p>(a) <i>The positions listed shall be limited to senior positions that are essential to the proper and timely execution of the Plant and Installation Services, such as Project Manager, Chief Engineer(s), Design Manager(s) or Section Manager(s) - responsible for major activities. The Employer shall make sure that the number of positions shall be kept to a minimum required for that purpose.</i></p> <p>(b) <i>One of the key positions shall be a Health and Safety Manager.</i></p> <p>(c) <i>Insert requirements in case of award for multiple lots, if applicable.</i></p>			

Alternative candidates for key positions shall not be evaluated.

The Bidder shall provide details of the proposed personnel for the Contract together with their experience records in Form PER-1 and Form PER-2 in Section IV, Bidding Forms.

### 1.1.2 Construction Equipment

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

No.	Equipment Type and Required Performance Characteristics	Minimum Requirement (Number of Units)
1		
2		
3		
4		
5		
<p><i>Notes for the Employer:</i></p> <p>(a) <i>The items listed shall be limited to major items of construction equipment that are essential to the proper and timely execution of the Plant and Installation Services, and items that Bidders may not readily be able to purchase, hire, or lease in the required time frame.</i></p> <p>(b) <i>Insert requirements for multiple contracts, if necessary.</i></p>		

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

### 1.1.3 Subcontractor for major item of the Plant

Subcontractors/manufactures for the following major item of the Plant must meet the following minimum criteria, herein listed for that item. Failure to comply with this requirement will result in rejection of the Subcontractor but not the Bidder.

Item No.	Description of Item	Minimum Criteria to be met	Submission Requirements
1			
2			
3			
4			
5			
...			
<p><i>Notes for the Employer:</i></p> <p>(a) <i>The items listed shall be limited to items of paramount importance of which the Employer wishes to confirm adequacy and suitability of the proposed Subcontractors at the bidding stage.</i></p> <p>(b) <i>List the submission requirement not already listed in Form ELI-3 that must be submitted with the Bid so as to prove compliance with the requirements. If there is no additional documents to be submitted, state "none".</i></p>			

In the case of a Bidder who offers to supply and install major items of the Plant under the contract, which the Bidder does not manufacture or otherwise produce, the Bidder shall provide the Manufacturer's authorization, using the form provided in Section IV, Bidding

Forms, showing that the Bidder has been duly authorized by the Manufacturer or producer of the related plant and equipment or component to supply and install that item in the Employer's country

**1.1.4 Other Evaluation Criteria**

*[If applicable, state other evaluation criteria; otherwise state "N/A".]*

.....  
.....

## 2 Qualification

### (I) Qualification of the Bidder but not of Bidder's Affiliates

It is the legal entity or entities comprising the Bidder (which is/are party to the Bidder under a JV or as specialized subcontractors to be employed for the key activities listed in this Section), and not the Bidder's parent company(ies), group companies, subsidiaries, or other affiliates, that must satisfy the qualification criteria.

### (II) Exchange Rate for Qualification Criteria

Wherever a Form in Section IV, Bidding Forms, requires the Bidder to state a monetary amount, the Bidder should indicate the USD equivalent using the rate of exchange determined as follows:

- (a) For turnover or financial data required for each year - Exchange rate prevailing on the last day of the respective calendar year or fiscal year, as applicable.
- (b) Value of single contract - Exchange rate prevailing on the date of the contract.

Exchange rates shall be taken from the publicly available source **identified in BDS 47.1** or, in case such rates are not available in the source identified above, any other publicly available source acceptable to the Employer. Any error in determining the exchange rates may be corrected by the Employer.

### (III) Qualification Criteria for Multiple Lots

*[Insert the following clause in case of bidding for multiple lots. Otherwise state "N/A".*

*"The Criteria for qualification are the aggregate minimum requirements, or any other reasonable requirements set forth by the Employer, for the respective lots as specified under Sub-Factors 2.3.2, 2.3.3, 2.4.2(a), 2.4.2(b)below."*]

## 2.1 Eligibility

Eligibility and Qualification Criteria				Compliance Requirements			Documentation
No.	Factor	Requirement	Single Firm	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
2.1.1	Nationality	Nationality in accordance with ITB 4.3	Must meet requirement	N/A	Must meet requirement	N/A	Forms ELI – 1 and 2 <sup>(i)</sup> with attachments
2.1.2	Conflict of Interest	No conflicts of interest in ITB 4.2	Must meet requirement	N/A	Must meet requirement (ii)	N/A	Letter of First Stage Bid
2.1.3	JICA Ineligibility	Not having been declared ineligible by JICA, as described in ITB 4.4	Must meet requirement	N/A	Must meet requirement (ii)	N/A	Letter of First Stage Bid Form ACK

Notes for the Bidders  
 (i) EL1-2 is required only if the Bidder is a JV.  
 (ii) This requirement also applies to subcontractors if proposed by the Bidder under 1.1.3 above and 2.4.2(b) below.

## 2.2 Historical Contract Non-Performance and Litigation

Eligibility and Qualification Criteria			Compliance Requirements				Documentation
No.	Factor	Requirement	Single Firm	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
2.2.1	History of Non-Performing Contracts	Non-performance of a contract <sup>(i)</sup> did not occur as a result of contractor's default since 1 <sup>st</sup> January [ <i>insert year</i> ]. <sup>1</sup>	Must meet requirement <sup>(ii)</sup>	N/A	Must meet requirement <sup>(ii)</sup>	N/A	Form CON
2.2.2	Pending Litigation	Bidder's financial position and prospective long-term profitability still sound according to criteria established in 2.3.1 below and assuming that all pending litigation will be resolved against the Bidder.	Must meet requirement <sup>(ii)</sup>	N/A	Must meet requirement <sup>(ii)</sup>	N/A	Form CON
2.2.3	Litigation History	No consistent history of court orders <sup>(iii)</sup> against the Bidder since 1 <sup>st</sup> January [ <i>insert year</i> ]. <sup>1</sup>	Must meet requirement <sup>(ii)</sup>	N/A	Must meet requirement <sup>(ii)</sup>	N/A	Form CON

### Notes for the Bidders

(i) Non-performance, as decided by the Employer, shall include all contracts:

- (a) where non-performance was not challenged by the contractor, including through referral to the dispute resolution mechanism under the respective contract, and
- (b) that were so challenged but fully settled against the contractor.

Non-performance shall not include contracts where Employer's decision was overruled by the dispute resolution mechanism. Moreover, non-performance must be based on all information on fully settled disputes or litigation, i.e. dispute or litigation that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the Bidder have been exhausted.

(ii) This requirement also applies to contracts executed by the Bidder as a JV member.

Eligibility and Qualification Criteria			Compliance Requirements			Documentation	
No.	Factor	Requirement	Single Firm	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
		(iii) The Bidder shall provide accurate information on the related Bidding Form about any litigation resulting from contracts completed or ongoing under its execution over the last five (5) years. A consistent history of court orders against the Bidder or any member of a joint venture may result in failure of the Bid.					
<i>Notes for the Employer</i>							
1 Year should usually be five (5) years prior to the Bid submission deadline.							



### 2.3 Financial Situation and Capabilities

Eligibility and Qualification Criteria			Compliance Requirements				Documentation
No.	Factor	Requirement	Single Firm	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
2.3.1	Financial Performance	<p>The financial statements for the last <i>[insert number of years]</i><sup>1</sup> years shall be submitted and must demonstrate the current soundness of the Bidder's financial position and indicate its prospective long-term profitability.</p> <p>As the minimum requirement, a Bidder's net worth calculated as the difference between total assets and total liabilities should be positive.</p>	Must meet requirement	N/A	Must meet requirement	N/A	Form FIN –1 with attachments
2.3.2	Average Annual Turnover	<p>Minimum average annual turnover of USD <i>[insert amount in USD]</i><sup>2</sup>, calculated as total certified payments received for contracts in progress and/ or completed, within the last <i>[insert number of years]</i><sup>3</sup> years, divided by <i>[insert number of years]</i><sup>4</sup> years.</p> <p><i>[Insert requirements for award of multiple lots, if</i></p>	Must meet requirement	Must meet requirement	Must meet <i>[insert number]</i> % <sup>5</sup> of the requirement	Must meet <i>[insert number]</i> % <sup>6</sup> of the requirement	Form FIN – 2

Eligibility and Qualification Criteria			Compliance Requirements			Documentation	
No.	Factor	Requirement	Single Firm	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
		<i>applicable.]</i>					
2.3.3	Financial Capabilities	<p>The Bidder shall demonstrate, to the satisfaction of the Employer that it currently (as of the Bid submission deadline), it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as USD [<i>insert amount in USD</i>]<sup>7</sup> for the subject contract(s) net of the Bidder's other commitments, both current and future.</p> <p><i>[Insert requirements for award of multiple lots, if applicable]</i></p>	Must meet requirement	Must meet requirement	N/A	N/A	Form FIN – 3 and FIN – 4

Eligibility and Qualification Criteria			Compliance Requirements			Documentation	
No.	Factor	Requirement	Single Firm	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
<i>Notes for the Employer</i>							
<ol style="list-style-type: none"> <li>1. Time period usually specified is five (5) years; it may be reduced to three (3) years minimum (in agreement with JICA) under special country circumstances, such as to provide opportunity for a newly privatized construction industry with limited period of existence, but with suitable experience, etc.</li> <li>2. The amount stated should normally not be less than twice the estimated annual turnover in the proposed contract (based on a straight-line projection of the Employer's estimated contract value, including contingencies, over the contract duration). The multiplier of 2 may be reduced for very large contracts but in any case, should not be less than 1.5.</li> <li>3. The time period is normally five (5) years or more, but may be reduced to not less than three (3) years (in agreement with JICA) under special country circumstances, such as to provide opportunities for a newly privatized construction industry with only a short record of experience, etc.</li> <li>4. Same number of years as in 3. above.</li> <li>5. Usually not less than 25% of the requirement for each member of a JV.</li> <li>6. Usually not less than 40% of the requirement for one member of a JV.</li> <li>7. Indicate the construction cash flow requirement for a number of months, determined as the total time needed by the Employer to pay a contractor's invoice, allowing for (a) the actual time consumed for construction, from the beginning of the month invoiced, (b) the time needed by the Project Manager to issue the payment approval, (c) the time needed by the Employer to pay the amount certified, and (d) a contingency period of one month to allow for unforeseen delays. The total period should not exceed six (6) months. The assessment of the monthly amount should be based on a straight-line projection of the estimated cash flow requirement over the particular contract period, neglecting the effect of any advance payment and retention monies, but including contingency allowances in the estimated contract cost.</li> </ol>							
$\text{Monthly Amount} = \frac{\text{Estimated Contract Value (inclusive of Taxes and Duties)}}{\text{Contract Period in Months}}$							

## 2.4 Experience

Eligibility and Qualification Criteria			Compliance Requirements				Documentation
No.	Factor	Requirement	Single Firm	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
2.4.1	General Experience	Continuous experience in plant and installation services in the role of prime contractor <sup>(i)</sup> (single firm or JV member) or subcontractor between 1 <sup>st</sup> January [ <i>insert year</i> ] <sup>1</sup> and the Bid submission deadline.	Must meet requirement	N/A	Must meet requirement	N/A	Form EXP –1
2.4.2	Specific Experience	<p>(a) A minimum number of [<i>insert number of contracts</i>]<sup>2</sup> similar contracts, each of minimum value of [<i>insert minimum value</i>]<sup>(ii)</sup> that have been satisfactorily completed<sup>(iii)</sup> as a prime contractor<sup>(i)</sup> (single entity or JV member)<sup>(iv)</sup> between 1<sup>st</sup> January [<i>insert year</i>]<sup>3</sup> and Bid submission deadline.</p> <p>The similarity of the contracts shall be based on the following: [<i>Based on Section VI, Employer's Requirements, specify the minimum key requirements in terms of physical size, complexity,</i></p>	Must meet requirement	Must meet requirement <sup>(v)</sup>	N/A	<p>Must meet the following requirements:</p> <p><i>[list the minimum requirements to be met by one member; if there is no such requirement, state "N/A"]</i></p>	Form EXP –2(a) with attachment

Eligibility and Qualification Criteria			Compliance Requirements			Documentation	
No.	Factor	Requirement	Single Firm	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
		<p><i>installation method, technology and/or other characteristics including part of the requirements that may be met by subcontractors, if permitted, in accordance with ITB 14.3]</i></p> <p><i>[Insert requirements for award of multiple lots, if applicable.]<sup>(vii)</sup></i></p>					
		<p>(b) For the above or other contracts completed and under implementation as prime contractor<sup>(i)</sup> (single entity or JV member) or subcontractor<sup>(vi)</sup> between 1<sup>st</sup> January [<i>insert year</i>]<sup>4</sup> and Bid submission deadline, a minimum experience in the following key activities successfully completed<sup>(iii)</sup> [<i>list activities indicating number, output, capacity, or performance level as applicable.</i>]</p> <p><i>[Insert requirements for award of multiple lots, if applicable.]<sup>(vii)</sup></i></p>	<p>Must meet requirement</p> <p>Following activities can be met through a specialized subcontractor:</p> <p><i>[specify activities, which may be met through a specialized subcontractor; if there is no such</i></p>	<p>Must meet requirement<sup>(v)</sup></p> <p>Following activities can be met through a specialized subcontractor:</p> <p><i>[specify activities, which may be met through a specialized subcontractor; if there is no such</i></p>	N/A	<p>Must meet requirement</p> <p>Following requirements shall be met by one member:</p> <p><i>[specify activities which shall be met by one member. If there is no such requirement, then state:</i></p>	<p>Form ELI –3</p> <p>Form EXP –2(b) with attachment</p> <p>Form MAN</p> <p>List of Subcontractors</p>

Eligibility and Qualification Criteria			Compliance Requirements			Documentation	
No.	Factor	Requirement	Single Firm	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
			<i>requirement , then state "N/A"]</i>	<i>requirement , then state "N/A"]</i>		"N/A"]	
<u>Notes for the Bidders</u>							
<p>(i) For the purposes of this criterion, a 'management contractor' is also considered as a prime contractor. A firm which takes on the role of contract management is referred herein as 'management contractor'. A management contractor does not normally perform directly the plant and installation services associated with the contract. Rather, it manages the work of other (sub) contractors while bearing full responsibility and risk for price, quality, and timely performance of the contract.</p> <p>(ii) Summation of number of small value contracts (less than the value specified under requirement) to meet the overall requirement will not be accepted.</p> <p>(iii) Completion shall be evidenced by submission of copy of end-user certificates such as Taking-over Certificates and Completion Certificates as required to be submitted as attachment to Form EXP-2(a) or Form EXP-2(b) of Section IV, Bidding Forms.</p> <p>(iv) For contracts under which the Bidder participated as a JV member, only the Bidder's share, by value, shall be considered to meet this requirement.</p> <p>(v) In case of a JV, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single entity. In determining whether the JV meets the requirement of total number of contracts, only the number of contracts completed by all members, each of value equal or more than the minimum value required, shall be aggregated.</p> <p>(vi) For contracts under which the Bidder participated as a JV member or subcontractor, only the Bidder's share, by value and role, shall be considered to meet this requirement.</p> <p>(vii) The minimum experience requirement for award of multiple lots will be the sum of the minimum requirements for respective individual lots.</p>							
<u>Notes for the Employer</u>							
<ol style="list-style-type: none"> <li>The time period is usually five (5) years or more, but may be reduced to not less than three (3) years (in agreement with JICA) under special country circumstances, such as to provide opportunities for a newly privatized industry with only a short record of experience.</li> <li>The range of contract numbers should be one (1) to three (3), depending on the size, value, nature and complexity of the subject contract, the exposure of the Employer to risk of contractor default, country conditions and history of similar contracts performed in the past.</li> <li>The time period is usually five (5) years, and may be extended up to a period of ten (10) years for large-scale projects.</li> </ol>							

Eligibility and Qualification Criteria			Compliance Requirements			Documentation	
No.	Factor	Requirement	Single Firm	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
4. Same as that stipulated in Sub-Factor 2.4.2 (a) above.							

## Second Stage Bids

### 1 Evaluation

#### 1.1 Technical Evaluation

The evaluation of the Second Stage Bids consists of the following:

- (a) assessment of the qualification of the Bidder to perform the Contract satisfactorily in accordance with ITB 43. The qualification criteria for the purpose of this assessment have been described in detail under item 2 (*Qualification*) below.
- (b) determination of the substantial responsiveness of the Second Stage Bid in accordance with ITB 44. The evaluation criteria for the purpose of this determination have been described hereinunder.

Determination of the substantial responsiveness of the Second Stage Bid includes, among other things, an assessment of the adequacy of the Bidder's Technical Proposal, during which the Bidder's technical capacity to complete the Facilities will be assessed in terms of the following. Based on such assessment, the Employer will determine whether the Technical Proposal is substantially responsive to the requirements stipulated in Section VI, Employer's Requirements.

- (i) overall completeness and compliance with the Employer's Requirements and Memorandum entitled "Change Required Pursuant to First Stage Evaluation".
  - (ii) conformity of the Plant and Installation Services offered with specified performance criteria, including conformity with the specified minimum (or maximum, as the case may be) acceptable levels corresponding to each functional guarantee, as indicated in the Employer's Requirements and in this Section.
  - (iii) suitability of the Plant and Installation Services offered in relation to the environmental and climatic conditions prevailing at the site.
  - (iv) quality, function and operation of any process control concept included in the Bid.
  - (v) type, quantity and long-term availability of mandatory and recommended spare parts and maintenance services.
  - (vi) mobilization of key construction equipment and personnel in execution of the Plant and Installation Services.
  - (vii) adequately supervising and controlling of the execution of the Plant and Installation Services by the appropriate allocation of staff.
  - (viii) planning and scheduling of all work activities in such a manner that the Facilities will be completed on time and meet with all Contract requirements, mainly the compliance with the time schedule called for in the corresponding Appendix to the Contract Agreement, as evidenced by a milestone schedule provided in the Technical Proposal.
  - (ix) execution of the Plant and Installation Services fully in accordance with all Contract requirements including but not limited to work methods, material
-



sourcing, etc.

- (x) carrying out all operations for the execution of the Plant and Installation Services safely and in an environmental friendly manner.
- (xi) conformity of subcontractors proposed in accordance with the items listed in Sub-Factor 1.1.3 in First Stage Evaluation, if applied.

The Bid that does not meet minimum acceptable standards of completeness, consistency and detail, and the specified minimum (or maximum, as the case may be) acceptable levels for the specified functional guarantees, will be rejected.

## 1.2 Financial Evaluation

In addition to the criteria listed in ITB 48.1 (a) – (c), (e) and (f), the following criteria shall apply:

### 1.2.1 Other Evaluation Criteria (ITB48.1(d))

The following factors and methods will apply under ITB 48.1(d):

(a) **Operating and Maintenance Costs**

*[If Operating and Maintenance Costs will be subject to evaluation, then insert the following. Otherwise delete all below and state "N/A".]*

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

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

- (i) number of years for life cycle [*insert life cycle period in years. The period should not exceed the period before a major overhaul of the facilities becomes necessary.*]
- (ii) operating costs [*insert fuel and/or other input, unit cost for annual and total operational requirements.*]
- (iii) maintenance costs, including the cost of spare parts for the initial period of operation, and
- (iv) a rate of [*insert rate in words and figures*] percent, to be used to discount to present value all annual future costs calculated under (ii) and (iii) above for the period specified in (i).

(b) **Functional Guarantees of the Plant and Installation Services**

The norms and the minimum/ maximum acceptable levels stated in the Employer’s Requirements for functional guarantees are:

*[Insert the requirements stated in the Employer’s Requirements]*

Functional Guarantee	Requirement	
	Norm	Minimum/ Maximum Acceptable Level
1.		
2.		
3.		
...		

For the purposes of evaluation, the following shall apply:

If the value(s) of the functional guarantee(s) of the proposed Plant, as provided by the Bidder in Form FUNC:

- (i) meet(s) the Norm specified in the table above, there shall no adjustment to the Bid Price.
- (ii) is/ are within the range between the Norm and the Minimum/ Maximum Acceptable Level in the table above, for each percentage point that the value of the functional guarantee is deviated from the Norm, the Bid Price shall be adjusted using the methodology stated below:

*[state methodology for calculation of adjustment.]*

- (iii) is/are not within the Minimum/ Maximum Acceptable Level in the table above, the Bid shall be rejected.

**(c) Specific Additional Evaluation Criteria**

The following additional criteria will be used in the evaluation: *[If applicable, insert additional evaluation criteria which; otherwise state “N/A”.]*

.....  
 .....

**1.2.2 Award Criteria of Multiple Lots (ITB 48.3)**

*[Insert the following paragraph in case of bidding for multiple lots, if applicable. Otherwise delete in its entirety and state “N/A”.*

*“If so provided in BDS 1.1, the Bidders have the option to bid for multiple lots of the Project in any combination. Bids for each lot or each combination of lots will then be evaluated taking into account discounts offered, if any, for the award of such multiple lots.*

*The lots will be awarded to the Bidder(s) offering the lowest evaluated cost to the Employer considering such discounts offered, subject to the selected Bidder(s) meeting the required qualification criteria for the award of such multiple lots.”]*



## Section IV. Bidding Forms

### Notes for the Employer

This Section includes the forms which are to be completed by the Bidder and submitted as part of its Bid and the Employer shall include herein all forms that the Bidder shall fill out and include in its Bid. As specified in this section, these Forms are Letter of Bid (the Letter of Technical Bid, the Letter of Price Bid for Single-Stage Two-Envelope Bidding, the Letter of First Stage Bid and the Letter of Second Stage Bid for Two-Stage One-Envelope Bidding), the Bid Security, the Price Schedules, the Technical Proposal Forms and the Bidder's Qualification Information Forms.

The "Boxed" notes indicated as "*Notes for the Employer*" are not part of the actual Bidding Forms, but contain guidelines and instructions for the Employer. The Employer shall fill in all necessary information in the following forms, complying with those guidelines and instructions.

- (a) Price Schedules
- (b) Schedule of Adjustment Data (except for the data to be filled in prior to contract signing as specifically stated in the "*Notes for the Employer*" thereof).
- (c) Technical Proposal (except the List of Subcontractors, Form FUNC, the Forms PER -1: Proposed Personnel, PER-2: Resume of Proposed Personnel and EQU: Construction Equipment).
- (d) Form CON: Historical Contract Non-Performance and Litigation (relevant year in accordance with Prequalification criteria or Section III, Evaluation and Qualification Criteria, as appropriate).
- (e) Form ACK: Acknowledgement of Compliance with Guidelines for Procurement under Japanese ODA Loans.

The above "Boxed" notes shall be deleted from the actual Bidding Document issued to the Bidders.

Italicised notes containing guidance and instruction (not specifically addressed to the Employer) are given solely for the Bidder as to which data to be filled in in the respective form and they shall not be filled in or modified by the Employer.

The "*Notes for the Bidders*" contained in this Section IV shall be included in the actual Bidding Document to be issued to the Bidders.



## Section IV. Bidding Forms

The forms included in this section shall be completed by the Bidder in accordance with guidance and instructions provided in this section and other sections of the Bidding Document, and submitted as part of its Technical and Price Bids (in the case of Single-Stage Two-Envelope Bidding) or its First-Stage and Second-Stage Bids (in the case of Two-Stage One-Envelope Bidding) as indicated in the table below:

<b>The Bid Submitted by Bidder</b>	
<b>Single-Stage Two-Envelope Bidding</b>	<b>Two-Stage One-Envelope Bidding</b>
<p><b><u>Technical Bid</u></b></p> <p>(a) <b>Letter of Technical Bid</b>, in accordance with ITB 12.1.</p> <p>(b) <b>Bid Security</b>, in accordance with ITB 19.</p> <p>(c) Power of Attorney, authorizing the signatory of the Bids to commit the Bidder, in accordance with ITB 20.2 and ITB 20.3.</p> <p>(d) Copy of the JV Agreement, or letter of intent to enter into a JV including a draft agreement in the case of a Bid submitted by a JV in accordance with ITB 4.1.</p> <p>(e) Documentary evidence in accordance with ITB 17 establishing the Bidder's eligibility and qualifications to perform the Contract if its Bid is accepted.</p> <ol style="list-style-type: none"> <li>i. <b>Form ELI -1: Bidder Information Form.</b></li> <li>ii. <b>Form ELI -2: JV Member Information Form.</b></li> <li>iii. <b>Form ELI -3: Subcontractor Information Form.</b></li> <li>iv. <b>Form CON: Historical Contract Non-Performance and Litigation.</b></li> <li>v. <b>Form FIN -1: Financial Situation.</b></li> <li>vi. <b>Form FIN -2: Average Annual Turnover.</b></li> <li>vii. <b>Form FIN -3: Financial Resources.</b></li> <li>viii. <b>Form FIN -4: Current Contract Commitments.</b></li> <li>ix. <b>Form EXP -1: General Experience*.</b></li> </ol>	<p><b><u>First Stage Bid</u></b></p> <p>(a) <b>Letter of First Stage Bid</b>, in accordance with ITB 12.1.</p> <p>(b) Power of Attorney, authorizing the signatory of the Bids to commit the Bidder, in accordance with ITB 16.2 and ITB 16.3.</p> <p>(c) Copy of the JV Agreement, or letter of intent to enter into a JV including a draft agreement in the case of a Bid submitted by a JV in accordance with ITB 4.1.</p> <p>(d) Documentary evidence in accordance with ITB 15 establishing the Bidder's eligibility and qualifications to perform the Contract if its Bid is accepted.</p> <ol style="list-style-type: none"> <li>i. <b>Form ELI -1: Bidder Information Form.</b></li> <li>ii. <b>Form ELI -2: JV Member Information Form.</b></li> <li>iii. <b>Form ELI -3: Subcontractor Information Form.</b></li> <li>iv. <b>Form CON: Historical Contract Non-Performance and Litigation.</b></li> <li>v. <b>Form FIN -1: Financial Situation.</b></li> <li>vi. <b>Form FIN -2: Average Annual Turnover.</b></li> <li>vii. <b>Form FIN -3: Financial Resources.</b></li> <li>viii. <b>Form FIN -4: Current Contract Commitments.</b></li> <li>ix. <b>Form EXP -1: General Experience*.</b></li> </ol>

<b>Single-Stage Two-Envelope Bidding</b>	<b>Two-Stage One-Envelope Bidding</b>
<p>x. <b>Form EXP -2(a): Specific Experience*.</b></p> <p>xi. <b>Form EXP -2(b): Experience in Key Activities*.</b></p> <p>(f) Documentary evidence in accordance with ITB 16.2 establishing that the Plant and Installation Services offered by the Bidder conform to the Bidding Document.</p> <p>(g) Technical Proposal in accordance with ITB 16.</p> <p>i. <b>Site Organization.</b></p> <p>ii. <b>Design Methodology.</b></p> <p>iii. <b>Method Statement.</b></p> <p>iv. <b>Mobilization Schedule.</b></p> <p>v. <b>Design, Supply and Installation Schedule.</b></p> <p>vi. <b>Proposed Plant to be Supplied and Installed.</b></p> <p>vii. <b>Health and Safety Plan.</b></p> <p>viii. <b>Environmental Plan.</b></p> <p>ix. <b>Form FUNC: Functional Guarantee.</b></p> <p>x. <b>List of Subcontractors.</b></p> <p>xi. <b>Form MAN: Manufacturer's Authorization.</b></p> <p>xii. <b>Form PER -1: Proposed Personnel.</b></p> <p>xiii. <b>Form PER -2: Resume of Proposed Personnel.</b></p> <p>xiv. <b>Form EQU: Construction Equipment.</b></p> <p>(h) <b>Acknowledgement of Compliance with the Guidelines for Procurement under Japanese ODA Loans (Form ACK)</b> which shall be signed and dated by the Bidder's authorized representative.</p> <p>(i) <b>Any other document required in BDS 11.2(i).</b></p>	<p>x. <b>Form EXP -2(a): Specific Experience*.</b></p> <p>xi. <b>Form EXP -2(b): Experience in Key Activities*.</b></p> <p>(e) Documentary evidence establishing in accordance with ITB 14.2 that the Plant and Installation Services offered by the Bidder conform to the Bidding Document.</p> <p>(f) Technical Proposal in accordance with ITB 14.</p> <p>i. <b>Site Organization.</b></p> <p>ii. <b>Design Methodology.</b></p> <p>iii. <b>Method Statement.</b></p> <p>iv. <b>Mobilization Schedule.</b></p> <p>v. <b>Design, Supply and Installation Schedule.</b></p> <p>vi. <b>Proposed Plant to be Supplied and Installed.</b></p> <p>vii. <b>Health and Safety Plan.</b></p> <p>viii. <b>Environmental Plan.</b></p> <p>ix. <b>Form FUNC: Functional Guarantee.</b></p> <p>x. <b>List of Subcontractors.</b></p> <p>xi. <b>Form MAN: Manufacturer's Authorization.</b></p> <p>xii. <b>Form PER -1: Proposed Personnel.</b></p> <p>xiii. <b>Form PER -2: Resume of Proposed Personnel.</b></p> <p>xiv. <b>Form EQU: Construction Equipment.</b></p> <p>(g) alternative Technical Proposals in accordance with ITB 13.</p> <p>(h) <b>Acknowledgement of Compliance with the Guidelines for Procurement under Japanese ODA Loans (Form ACK)</b> which shall be signed and dated by the Bidder's authorized representative.</p> <p>(i) <b>Any other document required in BDS 11.1(i).</b></p>
<p><b><u>Price Bid</u></b></p> <p>(a) <b>Letter of Price Bid</b>, in accordance with ITB 12.1.</p>	<p><b><u>Second-Stage Bid</u></b></p> <p>(a) <b>Letter of Second Stage Bid</b>, in accordance with ITB 29.</p>



<b>Single-Stage Two-Envelope Bidding</b>	<b>Two-Stage One-Envelope Bidding</b>
<p>(b) <b>Completed Schedules</b> in accordance with ITB 12.1 and 14, including completed <b>Price Schedules</b>, and completed <b>Schedule of Adjustment Data</b>, (if any required to be submitted under ITB 14.7) but excluding any Schedules, required in ITB 11.2.</p> <p>(c) <b>Any other document required in BDS 11.3(c).</b></p>	<p>(b) <b>Completed Schedules</b> in accordance with ITB 29.1 and 30, including completed <b>Price Schedules</b>, and completed <b>Schedule of Adjustment Data</b>, (if any required to be submitted under ITB 30.7).</p> <p>(c) <b>Bid Security</b>, in accordance with ITB 33</p> <p>(d) <b>Power of Attorney</b> authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 34.2 and ITB 34.3.</p> <p>(e) <b>Updated First Stage Bid</b>, comprising any modifications required to the First Stage Bid as recorded in the Memorandum entitled “Changes Required Pursuant to First Stage Evaluation”.</p> <p>(f) Documentary evidence regarding any changes that may have occurred between the times of submitting the First Stage Bid and the Second Stage Bids that have any material effect on the Bidder’s eligibility and qualifications to perform the Contract if its Bid is accepted.</p> <p>(g) Documentary evidence establishing that any additional or varied facilities to be supplied and installed by the Bidder, in accordance with the requirements of the Memorandum entitled “Changes Required Pursuant to First Stage Evaluation”, are technically acceptable.</p> <p>(h) Details of the proposed subcontractors, including manufacturers, if, as a result of complying with the memorandum “Changes Required Pursuant to First Stage Evaluation”, the Bidder proposes to engage any subcontractors or manufacturers additional to or different from those named in its First Stage Bid.</p> <p>(i) <b>Any other document required in BDS 28.1(i).</b></p>

\* *In case of prequalification was carried out prior to the Bidding Process, Forms EXP-1, EXP-2(a) and EXP-2(b) are not required to be submitted.*



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<Option A: Single-Stage Two-Envelope Bidding>

**[Prepare this Letter of Technical Bid on stationery with its letterhead clearly showing the Bidder's complete name and business address.]**

## Letter of Technical Bid

Date : [insert date of Bid submission]  
IFB No. : [insert Invitation for Bid number]  
Project : [insert name of Project]  
Contract : [insert name of Contract]

To: [insert full name of Employer],

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Document, including addenda issued in accordance with Instructions to Bidders (ITB) 8: [insert the number and issuing date of each addendum];
- (b) We, including subcontractors meet the eligibility requirements in accordance with ITB 4 and ITB 5;
- (c) We, including subcontractors have no conflict of interest in accordance with ITB 4;
- (d) We offer to design, supply and install, in conformity with the Bidding Document, the following Facilities: [insert a brief description of the Plant and Installation Services];
- (e) Our Bid shall be valid for a period of [specify the number of calendar days] days from the date fixed for the Bid submission deadline in accordance with the Bidding Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) We are not participating, as a Bidder or as a subcontractor in more than one Bid in this bidding process in accordance with ITB 4.2 (c), and
- (g) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any type of fraud or corruption.

Name of the Bidder<sup>1</sup>[insert complete name of the Bidder]

Name of the person duly authorized to sign the Bid on behalf of the Bidder<sup>2</sup>[insert complete name of person duly authorized to sign the Bid]

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

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

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

Notes for the Bidders

1. In the case of the Bid submitted by a Joint Venture, specify the name of the Joint Venture as Bidder.
2. Person signing the Bid shall have the Power of Attorney given by the Bidder to be included in the Technical Bid.

<Option A: Single-Stage Two-Envelope Bidding>

**[Prepare this Letter of Price Bid on stationery with its letterhead clearly showing the Bidder's complete name and business address.]**

## Letter of Price Bid

Date : [insert date of Bid submission]  
IFB No. : [insert Invitation for Bid number]  
Project : [insert name of Project]  
Contract : [insert name of Contract]

To: [insert full name of Employer],

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Document, including addenda issued in accordance with Instructions to Bidders (ITB) 8: [insert the number and issuing date of each addendum];
- (b) We offer to design, supply and install, in conformity with the Bidding Document, the following Facilities: [insert a brief description of the Plant and Installation Services comprising the Facilities];
- (c) The total price of our Bid, excluding any discounts offered in item (d) below is:  
[in case of only one lot, insert the total Bid Price in words and figures, indicating the amounts in the respective currencies]

[In case of multiple lots, insert:

(i) the total price of each lot; and

(ii) the sum of the total price of all lots (sum of all lots)];

In words and figures, indicating the amounts in the respective currencies]

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

The discounts offered are: [specify in detail each discount offered]

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

- (e) Our Bid shall be valid for a period of [specify the number of calendar days] days from the date fixed for the Bid submission deadline in accordance with the Bidding Document,

and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

- (f) If our Bid is accepted, we commit to obtain a Performance Security in accordance with the Bidding Document;
- (g) We understand that this Bid, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed; and
- (h) We understand that you are not bound to accept the lowest evaluated Bid or any other Bid that you may receive.

Name of the Bidder<sup>1</sup> [*insert complete name of the Bidder*]

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

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

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

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

#### Notes for the Bidders

1. In the case of the Bid submitted by a Joint Venture, specify the name of the Joint Venture as Bidder.



<Option B: Two-Stage One-Envelope Bidding>

**[Prepare this Letter of First Stage Bid on stationery with its letterhead clearly showing the Bidder's complete name and business address.]**

## Letter of First Stage Bid

Date : [insert date of Bid submission]  
IFB No. : [insert Invitation for Bid number]  
Project : [insert name of Project]  
Contract : [insert name of Contract]

To: [insert full name of Employer],

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Document, including addenda issued in accordance with Instructions to Bidders (ITB) 8: [insert the number and issuing date of each addendum];
- (b) We, including any subcontractors meet the eligibility requirements in accordance with ITB 4 and ITB 5;
- (c) We, including any subcontractors have no conflict of interest in accordance with ITB 4;
- (d) We offer to design, supply and install, in conformity with the Bidding Document, the following Facilities: [insert a brief description of the Plant and Installation Services.];
- (e) We are not participating, as a Bidder or as a subcontractor, in more than one Bid in this bidding process in accordance with ITB 4.2 (c);
- (f) We further undertake, if invited to do so by you, and at our own cost, to attend a clarification meeting at a place of your choice, for the purpose of reviewing our First Stage Bid and duly noting all amendments and additions thereto, and noting omissions therefrom that you may require; and
- (g) We further undertake, upon receiving your written invitation, to proceed with the preparation of our Second Stage Bid, updating our First Stage Bid in accordance with the requirements from the Memorandum of the clarification meeting, and completing our Second Stage Bid for supplying the Plant and Installation Services.

Name of the Bidder<sup>1</sup> [*insert complete name of the Bidder*]

Name of the person duly authorized to sign the Bid on behalf of the Bidder<sup>2</sup> [*insert complete name of person duly authorized to sign the Bid*]

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

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

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

#### Notes for the Bidders

1. In the case of the Bid submitted by a Joint Venture, specify the name of the Joint Venture as Bidder.
2. Person signing the Bid shall have the Power of Attorney given by the Bidder to be included in the First Stage Bid.

<Option B: Two-Stage One-Envelope Bidding>

**[Prepare this Letter of Second Stage Bid on stationery with its letterhead clearly showing the Bidder's complete name and business address.]**

## Letter of Second Stage Bid

Date : [insert date of Bid submission]  
IFB No. : [insert Invitation for Bid number]  
Project : [insert name of Project]  
Contract : [insert name of Contract]

To: [insert full name of Employer],

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Document, including addenda issued in accordance with Instructions to Bidders (ITB) 8: [insert the number and issuing date of each addendum], and your requirements incorporated in the Memorandum titled "Change Required Pursuant to First Stage Evaluation";
- (b) We, including any subcontractors meet the eligibility requirements in accordance with ITB 4 and ITB 5;
- (c) We, including any subcontractors, have no conflict of interest in accordance with ITB 4;
- (d) We are not participating, as a Bidder or as a subcontractor in more than one Bid in this bidding process in accordance with ITB 4.2 (c);
- (e) We offer to design, supply and install, in conformity with the Bidding Document, the Memorandum and the amendments of the Bidding Document, pursuant First Stage Evaluation, the following Facilities: [insert a brief description of the Plant and Installation Services ];
- (f) The total price of our Bid, excluding any discounts offered in item (g) below is:  
[In case of only one lot, insert the total Bid Price in words and figures, indicating the amounts in the respective currencies]

[In case of multiple lots, insert:

(i) the total price of each lot; and

(ii) the sum of the total price of all lots;

in words and figures, indicating the amounts in the respective currencies]

- (g) The discounts offered and the methodology for their application are:

The discounts offered are: *[specify in detail each discount offered]*

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

- (h) Our Bid shall be valid for a period of *[specify the number of calendar days]* days from the date fixed for the submission deadline for the Second Stage Bids as stipulated in the Letter of Invitation for Second Stage Bids, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (i) If our Bid is accepted, we commit to obtain a Performance Security in accordance with the Bidding Document;
- (j) We understand that this Bid, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- (k) We understand that you are not bound to accept the lowest evaluated Bid or any other Bid that you may receive; and
- (l) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any type of fraud or corruption.

Name of the Bidders<sup>1</sup> *[insert complete name of the Bidder]*

Name of the person duly authorized to sign the Bid on behalf of the Bidder<sup>2</sup> *[insert complete name of person duly authorized to sign the Bid]*

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

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

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

#### Notes for the Bidder

1. In the case of the Bid submitted by a joint venture, specify the name of the Joint Venture as Bidder.
2. Person signing the Bid shall have the Power of Attorney given by the Bidder to be attached with the Bid.

<Common to both Option A: Single-Stage Two-Envelope Bidding & Option B: Two-Stage One-Envelope Bidding>

## Schedule of Adjustment Data

Table A. Local Currency

### Notes for the Employer

The Employer shall indicate the necessary information in columns (i), (ii) and (iii), and shall also provide a fixed value in 'a' and a range of values in 'b', 'c', 'd' and 'e' of column (vi).

Column (iv) shall be left blank in the Bidding Document and shall be filled in with the relevant Values and Dates, prior to contract signing, as stated in note 3 below.

For very large and/or complex contracts, it may be necessary to specify several price adjustment formulae for the different classes of pay items involved and to prepare the corresponding adjustment tables.

(i)	(ii)	(iii)	(iv)		(v)	(vi)
Index Code	Index Description	Source of Index	Base Cost Index <sup>3</sup>		Total Amount <sup>1</sup> (Each Index)	Bidder's proposed weighting <sup>2</sup>
			Value	Date		
	Non-adjustable	-	-	-		a: _____
						b: _____
						c: _____
						d: _____
						e: _____
<b>Total</b>						<b>1.00</b>

### Notes for the Bidders

1. The Bidder shall fill in column (v), the Total Amount of each index component (i.e.: labour, material, equipment, etc as stated in column (ii)) quoted in the local currency.

The Total Amount of the relevant "*Non-adjustable*" component shall also be indicated in the corresponding cell.

2. The Bidder shall specify a value within the ranges given by the Employer in 'b', 'c', 'd' and 'e' of column (vi), so that the total weighting equals 1.00.

3. The Values and the Dates of the Base Cost Index(ices) will be provided by the Employer prior to contract signing.

Table B. Foreign Currency<sup>1</sup>

**Notes for the Employer**

The Employer shall indicate the necessary information in columns (i) and (ii), and shall also provide a fixed value in ‘a’ and a range of values in ‘b’, ‘c’, ‘d’ and ‘e’ of column (vii).

For very large and/or complex contracts, it may be necessary to specify several price adjustment formulae for the different classes of pay items involved and to prepare the corresponding adjustment tables.

**Payment Currency<sup>2</sup>:** \_\_\_\_\_

(i)	(ii)	(iii)	(iv)		(v)		(vi)		(vii)
Index Code	Index Description	Source of Index <sup>3</sup>	Base Cost Index <sup>4</sup>		Total in Source Currency <sup>5</sup>		Total in Payment Currency <sup>6</sup>		Bidder’s proposed weighting <sup>7</sup>
			Value	Date	Type	Amount	Exchange Rate	Amount	
	Non-adjustable	-	-	-	-	-			a: _____
									b: _____
									c: _____
									d: _____
									e: _____
<b>Total</b>									<b>1.00</b>

Notes for the Bidders

1. If so provided in BDS 15.1 in case of Single-Stage Two-Envelope Bidding and in BDS 31.1 in case of Two-Stage One-Envelope Bidding, the Bidder may quote in more than one foreign currency and, then this table should be repeated for each of those foreign currencies.
2. The Bidder shall indicate at the top of the table, the type of the foreign currency.
3. The Bidder shall indicate the source of each index in column (iii).
4. The Bidder may leave the Values and the Dates of the Base Cost Indices in column (iv) blank. If they are not available prior to submission of the Bid, due to absence of the relevant publication. However, the Bidder shall provide such Values and Dates prior to contract signing.
5. The Bidder shall fill in Column (v) the Total Amount of each index component (i.e.: labour, material, equipment, etc as stated in column (ii)) to be procured in a particular Source Currency.

For the purposes of this Schedule, the “Source Currency” of any index component means the currency, in which that index component is intended to be procured by the Bidder.

If the Source Currency of any index component is as same as the Payment Currency of this table, the Bidder may leave the corresponding cell of column (v) blank.

6. The Bidder shall derive the Total Amount in Payment Currency in Column (vi) by applying the exchange rate prevailing on the Base Date (as defined in Sub-Clause 1.1 of the Conditions of Contract), as published by the central bank of the country of the source currency, to the Total Amount in Source Currency in column (v).

The Total Amount of the “*Non-adjustable*” component quoted in the subject foreign currency shall also be indicated in the corresponding cell.

7. The Bidder shall specify a value within the ranges given by the Employer in ‘b’, ‘c’, ‘d’ and ‘e’ of column (vii), so that the total weighting equals 1.00.

## Price Schedule

### Notes for the Employer

#### Objectives

The objectives of the Price Schedule are:

- (a) to provide sufficient information on fundamental types and volume of the plant and installation services to be performed to enable Bids to be prepared efficiently and accurately; and
- (b) when a contract has been signed, to provide a completed Price Schedule for use in the valuation of plant and installation services performed, where necessary.

In order to attain these objectives, the Price Schedule should be well-structured and coherent, and its layout and content should be as simple and brief as possible.

The following guidance and directions should be complied with when preparing the Price Schedule.

#### Content

The Price Schedule should be divided generally into the following sections:

- (a) Preamble;
- (b) Items of the Plant and Installation Services (grouped into Schedules of Rates and Prices);
- (c) Schedule of Provisional Sums; and
- (d) Grand Summary.

#### Preamble

The Preamble should:

- (a) contain the provisions that describe the inclusiveness (and/or the exclusiveness where appropriate) of the prices; and
- (b) if the Contract includes items subject to re-measurement, set out the methods of measurement which has been used for measurement of estimated quantities of those items in the Price Schedule and that is to be used for measurement of actual quantities executed (i.e. re-measurement).

#### Items of Plant and Installation Services

All plant and installation services should be itemized in sufficient detail to distinguish between different categories of items included in the Contract such as plant supplied from abroad and those supplied from within the Employer's country, design services and installation services, etc.

The items should be grouped into Schedules (e.g., Schedule No. XX and Schedule No. YY) to distinguish between the categories which are varied by type, nature, location, access, timing, or any other special characteristics. Each Schedule may have its sub-schedules if



necessary so as to clearly specify the items of the Plant and Installation Services to be performed or make valuation/ payment during the performance of the Contract easier.

Generally, there should be no quantities indicated against lump sum items. Therefore, in order to avoid any confusions, it is advisable to indicate ‘-’ in the respective cells of the ‘Quantity’ and ‘Rate’ columns.

Normally, this type of contract is based on a lump sum price, with little or no re-measurement. However, if remeasurement items of the plant and installation services is applied, those should be clearly identified and described in Appendix 1 (*Payment Terms and Procedures*). The estimated quantities should be indicated against those items so that the Bidder could fill in its unit prices accordingly. In this regard, reference shall be made to GC Clause 12 (*Terms of Payment*).

The schedules allocated for plant supplied from abroad or from within the Employer’s country shall, among other things, include spare parts required for attaining the Operational Acceptance. The Spare parts that the Employer considered necessary for the operation and maintenance of the plant shall be included in the schedule allocated for the Mandatory Spare Parts, whereas additional spare parts proposed by Bidder shall be included in the schedule allocated for the Recommended Spare Parts. Specific instruction for the Bidder to the above effect should be included in the Preamble of the Price Schedule.

When a series of Price Adjustment Formulae is used, each Price Adjustment Formula should relate to the appropriate Price Schedule.

Moreover, in accordance with ITB 14.3 (in case of Single Stage Two-Envelope Bidding) or ITB 30.3 (in case of Two-Stage One-Envelope Bidding), the Bidder is required to provide a breakdown of the prices in the manner and detail specified in the Price Schedule. As such, the Employer should include a clear and specific instruction in the Preambles of the Price Schedules so that the detailed breakdown will be proposed.

### **Item Descriptions**

The Contract is generally carried out a lump-sum payment basis and the schedules do not necessarily give a full description of the plant and installation services to be performed. Each item description shall identify the work covered by the respective item, but the exact nature and extent of the plant and installation services is to be ascertained from the Employer’s Requirements (which includes Drawings and Specification) and Conditions of Contract, as the case may be.

The drafter shall make sure that details provided in item descriptions shall be consistent with the Preambles to the Price Schedule, Employer’s Requirements and the Conditions of Contract, where applicable.

### **Provisional Sums**

#### **Specified Provisional Sums**

The estimated cost of:

- (a) work or service which is known to be required and the scope of which can be defined but

cannot be completely designed or specified in detail;  
 should be specified in the relevant part of the Price Schedules (i.e. Schedule of Specified Provisional Sums) as a Specified Provisional Sum with an appropriate brief description.  
 Reference should be made to Clause 39.4 of the Conditions of Contract, as appropriate.

**The Provisional Sums for the cost of a Dispute Board (DB)**

The Provisional sum for the cost of a Dispute Board (DB) is one such specified Provisional Sum which falls into the category of (a) above. This Provisional Sum shall be included to cover a portion of the cost of the Dispute Board which consists only of its Regular Cost and the Employer's share (one-half) of its Non-Regular Cost as specified in Sub-Clause 39.4 of the Particular Conditions: Part B: Specific Provisions.

The Employer shall indicate in the Schedule of Specified Provisional Sums, an amount equivalent to the Employer's estimate of the portion of the cost of the DB covered under the Provisional Sum. Unlike other specified Provisional Sums, no Contractor's profits, overheads, etc. shall be included or payable on this Provisional Sum. When preparing the Employer's estimate above, reference shall be made to the table below which shows allocation of the various fees and expenses of the DB between the Regular Cost and Non-Regular Cost.

Fees and Expenses		Cost of the DB	
Item No.	Description	Regular Cost	Non-Regular Cost
1.	Retainer fees	<i>All.</i>	<i>None.</i>
2.	Daily fees	<i>only for regular Site visits.</i>	<i>for dispute referrals and work not accomplished during regular Site visits.</i>
3.	Expenses (a) international travel (b) local transport (c) accommodation (d) printing/ photocopying (e) international telephone calls (f) document courier services (g) postage	<i>only for regular Site visits.</i>	<i>for dispute referrals and work not accomplished during regular Site visits.</i>

	(h) others		
	Total	$\sum RC$	$\sum NRC$
Provisional Sum for the cost of the DB = $\sum RC + \frac{\sum NRC}{2}$			

### Contingency Allowance

Allowance for additional costs which may arise during the implementation of the Project due to unforeseen circumstances should be made by allocating contingency allowance in the Grand Summary. Allocation of this contingency allowance will make the resulting Bid Price a more realistic final contract value and thereby facilitate budgetary approval by avoiding the need to obtain supplementary approvals as the future need arises. When determining the value of this contingency allowance, the effect of price escalations (if allowed under the contract adjustments) on the estimated contract value, should be taken into account so that it can cover not only work contingencies but also price contingencies.

### Line Items to Address Social Clauses

The Employer shall decide whether the cost to comply with the requirements of the so called “social clauses” (Sub-Clauses 22.4.1 through 22.4.22 of the Conditions of Contract), to the scope and extent specified in the Employer’s Requirements, is to be considered by the Bidder as part of its overhead or reflected as a cost associated with one or more-line items in the Price Schedule addressing such requirements. As a general rule, such cost should be part of the Bidder's overhead unless the cost to comply with the requirements of some or all of the “social clauses” represents a large component of the works or services, as specified in the Employer’s Requirements. If line items are included in the Price Schedule, the facilities may be measured and paid through monthly instalments to make the Employer able to control the implementation of the facilities and services to be provided.

The following example illustrates when the cost to comply with the social clauses could be included by the Contractor as part of the general overheads and when as a part of line items. In regard to HIV-AIDS Prevention under Sub-Clause 22.4.7 of the Conditions of Contract, in some countries the government has public programmes for HIV/AIDS and the Contractor will only need to create a support basis whose cost may be included in its overhead. Actually, in many contracts (like in urban areas), workers do not live in the site but at their homes and the issue could be addressed in a different manner. In cases of plant and installation services in remote locations where the cost of such support is of a higher value, then it should be an item in the Price Schedule.

### Grand Summary

The Grand Summary should contain a tabulation of the separate parts of the Price Schedules carried forward, with the Specified Provisional Sums, and contingency allowance where applicable.

## A. Preamble

### Notes for the Employer

The Preamble is an essential part of the Price Schedule as it sets out the general principles based on which the Price Schedule is prepared and priced. The following paragraphs have been drafted for the reference of the Employer and they shall be modified or supplemented as appropriate, considering the country, project and plant and installation services specific requirements.

The Preamble shall be consistent with the General and Particular Conditions of Contract, Employer's Requirements and any other document forming part of the Contract. The Employer shall make sure that the Preamble is attached to the completed Price Schedule when compiling the Contract documents.

1. The Price Schedule shall be read in conjunction with the General and Particular Conditions of Contract and the Employer's Requirements.
2. Unless otherwise stated in the Particular Conditions of Contract, the Contract is executed on a lump-sum price basis. The Schedules do not generally give a full description of the Plant to be supplied or the Services to be performed under each item. Bidders shall be deemed to have read the Employer's Requirements and other sections of the Bidding Document and reviewed the drawings to ascertain the full scope of the requirements included in each item prior to filling in the rates and prices. The quantities (if any) given in the Price Schedule shall be used in accordance with GC Clause 12 (*Terms of Payment*).
3. Any parts, consumables or spare parts required for attaining the Operational Acceptance of the Plant and Installation Services or any part thereof shall:
  - (a) be included in or deemed to be covered by the rates and/or prices entered in the relevant Schedules of Rates and Prices of the Price Schedule. No separate payment shall be made in respect of any of such parts, consumables or spare parts.
  - (b) become the Employer's property immediately after they are brought to the Site, regardless of whether they will be subsequently used for the completion or will remain unused.
4. The Spare parts that the Employer considered necessary for the operation and maintenance of the Plant shall be included in the Price Schedule entitled "Mandatory Spare Parts", whereas Price Schedule entitled "Recommended Spare Parts" shall include additional spare parts proposed by the Bidder. Both Mandatory and Recommended Spare Parts are to be supplied prior to the completion of the Facilities.
5. The rates and prices in the completed Price Schedule shall, except insofar as it is otherwise provided under the Contract, include all of design, construction plant, labour,

supervision, materials, erection, maintenance, insurance, profit, taxes, and duties, together with all general risks, liabilities, and obligations set out or implied in the Contract.

6. A rate or price shall be entered against each item in the Price Schedule, irrespective of whether quantities are stated or not. Items against which no rate or price is entered in the completed Price Schedule shall be deemed to be covered by the rates or prices entered for other items therein, and will not be paid for separately.
7. The whole cost of complying with the provisions of the Contract shall be included in the items provided in the completed Price Schedule, and where no items are provided, the cost shall be deemed to be included in the rates or prices entered for the related items of Plant and Installation Services.
8. The payment shall be made in accordance with Sub-Clause 12.2 of the Conditions of Contract and Appendix 1 (*Payment Terms and Procedures*) to the Contract Agreement in the currency or currencies indicated under each respective item in the Price Schedule

If any composite or lump sum items, which require price breakdowns (as indicated in B: *Items of Plant and Installation Services* below), for the purposes of making payments or partial payments, valuation of Changes or evaluation of claims, or for such other purposes as the Project Manager considers reasonable, the Project Manager may use the breakdown of such items submitted by the Contractor during the bidding stage and included as an attachment to this Price Schedule.

Such breakdown shall clearly show the items of work activities that the respective composite or lump item consists of, their quantities and unit prices in the manner which can be used for the purposes described above.

9. General requirements, directions and/or descriptions of work and materials are not necessarily repeated or summarized in the Price Schedule. Relevant sections of the Contract documents shall be referred before entering prices against each item in the completed Price Schedule.
10. Provisional Sums included and so designated in the Price Schedule shall be expended in whole or in part at the direction and discretion of the Project Manager in accordance with Sub-Clause 39.4 of the Conditions of Contract, as applicable. Notwithstanding the above, the Provisional Sum for the cost of the DB shall require no prior instruction of the Project Manager.
11. No Contractor's overhead charges or profit shall be included or payable on the Provisional Sum for the cost of the DB.
12. If the Contract specifically provides for any item to be executed on a re-measurement basis, the method of measurement of completed work for payment in respect of that item

shall be in accordance with [*The Employer shall insert the name of a standard reference guide, or full details of the methods to be used*].

13. Any unit rates and/or prices quoted in the Price Schedule in:
  - (a) [*The Employer shall insert name of local currency, as indicated in BDS 15.1(in case of Single-Stage Two-Envelope Bidding) or in BDS 31.1(in case of Two-Stage One-Envelope Bidding)*], there shall be [*The Employer shall insert number of decimal places*] decimal places below zero.
  - (b) Japanese Yen (JPY), there shall be no decimal places below zero.
  - (c) [*The Employer shall insert name of any other foreign currency, as indicated in BDS 15.1(in case of Single-Stage Two-Envelope Bidding) or in BDS 31.1(in case of Two-Stage One-Envelope Bidding)*], there shall be [*The Employer shall insert number of decimal places*] decimal places below zero.

Any price(s) resulting from computations (such as unit price multiplied by quantity) shall be rounded down to the nearest decimal place(s) as indicated for each relevant currency above.

14. Where there are any items of work provided in the Price Schedule for complying with requirements of Sub-Clauses 22.4.7 through 22.4.22 of the Conditions of Contract, payment for such items are made only by monthly instalments upon the Contractor's compliance with all contract requirement with respect of that item, for each month, to the satisfaction of the Project Manager.

## B. Items of Plant and Installation Services

### Notes for the Employer

The following paragraphs and the part Schedules have been included only for the reference of the Employer and/or the Employer's consultant, and they shall be modified or supplemented as appropriate, considering the country, project and plant and installation services specific requirements.

They shall also be consistent with the Conditions of Contract, Employer's Requirements and any other document forming part of the Contract. Where appropriate, the items of plant and installation should be categorized into part Schedules considering their nature and scope, and timing of execution.

1. The Price Schedule contains the following Schedules of Rates and Prices, Schedule of Specified Provisional Sums and the Grand Summary:
  - Schedule No. 1 - Plant Supplied from Abroad (outside the Employer's country);
  - Schedule No. 2 - Plant Supplied from Within the Employer's country;
  - Schedule No. 3 - Design Services;
  - Schedule No. 4 - Installation and Other Services;
  - Schedule No. 5 - Mandatory Spare Parts;
  - Schedule No. 6 - Recommended Spare Parts;
  - Schedule of Specified Provisional Sums; and
  - Grand Summary.
  
2. The Price Schedule shall include as attachments thereto, price breakdowns for the following composite or lump sum items:
  - (a) [*The Employer shall insert reference and description of composite or lump-sum item.*]
  - (b) [*The Employer shall insert reference and description of composite or lump-sum item.*]
  - (c) [*The Employer shall insert reference and description of composite or lump-sum item.*]

**Schedule No. 1. Plant Supplied from Abroad (outside the Employer's country)**

Item no.	Description	Country of origin	Code <sup>1</sup>	Quantity (1)	Unit Price (2)		Total Price (1)*(2)
					Foreign currency	Unit Price (CIP)	
101							
102							
103							
104							
105							
106							
107							
108							
109							
110							
Total for Schedule No. 1 (carried forward to Grand Summary, p. ____)							

Notes for the Bidders

1. Enter a code representing the country of origin of all import plant and equipment.
2. Create and use as many columns for Unit Price and Total Price as there are currencies.



**Schedule No. 2. Plant Supplied from Within the Employer’s Country**

<i>Item no.</i>	<i>Description</i>	<i>Quantity (1)</i>	<i>Unit Price</i>	<i>Total Price (1)*(2)</i>
			<i>(2)</i>	
201				
202				
203				
204				
205				
206				
207				
208				
209				
210				
Total for Schedule No. 2 (carried forward to Grand Summary, p. ____)				-----

**Schedule No. 3. Design Services**

Item no.	Description	Quantity (1)	Unit Price (2)		Total Price (1)*(2)	
			Local	Foreign	Local	Foreign
301						
302						
303						
304						
305						
306						
307						
308						
309						
310						
Total for Schedule No. 3 (carried forward to Grand Summary, p. <u>    </u> )					-----	-----

**Schedule No. 4. Installation and Other Services**

<i>Item no.</i>	<i>Description</i>	<i>Quantity (1)</i>	<i>Unit Price (2)</i>		<i>Total Price (1)*(2)</i>	
			<i>Local</i>	<i>Foreign</i>	<i>Local</i>	<i>Foreign</i>
401						
402						
403						
404						
405						
406						
407						
408						
409						
410						
Total for Schedule No. 4 (carried forward to Grand Summary, p. <u>    </u> )					-----	-----

### Schedule No. 5. Mandatory Spare Parts

#### Notes for the Employer

The Employer shall decide and list out in this Schedule, all essential spare parts required for the operation and maintenance of the Facilities after the Operation Acceptance. In accordance with Sub-Clause 7.3 of the Conditions of Contract, the Contractor shall provide these spare parts on or before the Operational Acceptance of the Facilities.

Any spare parts required for attaining of the Operational Acceptance shall not be included in this Schedule as they will be included in the Schedules entitled “*Plant Supplied from Abroad (outside the Employer’s country)*” and “*Plant Supplied from Within the Employer’s country*”.

*Supplied from Abroad (outside the Employer’s country)*

Item no.	Description	Country of origin	Code <sup>1</sup>	Quantity (1)	Unit Price (2)		Total Price (1)*(2)
					Foreign currency	Unit Price	
501							
502							
503							
504							
505							
Total for Schedule No. 5-1 (carried forward to Grand Summary, p. ____)							

*Supplied from within the Employer’s Country*

Item no.	Description	Quantity (1)	Unit Price (2)		Total Price (1)*(2)
506					
507					
508					
509					
510					
Total for Schedule No.5- 2 (carried forward to Grand Summary, p. ____)					-----

Notes for the Bidders

1. Enter a code representing the country of origin of all import plant and equipment.

### Schedule No. 6. Recommended Spare Parts

*Supplied from Abroad (outside the Employer's country)*

Item no.	Description	Country of origin	Code <sup>1</sup>	Quantity (1)	Unit Price (2)		Total Price (1)*(2)
					Foreign currency	Unit Price	
601							
602							
603							
604							
605							
Total for Schedule No. 6-1 (carried forward to Grand Summary, p. ____)							

*Supplied from within the Employer's Country*

Item no.	Description	Quantity (1)	Unit Price (2)		Total Price (1)*(2)
606					
607					
608					
609					
610					
Total for Schedule No.6- 2 (carried forward to Grand Summary, p. ____)					-----

#### Notes for the Bidders

1. Enter a code representing the country of origin of all import plant and equipment.
2. The Bidder shall list out and price in the above schedule, any spare parts which it recommends for the operation and maintenance of the facilities for the period indicated in BDS 16.2(b) (in case of Single-Stage Two-Envelope Bidding) and in BDS 14.2(b) (in case of Two-Stage One-Envelope Bidding) after the Operational Acceptance of the Facilities, and which are not included in the Schedule entitled "Mandatory Spare Parts".
3. Any spare parts required for attaining of the Operational Acceptance shall not be included in this Schedule as they shall be included in the Schedules entitled "Plant Supplied from

Abroad (Outside the Employer's country)" and "Plant Supplied from within the Employer's country".

4. These spare parts may include, among others, any consumables, not readily available in the Employer's country.
5. The identity, specifications and quantities of such spare parts and the terms and conditions relating to the supply thereof are to be agreed between the Employer and the Contractor prior to the completion of the Facilities. Reference shall be made to Sub-Clause 7.3 of the Conditions of Contract.
6. The price of such spare parts shall include the purchase price and other costs relating to the supply of spare parts such as transportation, port charge and the Contractor's fees. The Recommended Spare Parts are not subject to evaluation in accordance with ITB 31.3 and ITB 35.1 (in case of Single-Stage Two-Envelope Bidding), and ITB 25.3 and ITB 48.1 (in case of Two-Stage One-Envelope Bidding).
7. The total price of this Schedule shall not be added to the Bid Price. However, the price may have added to the Contract Price (with modifications agreed during the contract negotiations or the contract execution), if both Parties agree to do so.

### Schedule of Specified Provisional Sums

#### Notes for the Employer

The local and foreign currency portions of the Amount shall be inserted for each Provisional Sum under the respective 'Amount' columns.

For the Provisional Sum for the cost of the DB, in accordance with Sub-Clause 39.4 of the Particular Conditions: Part B: Specific Provisions, the Employer's Estimate of the summation of the following costs of the DB shall be inserted.

- (a) Regular Cost (retainer fees of DB members plus daily fees of the DB members for regular Site visits plus all expenses of regular Site visits of the DB members).
- (b) One-half of Non-Regular Cost (1/2 of all fees and expenses other than those included in the Regular Cost).

Item No.	Description	Amount	
		Local	Foreign
1	Supply and install equipment in pumping station	[sum]	[sum]
2		[sum]	[sum]
3			
4			
etc.			
xx	Cost of Dispute Board (DB)	[sum]	[sum]
	Total (carried forward to Grand Summary (C), p. _____)	[sum]	[sum]

#### Notes for the Bidders

1. Provisional Sums included and designated above shall be expended in whole or in part at the direction of the Project Manager and in accordance with Sub-Clause 39.4 of Conditions of Contract. Notwithstanding the above, the Provisional Sum for the cost of the DB shall require no prior instruction of the Project Manager.
2. No Contractor's overhead charges or profit shall be included or payable on the Provisional Sum for the Cost of the DB.

## Grand Summary

### Notes for the Employer

The total for Schedule entitled “*Recommended Spare Parts*” shall not be included in the Bid Price and therefore is stated separately in the Grand Summary.

For item (B), the local and foreign currency portions of the total Estimated Cost of the Specified Provisional Sums, as indicated in the Schedule of Specified Provisional Sums shall be inserted under the respective ‘Amount’ columns.

Moreover, in item (D), out of the two options provided in BDS 14.10 (in case of Single-Stage Two-Envelope Bidding) and in BDS 30.10 (in case of Two-Stage One-Envelope Bidding):

- (a) if option A is chosen; insert the applicable percentage in “(...%)”.
- (b) if option B is chosen; delete “(...%)” together with note 1, and then insert the relevant local and foreign currency portions of the Amount under the respective ‘Amount’ columns.

With regard to item (E), in the case of Two-Stage One-Envelope Bidding, replace “Letter of Price Bid” by “Letter of Second Stage Bid”.

Description	Page	Amount	
		Local	Foreign
Schedule No. 1: Plant Supplied from Abroad			
Schedule No. 2: Plant Supplied from within Employer’s Country			
Schedule No. 3: Design Services			
Schedule No. 4: Installation and other Services			
Schedule No. 5: Mandatory Spare Parts			
—etc.—			
(A) Total of Schedules			
(B) Specified Provisional Sums		[sum]	[sum]
(C) Total of Schedules Plus Provisional Sums (A + B)			
(D) Add contingency allowance <sup>1</sup> (...%)		[sum] <sup>1</sup>	[sum] <sup>1</sup>
(E) Bid Price (C + D) [Carried forward to Letter of Price Bid]			
Schedule No. 6: Recommended Spare Parts		[sum]	[sum]

### Notes for the Bidders

- The Bidder shall derive the local and foreign currency portion of this Amount, applying the relevant percentage indicated in BDS 14.10 (in case of Single-Stage Two-Envelope Bidding) or BDS 30.10 (in case of Two-Stage One-Envelope Bidding), as appropriate.



## Technical Proposal

- Site Organization
  - Design Methodology
  - Method Statement
  - Mobilization Schedule
  - Design, Supply and Installation Schedule
  - Proposed Plant to be Supplied and Installed
  - Health and Safety Plan
  - Environmental Plan
  - Functional Guarantee
    - Form FUNC: Functional Guarantee
  - Subcontractors/ Manufacturers
    - List of Subcontractors
    - Form MAN: Manufacturer's Authorization
  - Personnel
    - Form PER-1: Proposed Personnel
    - Form PER-2: Resume of Proposed Personnel
  - Construction Equipment
    - Form EQU: Construction Equipment
  - [*others*]
-

## Site Organization

### Notes for the Employer

The Employer shall briefly but as clearly as possible describe the relevant submission requirements for the Bidder to comply with.

*[The Bidder shall insert the organization information.]*

## **Design Methodology**

### **Notes for the Employer**

The Employer shall briefly but as clearly as possible describe the relevant submission requirements for the Bidder to comply with.

*[The Bidder shall insert the design methodology.]*

## **Method Statement**

### **Notes for the Employer**

The Employer shall briefly but as clearly as possible describe the relevant submission requirements for the Bidder to comply with.

*[The Bidder shall insert the proposed Method Statement.]*

## **Mobilization Schedule**

### **Notes for the Employer**

The Employer shall briefly but as clearly as possible describe the relevant submission requirements for the Bidder to comply with.

*[The Bidder shall insert the Mobilization Schedule.]*

## **Design, Supply and Installation Schedule**

### **Notes for the Employer**

The Employer shall briefly but as clearly as possible describe the relevant submission requirements for the Bidder to comply with.

*[The Bidder shall insert the Design, Supply and Installation Schedule.]*

## **Proposed Plant to be Supplied and Installed**

### **Notes for the Employer**

The Employer shall briefly but as clearly as possible describe the relevant submission requirements for the Bidder to comply with.

*[The Bidder shall insert the description of Plant to be supplied and installed.]*

## **Health and Safety Plan**

### **Notes for the Employer**

The Employer shall briefly but as clearly as possible describe the relevant submission requirements for the Bidder to comply with.

*[The Bidder shall insert the Health and Safety Plan.]*



## **Environmental Plan**

### **Notes for the Employer**

The Employer shall briefly but as clearly as possible describe the relevant submission requirements for the Bidder to comply with.

*[The Bidder shall insert the Environmental Plan.]*

### Form FUNC: Functional Guarantee

**Notes for the Employer**

The Employer shall, in the left column of the table below, insert the identification of each functional guarantee required in the Employer’s Requirements and stated by the Employer in Section III. Evaluation and Qualification Criteria, Clause 1.2.1(b).

*[The Bidder shall provide, in the right column, the corresponding value for each functional guarantee of the proposed plant. This Form FUNC should be read with Appendix 8. Functional Guarantees to the Contract Agreement.]*

Required Functional Guarantee	Value of Functional Guarantee of the Proposed Plant
1.	
2.	
3.	
...	

### List of Subcontractors

*[The Bidder shall list below specialized subcontractors (if any) proposed by the Bidder for the execution of the key activities listed in the Prequalification criteria or Section III, Evaluation and Qualification, Sub-Factor 2.4.2(b) as appropriate, in accordance with Section I, Instruction to Bidders, ITB 16.3 (in the case of Single-Stage Two-Envelope Bidding) or ITB 14.3 (in the case of Two-Stage One-Envelope Bidding), as appropriate.]*

*Also, the Bidder shall list below subcontractors for major item of the Plant as listed by the Employer in Section III, Evaluation and Qualification Criteria 1.1.3. if applied, in accordance with Section I, Instruction to Bidders, ITB 16.3 (in the case of Single-Stage Two-Envelope Bidding) or ITB 14.3 (in the case of Two-Stage One-Envelope Bidding), as appropriate.*

*The completed list, once accepted by the Employer will be a contract document in accordance with the Contract Agreement.]*

The List of Subcontractor becomes part of the contract document in accordance with GC Clause 19 and Appendix 5 to the Contract Agreement.

No.	Key Activity	Specialized Subcontractor	
		Name	Nationality

No.	Major Item of the Plant	Subcontractor	
		Name	Nationality

### **Form MAN: Manufacturer's Authorization**

*[In accordance with ITB 16.3 (in case of Single-Stage Two-Envelope Bidding) or ITB 14.3 (in case of Two-Stage One-Envelope Bidding), if the Bidder proposes, for the execution of the key activities or major items above, to supply and install any goods which the Bidder do not manufacture or otherwise produce, the Bidder shall require the manufacturers of the goods to be supplied and installed under the Contract to fill in this Form in accordance with the instructions indicated.]*

*This letter of authorization should be signed by a person with the proper authority to sign documents that are binding on the manufacturer.*

*When the Bidder proposes subcontractors other than manufacturers in accordance with EQC 1.1.3 or 2.4.2(b), Form MAN is still required. Accordingly the first paragraph of the main text should be revised as follows:*

*“We [insert complete name of subcontractor] do hereby authorize [insert complete name of Bidder] to submit a Bid, the purpose of which is to provide the following part of the Contract performed by us [insert name and/or brief description of the services], and to subsequently negotiate and sign the Contract.”*

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

IFB No.: *[insert number of bidding process]*

To: *[insert complete name of Employer]*

#### **WHEREAS**

We *[insert complete name of manufacturer or manufacturer's authorized agent]*, who are official manufacturers of *[insert type of goods manufactured]*, having factories at *[insert full address of manufacturer's factories]*, do hereby authorize *[insert complete name of Bidder]* to submit a Bid the purpose of which is to provide the following goods, manufactured by us *[insert name and/or brief description of the goods]*, and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with the Contract, with respect to the goods offered by the above firm.

Name: *[insert complete name of person signing the Authorization]*

In the capacity of *[insert legal capacity of person signing the Authorization]*

**Signed:** *[insert signature of person whose name and capacity are shown above]*

Duly authorized to sign the bid for and on behalf of: [*insert complete name of Manufacturer*]

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ [*insert date of signing*]

**Form PER -1: Proposed Personnel**

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

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

JV Member Legal Name: *[insert full name]*

IFB No.: *[insert number]*

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

*[The Bidder shall provide the names of suitably qualified personnel to meet the specified requirements stated in Section III, Evaluation and Qualification Criteria, Clause 1.1.1. 'Title of Position' shall be filled in with key positions as listed in the above Clause.]*

<b>1.</b>	<b>Title of position:</b>
	<b>Name:</b>
<b>2.</b>	<b>Title of position:</b>
	<b>Name:</b>
<b>3.</b>	<b>Title of position:</b>
	<b>Name:</b>
<b>4.</b>	<b>Title of position:</b>
	<b>Name:</b>

## Form PER -2: Resume of Proposed Personnel

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

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

JV Member Legal Name: *[insert full name]*

IFB No.: *[insert number]*

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

*[The Bidder shall provide the data on the experience of the personnel indicated in Form PER-1, in the form below.]*

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

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

*[The Bidder shall summarize professional experience over the last 20 years, in a reverse chronological order. Indicate particular technical and managerial experience relevant to the position of the proposed personnel.]*

From	To	Relevant Technical and Management Experience
		Company : Project : Position : Experience:  
		Company : Project : Position : Experience:  
		Company : Project : Position : Experience:  
		Company : Project : Position : Experience:  



## Form EQU: Construction Equipment

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

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

JV Member Legal Name: *[insert full name]*

IFB No.: *[insert number]*

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

*[The Bidder shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III, Evaluation and Qualification Criteria, Clause 1.1.2. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Bidder.]*

<b>Item of equipment:</b>		
<b>Equipment information</b>	<b>Name of manufacturer:</b>	<b>Model and power rating:</b>
	<b>Capacity:</b>	<b>Year of manufacture:</b>
<b>Current status</b>	<b>Current location:</b>	
	<b>Details of current commitments:</b>	
<b>Source</b>	<b>Indicate source of the equipment:</b> <input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured	

Omit the following information for equipment owned by the Bidder.

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

## **Bidder's Qualification**

### **Notes for the Employer**

The Employer shall choose out of the two options given below:

- (a) Option I : if prequalification was carried out prior to the bidding process.
- (b) Option II : if Bidder's qualification will be assessed at the bidding stage.

### [Option I: Following Prequalification]

In accordance with Section III, Evaluation and Qualification Criteria, Clause 2, the Bidder shall update the information given during the corresponding prequalification exercise to demonstrate that he continues to meet the criteria used at the time of prequalification using the following forms:

- Form ELI -1 : Bidder Information Form
- Form ELI -2 : JV Member Information Form
- Form ELI -3 : Subcontractor Information Form
- Form CON : Historical Contract Non-Performance and Litigation
- Form FIN -1 : Financial Situation
- Form FIN -2 : Average Annual Turnover
- Form FIN -3 : Financial Resources
- Form FIN -4 : Current Contract Commitments

### [Option II: Without Prequalification]

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

- Form ELI -1 : Bidder Information Form
- Form ELI -2 : JV Member Information Form
- Form ELI -3 : Subcontractor Information Form
- Form CON : Historical Contract Non-Performance and Litigation
- Form FIN -1 : Financial Situation
- Form FIN -2 : Average Annual Turnover
- Form FIN -3 : Financial Resources
- Form FIN -4 : Current Contract Commitments
- Form EXP -1 : General Experience
- Form EXP -2(a) : Specific Experience
- Form EXP -2(b) : Experience in Key Activities

## Form ELI -1: Bidder Information Form

Date: *[insert day, month, year]*IFB No.: *[insert number]*Page *[insert page number]* of *[insert total number]* pages

*[Bidders shall provide the following information. The documents listed/ stated as required shall be submitted as attachments hereto.]*

Bidder's legal name: <i>[insert full name]</i>
In case of a JV, legal name of the representative member and of each member: <i>[insert full name of each member in the JV and specify the representative member.]</i>
Bidder's actual or intended country of registration: <i>[insert country of registration]</i>
Bidder's actual or intended year of incorporation: <i>[insert year of incorporation]</i>
Bidder's legal address in country of registration: <i>[insert mailing address]</i>
Bidder's authorized representative information Name: <i>[insert full name]</i> Address: <i>[insert mailing address]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers, including country and city codes]</i> E-mail address: <i>[insert E-mail address]</i>
<ol style="list-style-type: none"> <li>1. Attached are copies of original documents of Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above.</li> <li>2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.</li> </ol>

## Form ELI -2: JV Member Information Form

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

IFB No.: *[insert number]*

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

*[The following form is additional to Form ELI-1, and shall be completed to provide information relating to each JV member, in case if the Bidder is a JV. The documents listed/ stated as required shall be submitted as attachments hereto.]*

Bidder's legal name: <i>[insert full name]</i>
JV Member's legal name: <i>[insert full name of JV member]</i>
JV Member's country of registration: <i>[insert country of registration]</i>
JV Member's year of incorporation: <i>[insert year of incorporation]</i>
JV Member's legal address in country of registration: <i>[insert mailing address]</i>
JV Member's authorized representative information Name: <i>[insert full name]</i> Address: <i>[insert mailing address]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers, including country and city codes]</i> E-mail address: <i>[insert E-mail address]</i>
<ol style="list-style-type: none"> <li>1. Attached are copies of original documents of Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above.</li> <li>2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.</li> </ol>

## Form ELI -3: Subcontractor Information Form

Date: *[insert day, month, year]*IFB No.: *[insert number]*Page *[insert page number]* of *[insert total number]* pages

*[The following form is additional to Form ELI-1 and ELI-2 (if applicable), and shall be completed to provide information relating to the specialized subcontractor (if any) proposed by the Bidder for the execution of the key activities listed in the Prequalification criteria or Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4.2(b), as appropriate or the subcontractors for major items of the Plant as listed by the Employer in Section III, Evaluation and Qualification Criteria 1.1.3. The documents listed/ stated as required shall be submitted as attachments hereto.]*

Bidder's legal name: <i>[insert full name]</i>
Subcontractor's legal name: <i>[insert full name of Subcontractor]</i>
Subcontractor's country of registration: <i>[insert country of registration]</i>
Subcontractor's year of incorporation: <i>[insert year of incorporation]</i>
Subcontractor's legal address in country of registration: <i>[insert mailing address]</i>
Subcontractor's authorized representative information Name: <i>[insert full name]</i> Address: <i>[insert mailing address]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers, including country and city codes]</i> E-mail address: <i>[insert E-mail address]</i>
<ol style="list-style-type: none"> <li>1. Attached are copies of original documents of Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above.</li> <li>2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.</li> </ol>

## Form CON: Historical Contract Non-Performance and Litigation

[The following table shall be filled in for the Bidder, and for each JV member if the Bidder is a JV.]

Date: [insert day, month, year]

Bidder's Legal Name: [insert full name]

JV Member's Legal Name: [insert full name]

IFB No.: [insert number]

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

### 1. History of Non-Performing Contracts

<b>Non-Performing Contracts</b>			
<p>In accordance with the Prequalification criteria or Section III, Evaluation and Qualification Criteria, Sub-Factor 2.2.1, as appropriate, since 1<sup>st</sup> January [The Employer shall insert year.]:</p> <p>[The Bidder shall indicate the applicable wording below by checking the appropriate box]</p> <p><input type="checkbox"/> contract non-performance did not occur.</p> <p><input type="checkbox"/> contract non-performance occurred as indicated below:</p>			
Year	Non- performed portion of contract	Contract Identification	Total Contract Amount
[insert year]	[insert amount and percentage]	<ul style="list-style-type: none"> <li>• Contract Identification: [insert complete contract name, number, and any other identification]</li> <li>• Name of Employer: [insert full name]</li> <li>• Address of Employer: [insert mailing address]</li> <li>• Telephone/Fax numbers: [insert telephone/fax numbers, including country and city codes]</li> <li>• E-mail address: [insert E-mail address]</li> <li>• Reason(s) for non-performance: [indicate main reason(s)]</li> </ul>	[insert current value, currency, exchange rate and USD equivalent]

## 2. Pending Litigation

<b>Pending Litigation</b>				
<p>In accordance with the Prequalification criteria or Section III, Evaluation and Qualification Criteria, Sub-Factor 2.2.2, as appropriate:</p> <p><i>[The Bidder shall choose the relevant wording below by checking the appropriate box]</i></p> <p><input type="checkbox"/> there is no pending litigation involving the Bidder.</p> <p><input type="checkbox"/> there is pending litigation involving the Bidder as indicated below:</p>				
<b>Year of dispute</b>	<b>Amount in dispute (currency)</b>	<b>Outcome as Percentage of Net Worth</b>	<b>Contract Identification</b>	<b>Total Contract Amount</b>
<i>[insert year]</i>	<i>[insert amount]</i>	<i>[insert percentage]</i>	<ul style="list-style-type: none"> <li>• Contract Identification: <i>[indicate complete contract name, number, and any other identification]</i></li> <li>• Name of Employer: <i>[insert full name]</i></li> <li>• Address of Employer: <i>[insert mailing address]</i></li> <li>• Telephone/Fax numbers: <i>[insert telephone/fax numbers, including country and city codes]</i></li> <li>• E-mail address: <i>[insert E-mail address]</i></li> <li>• Party who initiated Litigation: <i>[indicate "Employer" or "Contractor"]</i></li> <li>• Matter in dispute: <i>[indicate main issues in dispute]</i></li> </ul>	<i>[insert current value, currency, exchange rate and USD equivalent]</i>

**3. Litigation History**

<b>Litigation History</b>		
<p>In accordance with the Prequalification criteria or Section III, Evaluation and Qualification Criteria, Sub-Factor 2.2.3, as appropriate, since 1<sup>st</sup> January [<i>The Employer shall insert year.</i>]:</p> <p>[<i>The Bidder shall choose the relevant wording below by checking the appropriate box</i>]</p> <p><input type="checkbox"/> there are no court orders against the Bidder.</p> <p><input type="checkbox"/> there are court orders against the Bidder as indicated below:</p>		
<b>Year of award</b>	<b>Contract Identification</b>	<b>Total Contract Amount</b>
[ <i>insert year</i> ]	<ul style="list-style-type: none"> <li>• Contract Identification: [<i>indicate complete contract name, number, and any other identification</i>]</li> <li>• Name of Employer: [<i>insert full name</i>]</li> <li>• Address of Employer: [<i>insert mailing address</i>]</li> <li>• Telephone/Fax numbers: [<i>insert telephone/fax numbers, including country and city codes</i>]</li> <li>• E-mail address: [<i>insert E-mail address</i>]</li> <li>• Matter in dispute: [<i>indicate main issues in dispute</i>]</li> <li>• Party who initiated litigation: [<i>indicate "Employer" or "Contractor"</i>]</li> <li>• Abstract of the Court Order: [<i>state concisely the court order concerning main issues in dispute</i>]</li> </ul>	[ <i>insert current value, currency, exchange rate and USD equivalent</i> ]



## Form FIN -1: Financial Situation

[The following table shall be filled in for the Bidder, and for each JV member if the Bidder is a JV. The documents listed/ stated as required shall be submitted as attachments hereto.]

Date: [insert day, month, year]

Bidder's Legal Name: [insert full name]

JV Member's Legal Name: [insert full name]

IFB No.: [insert number]

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

### 1. Financial data

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

## **2. Financial documents**

The Bidder and its parties shall provide copies of the financial statements<sup>1</sup> for the number of years indicated in the relevant Prequalification criteria or Section III, Evaluation and Qualification Criteria Sub-Factor 2.3.1, as appropriate. The financial statements shall:

- (a) reflect the financial situation of the legal entity(ies) comprising the Bidder, and not of the affiliated entities (such as parent company(ies), group companies or subsidiaries) of the Bidder unless they are parties to the Bidder under a JV in accordance with ITB 4.1.
- (b) be independently audited or certified in accordance with local legislation.
- (c) be complete, including all notes to the financial statements.
- (d) correspond to accounting periods already completed and audited.

Attached herewith are copies of financial statements for the number of years required above, and complying with the requirements.

### Notes for the Bidders

1. If the most recent set of financial statements is for a period earlier than 12 months from the date of bid, the reason for this should be justified.
-

## Form FIN -2: Average Annual Turnover

[The following table shall be filled in for the Bidder, and for each JV member if the Bidder is a JV.]

Date: [insert day, month, year]

Bidder's Legal Name: [insert full name]

JV Member's Legal Name: [insert full name]

IFB No.: [insert number]

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

<b>Annual Turnover Data</b>			
<b>Year</b>	<b>Amount and Currency</b>	<b>Exchange Rate</b>	<b>USD equivalent</b>
<i>[indicate year]</i>	<i>[insert amount and indicate currency]</i>	<i>[insert applicable exchange rate]</i>	<i>[insert amount in USD equivalent]</i>
<b>Average Annual Turnover <sup>1</sup></b>			

### Notes for the Bidders

1. Total USD equivalent for all years divided by the total number of years, in accordance with the Prequalification criteria or Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.2, as appropriate.

## Form FIN -3: Financial Resources

*[The following table shall be filled in for the Bidder and for each JV member if the Bidder is a JV.]*

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

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

JV Member's Legal Name: *[insert full name]*

IFB No.: *[insert number]*

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

*[Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject contract or contracts as specified in the Prequalification Criteria or Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.3, as appropriate.]*

<b>Financial Resources</b>		
<b>No.</b>	<b>Source of financing<sup>1</sup></b>	<b>Amount (USD equivalent)</b>
1		
2		
3		

### Notes for the Bidders

1. Sources of financing may include working capital (to be taken from FIN-1), Credit Line (to be substantiated by a letter from the bank issuing the line of credit), etc.

## Form FIN -4: Current Contract Commitments

*[The following table shall be filled in for the Bidder, and for each JV member if the Bidder is a JV.]*

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

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

JV Member's Legal Name: *[insert full name]*

IFB No. *[insert number]*

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

*[The Bidder and each member should provide information on their current commitments on all contracts that have been awarded, or for which a Letter of Intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full Taking-over Certificate/ Completion Certificate has yet to be issued, in accordance with the Prequalification Criteria or Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.3, as appropriate.]*

Current Contract Commitments						
No.	Name of Contract	Employer's Mailing Address, Tel, Fax.	Value of Outstanding Work [Current USD Equivalent]	Commencement Date	Estimated Completion Date	Average Monthly Invoicing Over Last Six Months [USD/month]
1						
2						
3						
4						
5						

## Form EXP -1: General Experience

[The following table shall be filled in for the Bidder, and for each JV member if the Bidder is a JV.]

Date: [insert day, month, year]  
 Bidder's Legal Name: [insert full name]  
 JV Member's Legal Name: [insert full name]  
 IFB No.: [insert number]  
 Page [insert page number] of [insert total number] pages

[The Bidder shall identify contracts that demonstrate continuous experience pursuant to Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4.1 and list contracts chronologically, according to their commencement (starting) dates.]

<b>General Experience</b>			
<b>Starting Year</b>	<b>Ending Year</b>	<b>Contract Identification</b>	<b>Role of Bidder</b>
[indicate year]	[indicate year]	<ul style="list-style-type: none"> <li>• Contract name: [insert full name]</li> <li>• Brief description of the contract performed by the Bidder: [describe contract performed briefly]</li> <li>• Amount of contract: [insert amount in currency, mention currency used, exchange rate and USD equivalent]</li> <li>• Name of Employer: [indicate full name]</li> <li>• Address: [indicate mailing address]</li> </ul>	[insert "Prime Contractor (single entity or JV member)" or "Subcontractor"]

## Form EXP -2(a): Specific Experience

*[The following table shall be filled in for the Bidder, and for each JV member if the Bidder is a JV. The documents listed/ stated as required shall be submitted as attachments hereto.]*

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

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

JV Member's Legal Name: *[insert full name]*

IFB No.: *[insert number]*

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

*[The Bidder shall fill out one (1) form per contract, in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4.2(a).]*

Contract of Similar Size and Nature			
Similar Contract No.	Information		
<i>[insert number]</i> of <i>[insert number of similar contracts required]</i>			
Contract Identification	<i>[insert contract name and reference identification number, if applicable]</i>		
Award Date	<i>[insert day, month, year, e.g., 15 June 2015]</i>		
Completion Date	<i>[insert day, month, year, e.g., 03 October 2017]</i>		
Role in Contract <i>[check the appropriate box]</i>	Prime Contractor		
	Single entity <input type="checkbox"/>	JV member <input type="checkbox"/>	
Total Contract Amount	<i>[insert total contract amount and currency(ies)]</i>	USD <i>[insert exchange rate and total contract amount in USD equivalent]</i>	
If member in a JV, specify participation in total Contract amount	<i>[insert percentage participation]</i>	<i>[insert total contract amount and currency(ies)]</i>	USD <i>[insert exchange rate and total contract amount in USD equivalent]</i>
	<i>[describe participation in JV and work performed]</i>		
Employer's Name:	<i>[insert full name]</i>		
Address:	<i>[insert mailing address]</i>		

<b>Contract of Similar Size and Nature</b>	
<b>Similar Contract No.</b>	<b>Information</b>
<i>[insert number] of [insert number of similar contracts required]</i>	
Telephone/fax number	<i>[insert telephone/fax numbers, including country and city area codes]</i>
E-mail:	<i>[insert E-mail address, if available]</i>
Description of the similarity in accordance with Sub-Factor 2.4.2(a) of Section III:	
1. Physical Size of Required items	<i>[insert physical size of items]</i>
2. Complexity	<i>[insert description of complexity]</i>
3. Construction Methods/ Technology	<i>[insert specific aspects of the methods/ technology involved in the contract]</i>
4. Other Characteristics	<i>[insert other characteristics as described in Section VI, Employer's Requirements]</i>
<p>Attached herewith are the copies of originals of:</p> <p>(a) abstracts of contract documents, JV Agreements, etc. evidencing that the size and nature of the above-mentioned contract meets the requirements specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4.2(a).</p> <p>(b) the end-user certificate(s) (i.e. Taking-over Certificate(s)/ Completion Certificate(s)), evidencing that the contract above-mentioned contract has been successfully completed.</p>	



## Form EXP -2(b): Experience in Key Activities

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

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

JV Member's Legal Name: *[insert full name]*

Subcontractor's Legal Name: *[insert full name]*

IFB No.: *[insert number]*

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

### 1. Summary of Key Activities

*[Fill out if the Bidder is a Single Firm/JV or proposes specialized subcontractors for the execution of any of the key activities]*

<b>Summary of Single Firm/JV Member/ Subcontractor for Key Activities</b>		
<b>Key Activity</b>		<i>Single Firm/JV Member/ Subcontractor</i>
<b>No</b>	<b>Description</b>	
1	<i>[insert name of Activity No. 1]</i>	<i>[insert full name(s) of Single Firm/JV Member(s)/ Subcontractor(s)]</i>  (i) _____ (ii) _____ (iii) _____
2	<i>[insert name of Activity No. 2]</i>	<i>[insert full name(s) of Single Firm/JV Member(s)/ Subcontractor(s)]</i>  (i) _____ (ii) _____ (iii) _____
3	<i>[insert name of Activity No. 3]</i>	<i>[insert full name(s) of Single Firm/JV Member(s)/ Subcontractor(s)]</i>  (i) _____ (ii) _____ (iii) _____
4	<i>[insert name of Activity No. 4]</i>	<i>[insert full name(s) of Single Firm/JV Member(s)/ Subcontractor(s)]</i>  (i) _____ (ii) _____ (iii) _____
etc.	_____	_____

**2. Contract Information**

**Key Activity No (1): [insert name of Key Activity]**

[Fill out one (1) form per contracts performed by the Bidder (Single Firm/ JV member/ specialized subcontractor as listed in the Summary of Key Activities above in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4.2(b). The documents listed/ stated as required shall be submitted as attachments hereto.]

(i) [insert full name of Single Firm, JV Member’s/ Subcontractor’s Legal Name]

<b>Contract with Similar Key Activities</b>							
<b>Item</b>	<b>Information</b>						
Contract Identification	[insert contract name and number, if applicable]						
Award Date	[insert day, month, year, e.g., 15 June 2015]						
Completion Date	[insert day, month, year, e.g., 03 October 2017]						
Role in Contract [check the appropriate box]	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2" style="text-align: center;"><b>Prime Contractor</b></td> <td rowspan="2" style="text-align: center;"><b>Subcontractor</b> <input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;">Single entity <input type="checkbox"/></td> <td style="text-align: center;">JV member <input type="checkbox"/></td> </tr> </table>		<b>Prime Contractor</b>		<b>Subcontractor</b> <input type="checkbox"/>	Single entity <input type="checkbox"/>	JV member <input type="checkbox"/>
<b>Prime Contractor</b>		<b>Subcontractor</b> <input type="checkbox"/>					
Single entity <input type="checkbox"/>	JV member <input type="checkbox"/>						
Total Contract Amount	[insert total contract amount and currency(ies)]	USD [insert Exchange rate and total contract amount in USD equivalent]					
[Insert brief description of the Activity No. (1)]	[describe briefly how the corresponding minimum requirement is met]						
Employer’s Name:	[insert full name]						
Address:	[indicate mailing address]						
Telephone/fax number	[insert telephone/fax numbers, including country and city area codes]						
E-mail:	[insert E-mail address, if available]						
Attached herewith are the copies of originals of:							
(a) abstracts of contract documents, sub-contract agreements, JV Agreements, etc. evidencing that the above activity meets the criteria specified in Section III, Evaluation and Qualification							

**Contract with Similar Key Activities**

Criteria, Sub-Factor 2.4.2(b).

- (b) the end-user certificate(s) (i.e. Taking-over Certificate(s)/ Completion Certificate(s)), for the above-mentioned contract, evidencing that the above activity has been successfully carried out.

(ii) [*insert full name of Single Firm, JV Member's/ Subcontractor's Legal Name*]

(iii) [*insert full name of Single Firm, JV Member's/ Subcontractor's Legal Name*]

**Key Activity No. (2):**

**Key Activity No. (3):**

## Form ACK

### Acknowledgement of Compliance with Guidelines for Procurement under Japanese ODA Loans

#### Notes for the Employer

The Form ACK should be finalized by using the latest version of Form ACK, uploaded in the JICA webpage;

[https://www.jica.go.jp/english/our\\_work/types\\_of\\_assistance/oda\\_loans/oda\\_op\\_info/guide/index.html](https://www.jica.go.jp/english/our_work/types_of_assistance/oda_loans/oda_op_info/guide/index.html)

The “date of issuance of Invitation for Bids” under B) and B’) below should be both revised to:

- (a) “request for price quotation,” if a contractor is selected through the International Shopping”;
- (b) "appointment", if a contractor is selected through the Direct Contracting; or
- (c) “Commencement of actual selection/bidding process”, if the Borrower wishes to adopt procurement procedures other than ICB, Limited International Bidding, International Shopping, or Direct Contracting.

The contact/ mailing address of JICA office in the project country should be stated in E) (2). Such address can be found in the webpage, URL of which has been given in E) (1). In case, if there is no JICA office available in the project country, E) (2) should be deleted in its entirety.]

A) I, [*insert name and position of authorized signatory*], being duly authorized by [*insert name of Bidder/members of joint venture (“JV”)*] (hereinafter referred to as the “Bidder”) to execute this Acknowledgement of Compliance with the Guidelines for Procurement under Japanese ODA Loans, hereby certify on behalf of the Bidder and myself that:

- (i) all information provided in the Bid submitted by the Bidder and its subcontractors for [*insert name of the Project, and name, number and identification of lot(s) (contracts(s)) as stated in BDS 1.1*] is true, correct and accurate to the best of the Bidder’s and my knowledge and belief; and
- (ii) the Bidder or any of its subcontractors has not, directly or indirectly, taken any action which is or constitutes a corrupt or fraudulent practice and is not subject to any conflict of interest as stipulated in the relevant section of the Guidelines and the Bidding Document.

*<If debarment for more than one year by the World Bank Group is NOT imposed, use the following sentence B).>*

B) I certify that the Bidder has NOT been debarred by the World Bank Group for more than one year since the date of issuance of Invitation for Bids.

*<If debarment for more than one year by the World Bank Group has been imposed BUT three (3) years have passed since the date of such debarment decision, use the following sentence B'>*

- B') I certify that the Bidder has been debarred by the World Bank Group for a period more than one year BUT that on the date of issuance of Invitation for Bids at least three (3) years had passed since the date of such debarment decision. Details of the debarment are as follows:

name of the debarred firm	starting date of debarment	ending date of debarment	reason for debarment

- C) I certify that the Bidder will not enter into a subcontract with a firm which has been debarred by the World Bank Group for a period more than one year, unless on the date of the subcontract at least three (3) years have passed since the date of such debarment decision.
- D) I certify, on behalf of the Bidder and its subcontractors, that if selected to undertake works and services in connection with the Contract, the Bidder and its subcontractors shall carry out such works and services in continuing compliance with the terms and conditions of the Contract.
- E) I further certify, on behalf of the Bidder and its subcontractors, that if the Bidder and any of its subcontractors is requested, directly or indirectly, to engage in any corrupt or fraudulent practice under any applicable law, such as the payment of a rebate, at any time or any stage of a process of procurement such as negotiations, execution or implementation of contract (including amendment thereof), the Bidder shall report all relevant facts regarding such request to the relevant section in JICA (details of which are specified below) in a timely manner.

JICA's information desk on fraud and corruption (A report can be made to either of the offices identified below.)

- (1) JICA Headquarters: Legal Affairs Division, General Affairs Department

URL: <https://forms.office.com/r/7n9Z2c4fAR>

Tel: +81 (0)3 5226 8850

- (2) JICA XX office

Tel:

The Bidder acknowledges and agrees that the reporting obligation stated above shall NOT in any way affect the Bidder's responsibilities, obligations or rights, under relevant laws, regulations, contracts, guidelines or otherwise, to disclose or report such request or other information to any other person(s) including the Employer or to take any other

action, required to or allowed to, be taken by the Bidder. The Bidder further acknowledges and agrees that JICA is not involved in or responsible for the procurement process in any way.

- F) If any of the statements made herein is subsequently proven to be untrue or incorrect based on facts subsequently determined, or if any of the warranties or covenants made herein is not complied with, the Bidder will accept, comply with, and not object to any remedies taken by the Employer and any sanctions imposed by or actions taken by JICA.

---

**Authorized Signatory**

*[insert name of signatory; title]*

**For and on behalf of**

*[insert name of the Bidder]*

Date: *[insert Date]*

## Form of Bid Security

### (Bank Guarantee)

#### Notes for the Employer

In case of Two-Stage One-Envelope Bidding, “Letters of Technical Bid and Price Bid” (in subparagraph (a) of the third paragraph) below shall be replaced with “Letter of Second Stage Bid”.

[*Guarantor letterhead or SWIFT identifier code*]

**Beneficiary:** [*insert its name and address*]

**IFB No.:** [*insert number of Invitation for Bids*]

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

**BID GUARANTEE No.:** [*insert guarantee reference number*]

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

We have been informed that [*insert name of the Bidder, which in the case of a joint venture shall be the name of the joint venture (whether legally constituted or prospective) or the names of all members thereof*] (hereinafter called "the Applicant") has submitted or will submit to the Beneficiary its Bid (hereinafter called "the Bid") for the execution of [*insert description of contract*].

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

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

- (a) has withdrawn its Bid during the period of bid validity set forth in the Applicant's Letters of Technical Bid and Price Bid (“the Bid Validity Period”), or any extension thereto provided by the Applicant; or
- (b) having been notified of the acceptance of its Bid by the Beneficiary during the Bid Validity Period or any extension thereto provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to Bidders of the Beneficiary's bidding document.

This guarantee shall expire and be returned to us: (a) if the Applicant is the successful Bidder, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security issued to the Beneficiary in relation to such contract agreement; or (b) if the Applicant is not the successful Bidder, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the bidding process; or (ii) twenty-eight days after the end of the Bid Validity Period.

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

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

---

[*signature(s)*]

[*Note: All italicized text is for use in preparing this form and shall be deleted from the final product.*]



## **Section V. Eligible Source Countries of Japanese ODA Loans**

### **Notes for the Employer**

This Section contains information and provisions as to the Eligible Source Countries applicable for the Bidders, and for the goods and services to be supplied under the Contract, as included in the Loan Agreement with JICA.

The Employer shall insert below, all relevant information and provisions cited from the Loan Agreement with JICA. If any additional documents are required to be submitted by the Bidder as evidence of compliance of the provisions above, such additional documents shall be listed in Section II, Bid Data Sheet: in the case of Single-Stage Two-Envelope Bidding, under ITB 11.2(i) and/or ITB 11.3(c), as appropriate, and in the case of Two-Stage One-Envelope Bidding, under ITB 11.1(i) and/or ITB 28.1(i), as appropriate.



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## **PART 2 - EMPLOYER'S REQUIREMENTS**



## Section VI. Employer's Requirements

### Notes for the Employer

This Section VI. Employer's Requirements contains the Scope (the Scope of Plant and Installation Services by the Contractor and the Scope of Works and Supply by the Employer), the Specification, the Drawings and Supplementary Information that describe the Facilities, and Forms and Procedures to be used during the implementation of the Contract.

This bidding process results in a design-supply-installation contract where the Contractor is responsible for the performance or outcome that the completed Facilities must achieve. Therefore, the Employer is not required to provide conventional technical specifications with detailed drawings. It is, nevertheless, in this Section, that the Employer precisely specifies the performance to be achieved or output specification for the completed Facilities, such as production output of a manufacturing plant or maximum generating capacity of a power station. Furthermore, design criteria, and any other technical requirements the Employer wishes to impose (e.g., quality of materials and workmanship, protection of the environment, occupational safety and health, etc.) should be also provided in this section. Accordingly, the Employer's Requirements should also specify the tests and testing procedures (e.g. the Guarantee Test) that will be carried out on completion of the Facilities to verify compliance with the requirements specified.

On the other hand, it is advisable to avoid over-specifying details to the extent that the flexibility and potential benefits associated with a design build concept are eroded or compromised. The Employer's Requirements should, therefore, be carefully prepared by suitably qualified engineers who are familiar with the requirements and with the technical aspect of the Facilities.

In particular, the extent of the contractor's design obligation must be defined without any room for uncertainty. If the Employer is responsible for the detailed design of any part of the Facilities, the extent of the scope and the extent of his obligations must be stated in the Employer's Requirements.

Under a design-supply-installation contract, no detailed drawings are generally available at the bidding stage. It would rather be useful to include outline and/or conceptual drawings as are appropriate to supplement or help illustrate the general concept of the Employer's needs. The Bidder should be well advised to the extent to which the Employer's outline design is a suggestion or a requirement.

The Employer's Requirements should include, as appropriate, information of a technical nature, referring to the Employer's Requirement or stating as specified, described or indicated in the Contract, in the following Sub-Clauses of the Conditions of Contract:

<b>Sub-Clause</b>		<b>Summary of Information Required</b>
<b>No.</b>	<b>Title</b>	
1.1	Definitions ("Employer's Requirements")	the purpose, scope, and/or design and/or other technical criteria, for the Facilities
1.1	Definitions ("Guarantee Test(s)")	Guarantee Test(s) to be carried out to ascertain whether the Facilities or a part thereof is able to attain the Functional Guarantees
1.1	Definitions ("Precommissioning")	testing, checking and other requirements that are to be carried out by the Contractor in preparation for Commissioning
1.1	Definitions ("Site")	lands or places where the Facilities are to be installed
7.1	Scope of Facilities	limitations to the Contractor's obligation for the provision of all Plant and the performance of all Installation Services
		documents according to which the work on the Facilities to be executed
9.1	Contractor's Responsibilities	intended purpose of the Facilities
10.1	Employer's Responsibilities	all information and/or data to be supplied by the Employer
10.2	Employer's Responsibilities	rights related to the possession of the Site and access thereto
10.3	Employer's Responsibilities	permits, approvals and/or licences to be acquired and paid for by the Employer
10.6	Employer's Responsibilities	operation and maintenance personnel to be supplied by the Employer for Precommissioning
		raw materials, utilities, lubricants, chemicals, catalysts, other materials and facilities to be supplied by the Employer
		work and services to be performed by the Employer
21.2	Procurement (Employer-Supplied Plant)	specific items (if any) to be furnished to the Contractor by the Employer
21.3	Procurement (Transportation)	mode of transport (if any) that the Employer requires the Contractor to use to carry materials and Contractor's Equipment
22.4.1	Installation (Staff and Labour: Engagement of Staff and Labour)	arrangement for engagement of staff and labour, and for their payment, housing, feeding and transport

22.4.6	Installation (Staff and Labour: Facilities for Staff and Labour)	accommodation and welfare facilities (if any) for the Contactor's Personnel facilities for the Employer's Personnel to be provided by the Contractor
22.4.11	Installation (Staff and Labour: Supply of Foodstuff)	foodstuff to be supplied by the Contractor
22.5	Installation (Contractor's Equipment)	any Contractor's Equipment which requires to be on the Site after completion of the Facilities
24.1	Completion of the Facilities	condition of the completed Facilities
24.2	Completion of the Facilities	-operating and maintenance personnel to be supplied by the Employer for Precommissioning -raw materials, utilities, lubricants, chemicals, catalysts, other materials and facilities to be supplied by the Employer

Care must be taken when drafting the Employer's Requirements to ensure that the requirements or parameters specified are not restrictive. Recognized international standards should be used as much as possible for the description of goods, materials and workmanship. Where other particular standards are specified, whether national standards of the Employer's country or other standards, it should be stated that goods, materials and workmanship meeting other authoritative standards, and which ensure equal or higher quality than the standards specified.

The Employer's Requirements should stipulate that all of the goods and materials to be incorporated in the Facilities are new, unused of the most recent or current models and incorporate all recent improvements in design and materials..

The Employer shall perform appropriate front-end tasks (such as geotechnical/environmental investigations and permit acquisitions). In this regard, pursuant to Sub-Clauses 9.2 and 10.1 of the Conditions of Contract, the Employer shall supply all information and/or data in the Employer's possession pertaining to the Site and the proposed works.

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## **Scope of Supply of Plant and Installation Services by the Contractor**

### **Notes for the Employer**

The Employer shall insert hereunder Contractor's scope of supply and services as referred in Sub-Clause 7.1 of the Conditions of Contract.

## **Scope of Work and Supply by the Employer**

### **Notes for the Employer**

The Employer shall insert Employer's scope of work and supply including those referred in Sub-Clauses 10.1, 10.2, 10.3 and 10.6 of the Conditions of Contract.

---

## Specification

### Notes for the Employer

The Employer shall insert hereunder specifications which set out the applicable minimum standards that applies for the Facilities as well as the other technical requirements to be incorporated in the design. Refer to the Notes for the Employer at the beginning of the section. In addition to the information required and matters to be referred, pursuant to the Conditions of Contract (as stated in the notes above), any or all of the following information may be specified;

- intended performance of the plant
- definition of the location of the site
- design and other technical criteria
- applicable technical standards, codes and regulation
- quality and performance criteria
- quality control and assurance system
- customs requirements
- proposed or required time programme, programme software, periodical programme revision, required milestones
- other contractors (and others) on the site
- setting-out points lines and levels of reference
- involvement of third parties
- environmental constrains
- access constrains: road, rail, air and sea
- electricity, water, gas and other services available on the site
- criteria for design personnel
- contractor's documents required, and whether required for information, review and/or approval, and number of copies
- operational training for the Employer's personnel
- as-built drawing and other records of the plant and installation services
- operation and maintenance manuals
- spare parts
- plant and installation services covered under Provisional sums
- health, safety and environmental plan
- operation and maintenance by the Contractor (if any)

## Drawings

### Notes for the Employer

The Employer's Requirements may include drawings, on which the proposed Facilities may be outlined. In such cases, the Employer's Requirements should define the extent to which (for example) the Plant and Installation Services must comply with the outline. The incorporation of design aspects into the drawings should be carried out with care, with full consideration being given to the consequences, including any ultimate responsibility for this design by the Employer.

The drawings, even if not fully developed, must show sufficient details to enable Bidders to understand the type and complexity of the Facilities.

A simplified map showing the location of the Site in relation to the local geography, including major roads, ports, airports, and railroads, is helpful.

It is customary to bind the drawings in a separate volume, which is often larger than other volumes of the Contract documents. The size will be dictated by the scale of the drawings, which must not be reduced to the extent that details are rendered illegible.

## **Forms and Procedures**

### CONTENTS

1. Form of Completion Certificate
2. Form of Operational Acceptance Certificate
3. Change Order Procedure
4. Change Order Forms

## Form of Completion Certificate

Date: *[insert date]*

*[Name of Contract]*

To: *[Name and address of Contractor]*

Dear Sirs,

Pursuant to GC Clause 24 (Completion of the Facilities) of the General Conditions of the Contract entered into between yourselves and the Employer dated *[insert date of contract]*, relating to the *[brief description of the Facilities]*:

We hereby notify you that *[insert "the whole of the Facilities as described above" or description of the relevant part of the Facilities, as appropriate]* was/ were complete on *[insert date of completion]*, in accordance with the terms of the Contract.

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

This letter does not relieve you of your obligation to complete the execution of any work on the Facilities or of any part thereof in accordance with the Contract nor of your obligations during the Defects Liability Period.

Very truly yours,

---

Title  
(Project Manager)

## Form of Operational Acceptance Certificate

Date: *[insert date]*

*[Name of Contract]*

To: *[Name and address of Contractor]*

Dear Sirs,

Pursuant to GC Sub-Clause 25.3 (Operational Acceptance) of the General Conditions of the Contract entered into between yourselves and the Employer dated *[insert date of contract]*, relating to the *[brief description of the Facilities]*, we hereby notify you that the Functional Guarantees of *[insert "the whole of the Facilities as described above" or description of the relevant part of the Facilities, as appropriate]* were satisfactorily attained on *[insert date of operational acceptance]*.

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

Very truly yours,

---

Title  
(Project Manager)

## **Change Order Procedure**

### CONTENTS

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



## 1. General

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

## 2. Change Order Log

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

## 3. References for Changes

- (1) Request for Change as referred to in GC Clause 39 shall be serially numbered CR-X-*nnn*.
- (2) Estimate for Change Proposal as referred to in GC Clause 39 shall be serially numbered CN-X-*nnn*.
- (3) Acceptance of Estimate as referred to in GC Clause 39 shall be serially numbered CA-X-*nnn*.
- (4) Change Proposal as referred to in GC Clause 39 shall be serially numbered CP-X-*nnn*.
- (5) Change Order as referred to in GC Clause 39 shall be serially numbered CO-X-*nnn*.

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

Home Office	CR-H- <i>nnn</i>
Site	CR-S- <i>nnn</i>

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

## **Change Order Forms**

### CONTENTS

- Form 1: Request for Change Proposal
  - Form 2: Estimate for Change Proposal
  - Form 3: Acceptance of Estimate
  - Form 4: Change Proposal
  - Form 5: Change Order
  - Form 6: Pending Agreement Change Order
  - Form 7: Application for Change Proposal
  - Form 8: Change Order Log
-

## Form 1. Request for Change Proposal

(Employer's Letterhead)

To: *[insert Contractor's name and address]*

Date: *[insert date]*

Attention: *[insert name and title]*

Contract Name: *[insert Contract name]*

Contract Number: *[insert Contract number]*

Dear Sirs,

With reference to the captioned Contract, you are requested to prepare and submit a Change Proposal for the Change noted below in accordance with the following instructions within *[insert number of days]* days of the date of this letter *[or on or before (date)]*.

1. Title of Change: *[insert title]* \_\_\_\_\_
2. Change Request No.: *[insert number]* \_\_\_\_\_
3. Originator of Change: Employer: *[insert name of Employer]* \_\_\_\_\_  
Contractor (by Application for Change Proposal No. *[insert number]*) \_\_\_\_\_
4. Brief Description of Change: *[insert description]* \_\_\_\_\_
5. Facilities and/or Item No. of equipment related to the requested Change: *[insert description]* \_\_\_\_\_
6. Reference drawings and/or technical documents for the request of Change:

Drawing No./Document No.	Description

7. Detailed conditions or special requirements on the requested Change: \_\_\_\_\_
8. General Terms and Conditions:
  - (a) The estimate shall show what effect the requested Change will have on the Contract Price.

- (b) The estimate shall include the Contractor's claim for the additional time, if any, for completion of the requested Change.
- (c) If the Contractor has any opinion negative or critical to the adoption of the requested Change in connection with the conformability to the other provisions of the Contract or the safety of the Plant or Facilities, the Employer shall be informed of such opinion in the proposal of revised provisions.
- (d) Any increase or decrease in the work of the Contractor relating to the services of its personnel shall be calculated.
- (e) The Contractor shall not proceed with the execution of the work for the requested Change until we have accepted and confirmed the amount and nature in writing.

---

(Employer's Name)

---

(Signature)

---

(Name of signatory)

---

(Title of signatory)

---

## Form 2. Estimate for Change Proposal

(Contractor's Letterhead)

To: *[insert Employer's Name and address]*

Date: *[insert date]*

Attention: *[insert name and title]*

Contract Name: *[insert Contract name]*

Contract Number: *[insert Contract number]*

Dear Sirs,

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

1. Title of Change: *[insert title]* \_\_\_\_\_
2. Change Request No./Rev.: *[insert number]* \_\_\_\_\_
3. Brief Description of Change: *[insert description]* \_\_\_\_\_
4. Scheduled Impact of Change: *[insert description]* \_\_\_\_\_
5. Cost for Preparation of Change Proposal: *[insert cost]* \_\_\_\_\_<sup>1</sup>

(a)	Engineering	(Amount)
-----	-------------	----------

(i)	Engineer	_____ hrs	x	_____ rate/hr	=	_____
-----	----------	-----------	---	---------------	---	-------

(ii)	Draftsperson	_____ hrs	x	_____ rate/hr	=	_____
------	--------------	-----------	---	---------------	---	-------

	Sub-total	_____ hrs					_____
--	-----------	-----------	--	--	--	--	-------

	Total Engineering Cost		_____
--	------------------------	--	-------

(b)	Other Cost		_____
-----	------------	--	-------

	Total Cost (a) + (b)		_____
--	----------------------	--	-------

---

<sup>1</sup> Cost shall be in the currencies of the Contract.

---

(Contractor's Name)

---

(Signature)

---

(Name of signatory)

---

(Title of signatory)

---

### Form 3. Acceptance of Estimate

(Employer's Letterhead)

To: *[insert Contractor's name and address]*

Date: *[insert date]*

Attention: *[insert name and title]*

Contract Name: *[insert Contract name]*

Contract Number: *[insert Contract number]*

Dear Sirs,

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

1. Title of Change: *[insert title]* \_\_\_\_\_
2. Change Request No./Rev.: *[insert number]* \_\_\_\_\_
3. Estimate for Change Proposal No./Rev.: *[insert number]* \_\_\_\_\_
4. Acceptance of Estimate No./Rev.: *[insert number]* \_\_\_\_\_
5. Brief Description of Change: *[insert description]* \_\_\_\_\_
6. Other Terms and Conditions: In the event that that the Employer decide not to order the Change accepted, the Contractor shall be entitled to compensation for the cost of preparation of Change Proposal described in the Contractor's Estimate for Change Proposal mentioned in 3 above, in accordance with GC Clause 39 of the Conditions of the Contract.

\_\_\_\_\_  
(Employer's Name)

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

\_\_\_\_\_  
(Name and Title of signatory)

## Form 4. Change Proposal

(Contractor's Letterhead)

To: *[insert Employer's Name and address]*

Date: *[insert date]*

Attention: *[insert name and title]*

Contract Name: *[insert Contract name]*

Contract Number: *[insert Contract number]*

Dear Sirs,

In response to your Request for Change Proposal No. *[insert number]*, we hereby submit our proposal as follows:

1. Title of Change: *[insert title]* \_\_\_\_\_
2. Change Proposal No./Rev.: *[insert number]* \_\_\_\_\_
3. Originator of Change: Employer: *[insert name of Employer]* \_\_\_\_\_  
Contractor: *[insert name of Contractor]* \_\_\_\_\_
4. Brief Description of Change: *[insert description]* \_\_\_\_\_
5. Reasons for Change: *[insert reason]* \_\_\_\_\_
6. Facilities and/or Item No. of equipment related to the requested Change: *[insert description]* \_\_\_\_\_
7. Reference drawings and/or technical documents for the requested Change:

Drawing No./Document No.	Description



8. Estimate of increase/decrease to the Contract Price resulting from Change Proposal:<sup>1</sup>

(Amount)

(a) Direct material \_\_\_\_\_

(b) Major construction equipment \_\_\_\_\_

(c) Direct field labour (Total \_\_\_\_ hrs) \_\_\_\_\_

(d) Subcontracts \_\_\_\_\_

(e) Indirect material and labour \_\_\_\_\_

(f) Site supervision \_\_\_\_\_

(g) Head office technical staff salaries

Process engineer \_\_\_\_\_ hrs @ \_\_\_\_\_ rate/hr \_\_\_\_\_

Project engineer \_\_\_\_\_ hrs @ \_\_\_\_\_ rate/hr \_\_\_\_\_

Equipment engineer \_\_\_\_\_ hrs @ \_\_\_\_\_ rate/hr \_\_\_\_\_

Procurement \_\_\_\_\_ hrs @ \_\_\_\_\_ rate/hr \_\_\_\_\_

Draftsperson \_\_\_\_\_ hrs @ \_\_\_\_\_ rate/hr \_\_\_\_\_

Total \_\_\_\_\_ hrs \_\_\_\_\_

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

(i) Fee for general administration, \_\_\_\_\_ % of Items \_\_\_\_\_

(j) Taxes and customs duties \_\_\_\_\_

Total lump sum cost of Change Proposal \_\_\_\_\_

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

Cost to prepare Estimate for Change Proposal \_\_\_\_\_

*(Amount payable if Change is not accepted)*

## 9. Additional Time for Completion required due to Change Proposal

## 10. Effect on the Functional Guarantees

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

\_\_\_\_\_

1 Increase and/or decrease to the Contract Price shall be in the currencies of the Contract.

- 12. Validity of this Proposal: within *[number]* days after receipt of this Proposal by the Employer
  
- 13. Other terms and conditions of this Change Proposal:
  - (a) You are requested to notify us of your acceptance, comments or rejection of this detailed Change Proposal within *[number]* days from your receipt of this Proposal.
  
  - (b) The amount of any increase and/or decrease shall be taken into account in the adjustment of the Contract Price.
  
  - (c) Contractor's cost for preparation of this Change Proposal:  
*[Note: This cost shall be reimbursed by the Employer in case of Employer's withdrawal or rejection of this Change Proposal without default of the Contractor in accordance with GC 39 of the Conditions of the Contract.]*

---

(Contractor's Name)

---

(Signature)

---

(Name of signatory)

---

(Title of signatory)

---

## Form 5. Change Order

(Employer's Letterhead)

To: *[insert Contractor's name and address]*

Date: *[insert date]*

Attention: *[insert name and title]*

Contract Name: *[insert Contract name]*

Contract Number: *[insert Contract number]*

Dear Sirs,

We approve the Change Order for the Facilities specified in the Change Proposal (No. *[insert number]*), and agree to adjust the Contract Price, Time for Completion and/or other conditions of the Contract in accordance with GC Clause 39 of the Conditions of the Contract.

1. Title of Change: *[insert title]* \_\_\_\_\_
2. Change Request No./Rev.: *[insert number]* \_\_\_\_\_
3. Change Order No./Rev.: *[insert number]* \_\_\_\_\_
4. Originator of Change: Employer: *[insert name of Employer]* \_\_\_\_\_  
Contractor: *[insert name of Contractor]* \_\_\_\_\_
5. Authorized Price:  
  
Ref. No.: *[insert number]* \_\_\_\_\_ Date: *[insert date]* \_\_\_\_\_  
Foreign currency portion: *[insert amount]* \_\_\_\_\_ plus Local currency portion:  
*[insert amount]* \_\_\_\_\_
6. Adjustment of Time for Completion  
  
None                      Increase *[insert number]* days                      Decrease *[insert number]* days
7. Other effects, if any

Authorized by: \_\_\_\_\_ Date: \_\_\_\_\_  
(Employer)

Accepted by: \_\_\_\_\_ Date: \_\_\_\_\_  
(Contractor)

## Form 6. Pending Agreement Change Order

(Employer's Letterhead)

To: *[insert Contractor's name and address]*

Date: *[insert date]*

Attention: *[insert name and title]*

Contract Name: *[insert Contract name]*

Contract Number: *[insert Contract number]*

Dear Sirs,

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

1. Title of Change: *[insert title]* \_\_\_\_\_
2. Employer's Request for Change Proposal No./Rev.: *[insert number]* \_\_\_\_\_  
dated: *[insert date]* \_\_\_\_\_
3. Contractor's Change Proposal No./Rev.: *[insert number]* \_\_\_\_\_  
dated: *[insert date]* \_\_\_\_\_
4. Brief Description of Change: *[insert description]* \_\_\_\_\_
5. Facilities and/or Item No. of equipment related to the requested Change: *[insert description]* \_\_\_\_\_
6. Reference Drawings and/or technical documents for the requested Change:

Drawing No./Document No.	Description

7. Adjustment of Time for Completion:
8. Other change in the Contract terms:
9. Other terms and conditions:



---

(Employer's Name)

---

(Signature)

---

(Name of signatory)

---

(Title of signatory)

---

### Form 7. Application for Change Proposal

(Contractor's Letterhead)

To: *[insert Employer's Name and address]*

Date: *[insert date]*

Attention: *[insert name and title]*

Contract Name: *[insert Contract name]*

Contract Number: *[insert Contract number]*

Dear Sirs,

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

1. Title of Change: *[insert title]* \_\_\_\_\_
2. Application for Change Proposal No./Rev.: *[insert number]* \_\_\_\_\_ dated: *[insert date]* \_\_\_\_\_
3. Brief Description of Change: *[insert description]* \_\_\_\_\_
4. Reasons for Change: *[insert reason]* \_\_\_\_\_
5. Order of Magnitude Estimation (in the currencies of the Contract): *[insert amount]* \_\_\_\_
6. Scheduled Impact of Change: *[insert scheduled impact]* \_\_\_\_\_
7. Effect on Functional Guarantees, if any: *[insert effect, if any]* \_\_\_\_\_
8. Appendix:

\_\_\_\_\_  
(Contractor's Name)

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

\_\_\_\_\_  
(Name of signatory)

\_\_\_\_\_  
(Title of signatory)

**Form 8. Change Order Log**

*[The Contractor shall prepare an up-to-date Change Order Log, in accordance with Clause 2 of the Change Order Procedure, and attach a copy of it to the monthly progress report to be submitted to the Employer.]*



## **Supplementary Information**

### **Notes for the Employer**

The Supplementary information may typically include any additional data or information relating to the Facilities, Site, Project, country or locality, which may be useful or helpful for the Bidder for preparation of its Bid.

## Site Data

### Notes for the Employer

Pursuant to GC Sub-Clause 9.2 and 10.1 of the Conditions of Contract, the Employer should make available to the Bidders, data in the Employer's possession pertaining to the Site and the proposed Facilities, which may typically include the following:

- (a) topographical survey data.
- (b) environmental and social baseline data.
- (c) meteorological data and tidal data.
- (d) ground investigation and ground condition data (i.e. geotechnical data, geological data.).
- (e) utility records.
- (f) land ownership data.
- (g) ground water, surface water and hydrological data.
- (h) orders, consents, permits, licenses and compliance requirements.
- (i) as-built records of existing infrastructure.
- (j) quality and environmental, health or safety systems to apply.
- (k) details of any risks or hazards.
- (l) any other physical constraints.

If the Site Data is voluminous and the Employer finds it difficult to attach with the Bidding Document, he may include only the list of such Site Data hereunder and issue them separately to the Bidders in CD(s)/ DVD(s).





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

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### Notes for the Employer

The Conditions of Contract comprise two parts:

- (a) **General Conditions** – GC (Section VII of the Bidding Document); and
- (b) **Particular Conditions** – PC (Section VIII of the Bidding Document).

The General Conditions of Contract set forth in Part 3, Section VII of this Standard Bidding Document for Procurement of Plant Design, Supply and Installation are based on the Model Form of International Contract for Process Plant Construction published by the Engineering Advancement Association of Japan (ENAA). The use of these Standard GC is required in bidding documents/ contracts for Plant Design, Supply and Installation to be procured through international competitive bidding (ICB), and they shall be used without any modification.

A copy of the Standard GC shall be attached to the Bidding Document/ Contract prepared by the Employer. If the General Conditions in the Bidding Document/Contract prepared by the Employer contain modifications from the Standard GC, JICA will not consider them valid and will require the Employer to revise the Bidding Document/ Contract so that the Standard GC, as defined above, shall apply.

The Particular Conditions (PC) complement the General Conditions (GC) to specify data and contractual requirements linked to the special circumstances of the country, the Employer, the Project Manager, the sector, the overall project, and the Facilities. It is good practice to have a list of tax and custom regulations applicable in the country, to be provided as non-binding general information, attached to the Bidding Document.

This Section consists of Part A, Contract Data, which contains data specific to each contract, and Part B, Specific Provisions, which contains provisions specific to each contract. Moreover, Part B consists of a set of provisions prepared by JICA which shall be used **without modification**. In addition to those, country or project specific provisions must also be prepared and incorporated in each case. Whoever drafts the PC should be thoroughly familiar with the provisions of the GC and with any specific requirements of the Contract. Legal advice is recommended when amending provisions or drafting new ones. Note that the **PC provisions take precedence over those in the GC**. Clause numbers in the PC correspond to those in the GC.

# Section VII. General Conditions (GC)

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## A. Contract and Interpretation

### 1. Definitions

1.1 The following words and expressions shall have the meanings hereby assigned to them:

“Base Date” means:

- (a) the date 28 days prior to the latest date for submission of the Bid, when Single-Stage Two-Envelope Bidding procedure is used; or
- (b) the date 28 days prior to the latest date for submission of the Second Stage Bid, when Two-Stage One-Envelope Bidding procedure is used.

“Borrower” means the person (if any) **named as the borrower in the Contract Data.**

“Commissioning” means operation of the Facilities or any Section thereof by the Contractor following Completion, which operation is to be carried out by the Contractor as provided in GC Sub-Clause 25.1 (*Commissioning*) hereof, for the purpose of carrying out Guarantee Test(s).

“Completion” means that the Facilities or any Section thereof have been completed operationally and structurally and put in a tight and clean condition, that all work in respect of Precommissioning of the Facilities or such Section thereof has been completed, and that the Facilities or such Section thereof are ready for Commissioning as provided in GC Clause 24 (*Completion of the Facilities*) hereof.

“Construction Manager” means the person appointed by the Contractor’s Representative in the manner provided in GC Sub-Clause 17.2.4.

“Contract” means the Contract Agreement entered into between the Employer and the Contractor, together with the Contract Documents referred to therein; they shall constitute the Contract, and the term “the Contract” shall in all such documents be construed accordingly.

“Contract Data” means the pages completed by the Employer entitled contract data which constitute Part A of the Particular Conditions.

“Contract Documents” means the documents listed in Article 1.1 (*Contract Documents*) of the Contract Agreement (including

any amendments thereto).

“Contract Price” means the sum specified in Article 2.1 (*Contract Price*) of the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.

“Contractor” means the person(s) whose bid to perform the Contract has been accepted by the Employer and is named as Contractor in the Contract Agreement and includes the legal successors or permitted assigns of the Contractor.

“Contractor’s Equipment” means all facilities, equipment, machinery, tools, apparatus, appliances or things of every kind required in or for installation, completion and maintenance of Facilities that are to be provided by the Contractor, but does not include Plant, or other things intended to form or forming part of the Facilities.

“Contractor’s Personnel” means all personnel whom the Contractor utilises for the execution of the Contract, who may include the staff, labour and other employees of the Contractor and of each Subcontractor; and any other personnel assisting the Contractor in the execution of the Contract.

“Contractor’s Representative” means any person nominated by the Contractor and approved by the Employer in the manner provided in GC Sub-Clause 17.2 (*Contractor’s Representative and Construction Manager*) hereof to perform the duties delegated by the Contractor.

“day” means calendar day.

“Defects Liability Period” means the period of validity of the warranties given by the Contractor commencing at Operational Acceptance of the Facilities or a part thereof, during which the Contractor is responsible for defects with respect to the Facilities (or the relevant part thereof) as provided in GC Clause 27 (*Defects Liability*) hereof.

“Dispute Board” (DB) means the person or persons appointed by agreement between the Employer and the Contractor to make a decision with respect to any dispute or difference between the Employer and the Contractor referred to him or her by the Parties pursuant to GC Sub-Clause 45.1 (*Appointment of the Dispute Board*) hereof.

“Effective Date” means the date under GC Sub-Clause 8.1,

from which the Time for Completion shall be calculated.

“Employer” means the person **named as such in the Contract Data** and includes the legal successors or permitted assigns of the Employer.

“Employer’s Requirements” means the document entitled employer’s requirements, as included in the Contract, and any additions and modifications to such document in accordance with the Contract. Such document includes drawings, specifications, and any other documents specifying the purpose, scope, and/or design and/or other technical criteria, for the Facilities.

“Facilities” means the Plant to be supplied and installed, as well as all the Installation Services to be carried out by the Contractor under the Contract.

“GC” means the General Conditions hereof.

“Guarantee Test(s)” means the test(s) specified in the Employer’s Requirements to be carried out to ascertain whether the Facilities or a part thereof is able to attain the Functional Guarantees specified in Appendix 8 (*Functional Guarantees*) to the Contract Agreement, in accordance with the provisions of GC Sub-Clause 25.2 (*Guarantee Test*) hereof.

“Installation Services” means all those services ancillary to the supply of the Plant for the Facilities, to be provided by the Contractor under the Contract, such as transportation and provision of marine or other similar insurance, inspection, expediting, site preparation works (including the provision and use of Contractor’s Equipment and the supply of all construction materials required), installation, testing, precommissioning, commissioning, operations, maintenance, the provision of operations and maintenance manuals, training, etc. as the case may require.

“JICA” means the Japan International Cooperation Agency.

“Letter of Acceptance” means the letter of formal acceptance, signed by the Employer, of the Letter of Bid, including any annexed memoranda comprising agreements between and signed by both Parties. If there is not such letter of acceptance, the expression “Letter of Acceptance” means the Contract Agreement and the date of issuing or receiving the Letter of Acceptance means the date of signing of the Contract Agreement.

“Letter of Bid” means the document(s) entitled letters of technical bid and price bid, or letter of second stage bid as appropriate, which was/were completed by the Contractor and include(s) the signed offer to the Employer for the Facilities.

“Mandatory Spare Parts” means means the spare parts listed in the Schedule entitled “Mandatory Spare Parts” of the Price Schedule included in the Contract, which are required in the Contract and to be supplied by the Contractor, prior to the completion of the Facilities under GC Sub-Clause 7.3 (*Spare Parts*) (a), for the purpose of the proper and continuing functioning of the Facilities after the Operational Acceptance of the Facilities in accordance with GC Sub-Clause 25.3 (*Operational Acceptance*).

If the said Schedule is not included in the Contract, this Sub-Clause shall not apply.”.

“month” means calendar month.

“Operational Acceptance” means the acceptance by the Employer of the Facilities or any Section thereof, which certifies the Contractor’s fulfilment of the Contract in respect of Functional Guarantees of the Facilities (or the relevant part thereof) in accordance with the provisions of GC Clause 28 (*Functional Guarantees*) hereof and shall include deemed acceptance in accordance with GC Clause 25 (*Commissioning and Operational Acceptance*) hereof.

“Operational Acceptance Certificate” means a certificate issued under GC Clause 25 (*Commissioning and Operational Acceptance*) hereof.

“Party” means the Employer or the Contractor, as the context requires, and “Parties” means both of them.

“PC” means the Particular Conditions.

“Performance Security” means the security(ies) under GC Sub-Clause 13.3 (*Performance Security*).

“Plant” means permanent plant, equipment, machinery, apparatus, materials, articles and things of all kinds to be provided and incorporated in the Facilities by the Contractor under the Contract (including the spare parts to be supplied by the Contractor under GC Sub-Clause 7.3 hereof), but does not include Contractor’s Equipment.

“Precommissioning” means the testing, checking and other

requirements specified in the Employer's Requirements that are to be carried out by the Contractor in preparation for Commissioning as provided in GC Clause 24 (*Completion of the Facilities*) hereof.

"Project Manager" means the person appointed by the Employer in the manner provided in GC Sub-Clause 17.1 (*Project Manager*) hereof and **named as such in the Contract Data** to perform the duties delegated by the Employer.

"Provisional Sum" means a sum which is specified in the Contract as a provisional sum, for the supply of any Plant and Installations Services or other services under GC Sub-Clause 39.4 (*Provisional Sums*).

"Recommended Spare Parts" means spare parts listed in the Schedule entitled "Recommended Spare Parts" of the Price Schedule included in the Contract, which are to be supplied by the Contractor under an agreement between the Parties in accordance with Sub-Clause 7.3(b), prior to the completion of the Facilities, and are necessary for the purpose of the proper and continuing functioning of the Facilities after the Operational Acceptance of the Facilities in accordance with GC Sub-Clause 25.3 (*Operational Acceptance*).

"Section" means a part of the Facilities **specified in the Contract Data** as a Section (if any).

"Site" means the land and other places upon which the Facilities are to be installed, and such other land or places as may be specified in the Contract as forming part of the Site.

"Subcontractor," including manufacturers, means any person to whom execution of any part of the Facilities, including preparation of any design or supply of any Plant, is sub-contracted directly or indirectly by the Contractor, and includes its legal successors or permitted assigns.

"Time for Completion" means the time within which Completion of the Facilities or any Section thereof is to be attained, as referred to in GC Clause 8 (*Commencement and Time for Completion*) and in accordance with the all relevant provisions of the Contract.

"year" means 365 days.

## 2. Contract

2.1 Subject to Article 1.2 (*Order of Precedence*) of the Contract Agreement, all documents forming part of the Contract (and all

**Documents**

parts thereof) are intended to be correlative, complementary and mutually explanatory. The Contract shall be read as a whole.

**3. Interpretation**

3.1 In the Contract, except where the context requires otherwise:

- (a) words indicating one gender include all genders;
- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) provisions including the word “agree,” “agreed,” or “agreement” require the agreement to be recorded in writing;
- (d) the word “Tender” is synonymous with “Bid,” “Tenderer,” with “Bidder,” and “Tender Document” with “Bidding Document;” and
- (e) “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record.

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

3.2 Incoterms

Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of Parties thereunder shall be as prescribed by *Incoterms*.

Incoterms means international rules for interpreting trade terms published by the International Chamber of Commerce (latest edition as of the Base Date), 38 Cours Albert 1<sup>er</sup>, 75008 Paris, France.

3.3 Entire Agreement

Subject to GC Sub-Clause 16.4 hereof, the Contract constitutes the entire agreement between the Employer and Contractor with respect to the subject matter of Contract and supersedes all communications, negotiations and agreements (whether written or oral) of the Parties with respect thereto made prior to the date of Contract.

3.4 Amendment

No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of

each Party hereto.

3.5 Independent Contractor

The Contractor shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the Parties hereto. Subject to the provisions of the Contract, the Contractor shall be solely responsible for the manner in which the Contract is performed. All employees, representatives or Subcontractors engaged by the Contractor in connection with the performance of the Contract shall be under the complete control of the Contractor and shall not be deemed to be employees of the Employer, and nothing contained in the Contract or in any subcontract awarded by the Contractor shall be construed to create any contractual relationship between any such employees, representatives or Subcontractors and the Employer.

3.6 Non-Waiver

3.6.1 Subject to GC Sub-Clause 3.6.2 below, no relaxation, forbearance, delay or indulgence by either Party in enforcing any of the terms and conditions of the Contract or the granting of time by either Party to the other shall prejudice, affect or restrict the rights of that Party under the Contract, nor shall any waiver by either Party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

3.6.2 Any waiver of a Party's rights, powers or remedies under the Contract must be in writing, must be dated and signed by an authorized representative of the Party granting such waiver, and must specify the right and the extent to which it is being waived.

3.7 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

**4. Communica-  
tions**

4.1 Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:

- (a) in writing and delivered against receipt; and
- (b) delivered, sent or transmitted to the address for the recipient's communications **as stated in the Contract**



### **Data.**

When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Project Manager, a copy shall be sent to the Project Manager or the other Party, as the case may be.

#### **5. Law and Language**

5.1 The Contract shall be governed by and interpreted in accordance with laws of the country **specified in the Contract Data.**

5.2 The ruling language of the Contract shall be that **stated in the Contract Data.**

5.3 The language for communications shall be the ruling language unless otherwise **stated in the Contract Data.**

#### **6. Corrupt or Fraudulent Practices**

6.1 If the Employer determines, based on reasonable evidence, that the Contractor has engaged in any corrupt or fraudulent practice, in competing for or in executing the Contract, then the Employer may, after giving fourteen (14) days' notice to the Contractor, terminate the Contract and expel him from the Site, and the provisions of GC Clause 42 shall apply as if such termination had been made under GC Sub-Clause 42.2.1(c).

6.2 Should any employee of the Contractor be determined, based on reasonable evidence, to have engaged in any corrupt or fraudulent practice during the execution of the Contract, then that employee shall be removed in accordance with GC Sub-Clauses 17.2.5.

6.3 The Contractor is required to comply with JICA's policy in regard to corrupt and fraudulent practices as declared in the Acknowledgement of Compliance with Guidelines for Procurement under Japanese ODA Loans.

### **B. Subject Matter of Contract**

#### **7. Scope of Facilities**

7.1 Unless otherwise expressly limited in the Employer's Requirements, the Contractor's obligations cover the provision of all Plant and the performance of all Installation Services required for the design, and the manufacture (including procurement, quality assurance, construction, installation, associated civil works, Precommissioning and delivery) of the Plant, and the installation, completion and commissioning of the Facilities in accordance with the plans, procedures, specifications, drawings, codes and any other documents as specified in Section VI, Employer's Requirements. Such specifications include, but are not limited to the provision of

supervision and engineering services; the supply of labor, materials, equipment, spare parts (as specified in GC Sub-Clause 7.3 below) and accessories; Contractor's Equipment; construction utilities and supplies; temporary materials, structures and facilities; transportation (including, without limitation, unloading and hauling to, from and at the Site); and storage, except for those supplies, works and services that will be provided or performed by the Employer, as set forth in the Employer's Requirements, or any other requirements specified in the Contract.

7.2 The Contractor shall, unless specifically excluded in the Contract, perform all such work and/or supply all such items and materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining the Completion of the Facilities as if such work and/or items and materials were expressly mentioned in the Contract.

### 7.3 Spare Parts

(a) The Contractor shall supply to the Employer, the Mandatory Spare Parts, prior to the completion of the Facilities or any Section thereof, at such timing as specified in the Contract for the operation and maintenance of the Facilities for the period **specified in the Contract Data** after the Operational Acceptance by the Employer.

The price of the Mandatory Spare Parts shall be included in the Contract Price.

(b) Upon the both Parties agree on the details of the Recommended Spare Parts for the operation and maintenance of the Facilities for the period **specified in the Contract Data** including the identity, specifications and quantities of such spare parts and the terms and conditions, a Change is issued under GC Clause 39 (*Change in the Facilities*) and the price of Recommended Spare Parts shall be included in the Contract Price. The Contractor shall supply to the Employer, the Recommended Spare Parts, prior to the completion of the Facilities.

The price of Recommended Spare Parts shall include the purchase price and other costs relating to the supply of spare parts such as transportation, port charge and the Contractor's fees.

**8. Commencement and Time for Completion**

8.1 The Effective Date is the date at which the following precedent conditions have been fulfilled and the Project Manager's notification recording the agreement of both Parties on such fulfilment, and instructing to commence the work is received by the Contractor:

- (a) this Contract Agreement has been duly executed for and on behalf of both the Employer and the Contractor;
- (b) reasonable evidence of the Employer's financial arrangements has been delivered by the Employer to the Contractor in accordance with GC Sub-Clause 10.5;
- (c) **except if otherwise specified in the Contract Data**, the possession of the Site and access thereto and all other areas reasonably required for the proper execution of the Contract in accordance with GC Sub-Clause 10.2 is given to the Contractor, as required for the commencement of the work; and
- (d) the Contractor has received the Advance Payment as stated in Appendix 1 (*Payment Terms and Procedures*) provided that the corresponding bank guarantee has been delivered by the Contractor.

The Contractor shall commence the work on the Facilities after the Effective Date and, the Contractor shall thereafter proceed in accordance with time schedule specified in the Appendix 4 (*Time Schedule*) to the Contract Agreement.

8.2 The Contractor shall attain Completion of the Facilities or a Section thereof, within the Time for Completion **stated in the Contract Data**, calculated from the Effective Date, or within such extended time to which the Contractor shall be entitled under GC Clause 40 hereof.

**9. Contractor's Responsibilities**

9.1 The Contractor shall design, manufacture including associated purchases and/or subcontracting, install and complete the Facilities in accordance with the Contract. When completed, the Facilities should be fit for the purposes for which they are intended as defined in the Contract.

9.2 The Contractor confirms that it:

- (a) has entered into this Contract on the basis of a proper examination of the data relating to the Facilities including any data as to boring tests provided by the Employer, and

on the basis of information that the Contractor could have obtained from a visual inspection of the Site if access thereto was available and of other data readily available to it relating to the Facilities as of the Base Date; and

- (b) is responsible for interpreting all such data referred to in the above sub-paragraph (a).

The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Facilities.

- 9.3 The Contractor shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located which such authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Employer under GC Sub-Clause 10.3 hereof and that are necessary for the performance of the Contract.
- 9.4 The Contractor shall comply with all laws in force in the country where the Facilities are to be implemented. The laws include all local, state, national or other laws that affect the performance of the Contract and are binding upon the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to GC Sub-Clause 10.1 hereof.
- 9.5 Any Plant and Installation Services that will be incorporated in or be required for the Facilities and other supplies shall meet the requirement specified in Appendix 6 (*Eligible Source Countries of Japanese ODA Loans*) to the Contract Agreement.
- 9.6 If the Contractor is a joint venture (JV), which means for the purposes of this Contract, joint venture, consortium, association or unincorporated grouping of two or more persons, all such persons shall be jointly and severally bound to the Employer for the fulfilment of the provisions of the Contract, and shall designate one of such persons to act as a leader with authority to

bind the JV. The composition or the constitution of the JV shall not be altered without the prior consent of the Employer.

**10. Employer's Responsibilities**

- 10.1 All information and/or data to be supplied by the Employer as described in the Employer's Requirements, shall be deemed to be accurate, except when the Employer expressly states otherwise, and the Contractor shall not be liable for the consequences of any discrepancies, errors, omissions or inaccuracies in such information and/or data.
- 10.2 The Employer shall be responsible for acquiring and providing possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of way, as specified in the Employer's Requirements. The Employer shall give to the Contractor such possession and access on or before the date(s) **specified in the Contract Data**.
- 10.3 The Employer shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located which (a) such authorities or undertakings require the Employer to obtain in the Employer's name, (b) are necessary for the execution of the Contract, including those required for the performance by both the Contractor and the Employer of their respective obligations under the Contract, and (c) are specified in the Employer's Requirements.
- 10.4 If requested by the Contractor, the Employer shall use its best endeavours to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the execution of the Contract from all local, state or national government authorities or public service undertakings that such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain.
- 10.5 The Employer shall submit, before the Effective Date and thereafter within twenty-eight (28) days after receiving any request from the Contractor, reasonable evidence that financial arrangements have been made and are being maintained which will enable the Employer to pay the Contract Price punctually (as estimated at that time) in accordance with Appendix 1 (*Payment Terms and Procedures*) to the Contract Agreement. Before the Employer makes any material change to his financial arrangements, the Employer shall give notice to the Contractor with detailed particulars. In addition, if JICA has

notified to the Borrower that JICA has suspended disbursements under its loan, which finances in whole or in part the execution of the work on the Facilities, the Employer shall give notice of such suspension to the Contractor with detailed particulars, including the date of such notification, with a copy to the Project Manager, within seven (7) days of the Borrower having received the suspension notification from JICA. If alternative funds will be available in appropriate currencies to the Employer to continue making payments to the Contractor beyond a date sixty (60) days after the date of JICA notification of the suspension, the Employer shall provide reasonable evidence in his notice of the extent to which such funds will be available.

- 10.6 Unless otherwise specified in the Contract or agreed upon by the Employer and the Contractor, the Employer shall provide sufficient, properly qualified operating and maintenance personnel; shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts, other materials and facilities; and shall perform all work and services of whatsoever nature, including those required by the Contractor to properly carry out Precommissioning, Commissioning and Guarantee Tests, all in accordance with the Employer's Requirements, at or before the time specified in the programme furnished by the Contractor under GC Sub-Clause 18.2 (*Programme of Performance*) hereof and in the manner thereupon specified or as otherwise agreed upon by the Employer and the Contractor.
- 10.7 All costs and expenses involved in the performance of the obligations under this GC Clause 10 shall be the responsibility of the Employer, save those to be incurred by the Contractor with respect to the performance of Guarantee Tests, in accordance with GC Sub-Clause 25.2 (*Guarantee Test*).
- 10.8 In the event that the Employer shall be in breach of any of his obligations under this Clause, the additional cost incurred by the Contractor in consequence thereof shall added to the Contract Price.

### **C. Payment**

- 11. Contract Price**
- 11.1 The Contract Price shall be as specified in Article 2 (*Contract Price and Terms of Payment*) of the Contract Agreement.
- 11.2 **Unless otherwise stated in the Contract Data**, the Contract Price shall be a firm lump sum not subject to any alteration, except in the event of a Change in the Facilities or as otherwise

provided in the Contract.

- 11.3 Subject to GC Sub-Clauses 9.2, 10.1 and 35 hereof, the Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.

## **12. Terms of Payment**

### **12.1 Contract Price and Payment Procedure**

The Contract Price shall be paid as specified in Article 2 (*Contract Price and Terms of Payment*) of the Contract Agreement, this GC Clause 12 and Appendix 1 (*Payment Terms and Procedures*) to the Contract Agreement, which also outlines the procedures to be followed in making application for and processing payments.

No payment made by the Employer herein shall be deemed to constitute acceptance by the Employer of the Facilities or any part(s) thereof.

However, if any item of plant and installation services is to be paid according to quantity supplied or work done, the provisions for measurement and evaluation shall be as stated in the Appendix 1 (*Payment Terms and Procedures*), and the Contract Price shall be adjusted accordingly. Any quantities which may be set out in a Schedule are estimated quantities and are not to be taken as the actual and correct quantities of the item of Plant and Installation services which the Contractor is required to execute: and any quantities or price data which may be set out in a Schedule shall be used for the purposes stated in the Schedule and may be inapplicable for other purposes.

The currency(ies) in which payments are made to the Contractor under this Contract shall be as specified in Article 2.1 of the Contract Agreement, subject to the general principle that payments will be made in the currency(ies) in which the Contract Price has been stated in the Contractor's bid.

### **12.2 Payment**

The Employer shall pay to the Contractor:

- (a) the advance payment within twenty-one (21) days after the Project Manager receives the invoice and the documents stated in Appendix 1 (*Payment Terms and Procedures*) to the Contract Agreement.
- (b) the amount approved by the Project Manager with respect

of each subsequent payment application, within fifty-six (56) days after the Project Manager receives invoice and the documents stated in Appendix 1 (*Payment Terms and Procedures*) to the Contract Agreement; or, at a time when the JICA's loan or credit (from which part of the payments to the Contractor is being made) is suspended, the amount shown on any invoice submitted by the Contractor within fourteen(14) days after such invoice is submitted, any discrepancy being rectified in the next payment to the Contractor.

### 12.3 JICA Disbursement Procedure

Payment of the amount due in:

- (a) local currency, payable from the proceeds of the Loan shall be made through as **specified in the Contract Data**; and
- (b) foreign currency, payable from the proceeds of the Loan shall be made through as **specified in the Contract Data**.

in accordance with the JICA's Disbursement Procedures as stated **in the Contract Data**.

Payment of the amount due in each currency, payable from any source of finance other than the Loan Agreement such as the Employer's own funds, shall be made directly into the bank account, nominated by the Contractor, in the payment country (for this currency) specified in the Contract.

Any charges or fees associated with or incidental to remittance of funds from JICA/ Employer to the Contractor's account including but not limited to those for opening and amendment commissions of the Letter of Credit shall solely be borne by the Employer.

### 12.4 Delayed Payment

If the Contractor does not receive payment on its respective due date in accordance with GC Sub-Clause 12.2 (*Payment*), the Contractor shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period of delay until payment has been made in full, whether before or after judgment or arbitral award.

These financing charges shall be calculated at the annual rate of three percentage points above the discount rate of the central



bank in the country of the currency of payment, or if not available, the interbank offered rate, and shall be paid in such currency.

### 13. Securities

#### 13.1 Issuance of Securities

The Contractor shall provide the securities specified below in favour of the Employer at the times, and in the amount, manner and form specified below.

#### 13.2 Advance Payment Security

13.2.1 The Contractor shall, within twenty-eight (28) days of the receipt of the Letter of Acceptance, provide a security in an amount equal to the total advance payment. The amount shall be calculated by applying the percentage rate **as indicated in the Contract Data**, and in the same currency(ies) of the Contract Price. The Advance Payment shall be for the Facilities as a whole or for the relevant Plant or Installation Service(s) in accordance with Appendix 1 (*Payment Terms and Procedures*) to the Contract Agreement.

13.2.2 The security shall be in the form provided in the Contract or in another form acceptable to the Employer. The amount of the security shall be reduced in proportion to the value of the work on the Facilities executed by and paid to the Contractor from time to time, and shall automatically become null and void when the full amount of the Advance Payment has been recovered by the Employer. The security shall be returned to the Contractor immediately after its expiration.

#### 13.3 Performance Security

13.3.1 The Contractor shall, within twenty-eight (28) days of the receipt of the Letter of Acceptance, provide a security for the due performance of the Contract in the amount **specified in the Contract Data**.

13.3.2 The Performance Security shall be denominated in the currency(ies) of the Contract, or in a freely convertible currency acceptable to the Employer, and shall be in the form provided in the Contract **as stated in the Contract Data**, or in another form acceptable to the

Employer.

- 13.3.3 Promptly after the expiry date of the Defect Liability Period, the Performance Security shall become null and void.

However, if the Defects Liability Period has been extended on any part of the Facilities pursuant to GC Sub-Clause 27.8 hereof, the Contractor shall issue an additional security in an amount proportionate to the Contract Price of that part.

The security shall be returned immediately after its expiration.

- 13.3.4 The Employer shall not make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract. The Employer shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent to which the Employer was not entitled to make the claim.

#### **14. Taxes and Duties**

- 14.1 The Contractor shall bear and pay all taxes, duties, levies and charges assessed on the Contractor, its Subcontractors or their employees by all municipal, state or national government authorities in connection with the Facilities in and outside of the country where the Site is located, unless otherwise **stated in the Contract Data**.

In this context;

- (a) duties, taxes and levies **listed in the Contract Data** shall be exempted. Such exemptions are fallen into two categories, namely:
- (i) “No Pay” category: The Contractor shall be entitled to exemption from duties, taxes and levies falling into this category, without having to make any payment arising from or out of or in connection with such liabilities; or
  - (ii) “Pay & Reimburse” category: The Contractor shall be entitled to exemption from duties, taxes and levies, falling into this category, provided that he first makes all payments arising from or out of or in connection with such liabilities and then applies for their reimbursement from the relevant authority, following the procedure prescribed by such authority;

or

(b) duties, taxes and levies shall be paid by the Employer on behalf of the Contractor:

- 14.2 Notwithstanding GC Sub-Clause 14.1 above, the Employer shall bear and promptly pay all customs and import duties for the Plant specified in Price Schedule No. 1.
- 14.3 If any tax exemptions, reductions, allowances or privileges may be available to the Contractor in the country where the Site is located, the Employer shall use its best endeavours to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.
- 14.4 For the purpose of the Contract, the Contract Price specified in Article 2 (*Contract Price and Terms of Payment*) of the Contract Agreement shall be deemed to be based on the taxes, duties, levies and charges prevailing at the Base Date in the country where the Site is located (hereinafter called "Tax" in this GC Sub-Clause 14.4).

If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of Contract, which was or will be assessed on the Contractor, Subcontractors or their employees in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction therefrom, as the case may be, in accordance with GC Clause 36 hereof.

#### **D. Intellectual Property**

##### **15. License/Use of Technical Information**

- 15.1 For the operation and maintenance of the Plant, the Contractor hereby grants a non-exclusive and non-transferable license (without the right to sub-license) to the Employer under the patents, utility models or other intellectual property rights owned by the Contractor or by a third Party from whom the Contractor has received the right to grant sub-licenses, and shall also grant to the Employer a non-exclusive and non-transferable right (without the right to sub-license) to use the know-how and other technical information disclosed to the Employer under the Contract. Nothing contained herein shall be construed as transferring ownership of any patent, utility model, trademark, design, copyright, know-how or other intellectual property right from the Contractor or any third

Party to the Employer.

15.2 The copyright in all drawings, documents and other materials containing data and information furnished to the Employer by the Contractor herein shall remain vested in the Contractor or, if they are furnished to the Employer directly or through the Contractor by any third Party, including suppliers of materials, the copyright in such materials shall remain vested in such third Party.

**16. Confidential Information**

16.1 The Employer and the Contractor shall keep confidential and shall not, without the written consent of the other Party hereto, divulge to any third Party any documents, data or other information marked as confidential by the other Party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this GC Clause 16.

16.2 The Employer shall not use such documents, data and other information, marked as 'confidential' and received from the Contractor for any purpose other than the operation and maintenance of the Facilities or to comply with applicable laws. Similarly, the Contractor shall not use such documents, data and other information marked as 'confidential' and received from the Employer for any purpose other than the design, procurement of Plant, construction or such other work and services as are required for the performance of the Contract or to comply with the applicable laws.

16.3 The obligation of a Party under GC Sub-Clauses 16.1 and 16.2 above, however, shall not apply to that information which:

- (a) now or hereafter enters the public domain through no fault of that Party;
- (b) can be proven to have been possessed by that Party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other Party hereto; and
- (c) otherwise lawfully becomes available to that Party from a third Party that has no obligation of confidentiality.

16.4 The above provisions of this GC Clause 16 shall not in any

way modify any undertaking of confidentiality given by either of the Parties hereto prior to the date of the Contract in respect of the Facilities or any part thereof.

- 16.5 The provisions of this GC Clause 16 shall survive termination, for whatever reason, of the Contract.

### **E. Execution of the Facilities**

#### **17. Representatives**    17.1 Project Manager

The Employer shall appoint the Project Manager and that person shall be **named in the Contract Data**. The Employer may from time to time appoint some other person as the Project Manager in place of the person previously so appointed and shall give a notice of the name of such other person to the Contractor without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the Facilities. Such appointment shall only take effect upon receipt of such notice by the Contractor. The Project Manager shall represent and act for the Employer at all times during the performance of the Contract.

All notices, instructions, orders, certificates, approvals and all other communications under the Contract shall be given by the Project Manager, except as herein otherwise provided.

If any disagreement, claim or dispute may arise, the Project Manager shall consult with each Party in an endeavour to reach agreement.

#### 17.2 Contractor's Representative & Construction Manager

17.2.1 The Contractor shall appoint the Contractor's Representative prior to the Effective Date. If the Employer makes no objection to the appointment within fourteen (14) days, the Contractor's Representative shall be deemed to have been approved. If the Employer objects to the appointment within fourteen (14) days giving the reason therefor, then the Contractor shall appoint a replacement within fourteen (14) days of such objection, and the foregoing provisions of this GC Sub-Clause 17.2.1 shall apply thereto.

17.2.2 The Contractor's Representative shall represent and act for the Contractor at all times during the

performance of the Contract and shall give to the Project Manager all the Contractor's notices, instructions, information and all other communications under the Contract.

All notices, instructions, information and all other communications given by the Employer or the Project Manager to the Contractor under the Contract shall be given to the Contractor's Representative or, in its absence, its deputy, except as herein otherwise provided.

The Contractor shall not revoke the appointment of the Contractor's Representative without the Employer's prior written consent, which shall not be unreasonably withheld. If the Employer consents thereto, the Contractor shall appoint some other person as the Contractor's Representative, pursuant to the procedure set out in GC Sub-Clause 17.2.1.

- 17.2.3 The Contractor's Representative may, subject to the approval of the Employer which shall not be unreasonably withheld, at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Contractor's Representative, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Employer and the Project Manager.

Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GC Sub-Clause 17.2.3 shall be deemed to be an act or exercise by the Contractor's Representative.

- 17.2.4 From the commencement of installation of the Facilities at the Site until Completion, the Contractor's Representative shall appoint a suitable person as the Construction Manager. The Construction Manager shall supervise all work done at the Site by the Contractor and shall be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Contract.

Whenever the Construction Manager is absent from the Site, a suitable person shall be appointed to act as the Construction Manager's deputy.

17.2.5 The Employer may by notice to the Contractor object to any representative or person employed by the Contractor in the execution of the Contract who, in the reasonable opinion of the Employer, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the site regulations provided under GC Sub-Clause 22.6 (*Site Regulations and Safety*). The Employer shall provide evidence of the same, whereupon the Contractor shall remove such person from the Facilities.

17.2.6 If any representative or person employed by the Contractor is removed in accordance with GC Sub-Clause 17.2.5, the Contractor shall, where required, promptly appoint a replacement with equivalent skills and experience.

## **18. Work Programme**

### **18.1 Contractor's Organization**

The Contractor shall supply to the Employer and the Project Manager a chart showing the proposed organization to be established by the Contractor for carrying out work on the Facilities within twenty-one (21) days of the Effective Date. The chart shall include the identities of the key personnel, and the curricula vitae of such key personnel to be employed shall be supplied together with the chart. The Contractor shall promptly inform the Employer and the Project Manager in writing of any revision or alteration of such an organization chart.

### **18.2 Programme of Performance**

Within twenty-eight (28) days after the Effective Date, the Contractor shall submit to the Project Manager a detailed programme of performance of the Contract, made in a form acceptable to the Project Manager and showing the sequence in which it proposes to design, manufacture, transport, assemble, install and precommission the Facilities, as well as the date by which the Contractor reasonably requires that the Employer shall have fulfilled its obligations under the Contract so as to enable the Contractor to execute the Contract in accordance with the programme and to achieve Completion, Commissioning and Acceptance of the Facilities

in accordance with the Contract. The programme so submitted by the Contractor shall accord with the Time Schedule included in Appendix 4 (*Time Schedule*) to the Contract Agreement, and any other dates and periods specified in the Contract. The Contractor shall update and revise the programme as and when appropriate or when required by the Project Manager, but without modification in the Times for Completion specified in the PC pursuant to Sub-Clause 8.2 and any extension granted in accordance with GC Clause 40 and shall submit all such revisions to the Project Manager.

### 18.3 Progress Report

The Contractor shall monitor progress of all the activities specified in the programme referred to in GC Sub-Clause 18.2 above and supply a progress report to the Project Manager every month.

The progress report shall be in a form acceptable to the Project Manager and shall indicate: (a) percentage completion achieved compared with the planned percentage completion for each activity; and (b) where any activity is behind the programme, giving comments and likely consequences and stating the corrective action being taken.

### 18.4 Progress of Performance

If at any time the Contractor's actual progress falls behind the programme referred to in GC Sub-Clause 18.2, or it becomes apparent that it will so fall behind, the Contractor shall, at the request of the Employer or the Project Manager, prepare and submit to the Project Manager a revised programme, taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress so as to attain Completion of the Facilities within the Time for Completion under GC Sub-Clause 8.2, any extension thereof entitled under GC Sub-Clause 40.1, or any extended period as may otherwise be agreed upon between the Employer and the Contractor.

### 18.5 Procedures

The Contract shall be executed in accordance with the Contract Documents including the procedures given in the Forms and Procedures of the Employer's Requirements.

The Contractor may execute the Contract in accordance with its own standard project execution plans and procedures to the



extent that they do not conflict with the provisions contained in the Contract.

## **19. Subcontracting**

- 19.1 Appendix 5 (*List of Approved Subcontractors*) to the Contract Agreement specifies major items of supply or services and a list of approved Subcontractors against each item, including manufacturers. Insofar as no Subcontractors are listed against any such item, the Contractor shall prepare a list of Subcontractors for such item for inclusion in such list. The Contractor may from time to time propose any addition to or deletion from any such list. The Contractor shall submit any such list or any modification thereto to the Employer for its approval in sufficient time so as not to impede the progress of work on the Facilities. Such approval by the Employer for any of the Subcontractors shall not relieve the Contractor from any of its obligations, duties or responsibilities under the Contract.
- 19.2 The Contractor shall select and employ its Subcontractors for such major items from those listed in the lists referred to in GC Sub-Clause 19.1.
- 19.3 For items or parts of the Facilities not specified in Appendix 5 (*List of Approved Subcontractors*) to the Contract Agreement, the Contractor may employ such Subcontractors as it may select, at its discretion.
- 19.4 Each subcontract shall include provisions which would entitle the Employer to require the subcontract to be assigned to the Employer under GC Sub-Clause 19.5 (if and when applicable), or in event of termination by the Employer under GC Sub-Clause 42.2 (*Termination by Employer for Contractor's Default*).
- 19.5 If a Subcontractor's obligations extend beyond the expiry date of the relevant Defects Liability Period and the Project Manager, prior to that date, instructs the Contractor to assign the benefits of such obligations to the Employer, then the Contractor shall do so.

## **20. Design and Engineering**

### **20.1 Technical Documents**

- 20.1.1 The Contractor shall execute the basic and detailed design and the engineering work in compliance with the provisions of the Contract, or where not so specified, in accordance with good engineering practice.

Subject to GC Sub-Clause 10.1, the Contractor shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, whether such specifications, drawings and other documents have been approved by the Project Manager or not.

20.1.2 The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designated by or on behalf of the Employer, by giving a notice of such disclaimer to the Project Manager.

## 20.2 Codes and Standards

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the Base Date shall apply unless otherwise specified. During Contract execution, any changes in such codes and standards shall be applied subject to approval by the Employer and shall be treated in accordance with GC Clause 39 (*Changes in the Facilities*).

## 20.3 Approval/Review of Technical Documents by Project Manager

20.3.1 The Contractor shall prepare or cause its Subcontractors to prepare, and furnish to the Project Manager the documents listed in Appendix 7 (*List of Documents for Approval or Review*) to the Contract Agreement, for its approval or review in accordance with GC Sub-Clause 18.2 (*Programme of Performance*), together with the Contractor's notice stating that the documents furnished therewith:

- (a) are considered ready, both for review (and approval, if so specified) in accordance with this Sub-Clause and for use; and
- (b) comply with the Contract, or the extent to which it does not comply.

Any part of the Facilities covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval thereof.

GC Sub-Clauses 20.3.2 through 20.3.6 shall apply to

those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only.

- 20.3.2 Within the period **specified in the Contract Data** after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GC Sub-Clause 20.3.1, the Project Manager shall either return one copy thereof to the Contractor with its approval endorsed thereon or shall notify the Contractor in writing of its disapproval thereof and the reasons therefor and the modifications that the Project Manager proposes.

If the Project Manager fails to take such action within the period specified above, then the said document shall be deemed to have been approved by the Project Manager.

- 20.3.3 The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with the Contract or that it is contrary to good engineering practice. If the Project Manager disapproves a document, he shall specify the reasons for such disapproval.

- 20.3.4 If the Project Manger disapproves the document, the Contractor may either modify the document and re-submit it for the Project Manager's approval in accordance with GC 20.3.2, or may dispute the disapproval in accordance with GC Clause 45. If the Project Manager approves the document subject to modification(s), the Contractor may either accept the modification(s), whereupon the document shall be deemed to have been approved, further modify the document and re-submit it for the Project Manager's approval in accordance with GC 20.3.2 or dispute the modification(s) in accordance with GC Clause 45.

- 20.3.5 The Project Manager's approval, with or without modification of the document furnished by the Contractor, shall not relieve the Contractor of any responsibility or liability imposed upon it by any provisions of the Contract.

- 20.3.6 The Contractor shall not depart from any approved document unless the Contractor has first submitted to the Project Manager an amended document and

obtained the Project Manager's approval thereof pursuant to the provisions of this GC Sub-Clause 20.3.

If the Project Manager requests any change in any already approved document and/or in any document based thereon, the provisions of GC Clause 39 (*Change in the Facilities*) shall apply to such request.

## **21. Procurement**

### **21.1 Plant**

Subject to the Employer's obligation under GC Sub-Clause 14.2, the Contractor shall procure and transport all Plant in an expeditious and orderly manner to the Site.

### **21.2 Employer-Supplied Plant**

If the Employer's Requirements, provides that the Employer shall furnish any specific items to the Contractor, the following provisions shall apply:

21.2.1 The Employer shall, at its own risk and expense, transport each item to the place on or near the Site as agreed upon by the Parties and make such item available to the Contractor at the time specified in the programme furnished by the Contractor, pursuant to GC Sub-Clause 18.2 (*Programme of Performance*), unless otherwise mutually agreed.

21.2.2 Upon receipt of such item, the Contractor shall inspect the same visually and notify the Project Manager of any detected shortage, defect or default. The Employer shall immediately remedy any shortage, defect or default, or the Contractor shall, if practicable and possible, at the request of the Employer, remedy such shortage, defect or default at the Employer's cost and expense. After inspection, such item shall fall under the care, custody and control of the Contractor. The provision of this GC Sub-Clause 21.2.2 shall apply to any item supplied to remedy any such shortage or default or to substitute for any defective item or shall apply to defective items that have been repaired.

21.2.3 The foregoing responsibilities of the Contractor and its obligations of care, custody and control shall not relieve the Employer of liability for any undetected shortage, defect or default, nor place the Contractor under any liability for any such shortage, defect or

default whether under GC Clause 27 (*Defects Liability*) or under any other provision of the Contract.

### 21.3 Transportation

21.3.1 The Contractor shall at its own risk and expense transport all the materials and the Contractor's Equipment to the Site.

21.3.2 Unless otherwise provided in the Contract, the Contractor shall be entitled to select any safe mode of transport operated by any person to carry the materials and the Contractor's Equipment.

21.3.3 Upon dispatch of each shipment of materials and the Contractor's Equipment, the Contractor shall notify the Employer by fax or email, of the description of the materials and of the Contractor's Equipment, the point and means of dispatch, and the estimated time and point of arrival in the country where the Site is located, if applicable, and at the Site. The Contractor shall furnish the Employer with relevant shipping documents to be agreed upon between the Parties.

21.3.4 The Contractor shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the materials and the Contractor's Equipment to the Site. The Employer shall use its best endeavours in a timely and expeditious manner to assist the Contractor in obtaining such approvals, if requested by the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any claim for damage to roads, bridges or any other traffic facilities that may be caused by the transport of the materials and the Contractor's Equipment to the Site.

### 21.4 Customs Clearance

The Contractor shall, at its own expense, handle all imported materials and Contractor's Equipment at the point(s) of import and shall handle any formalities for customs clearance, subject to the Employer's obligations under GC Sub-Clause 14.2, provided that if applicable laws or regulations require any application or act to be made by or in the name of the Employer, the Employer shall take all necessary steps to comply with such laws or regulations. In the event of delays

in customs clearance that are not the fault of the Contractor, the Contractor shall be entitled to an extension in the Time for Completion, pursuant to GC Clause 40 (*Extension of Time for Completion*).

## **22. Installation**

### **22.1 Setting Out**

The Contractor shall be responsible for the true and proper setting-out of the Facilities in relation to bench marks, reference marks and lines provided to it in writing by or on behalf of the Employer.

If, at any time during the progress of installation of the Facilities, any error shall appear in the position, level or alignment of the Facilities, the Contractor shall forthwith notify the Project Manager of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of the Project Manager. If such error is based on incorrect data provided in writing by or on behalf of the Employer, the expense of rectifying the same shall be borne by the Employer.

### **22.2 Contractor's Superintendence**

The Contractor shall give or provide all necessary superintendence during the installation of the Facilities, and as long as thereafter as necessary to fulfill the Contractor's obligation. The Construction Manager or its deputy shall be constantly on the Site to provide full-time superintendence of the installation. Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications (specified in GC Clause 5 (*Law and Language*)) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Plant and Installation Services.

### **22.3 Contractor's Personnel**

The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Project Manager may require the Contractor to remove (or cause to be removed) any person employed on the Site or Plant and Installation Services, including the Contractor's Representative if applicable, who:

- (a) persists in any misconduct or lack of care,

- (b) carries out duties incompetently or negligently,
- (c) fails to conform with any provisions of the Contract, or
- (d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment.

If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person with equivalent skills and experience.

## 22.4 Staff and Labour

### 22.4.1 Engagement of Staff and Labour

Except as otherwise stated in the Employer's Requirements, the Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport.

The Contractor shall provide and employ on the Site in the installation of the Facilities such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of the Contract. The Contractor is encouraged, to the extent practicable and reasonable, to use local labour that has the necessary skills.

### 22.4.2 Rates of Wages and Conditions of Labour

The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.

The Contractor shall inform the Contractor's Personnel about their liability to pay personal income taxes in the country where the Site is located in respect of such of their salaries, wages and allowances as are chargeable under the laws for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such laws.

### 22.4.3 Persons in the Service of Employer

The Contractor shall not recruit, or attempt to recruit,

staff and labor from amongst the Employer's Personnel.

#### 22.4.4 Labour Laws

The Contractor shall:

- (a) comply with all the relevant labour laws applicable to the Contractor's Personnel, including laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights; and
- (b) at all times during the progress of the Contract, require his employees to obey all applicable laws, including those concerning safety at work.

#### 22.4.5 Working Hours

No work shall be carried out on the Site on locally recognized days of rest, or outside the normal working hours **stated in the Contract Data**, unless:

- (a) otherwise stated in the Contract;
- (b) the Project Manager gives consent; or
- (c) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Facilities, in which case the Contractor shall immediately advise the Project Manager.

If and when the Contractor considers it necessary to carry out work at night or on public holidays so as to meet the Time for Completion and requests the Project Manager's consent thereto, the Project Manager shall not unreasonably withhold such consent.

This Sub-Clause shall not apply to any work which is customarily carried out by rotary or double-shifts.

#### 22.4.6 Facilities for Staff and Labour

Except as otherwise stated in the Employer's Requirements, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Employer's Requirements.

The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures



forming part of the Plant.

#### 22.4.7 Health and Safety

The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Employer's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the performance of the Contract, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

The Contractor shall send to the Project Manager, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Project Manager may reasonably require.

HIV-AIDS Prevention. The Contractor shall conduct an HIV-AIDS awareness programme via an approved service provider, and shall undertake such other measures as are specified in this Contract to reduce the risk of the transfer of the HIV virus between and among the Contractor's Personnel and the local community, to promote early diagnosis and to assist affected individuals.

The Contractor shall throughout the Contract (including the Defects Liability Period): (i) conduct Information, Education and Consultation Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and labour (including all the Contractor's employees, all Subcontractors and Employer's and Project Manager's employees, and all truck drivers and crew making

deliveries to Site for construction activities) and to the immediate local communities, concerning the risks, dangers and impact, and appropriate avoidance behavior with respect to Sexually Transmitted Diseases (STD) - or Sexually Transmitted Infections (STI) in general and HIV/AIDS in particular; (ii) provide male or female condoms for all Site staff and labor as appropriate; and (iii) provide for STI and HIV/AIDS screening, diagnosis, counseling and referral to a dedicated national STI and HIV/AIDS programme, (unless otherwise agreed) of all Site staff and labor.

The Contractor shall include in the programme to be submitted for the execution of the work on the Facilities under GC Sub-Clause 18.2 an alleviation programme for Site staff and labor and their families in respect of STI and STD, including HIV/AIDS. The STI, STD and HIV/AIDS alleviation programme shall indicate when, how and at what cost the Contractor plans to satisfy the requirements of this GC Sub-Clause and the related Employer's Requirements. For each component, the programme shall detail the resources to be provided or utilized and any related subcontracting proposed. The programme shall also include provision of a detailed cost estimate with supporting documentation.

#### 22.4.8 Records of Contractor's Personnel

The Contractor shall keep accurate records showing the number of each class of Contractor's Personnel on the Site. These records shall be summarized on a monthly basis in a form approved by the Project Manager and shall be available for inspection by the Project Manager until the Contractor has completed all work.

#### 22.4.9 Disorderly Conduct

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor's Personnel, and to preserve peace and protection of persons and property on and near the Site.

#### 22.4.10 Foreign Personnel

The Contractor may bring in to the country where the Site is located any foreign personnel who are necessary for the execution of the works for the Facilities to the extent allowed by the applicable

laws. The Contractor shall ensure that these personnel are provided with the required residence visas and work permits. The Employer will, if requested by the Contractor, use his best endeavours in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national, or government permission required for bringing in the Contractor's personnel.

The Contractor shall be responsible for the return of these personnel to the place where they were recruited or to their domicile. In the event of the death in the country where the Site is located of any of these personnel or members of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for their return or burial.

22.4.11 Supply of Foodstuffs

The Contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Employer's Requirements at reasonable prices for the Contractor's Personnel for the purposes of or in connection with the Contract.

22.4.12 Supply of Water

The Contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor's Personnel.

22.4.13 Measures against Insect and Pest Nuisance

The Contractor shall at all times take the necessary precautions to protect the Contractor's Personnel employed on the Site from insect and pest nuisance, and to reduce their danger to health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.

22.4.14 Alcoholic Liquor or Drugs

The Contractor shall not, otherwise than in accordance with the laws of the country where the Site is located, import, sell, give barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift barter or disposal by Contractor's Personnel.

22.4.15 Arms and Ammunition

The Contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so.

22.4.16 Festivals and Religious Customs

The Contractor shall respect the country's recognized festivals, days of rest and religious or other customs in the country where the Site is located.

22.4.17 Funeral Arrangements

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

22.4.18 Forced Labour

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

22.4.19 Child Labour

The Contractor shall not employ children in a manner that is economically exploitative, or is likely to be hazardous, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. Where the relevant labour laws of the country where the Site is located have provisions for employment of minors, the Contractor shall follow those laws applicable to the Contractor. Children below the age of 18 years shall not be employed in dangerous work.

22.4.20 Employment Records of Workers

The Contractor shall keep complete and accurate records of the employment of labour at the Site. The records shall include the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarised on a monthly basis and submitted to the Project Manager. These records shall be included in the details to be submitted by the Contractor under GC Sub-Clause 22.4.8 (*Records of*

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*Contractor's Personnel).*

#### 22.4.21 Workers' Organisations

In countries where the relevant labour laws recognise workers' rights to form and to join workers' organisations of their choosing without interference and to bargain collectively, the Contractor shall comply with such laws. Where the relevant labour laws substantially restrict workers' organisations, the Contractor shall enable alternative means for the Contractor's Personnel to express their grievances and protect their rights regarding working conditions and terms of employment. In either case described above, and where the relevant labour laws are silent, the Contractor shall not discourage the Contractor's Personnel from forming or joining workers' organisations of their choosing or from bargaining collectively, and shall not discriminate or retaliate against the Contractor's Personnel who participate, or seek to participate, in such organisations and bargain collectively. The Contractor shall engage with such workers' representatives. Workers' organisations are expected to fairly represent the workers in the workforce.

#### 22.4.22 Non-Discrimination and Equal Opportunity

The Contractor shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment relationship on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline. In countries where the relevant labour laws provide for non-discrimination in employment, the Contractor shall comply with such laws. When the relevant labour laws are silent on non-discrimination in employment, the Contractor shall meet this Sub-Clause's requirements. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination.

## 22.5 Contractor's Equipment

22.5.1 All Contractor's Equipment brought by the Contractor onto the Site shall be deemed to be intended to be used exclusively for the execution of the Contract. The Contractor shall not remove the same from the Site without the Project Manager's consent that such Contractor's Equipment is no longer required for the execution of the Contract.

22.5.2 Upon completion of the Facilities, the Contractor shall remove from the Site all Contractor's Equipment brought by the Contractor onto the Site and any surplus materials remaining thereon. However, the Contractor may retain on Site, during the Defect Liability Period, such Contractor's Equipment as are required for the Contractor to fulfill obligations under the Contract.

22.5.3 The Employer will, if requested, use its best endeavours to assist the Contractor in obtaining any local, state or national government permission required by the Contractor for the export of the Contractor's Equipment imported by the Contractor for use in the execution of the Contract that is no longer required for the execution of the Contract.

22.5.4 The Contractor shall keep accurate records showing the number of each type of Contractor's Equipment on the Site. These records shall be summarized on a monthly basis in a form approved by the Project Manager and shall be available for inspection by the Project Manager until the Contractor has completed all work.

## 22.6 Site Regulations and Safety

The Contractor shall establish Site regulations setting out the rules to be observed in the execution of the Contract at the Site and shall comply therewith. The Contractor shall prepare and submit to the Employer, with a copy to the Project Manager, proposed Site regulations for the Employer's approval, which approval shall not be unreasonably withheld.

Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety of the Facilities, gate control, sanitation, medical care, and fire prevention.

## 22.7 Opportunities for Other Contractors

22.7.1 The Contractor shall, upon written request from the Employer or the Project Manager, give all reasonable opportunities for carrying out the work to any other contractors employed by the Employer on or near the Site.

22.7.2 If the Contractor, upon written request from the Employer or the Project Manager, makes available to other contractors any roads or ways for the maintenance of which the Contractor is responsible, permits the use by such other contractors of the Contractor's Equipment, or provides any other service of whatsoever nature for such other contractors, the Employer shall fully compensate the Contractor for any loss or damage caused or occasioned by such other contractors in respect of any such use or service, and shall pay to the Contractor reasonable remuneration for the use of such equipment or the provision of such services.

22.7.3 The Contractor shall also so arrange to perform its work as to minimize, to the extent possible, interference with the work of other contractors. The Project Manager shall determine the resolution of any difference or conflict that may arise between the Contractor and other contractors and the workers of the Employer in regard to their work.

22.7.4 The Contractor shall notify the Project Manager promptly of any defects in the other contractors' work that come to its notice, and that could affect the Contractor's work. The Project Manager shall determine the corrective measures, if any, required to rectify the situation after inspection of the Facilities and may instruct a Change under GC Clause 39 for implementation of such corrective measures.

## 22.8 Emergency Work

If, by reason of an emergency arising in connection with and during the execution of the Contract, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Facilities, the Contractor shall immediately carry out such work.

If the Contractor is unable or unwilling to do such work

immediately, the Employer may do or cause such work to be done as the Employer may determine is necessary in order to prevent damage to the Facilities. In such event the Employer shall, as soon as practicable after the occurrence of any such emergency, notify the Contractor in writing of such emergency, the work done and the reasons therefor. If the work done or caused to be done by the Employer is work that the Contractor was liable to do at its own expense under the Contract, the reasonable costs incurred by the Employer in connection therewith shall be paid by the Contractor to the Employer. Otherwise, the cost of such remedial work shall be borne by the Employer.

#### 22.9 Site Clearance

The Contractor shall keep the Site reasonably free from all unnecessary obstruction, store or remove any surplus materials, clear away any rubbish or temporary works from the Site, and remove any Contractor's Equipment no longer required for execution of the Contract.

After Completion of the Facilities or any Section thereof, the Contractor shall clear away and remove all rubbish and debris of any kind from the Site (or the relevant part thereof), and shall leave the Site (or the relevant part thereof) and the Facilities (or the relevant part thereof) in a clean, tidy and safe condition.

#### 22.10 Watching and Lighting

The Contractor shall provide and maintain at its own expense all lighting, fencing, and watching when and where necessary for the proper execution and the protection of the Facilities, or for the safety of the owners and occupiers of adjacent property and for the safety of the public.

### **23. Test and Inspection**

23.1 The Contractor shall at its own expense carry out at the place of manufacture and/or on the Site all such tests and/or inspections of the Plant and any part of the Facilities as are the specified in the Contract.

23.2 The Employer and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the Employer shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

23.3 Whenever the Contractor is ready to carry out any such test



and/or inspection, the Contractor shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Contractor shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Employer and the Project Manager or their designated representatives to attend the test and/or inspection.

- 23.4 The Contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection.

If the Employer or Project Manager or their designated representatives fails to attend the test and/or inspection, or if it is agreed between the Parties that such persons shall not do so, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Project Manager with a certified report of the results thereof.

- 23.5 The Project Manager may require the Contractor to carry out any test and/or inspection not required by the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impede the progress of work on the Facilities and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made by the Project Manager on the request of the Contractor, in respect of the Time for Completion and the other obligations so affected.

- 23.6 If any Plant or any part of the Facilities fails to pass any test and/or inspection, the Contractor shall either rectify or replace such Plant or part of the Facilities and shall repeat the test and/or inspection upon giving a notice under GC Sub-Clause 23.3.

- 23.7 If any dispute or difference of opinion shall arise between the Parties in connection with or arising out of the test and/or inspection of the Plant or part of the Facilities that cannot be settled between the Parties within a reasonable period of time, it may be referred to the DB for decision in accordance with GC Sub-Clause 45.3 (*Obtaining Dispute Board's Decision*).

- 23.8 The Contractor shall afford the Employer and the Project Manager, at the Employer's expense, access at any reasonable time to any place where the Plant are being manufactured or

the Facilities are being installed, in order to inspect the progress and the manner of manufacture or installation, provided that the Project Manager shall give the Contractor a reasonable prior notice.

23.9 The Contractor agrees that neither the execution of a test and/or inspection of Plant or any part of the Facilities, nor the attendance by the Employer or the Project Manager, nor the issue of any test certificate pursuant to GC Sub-Clause 23.4, shall release the Contractor from any other responsibilities under the Contract.

23.10 No part of the Facilities or foundations shall be covered up on the Site without the Contractor carrying out any test and/or inspection required under the Contract. The Contractor shall give a reasonable notice to the Project Manager whenever any such parts of the Facilities or foundations are ready or about to be ready for test and/or inspection; such test and/or inspection and notice thereof shall be subject to the requirements of the Contract.

23.11 The Contractor shall uncover any part of the Facilities or foundations, or shall make openings in or through the same as the Project Manager may from time to time require at the Site, and shall reinstate and make good such part or parts.

If any parts of the Facilities or foundations have been covered up at the Site after compliance with the requirement of GC Sub-Clause 23.10 and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by the Employer, and the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been delayed or impeded in the performance of any of its obligations under the Contract.

#### **24. Completion of the Facilities**

24.1 As soon as the Facilities or any Section thereof has, in the opinion of the Contractor, been completed operationally and structurally and put in a tight and clean condition as specified in the Employer's Requirements, excluding minor items not materially affecting the operation or safety of the Facilities, the Contractor shall so notify the Employer in writing.

24.2 Within seven (7) days after receipt of the notice from the Contractor under GC Sub-Clause 24.1, the Employer shall supply the operating and maintenance personnel specified in the Employer's Requirements for Precommissioning of the

Facilities or any Section thereof.

Pursuant to the Employer's Requirements, the Employer shall also provide, within the said seven (7) day period, the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Precommissioning of the Facilities or any Section thereof.

- 24.3 As soon as reasonably practicable after the operating and maintenance personnel have been supplied by the Employer and the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters have been provided by the Employer in accordance with GC Sub-Clause 24.2, the Contractor shall commence Precommissioning of the Facilities or the relevant Section thereof in preparation for Commissioning, subject to GC Clause 25 (*Commissioning and Operational Acceptance*).
- 24.4 As soon as all work in respect of Precommissioning are completed and, in the opinion of the Contractor, the Facilities or any Section thereof is ready for Commissioning, the Contractor shall so notify the Project Manager in writing.
- 24.5 The Project Manager shall, within fourteen (14) days after receipt of the Contractor's notice under GC Sub-Clause 24.4, either issue a Completion Certificate in the form specified in the Employer's Requirements, stating that the Facilities or that Section thereof have reached Completion in accordance with the Contract, as of the date of the Contractor's notice under GC Sub-Clause 24.4, or notify the Contractor in writing of any defects and/or deficiencies.

If the Project Manager notifies the Contractor of any defects and/or deficiencies, the Contractor shall then correct such defects and/or deficiencies, and shall repeat the procedure described in GC Sub-Clause 24.4.

If the Project Manager is satisfied that the Facilities or that Section thereof have reached Completion, the Project Manager shall, within seven (7) days after receipt of the Contractor's repeated notice, issue a Completion Certificate stating that the Facilities or that Section thereof have reached Completion as of the date of the Contractor's repeated notice.

If the Project Manager is not so satisfied, then it shall notify the Contractor in writing of any defects and/or deficiencies within seven (7) days after receipt of the Contractor's

repeated notice, and the above procedure shall be repeated.

24.6 If the Project Manager fails to issue the Completion Certificate and fails to inform the Contractor of any defects and/or deficiencies within fourteen (14) days after receipt of the Contractor's notice under GC Sub-Clause 24.4 or within seven (7) days after receipt of the Contractor's repeated notice under GC Sub-Clause 24.5, or if the Employer makes use of the Facilities or any part thereof, then the Facilities or that part thereof shall be deemed to have reached Completion as of the date of the Contractor's notice or repeated notice, or as of the Employer's use of the Facilities or that part thereof, as the case may be.

24.7 As soon as possible after Completion, the Contractor shall complete all outstanding minor items so that the Facilities or the relevant part thereof are fully in accordance with the requirements of the Contract, failing which the Employer will undertake such completion and deduct the costs thereof from any monies due to the Contractor.

## **25. Commissioning and Operational Acceptance**

### **25.1 Commissioning**

25.1.1 Commissioning of the Facilities or any Section thereof shall be commenced by the Contractor immediately after issue of the Completion Certificate by the Project Manager, pursuant to GC Sub-Clause 24.5, or immediately after the date of the deemed Completion, under GC Sub-Clause 24.6.

25.1.2 The Employer shall supply the operating and maintenance personnel and all raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Commissioning.

25.1.3 In accordance with the requirements of the Contract, the Contractor's and Project Manager's advisory personnel shall attend the Commissioning, including the Guarantee Test, and shall advise and assist the Employer.

### **25.2 Guarantee Test**

25.2.1 The Guarantee Test and repeats thereof shall be conducted by the Contractor during Commissioning of the Facilities or the relevant part thereof to ascertain whether the Facilities or the relevant part can attain the Functional Guarantees specified in the Appendix 8

(*Functional Guarantees*) to the Contract Agreement. The Employer shall promptly provide the Contractor with such information as the Contractor may reasonably require in relation to the conduct and results of the Guarantee Test and any repeats thereof.

25.2.2 If for reasons not attributable to the Contractor, the Guarantee Test of the Facilities or the relevant part thereof cannot be successfully completed within the period from the date of Completion **specified in the Contract Data** or any other period agreed upon by the Employer and the Contractor, the Contractor shall be deemed to have fulfilled its obligations with respect to the Functional Guarantees, and GC Sub-Clauses 28.2 and 28.3 shall not apply.

### 25.3 Operational Acceptance

25.3.1 Subject to GC Sub-Clause 25.4 below, Operational Acceptance shall occur in respect of the Facilities or any Section thereof when:

- (a) the Guarantee Test has been successfully completed and the Functional Guarantees are met; or
- (b) the Guarantee Test has not been successfully completed or has not been carried out for reasons not attributable to the Contractor within the period from the date of Completion pursuant to GC Sub-Clause 25.2.2 above or any other period agreed upon by the Employer and the Contractor; or
- (c) the Contractor has paid the liquidated damages specified in GC Sub-Clause 28.3 hereof; and
- (d) any minor items mentioned in GC Sub-Clause 24.7 hereof relevant to the Facilities or that Section thereof have been completed.

25.3.2 At any time after the Conditions for Operational Acceptance set out in GC Sub-Clause 25.3.1 have been met, the Contractor may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate in the form provided in the Employer's Requirements in respect of the Facilities or the Section thereof specified in such notice as of the date of such notice.

25.3.3 The Project Manager shall, after consultation with the Employer, and within seven (7) days after receipt of the Contractor's notice, issue an Operational Acceptance Certificate.

25.3.4 If within seven (7) days after receipt of the Contractor's notice, the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the Contractor in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the Facilities or the relevant part thereof shall be deemed to have been accepted as of the date of the Contractor's said notice.

#### 25.4 Partial Acceptance

25.4.1 If the Contract specifies Sections of the Facilities, the provisions relating to Completion and Commissioning including the Guarantee Test shall apply to each such Section of the Facilities individually, and the Operational Acceptance Certificate shall be issued accordingly for each such Section of the Facilities.

25.4.2 If a part of the Facilities comprises facilities such as buildings, for which no Commissioning or Guarantee Test is required, then the Project Manager shall issue the Operational Acceptance Certificate for such facility when it attains Completion, provided that the Contractor shall thereafter complete any outstanding minor items that are listed in the Operational Acceptance Certificate.

### **F. Guarantees and Liabilities**

#### **26. Completion Time Guarantee**

26.1 The Contractor guarantees that it shall attain Completion of the Facilities or any Section thereof within the Time for Completion pursuant to GC Sub-Clause 8.2, or within such extended time to which the Contractor shall be entitled under GC Clause 40 hereof.

26.2 If the Contractor fails to attain Completion of the Facilities or any Section thereof within the Time for Completion or any extension thereof under GC Clause 40, the Contractor shall pay to the Employer liquidated damages in the amount **specified in the Contract Data** as a percentage rate of the Contract Price or the relevant part thereof. The aggregate amount of such liquidated damages shall in no event exceed the maximum amount **stated in the Contract Data**. Once the maximum

amount is reached, the Employer may consider termination of the Contract, pursuant to GC Sub-Clause 42.2.2.

Such payment shall completely satisfy the Contractor's obligation to attain Completion of the Facilities or any Section thereof within the Time for Completion or any extension thereof under GC Clause 40 (*Extension of Time for Completion*). The Contractor shall have no further liability whatsoever to the Employer in respect thereof.

However, the payment of liquidated damages shall not in any way relieve the Contractor from any of its obligations to complete the Facilities or any part thereof or from any other obligations and liabilities of the Contractor under the Contract.

Save for liquidated damages payable under this GC Sub-Clause 26.2, the failure by the Contractor to attain any milestone or other act, matter or thing by any date specified in Appendix 4 (*Time Schedule*) to the Contract Agreement, and/or other programme of work prepared pursuant to GC Sub-Clause 18.2 shall not render the Contractor liable for any loss or damage thereby suffered by the Employer.

26.3 When the Contractor attains Completion of the Facilities or any Section thereof before the Time for Completion or any extension thereof under GC Clause 40, the Employer shall pay to the Contractor a bonus in the amount **specified in the Contract Data** (if any). The aggregate amount of such bonus shall in no event exceed the maximum amount **specified in the Contract Data**.

## 27. Defects Liability

27.1 The Contractor warrants that the Facilities or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Plant supplied and of the work executed.

27.2 The Defects Liability Period in respect of the Facilities (or, where Operational Acceptance of any Section of the Facilities occurs, of such part) shall commence upon the date of Operational Acceptance and expire after 365 days or such other period **specified in the Contract Data**.

If during the Defects Liability Period any defect should be found in the design, engineering, materials and workmanship of the Plant supplied or of the work executed by the Contractor, the Contractor shall promptly, in consultation and agreement with the Employer regarding appropriate remedying of the defects, and at its cost, repair, replace or otherwise make good as the

Contractor shall determine at its discretion, such defect as well as any damage to the Facilities caused by such defect. The Contractor shall not be responsible for the repair, replacement or making good of any defect or of any damage to the Facilities arising out of or resulting from any of the following causes:

- (a) improper operation or maintenance of the Facilities by the Employer;
- (b) operation of the Facilities outside specifications provided in the Contract; or
- (c) normal wear and tear.

27.3 The Contractor's obligations under this GC Clause 27 shall not apply to:

- (a) any materials that are supplied by the Employer under GC Sub-Clause 21.2 (*Employer-Supplied Plant*), are normally consumed in operation, or have a normal life shorter than the Defects Liability Period stated herein;
- (b) any designs, specifications or other data designed, supplied or specified by or on behalf of the Employer or any matters for which the Contractor has disclaimed responsibility herein; or
- (c) any other materials supplied or any other work executed by or on behalf of the Employer, except for the work executed by the Employer under GC Sub-Clause 27.7.

27.4 The Employer shall give the Contractor a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Employer shall afford all reasonable opportunity for the Contractor to inspect any such defect.

27.5 The Employer shall afford the Contractor all necessary access to the Facilities and the Site to enable the Contractor to perform its obligations under this GC Clause 27.

The Contractor may, with the consent of the Employer, remove from the Site any Plant or any part of the Facilities that are defective if the nature of the defect, and/or any damage to the Facilities caused by the defect, is such that repairs cannot be expeditiously carried out at the Site.

27.6 If the repair, replacement or making good is of such a character that it may affect the efficiency of the Facilities or any part thereof, the Employer may give to the Contractor a notice



requiring that tests of the defective part of the Facilities shall be made by the Contractor immediately upon completion of such remedial work, whereupon the Contractor shall carry out such tests.

If such part fails the tests, the Contractor shall carry out further repair, replacement or making good, as the case may be, until that part of the Facilities passes such tests. The tests shall be agreed upon by the Employer and the Contractor.

27.7 If the Contractor fails to commence the work necessary to remedy such defect or any damage to the Facilities caused by such defect within a reasonable time (which shall in no event be considered to be less than fourteen (14) days), the Employer may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Employer in connection therewith shall be paid to the Employer by the Contractor or may be deducted by the Employer from any monies due to the Contractor or claimed under the Performance Security.

27.8 If a defect is made good under this GC Clause 27, the Defects Liability Period for the item which has been made good shall extend for a period of twelve (12) months from such making good. However, in no event shall the Defects Liability Period extend beyond twenty-four (24) months after the date of Operational Acceptance of the Facilities or the relevant part of the Facilities.

27.9 Except as provided in this GC Clause 27 and GC Clause 33 (*Loss of or Damage to Property; Accident or Injury to Workers; Indemnification*), the Contractor shall be under no liability whatsoever and howsoever arising, under the Contract, in respect of defects in the Facilities or any part thereof, the Plant, design or engineering or work executed that appear after Completion of the Facilities or any part thereof, except where such defects are the result of the gross negligence, fraud, or criminal or wilful action of the Contractor.

## **28. Functional Guarantees**

28.1 The Contractor guarantees that during the Guarantee Test, the Facilities and all parts thereof shall attain the Functional Guarantees specified in Appendix 8 (*Functional Guarantees*) to the Contract Agreement, subject to and upon the conditions therein specified.

28.2 If, for reasons attributable to the Contractor, the minimum level of the Functional Guarantees specified in Appendix 8 (*Functional Guarantees*) to the Contract Agreement are not met

either in whole or in part, the Contractor shall at its cost and expense make such changes, modifications and/or additions to the Plant or any part thereof as may be necessary to meet at least the minimum level of such Guarantees. The Contractor shall notify the Employer upon completion of the necessary changes, modifications and/or additions, and shall request the Employer to repeat the Guarantee Test until the minimum level of the Guarantees has been met. If the Contractor eventually fails to meet the minimum level of Functional Guarantees, the Employer may consider termination of the Contract, pursuant to GC Sub-Clause 42.2.2.

28.3 If, for reasons attributable to the Contractor, the Functional Guarantees specified in the Appendix 8 (*Functional Guarantees*) to the Contract Agreement, are not attained either in whole or in part, but the minimum level of the Functional Guarantees specified in the said Appendix to the Contract Agreement is met, the Contractor shall, at the Contractor's option, either:

- (a) make such changes, modifications and/or additions to the Facilities or any part thereof that are necessary to attain the Functional Guarantees at its cost and expense, and shall request the Employer to repeat the Guarantee Test; or
- (b) pay liquidated damages to the Employer in respect of the failure to meet the Functional Guarantees in the amount specified in the Appendix 8 (*Functional Guarantees*) to the Contract Agreement. However, the total amount of such liquidated damages due under this Sub-Clause shall not exceed the maximum amount **specified in the Contract Data**.

28.4 The payment of liquidated damages under GC Sub-Clause 28.3 up to the maximum amount **specified in the Contract Data**, shall completely satisfy the Contractor's guarantees under GC Sub-Clause 28.3, and the Contractor shall have no further liability whatsoever to the Employer in respect thereof. Upon the payment of such liquidated damages by the Contractor, the Project Manager shall issue the Operational Acceptance Certificate for the Facilities or any Section thereof in respect of which the liquidated damages have been so paid.

## **29. Patent Indemnity**

29.1 The Contractor shall, subject to the Employer's compliance with GC Sub-Clause 29.2, indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Employer may

suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

- (a) the installation of the Facilities by the Contractor or the use of the Facilities in the country where the Site is located; and
- (b) the sale of the products produced by the Facilities in any country.

Such indemnity shall not cover any use of the Facilities or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the Facilities or any part thereof, or any products produced thereby in association or combination with any other equipment, plant or materials not supplied by the Contractor, pursuant to the Contract Agreement.

- 29.2 If any proceedings are brought or any claim is made against the Employer arising out of the matters referred to in GC Sub-Clause 29.1, the Employer shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Employer within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission that may be prejudicial to the defence of any such proceedings or claim.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

- 29.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Contractor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract

arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Employer.

**30. Limitation of Liability**

- 30.1 Except in cases of criminal negligence or wilful misconduct:
- (a) neither Party shall be liable to the other Party, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, which may be suffered by the other Party in connection with the Contract, other than specifically provided as any obligation of the Party in the Contract; and
  - (b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed the amount resulting from the application of the multiplier **specified in the Contract Data** to the Contract Price or, the sum **specified in the Contract Data**, if such multiplier or sum is not so stated, the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.

**G. Risk Distribution**

**31. Transfer of Ownership**

- 31.1 Ownership of the Plant (including spare parts) to be imported into the country where the Site is located shall be transferred to the Employer upon loading on to the mode of transport to be used to convey the Plant from the country of origin to that country.
- 31.2 Ownership of the Plant (including spare parts) procured in the country where the Site is located shall be transferred to the Employer when the Plant is brought on to the Site.
- 31.3 Ownership of the Contractor's Equipment used by the Contractor and its Subcontractors in connection with the Contract shall remain with the Contractor or its Subcontractors.
- 31.4 Ownership of any Plant in excess of the requirements for the Facilities shall revert to the Contractor upon Operational Acceptance or at such earlier time when the Employer and the Contractor agree that the Plant in question are no longer required for the Facilities.
- 31.5 Notwithstanding the transfer of ownership of the Plant, the

responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor pursuant to GC Clause 32 (*Care of Facilities*) hereof until Operational Acceptance of the Facilities or any Section thereof in which such Plant are incorporated.

31.6 Upon Operational Acceptance, the Employer shall be responsible for the care and custody of the Facilities or the relevant part thereof, together with the risk of loss or damage thereto, and shall thereafter take over the Facilities or the relevant part thereof.

### **32. Care of Facilities**

32.1 The Contractor shall be responsible for the care and custody of the Facilities or any part thereof until the date of Operational Acceptance of the Facilities or that part, pursuant to GC Clause 25 (*Commissioning and Operational Acceptance*), and shall make good at its own cost any loss or damage that may occur to the Facilities or the relevant part thereof from any cause whatsoever during such period. The Contractor shall also be responsible for any loss or damage to the Facilities caused by the Contractor or its Subcontractors in the course of any work carried out, pursuant to GC Clause 27 (*Defects Liability*). Notwithstanding the foregoing, the Contractor shall not be liable for any loss or damage to the Facilities or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GC Sub-Clauses 32.2, and GC Clauses 38 (*War Risks*).

32.2 If any loss or damage occurs to the Facilities or any part thereof or to the Contractor's temporary facilities by reason of:

- (a) insofar as they relate to the country where the Site is located, nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced Contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks and Political Risks, taken out under GC Clause 34 (*Insurance*) hereof; or
- (b) any use or occupation by the Employer or any third party other than a Subcontractor, authorized by the Employer of any part of the Facilities; or
- (c) any use of or reliance upon any design, data or specification provided or designated by or on behalf of the

Employer, or any such matter for which the Contractor has disclaimed responsibility herein,

the Employer shall pay to the Contractor all sums payable in respect of the Facilities executed, notwithstanding that the same be lost, destroyed or damaged, and will pay to the Contractor the replacement value of all temporary facilities and all parts thereof lost, destroyed or damaged. If the Employer requests the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Contractor shall make good the same at the cost of the Employer in accordance with GC Clause 39 (*Change in the Facilities*). If the Employer does not request the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Employer shall either request a change in accordance with GC Clause 39, excluding the performance of that part of the Facilities thereby lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the Facilities, the Employer may terminate the Contract pursuant to GC Sub-Clause 42.1 (*Termination by Employer for Employer's Convenience*) hereof.

32.3 The Contractor shall be liable for any loss of or damage to any Contractor's Equipment, or any other property of the Contractor used or intended to be used for purposes of the Facilities, except (i) as mentioned in GC Sub-Clause 32.2 with respect to the Contractor's temporary facilities, and (ii) where such loss or damage arises by reason of any of the matters specified in GC Sub-Clauses 32.2 (b) and (c) and 38.1.

32.4 With respect to any loss or damage caused to the Facilities or any part thereof or to the Contractor's Equipment by reason of any of the matters specified in GC Sub-Clause 38.1, the provisions of GC Sub-Clause 38.3 shall apply.

**33. Loss of or  
Damage to  
Property;  
Accident or  
Injury to  
Workers;  
Indemnifica-  
tion**

33.1 Subject to GC Sub-Clause 33.3, the Contractor shall indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property other than the Facilities whether accepted or not, arising in connection with the supply and installation of the Facilities and by reason of the negligence of the Contractor or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Employer, its contractors, employees, officers or agents.

33.2 If any proceedings are brought or any claim is made against the Employer that might subject the Contractor to liability under GC Sub-Clause 33.1, the Employer shall promptly give the Contractor a notice thereof and the Contractor may at its own expense and in the Employer's name, conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Employer within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission that may be prejudicial to the defence of any such proceedings or claim.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

33.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from any liability for loss of or damage to property of the Employer, other than the Facilities not yet taken over, that is caused by fire, explosion or any other perils, in excess of the amount recoverable from insurances procured under GC Clause 34 (*Insurance*), provided that such fire, explosion or other perils were not caused by any act or failure of the Contractor.

33.4 The Party entitled to the benefit of an indemnity under this GC Clause 33 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the Party fails to take such measures, the other Party's liabilities shall be correspondingly reduced.

#### **34. Insurance**

34.1 The Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the following insurances in the sums and with the deductibles and other conditions specified in Appendix 3 (*Insurance Requirements*) to the Contract Agreement.

- (a) Cargo Insurance
- (b) Installation All Risks Insurance
- (c) Third Party Liability Insurance
- (d) Automobile Liability Insurance

- (e) Workers' Compensation
  - (f) Employer's Liability
  - (g) Other Insurances, if any stated in Appendix 3 (*Insurance Requirements*) to the Contract Agreement.
- 34.2 The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GC Sub-Clause 34.1, except for the Third Party Liability, the Workers' Compensation and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insureds under all insurance policies taken out by the Contractor pursuant to GC Sub-Clause 34.1 except for the Cargo Insurance, Workers' Compensation and Employer's Liability Insurances. All insurer's rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.
- 34.3 The Contractor shall, within the periods **stated in the Contract Data** (calculated from the Effective Date), deliver to the Employer, certificates of insurance or copies of the insurance policies as evidence that the required policies are in full force and effect. The certificates shall provide that no less than twenty-one (21) days' notice shall be given to the Employer by insurers prior to cancellation or material modification of a policy.
- 34.4 The Contractor shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Contractor.
- 34.5 The Employer shall at its expense take out and maintain in effect during the performance of the Contract those insurances **specified in the Contract Data** and Appendix 3 (*Insurance Requirements*) to the Contract Agreement, if any, in the sums and with the deductibles and other conditions specified in the said Appendix. The Contractor and the Contractor's Subcontractors shall be named as co-insureds under all such policies. All insurers' rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies. The Employer shall, within the period **stated in the Contract Data** (calculated from the Effective Date) deliver to the Contractor, certificates of insurance or copies of the insurance policies as evidence that the required policies are in full force and effect. The policies shall provide that not less than twenty-one (21) days' notice shall be



given to the Contractor by all insurers prior to any cancellation or material modification of the policies. If so requested by the Contractor, the Employer shall provide copies of the policies taken out by the Employer under this GCC Sub-Clause 34.5

34.6 If the Contractor fails to take out and/or maintain in effect the insurances referred to in GC Sub-Clause 34.1, the Employer may take out and maintain in effect any such insurances and may from time to time deduct from any amount due to the Contractor under the Contract any premium that the Employer shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Contractor. If the Employer fails to take out and/or maintain in effect the insurances referred to in GC 34.5, the Contractor may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Employer under the Contract any premium that the Contractor shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Employer. If the Contractor fails to or is unable to take out and maintain in effect any such insurances, the Contractor shall nevertheless have no liability or responsibility towards the Employer, and the Contractor shall have full recourse against the Employer for any and all liabilities of the Employer herein.

34.7 Unless otherwise provided in the Contract, the Contractor shall prepare and conduct any claim made under the policies effected by it pursuant to this GC Clause 34, and all monies payable by any insurers shall be paid to the Contractor. The Employer shall give to the Contractor all such reasonable assistance as may be required by the Contractor. With respect to insurance claims in which the Employer's interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of the Employer. With respect to insurance claims in which the Contractor's interest is involved, the Employer shall not give any release or make any compromise with the insurer without the prior written consent of the Contractor.

**35. Unforeseen  
Conditions**

35.1 If, during the execution of the Contract, the Contractor shall encounter on the Site any physical conditions other than climatic conditions, or artificial obstructions that could not have been reasonably foreseen prior to the Base Date by an experienced Contractor on the basis of reasonable examination of the data relating to the Facilities including any data as to boring tests, provided by the Employer, and on the basis of information that it could have obtained from a visual inspection of the Site if access thereto was available, or other data readily available to it relating

to the Facilities, and if the Contractor determines that it will in consequence of such conditions or obstructions incur additional cost and expense or require additional time to perform its obligations under the Contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Contractor shall promptly, and before performing additional work on the Facilities or using additional Contractor's Equipment, notify the Project Manager in writing of:

- (a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen;
- (b) the additional work on the Facilities and/or Contractor's Equipment required, including the steps which the Contractor will or proposes to take to overcome such conditions or obstructions;
- (c) the extent of the anticipated delay; and
- (d) the additional cost and expense that the Contractor is likely to incur.

On receiving any notice from the Contractor under this GC Sub-Clause 35.1, the Project Manager shall promptly consult with the Employer and the Contractor to decide upon the actions to be taken to overcome the physical conditions or artificial obstructions encountered. Following such consultations, the Project Manager shall instruct the Contractor, with a copy to the Employer, of the actions to be taken.

35.2 Any reasonable additional cost and expense incurred by the Contractor in following the instructions from the Project Manager to overcome such physical conditions or artificial obstructions referred to in GC Sub-Clause 35.1 shall be paid by the Employer to the Contractor as an addition to the Contract Price.

If the Contractor is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in GC Sub-Clause 35.1, the Time for Completion shall be extended in accordance with GC Clause 40.

### **36. Change in Laws and Regulations**

36.1 If, after the Base Date, in the country where the Site is located, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed which shall be deemed to include any change in interpretation or application by the competent authorities, that subsequently

affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with Appendix 2 (*Price Adjustment*) to the Contract Agreement and the PC pursuant to GC Sub-Clause 11.2.

**37. Force  
Majeure**

37.1 “Force Majeure” shall mean any event beyond the reasonable control of the Employer or of the Contractor, as the case may be, and which is unavoidable notwithstanding the reasonable care of the Party affected, and shall include, without limitation, the following:

- (a) war, hostilities or warlike operations whether a state of war be declared or not, invasion, act of foreign enemy and civil war;
- (b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts;
- (c) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority;
- (d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine and plague;
- (e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster; and
- (f) shortage of labour, materials or utilities where caused by circumstances that are themselves Force Majeure.

37.2 If either Party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the

occurrence of such event and the circumstances thereof within fourteen (14) days after the Party became or should have become aware of the occurrence of such event.

- 37.3 The Party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such Party's performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with GC Clause 40 (*Extension of Time for Completion*), taking into account such prevention, hindrance or delay, as the case may be.
- 37.4 The Party or Parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfil its or their obligations under the Contract, but without prejudice to either Party's right to terminate the Contract under GC Sub-Clauses 37.6 and 38.5.
- 37.5 No delay or nonperformance by either Party hereto caused by the occurrence of any event of Force Majeure shall:
- (a) constitute a default or breach of the Contract, or
  - (b) give rise to any claim for damages or additional cost or expense occasioned thereby, subject to GC Sub-Clauses 32.2, 38.3 and 38.4
- 37.6 If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the Contract, the Parties will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Contract by giving a notice to the other, but without prejudice to either Party's right to terminate the Contract under GC Sub-Clause 38.5.
- 37.7 In the event of termination pursuant to GC Sub-Clause 37.6, the rights and obligations of the Employer and the Contractor shall be as specified in GC Sub-Clauses 42.1.2 and 42.1.3.
- 37.8 Notwithstanding GC Sub-Clause 37.5, Force Majeure shall not apply to any obligation of the Employer to make payments to the Contractor herein.

### **38. War Risks**

- 38.1 "War Risks" shall mean any event specified in paragraphs (a) and (b) of GC Sub-Clause 37.1 and any explosion or impact of

any mine, bomb, shell, grenade or other projectile, missile, munitions or explosive of war, occurring or existing in or near the country (or countries) where the Site is located.

38.2 Notwithstanding anything contained in the Contract, the Contractor shall have no liability whatsoever for or with respect to:

- (a) destruction of or damage to Facilities, Plant, or any part thereof;
- (b) destruction of or damage to property of the Employer or any third Party; or
- (c) injury or loss of life,

if such destruction, damage, injury or loss of life is caused by any War Risks, and the Employer shall indemnify and hold the Contractor harmless from and against any and all claims, liabilities, actions, lawsuits, damages, costs, charges or expenses arising in consequence of or in connection with the same.

38.3 If the Facilities or any Plant or Contractor's Equipment or any other property of the Contractor used or intended to be used for the purposes of the Facilities shall sustain destruction or damage by reason of any War Risks, the Employer shall pay the Contractor for:

- (a) any part of the Facilities or the Plant so destroyed or damaged to the extent not already paid for by the Employer;
- (b) replacing or making good any Contractor's Equipment or other property of the Contractor so destroyed or damaged; or
- (c) replacing or making good any such destruction or damage to the Facilities or the Plant or any part thereof;

and so far as may be required by the Employer, and as may be necessary for completion of the Facilities.

If the Employer does not require the Contractor to replace or make good any such destruction or damage to the Facilities, the Employer shall either request a change in accordance with GC Clause 39 (*Change in the Facilities*), excluding the performance of that part of the Facilities thereby destroyed or damaged or, where the loss, destruction or damage affects a substantial part of the Facilities, shall terminate the Contract, pursuant to GC Sub-Clause 42.1 (*Termination by Employer for Employer's*

*Convenience*).

If the Employer requires the Contractor to replace or make good on any such destruction or damage to the Facilities, the Time for Completion shall be extended in accordance with GC Clause 40 (*Extension of Time for Completion*).

- 38.4 Notwithstanding anything to the contrary contained in the Contract, the Employer shall pay the Contractor for any increased costs or incidentals to the execution of the Contract that are in any way attributable to, consequent on, resulting from, or in any way connected with any War Risks, provided that the Contractor shall as soon as practicable notify the Employer in writing of any such increased cost.
- 38.5 If during the performance of the Contract any War Risks shall occur that financially or otherwise materially affect the execution of the Contract by the Contractor, the Contractor shall use its reasonable efforts to execute the Contract with due and proper consideration given to the safety of its and its Subcontractors' personnel engaged in the work on the Facilities, provided, however, that if the execution of the work on the Facilities becomes impossible or is substantially prevented for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of any War Risks, the Parties will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Contract by giving a notice to the other.
- 38.6 In the event of termination pursuant to GC Sub-Clauses 38.3 or 38.5, the rights and obligations of the Employer and the Contractor shall be specified in GC Sub-Clauses 42.1.2 and 42.1.3.

## **H. Change in Contract Elements**

### **39. Change in the Facilities**

#### **39.1 Introducing a Change**

- 39.1.1 Subject to GC Sub-Clauses 39.2.5 and 39.2.7, the Employer shall have the right to propose, and subsequently require, that the Project Manager instructs the Contractor from time to time during the performance of the Contract to make any change, modification, addition or deletion to, in or from the Facilities hereinafter called "Change", provided that such Change falls within the general scope of the Facilities and does not constitute unrelated work and

that it is technically practicable, taking into account both the state of advancement of the Facilities and the technical compatibility of the Change envisaged with the nature of the Facilities as specified in the Contract.

39.1.2 The Contractor may from time to time during its performance of the Contract propose to the Employer with a copy to the Project Manager, any Change that the Contractor considers necessary or desirable to improve the quality, efficiency or safety of the Facilities or which is necessitated by reason of any act, omission or breach of the Contract by the Employer or its contractors of any tier. The Employer may at its discretion approve or reject any Change proposed by the Contractor, provided that the Employer shall approve any Change necessitated by reason of any act, omission or breach of the Contract by the Employer or its contractors of any tier or proposed by the Contractor to ensure the safety of the Facilities.

39.1.3 Notwithstanding GC Sub-Clauses 39.1.1 and 39.1.2, no change made necessary because of any default of the Contractor in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Completion.

39.1.4 The procedure on how to proceed with and execute Changes is specified in GC Sub-Clauses 39.2 and 39.3, and further details and forms are provided in the Employer's Requirements (Forms and Procedures).

## 39.2 Changes Originating from the Employer

39.2.1 If the Employer proposes a Change pursuant to GC Sub-Clause 39.1.1, it shall send to the Contractor a "Request for Change Proposal," requiring the Contractor to prepare and furnish to the Project Manager as soon as reasonably practicable a "Change Proposal," which shall include the following:

- (a) brief description of the Change;
- (b) effect on the Time for Completion;
- (c) estimated cost of the Change;
- (d) effect on Functional Guarantees (if any);

- (e) effect on the Facilities; and
- (f) effect on any other provisions of the Contract.

39.2.2 Prior to preparing and submitting the "Change Proposal," the Contractor shall submit to the Project Manager an "Estimate for Change Proposal," which shall be an estimate of the cost of preparing and submitting the Change Proposal.

Upon receipt of the Contractor's Estimate for Change Proposal, the Employer shall do one of the following:

- (a) accept the Contractor's estimate with instructions to the Contractor to proceed with the preparation of the Change Proposal;
- (b) advise the Contractor of any part of its Estimate for Change Proposal that is unacceptable and request the Contractor to review its estimate; or
- (c) advise the Contractor that the Employer does not intend to proceed with the Change.

39.2.3 Upon receipt of the Employer's instruction to proceed under GC Sub-Clause 39.2.2(a), the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GC Sub-Clause 39.2.1.

39.2.4 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If such rates and prices are inapplicable, the Parties thereto shall agree on specific rates for the valuation of the Change.

39.2.5 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith and with all other Change Orders that have already become binding upon the Contractor under this GC Clause 39 would be to increase or decrease the Contract Price as originally set forth in Article 2 (*Contract Price and Terms of Payment*) of the Contract Agreement by more than fifteen percent (15%), the Contractor may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If the Employer accepts the Contractor's objection, the Employer shall withdraw the proposed Change and shall notify the



Contractor in writing thereof.

The Contractor's failure to so object shall neither affect its right to object to any subsequent requested Changes or Change Orders herein, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Contractor represents.

- 39.2.6 Upon receipt of the Change Proposal, the Employer and the Contractor shall mutually agree upon all matters therein contained. Within fourteen (14) days after such agreement, the Employer shall, if it intends to proceed with the Change, issue the Contractor with a Change Order.

If the Employer is unable to reach a decision within fourteen (14) days, it shall notify the Contractor with details of when the Contractor can expect a decision.

If the Employer decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Contractor accordingly. Under such circumstances, the Contractor shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Contractor in its Estimate for Change Proposal submitted in accordance with GC Sub-Clause 39.2.2.

- 39.2.7 If the Employer and the Contractor cannot reach agreement on the price for the Change, an appropriate adjustment to the Time for Completion, or any other matters identified in the Change Proposal, the Employer may nevertheless instruct the Contractor to proceed with the Change by issue of a "Pending Agreement Change Order."

Upon receipt of a Pending Agreement Change Order, the Contractor shall immediately proceed with effecting the Changes covered by such Order. The Parties shall thereafter attempt to reach agreement on the outstanding issues under the Change Proposal.

If the Parties cannot reach agreement within sixty (60) days from the date of issue of the Pending Agreement

Change Order, then the matter may be referred to the Dispute Board in accordance with the provisions of GC Sub-Clause 45.3.

### 39.3 Changes Originating from Contractor

If the Contractor proposes a Change pursuant to GC Sub-Clause 39.1.2, the Contractor shall submit to the Project Manager a written "Application for Change Proposal," giving reasons for the proposed Change and including the information specified in GC Sub-Clause 39.2.1.

Upon receipt of the Application for Change Proposal, the Parties shall follow the procedures outlined in GC Sub-Clauses 39.2.6 and 39.2.7. However, should the Employer choose not to proceed, the Contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal.

### 39.4 Provisional Sums

Each Provisional Sum shall only be used, in whole or in part, in accordance with the Project Manager's instructions and the Contract Price shall be adjusted accordingly. The total sum paid to the Contractor shall include only such amounts, for the Plant, or the Installation Service(s) to which the Provisional Sum relates, as the Project Manager shall have instructed:

- (a) work to be executed (including Plant, materials or services to be supplied) by the Contractor and valued under GC Clause 39 (*Change in the Facilities*); and/or
- (b) Plant, Materials or services to be purchased by the Contractor, for which there shall be included in the Contract Price:
  - (i) the actual amounts paid (or due to be paid) by the Contractor, and
  - (ii) a sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the percentage rate **stated in the Contract Data**.

The Contractor shall, when required by the Project Manager, produce quotations, invoices, vouchers and accounts or receipts in substantiation.

As an exception to the above, the Provisional Sum for the cost of the DB shall be used, in accordance with GC Sub-Clause 45.1 (*Appointment of the Dispute Board*), for payments to the Contractor of the invoices of the DB for its Regular Cost and

one-half of its Non-Regular Cost.

No prior instruction of the Project Manager shall be required with respect to the work of the DB.

The following shall apply to payments under the Provisional Sum of the cost of the DB:

- (a) Requests for any payment under the Provisional Sum shall be submitted with all necessary substantiations including:
  - (i) invoices prepared by the DB members and provided to the Contractor for payment/ reimbursement of their fees and/or expenses; and
  - (ii) evidence of payment of such invoiced amounts in full.
- (b) The Contractor's overhead, profit, etc., shall not be included in the Provisional Sums for the cost of the DB.
- (c) The Project Manager's approval shall be based upon the invoices of the DB and evidence of payment of such invoiced amounts in full by the Contractor.

**40. Extension of Time for Completion**

40.1 The Time(s) for Completion pursuant to GC Sub-Clause 8.2 shall be extended if the Contractor is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

- (a) any Change in the Facilities as provided in GC Clause 39 (*Change in the Facilities*);
- (b) any occurrence of Force Majeure as provided in GC Clause 37 (*Force Majeure*), unforeseen conditions as provided in GC Clause 35 (*Unforeseen Conditions*), or other occurrence of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GC Sub-Clause 32.2;
- (c) any suspension order given by the Project Manager other than by reason of the Contractor's default or breach of the Contract under GC Sub-Clause 41.1 (*Suspension by Employer*) hereof or reduction in the rate of progress pursuant to GC Sub-Clause 41.2 (*Suspension by Contractor*);
- (d) any changes in laws and regulations as provided in GC Clause 36 (*Change in Laws and Regulations*);

- (e) any default or breach of the Contract by the Employer, or any activity, act or omission of the Employer, or the Project Manager, or any other contractors employed by the Employer;
- (f) any delay on the part of a Subcontractor, provided such delay is due to a cause for which the Contractor himself would have been entitled to an extension of time under this sub-clause;
- (g) delays attributable to the Employer or caused by customs;  
or
- (h) any other matter specifically stated in the Contract;

by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Contractor.

The Time for Completion shall be extended in accordance with this GC Sub-Clauses 40.1, irrespective of any delaying factors attributable to the Contractor which operate or operated concurrently with any of the factors stated in (a) through (h) thereof.

- 40.2 Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Project Manager a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as practicable, and not later than twenty-eight (28) days after the Contractor became aware, or should have become aware, of the event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Employer and the Contractor shall agree upon the period of such extension. In the event that the Contractor does not accept the Employer's estimate of a fair and reasonable time extension, the Contractor shall be entitled to refer the matter to a Dispute Board, pursuant to GC Sub-Clause 45.3.
- 40.3 The Contractor shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.
- 40.4 In all cases where the Contractor has given a notice of a claim for an extension of time under GC Clause 40.2, the Contractor shall consult with the Project Manager in order to determine the steps (if any) which can be taken to overcome or minimize the actual or anticipated delay. The Contractor shall thereafter comply with

all reasonable instructions which the Project Manager shall give in order to minimize such delay. If compliance with such instructions shall cause the Contractor to incur extra costs and the Contractor is entitled to an extension of time under GC Clause 40.1, the amount of such extra costs shall be added to the Contract Price.

## **41. Suspension**

### **41.1 Suspension by Employer**

The Employer may request the Project Manager, by notice to the Contractor, to order the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefor. The Contractor shall thereupon suspend performance of such obligation, except those obligations necessary for the care, protection or preservation of the Facilities, until ordered in writing to resume such performance by the Project Manager.

If, by virtue of a suspension order given by the Project Manager, other than by reason of the Contractor's default or breach of the Contract, the Contractor's performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Project Manager requiring that the Employer shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GC Clause 39 (*Change in the Facilities*), excluding the performance of the suspended obligations from the Contract.

If the Employer fails to do so within such period, the Contractor may, by a further notice to the Project Manager, elect to treat the suspension, where it affects a part only of the Facilities, as a deletion of such part in accordance with GC Clause 39 or, where it affects the whole of the Facilities, as termination of the Contract under GC Sub-Clause 42.1 (*Termination by Employer for Employer's Convenience*).

### **41.2 Suspension by Contractor**

If:

- (a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to Appendix 1 (*Payment Terms and Procedures*) to the Contract Agreement, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such

sum, with financing charges thereon as stipulated in GC Sub-Clause 12.4 (*Delayed Payment*), requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice; or

- (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas in accordance with GC Sub-Clause 10.2, or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities;

then, the Contractor may by notice to the Employer suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress.

Notwithstanding the above, if JICA has suspended disbursements under the loan or credit from which payments to the Contractor are being made, in whole or in part, for the execution of the work on the Facilities, and no alternative funds are available as provided for in GC Sub-Clause 10.5, the Contractor may by notice suspend work or reduce the rate of work at any time, but not less than 7 days after the Borrower having received the suspension notification from JICA. The Contractor's action shall not prejudice his entitlements to financing charges under GC Sub-Clause 12.4 and to termination under GC Sub-Clause 42.3 (*Termination by the Contractor*).

If the Contractor subsequently receives such payment approval, evidence or payment (as described in the relevant provision of the Contract and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.

- 41.3 If the Contractor's performance of its obligations is suspended or the rate of progress is reduced pursuant to GC Sub-Clauses 41.1 and 41.2 above, then the Time for Completion shall be extended in accordance with GC Sub-Clause 40.1, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by the Employer to the Contractor in addition to the Contract Price,

except in the case of suspension order or reduction in the rate of progress by reason of the Contractor's default or breach of the Contract.

41.4 During the period of suspension, the Contractor shall not remove from the Site any Plant, any part of the Facilities or any Contractor's Equipment, without the prior written consent of the Employer.

## **42. Termination**

### **42.1 Termination by Employer for Employer's Convenience**

42.1.1 The Employer may at any time terminate the Contract for any reason by giving the Contractor a notice of termination that refers to this GC Sub-Clause 42.1 (*Termination by Employer for Employer's Convenience*).

42.1.2 Upon receipt of the notice of termination under GC Sub-Clause 42.1.1, the Contractor shall either immediately or upon the date specified in the notice of termination:

- (a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean, tidy and safe condition;
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii) below;
- (c) remove all Contractor's Equipment from the Site, repatriate the Contractor's and its Subcontractors' personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean, tidy and safe condition; and
- (d) subject to the payment specified in GC Sub-Clause 42.1.3,
  - (i) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination;
  - (ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant as

of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and

- (iii) deliver to the Employer all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Facilities.

42.1.3 In the event of termination of the Contract under GC Sub-Clause 42.1.1, the Employer shall pay to the Contractor the following amounts:

- (a) the Contract Price, properly attributable to the parts of the Facilities executed by the Contractor as of the date of termination;
- (b) the costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment from the Site and in the repatriation of the Contractor's and its Subcontractors' personnel;
- (c) any amounts to be paid by the Contractor to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges;
- (d) costs incurred by the Contractor in protecting the Facilities and leaving the Site in a clean, tidy and safe condition pursuant to paragraph (a) of GC Sub-Clause 42.1.2; and
- (e) the cost of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with third Parties in connection with the Contract and that are not covered by paragraphs (a) through (d) above.

## 42.2 Termination by Employer for Contractor's Default

42.2.1 The Employer, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefor to the Contractor, referring to this GC Sub-Clause 42.2:



- (a) if the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is a corporation, a resolution is passed or order is made for its winding up, other than a voluntary liquidation for the purposes of amalgamation or reconstruction, a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt;
- (b) if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of GC Clause 43 (*Assignment*); or
- (c) if the Contractor, in the judgment of the Employer has engaged in any corrupt or fraudulent practice, as defined in GC Clause 6 (*Corrupt or Fraudulent Practices*), in competing for or in executing the Contract.

42.2.2 If the Contractor:

- (a) has abandoned or repudiated the Contract;
  - (b) has without valid reason failed to commence work on the Facilities promptly or has suspended, other than pursuant to GC Sub-Clause 41.2 (*Suspension by Contractor*), the progress of Contract performance for more than twenty-eight (28) days after receiving a written instruction from the Employer to proceed;
  - (c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause; or
  - (d) refuses or is unable to provide sufficient materials, services or labor to execute and complete the Facilities in the manner specified in the programme furnished under GC Sub-Clause 18.2 (*Programme of Performance*) at rates of progress that give reasonable assurance to the Employer that the Contractor can attain Completion of the Facilities by the Time for Completion as extended;
- then the Employer may, without prejudice to any other rights it may possess under the Contract,

give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Employer may terminate the Contract forthwith by giving a notice of termination to the Contractor that refers to this GC Sub-Clause 42.2 (*Termination by Employer for Contractor's Default*).

42.2.3 Upon receipt of the notice of termination under GC Sub-Clauses 42.2.1 or 42.2.2, the Contractor shall, either immediately or upon such date as is specified in the notice of termination:

- (a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean, tidy and safe condition;
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) below;
- (c) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination;
- (d) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and
- (e) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities.

42.2.4 After termination in accordance with GC Sub-Clause 42.2.3 above wholly or partly, the Employer may complete the Facilities itself or by employing any third party. The Employer may, to the exclusion of any right of the Contractor over the same, take over and use with the payment of a fair rental rate to the Contractor, with

all the maintenance costs to the account of the Employer and with an indemnification by the Employer for all liability including damage or injury to persons arising out of the Employer's use of such equipment, any Contractor's Equipment owned by the Contractor and on the Site in connection with the Facilities for such reasonable period as the Employer considers expedient for completion of the Facilities.

Upon completion of the Facilities or at such earlier date as the Employer thinks appropriate, the Employer shall give notice to the Contractor that such Contractor's Equipment will be returned to the Contractor at or near the Site and shall return such Contractor's Equipment to the Contractor in accordance with such notice. The Contractor shall thereafter without delay and at its cost remove or arrange removal of the same from the Site.

- 42.2.5 Subject to GC Sub-Clause 42.2.6, the Contractor shall be entitled to be paid the Contract Price attributable to the Facilities executed as of the date of termination, the value of any unused or partially used Plant on the Site, and the costs, if any, incurred in protecting the Facilities and in leaving the Site in a clean, tidy and safe condition pursuant to paragraph (a) of GC Sub-Clause 42.2.3. Any sums due to the Employer from the Contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the Contractor under this Contract.
- 42.2.6 If the Employer undertakes to complete the Facilities, the cost of completing the Facilities by the Employer shall be determined.

If the sum that the Contractor is entitled to be paid, pursuant to GC Sub-Clause 42.2.5, plus the reasonable costs incurred by the Employer in completing the Facilities, exceeds the Contract Price, the Contractor shall be liable for such excess.

If such excess is greater than the sums due to the Contractor under GC Sub-Clause 42.2.5, the Contractor shall pay the balance to the Employer, and if such excess is less than the sums due to the Contractor under GC Sub-Clause 42.2.5, the Employer shall pay the balance to the Contractor.

The Employer and the Contractor shall agree, in writing,

on the computation described above and the manner in which any sums shall be paid.

#### 42.3 Termination by the Contractor

##### 42.3.1 If:

- (a) the Contractor has not received the Project Manager's instruction under GC Sub-Clause 8.1 within one-hundred and eighty (180) days after receipt of the Letter of Acceptance by the Contractor;
- (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities;
- (c) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to Appendix 1 (*Payment Terms and Procedures*) to the Contract Agreement, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with financing charges thereon as stipulated in GC Sub-Clauses 12.4 (*Delayed Payment*), requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice; or
- (d) the Contractor does not receive the reasonable evidence within forty-two (42) days after giving notice under GC Sub-Clause 41.2 (*Suspension by Contractor*) in respect of a failure to comply with

## GC Sub-Clause 10.5;

then the Contractor may give a notice to the Employer thereof, and if the Employer has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Contractor is still unable to carry out any of its obligations under the Contract for any reason attributable to the Employer within twenty-eight (28) days of the said notice, the Contractor may by a further notice to the Employer referring to this GC Sub-Clause 42.3.1, forthwith terminate the Contract.

In the event JICA suspends the loan or credit from which part or whole of the payments to the Contractor are being made, if the Contractor has not received the sums due to him upon expiration of the fourteen (14) days referred to in GC Sub-Clause 12.2 (*Payment*), the Contractor may, without prejudice to the Contractor's entitlement to financing charges under GC Sub-Clause 12.4 (*Delayed Payment*), take one of the following actions, namely;

- (i) suspend work or reduce the rate of work under GC Sub-Clause 41.2 (*Suspension by Contractor*) above, or
- (ii) terminate the Contract by giving notice to the Employer, with a copy to the Project Manager, such termination to take effect fourteen (14) days after the giving of the notice.

42.3.2 If the Employer becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Employer takes or suffers any other analogous action in consequence of debt, then the Contractor may, by giving a notice to the Employer to that effect referring to this GC Sub-Clause 42.3.2, terminate the Contract forthwith.

42.3.3 If the Contract is terminated under GC Sub-Clauses 42.3.1 or 42.3.2, then the Contractor shall immediately:

- (a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean, tidy and safe condition;
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii);
- (c) remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Subcontractors' personnel from the Site; and
- (d) subject to the payment specified in GC Sub-Clause 42.3.4:
  - (i) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination;
  - (ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and
  - (iii) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities.

42.3.4 If the Contract is terminated under GC Sub-Clauses 42.3.1 or 42.3.2, the Employer shall pay to the Contractor all payments specified in GC Sub-Clause 42.1.3, and reasonable compensation for all loss, except for loss of profit, or damage sustained by the Contractor arising out of, in connection with or in consequence of such termination.

42.3.5 Termination by the Contractor pursuant to this GC Sub-Clause 42.3 is without prejudice to any other rights or remedies of the Contractor that may be exercised in lieu

of or in addition to rights conferred by this GC Sub-Clause 42.3.

42.4 In this GC Clause 42, the expression "Facilities executed" shall include all work executed, Installation Services provided, and all Plant acquired, or subject to a legally binding obligation to purchase, by the Contractor and used or intended to be used for the purpose of the Facilities, up to and including the date of termination.

42.5 In this GC Clause 42, in calculating any monies due from the Employer to the Contractor, account shall be taken of any sum previously paid by the Employer to the Contractor under the Contract, including any advance payment paid pursuant to Appendix 1 (*Payment Terms and Procedures*) to the Contract Agreement.

#### **43. Assignment**

43.1 Neither the Employer nor the Contractor shall, without the express prior written consent of the other Party, which consent shall not be unreasonably withheld, assign to any third party the Contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder, except that the Contractor shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

### **I. Claims, Disputes and Arbitration**

#### **44. Contractor's Claims**

44.1 If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall submit a notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than twenty-eight (28) days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of twenty-eight (28) days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the

claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the Employer's liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.

Within forty-two (42) days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- (a) this fully detailed claim shall be considered as interim;
- (b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Project Manager may reasonably require; and
- (c) the Contractor shall send a final claim within twenty-eight (28) days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.

Within forty-two (42) days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager shall, after consulting with each Party in an endeavour to reach agreement in accordance with GC Clause 17.1, respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

In the event that the Contractor and the Employer cannot agree on any matter relating to a claim within the said above defined period of forty-two (42) days, thereafter either Party may refer



the matter to the DB pursuant to GC Clause 45 (*Disputes and Arbitration*) hereof.

Each payment approval issued by the Project Manager shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

#### 45. Disputes and Arbitration

##### 45.1 Appointment of the Dispute Board

Disputes shall be referred to a DB for decision in accordance with GC Sub-Clause 45.3 (*Obtaining Dispute Board's Decision*). The Parties shall appoint a DB by the date **stated in the Contract Data**.

The DB shall comprise, as **stated in the Contract Data**, either one or three suitably qualified persons ("the members"), each of whom shall be fluent in the language for communication defined in the Contract and shall be a professional experienced in the type of Plant or Installation Services involved in the performance of the Contract and with the interpretation of the Contract Documents. If the number is not so stated and the Parties do not agree otherwise, the DB shall comprise three persons, one of whom shall serve as chairman.

If the Parties have not jointly appointed the DB twenty-one (21) days before the date **stated in the Contract Data** and the DB is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman.

However, if a list of potential members has been agreed by the Parties and is included in the Contract, the members shall be selected from those on the list, other than anyone who is unable

or unwilling to accept appointment to the DB.

The agreement between the Parties and either the sole member or each of the three members shall incorporate by reference the General Conditions of Dispute Board Agreement contained in the Appendix to these General Conditions, with such amendments as are agreed between them.

The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the DB consults, shall be mutually agreed upon by the Parties when agreeing the terms of appointment of the member or of such expert (as the case may be). The Employer shall be responsible for paying the Regular Cost and one-half of the Non-Regular Cost and the Contractor shall be responsible for paying one-half of the Non-Regular Cost. For the purposes of this Sub-Clause:

- (a) "Regular Cost" means retainer fees of DB members, daily fees of the DB members for regular Site visits and all expenses of regular Site visits of the DB members.
- (b) "Non-Regular Cost" means all fees and expenses of the DB other than the Regular Cost.

If at any time the Parties so agree, they may jointly refer a matter to the DB for it to give its opinion. Neither Party shall consult the DB on any matter without the agreement of the other Party.

If a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Sub-Clause.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DB (including each member) shall expire at the end of the Defects Liability Period, as specified in GC Clause 27 (*Defects Liability*).

#### 45.2 Failure to Agree on the Composition of the Dispute Board

If any of the following conditions apply, namely:

- (a) the Parties fail to agree upon the appointment of the sole member of the DB by the date stated in the first paragraph of GC Sub-Clause 45.1 (*Appointment of the Dispute*

*Board*);

- (b) either Party fails to nominate a member (for approval by the other Party) of a DB of three persons by such date;
- (c) the Parties fail to agree upon the appointment of the third member (to act as chairman) of the DB by such date; or
- (d) the Parties fail to agree upon the appointment of a replacement person within forty-two (42) days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment;

then the appointing entity or official **named in the Contract Data** shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.

#### 45.3 Obtaining Dispute Board's Decision

If a dispute (of any kind whatsoever) arises between the Parties in connection with the Contract or the execution of the work on the Facilities, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Project Manager, either Party may refer the dispute in writing to the DB for its decision, with copies to the other Party and the Project Manager. Such reference shall state that it is given under this Sub-Clause.

For a DB of three persons, the DB shall be deemed to have received such reference on the date when it is received by the chairman of the DB.

Both Parties shall promptly make available to the DB all such additional information, further access to the Site, and appropriate facilities, as the DB may require for the purposes of making a decision on such dispute. The DB shall be deemed to be not acting as arbitrator(s).

Within eighty-four (84) days after receiving such reference, or within such other period as may be proposed by the DB and approved by both Parties, the DB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in

an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the work in accordance with the Contract.

If either Party is dissatisfied with the DB's decision, then either Party may, within twenty-eight (28) days after receiving the decision, give notice to the other Party of its dissatisfaction and intention to commence arbitration. If the DB fails to give its decision within the period of eighty-four (84) days (or as otherwise approved) after receiving such reference, then either Party may, within twenty-eight (28) days after this period has expired, give notice to the other Party of its dissatisfaction and intention to commence arbitration.

In either event, this notice of dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in GC Sub-Clauses 45.6 and 45.7, neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Sub-Clause.

If the DB has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within twenty-eight (28) days after it received the DB's decision, then the decision shall become final and binding upon both Parties.

#### 45.4 Amicable Settlement

Where notice of dissatisfaction has been given under GC Sub-Clause 45.3 above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the fifty-sixth (56<sup>th</sup>) day after the day on which notice of dissatisfaction and intention to commence arbitration was given, even if no attempt at amicable settlement has been made.

#### 45.5 Arbitration

Any dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with GC Sub-Clause 45.4 above and in respect of which the DB's decision (if any) has not become final and binding shall be finally settled by arbitration. Arbitration shall be conducted as follows:

- (a) if the Contract is with a foreign contractor (or if the lead partner is a foreign contractor, in case of JV), international arbitration (i) with proceedings administered by the arbitration institution **designated in the Contract Data**, and conducted under the rules of arbitration of such institution; or, if so **specified in the Contract Data**, (ii) with proceedings administered by Japan Commercial Arbitration Association (JCAA) and conducted under the arbitration rules of JCAA; or (iii) if neither an arbitration institution nor arbitration rules are **specified in the Contract Data**, with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by one or more arbitrators appointed in accordance with said arbitration rules.
- (b) if the Contract is with a domestic contractor (or if the lead partner is a domestic contractor, in case of JV), arbitration with proceedings conducted in accordance with the laws of the Employer's country.

The place of arbitration shall be a neutral location determined in accordance with the applicable rules of arbitration; and the arbitration shall be conducted in the language for communications defined in GC Sub-Clause 5.3 (*Law and Language*).

The arbitrator(s) shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, and any decision of the DB, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Project Manager from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrator(s) to the evidence or arguments previously put before the DB to obtain its(their) decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the DB shall be admissible in evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the Facilities. The obligations of the Parties, the Project Manager and the DB shall not be altered by reason of any arbitration being conducted during the progress of the work on the Facilities.

#### 45.6 Failure to Comply with Dispute Board's Decision

In the event that a Party fails to comply with any decision of the DB, whether binding or final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself directly to arbitration under GC Sub-Clause 45.5 (*Arbitration*) in which case GC Sub-Clauses 45.3 (*Obtaining Dispute Board's Decision*) and 45.4 (*Amicable Settlement*) shall not apply to this reference. The arbitral tribunal (constituted under GC Sub-Clause 45.5) shall have the power, by way of summary or other expedited procedure, to order, whether by partial award, an interim or provisional measure or award (as may be appropriate under applicable law or otherwise), the enforcement of that decision.

#### 45.7 No Dispute Board in Place

If a dispute arises between the Parties in connection with, or arising out of, the Contract or the execution of the works on the Facilities and there is no DB in place (or no DB is being constituted), whether by reason of the expiry of the DB's appointment or otherwise:

- (a) GC Sub-Clause 45.3 (*Obtaining Dispute Board's Decision*) and GC Sub-Clause 45.4 (*Amicable Settlement*) shall not apply, and
- (b) the dispute may be referred by either Party directly to arbitration under GC Sub-Clause 45.5 (*Arbitration*) without prejudice to any other rights the Party may have.

45.8 Notwithstanding any reference to the DB or arbitration, the Parties shall continue to perform their respective obligations under the Contract unless the Parties otherwise agree.

## APPENDIX

### General Conditions of Dispute Board Agreement

#### 1

##### Definitions

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

- (a) the “Employer”;
- (b) the “Contractor”; and
- (c) the “Member” who is defined in the Dispute Board Agreement as being:
  - (i) the sole member of the “DB” and, where this is the case, all references to the “Other Members” do not apply, or
  - (ii) one of the three persons who are jointly called the “DB” (or “Dispute Board”) and, where this is the case, the other two persons are called the “Other Members”.

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

#### 2

##### General Provisions

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

- (a) the Effective Date defined in the Contract,
- (b) when the Employer, the Contractor and the Member have each signed the Dispute Board Agreement, or
- (c) when the Employer, the Contractor and each of the Other Members (if any) have respectively each signed a dispute board agreement.

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

this period.

3 -----

**Warranties**

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

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

- (a) experienced in the work which the Contractor is to carry out under the Contract,
- (b) experienced in the interpretation of contract documentation, and
- (c) fluent in the language for communications defined in the Contract.

4 -----

**General Obligations of the Member**

The Member shall:

- (a) have no interest financial or otherwise in the Employer, the Contractor or the Project Manager, nor any financial interest in the Contract except for payment under the Dispute Board Agreement;
- (b) not previously have been employed as a consultant or otherwise by the Employer, the Contractor or the Project Manager, except in such circumstances as were disclosed in writing to the Employer and the Contractor before they signed the Dispute Board Agreement;
- (c) have disclosed in writing to the Employer, the Contractor and the Other Members (if any), before entering into the Dispute Board Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Employer, the Contractor or the Project Manager, and any previous involvement in the overall project of which the Contract forms part;
- (d) not, for the duration of the Dispute Board Agreement, be employed as a consultant or otherwise by the Employer, the Contractor or the Project Manager, except as may be agreed



- in writing by the Employer, the Contractor and the Other Members (if any);
- (e) comply with the annexed procedural rules and with GC Sub-Clause 45.3;
  - (f) not give advice to the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel concerning the conduct of the Contract, other than in accordance with the annexed procedural rules;
  - (g) not while a Member enter into discussions or make any agreement with the Employer, the Contractor or the Project Manager regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Board Agreement;
  - (h) ensure his/her availability for all site visits and hearings as are necessary;
  - (i) become conversant with the Contract and with the progress of the work on the Facilities (and of any other parts of the project of which the Contract forms part) by studying all documents received which shall be maintained in a current working file;
  - (j) treat the details of the Contract and all the DB's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer, the Contractor and the Other Members (if any); and
  - (k) be available to give advice and opinions, on any matter relevant to the Contract when requested by both the Employer and the Contractor, subject to the agreement of the Other Members (if any).

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**5****General Obligations of the Employer and the Contractor**

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

The Employer and the Contractor undertake to each other and to the Member that the Member shall not, except as otherwise agreed in writing by the Employer, the Contractor, the Member and the

Other Members (if any):

- (a) be appointed as an arbitrator in any arbitration under the Contract;
- (b) be called as a witness to give evidence concerning any dispute before arbitrator(s) appointed for any arbitration under the Contract; or
- (c) be liable for any claims for anything done or omitted in the discharge or purported discharge of the Member's functions, unless the act or omission is shown to have been in bad faith.

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

Whenever the Employer or the Contractor refers a dispute to the DB under GC Sub-Clause 45.3, which will require the Member to make a site visit and attend a hearing, the Employer or the Contractor shall provide appropriate security for a sum equivalent to the reasonable expenses to be incurred by the Member. No account shall be taken of any other payments due or paid to the Member.

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**6****Payment**

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

- (a) a retainer fee per calendar month, which shall be considered as payment in full for:
  - (i) being available on twenty-eight (28) days' notice for all site visits and hearings;
  - (ii) becoming and remaining conversant with all project developments and maintaining relevant files;
  - (iii) all office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties; and
  - (iv) all services performed hereunder except those referred to in sub-paragraphs (b) and (c) of this Clause.

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

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

- (b) a daily fee which shall be considered as payment in full for:
  - (i) each day or part of a day up to a maximum of two days' travel time in each direction for the journey between the Member's home and the site, or another location of a meeting with the Other Members (if any);
  - (ii) each working day on site visits, hearings or preparing decisions; and
  - (iii) each day spent reading submissions in preparation for a hearing.
- (c) all reasonable expenses including necessary travel expenses (air fare in less than first class, hotel and subsistence and other direct travel expenses) incurred in connection with the Member's duties, as well as the cost of telephone calls, courier charges, faxes and telexes: a receipt shall be required for each item in excess of five percent of the daily fee referred to in sub-paragraph (b) of this Clause;
- (d) any taxes properly levied in the country where the site is located on payments made to the Member (unless a national or permanent resident of the country where the site is located) under this Clause 6.

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

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

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

The Contractor shall pay each of the Member's invoices in full

within 56 calendar days after receiving each invoice and shall apply to the Employer (in the Statements under the Contract) for reimbursement of the amount which the Employer is responsible for these invoices (the Regular Cost and one-half of the Non-Regular Cost). The Employer shall then pay the Contractor in accordance with the Contract.

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the Dispute Board Agreement, the Employer shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the DB; and without prejudice to the Employer's rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of the amount which the Contractor is responsible for, including any additional excess of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in accordance with GC Sub-Clause 12.4.

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

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7

### **Termination**

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

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

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

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

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8

### **Default of the**

If the Member fails to comply with any of his obligations under

**Member**

Clause 4 (a) - (d) above, he shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses received by the Member and the Other Members (if any), for proceedings or decisions (if any) of the DB which are rendered void or ineffective by the said failure to comply.

If the Member fails to comply with any of his obligations under Clause 4 (e) - (k) above, he shall not be entitled to any fees or expenses hereunder from the date and to the extent of the non-compliance and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses already received by the Member, for proceedings or decisions (if any) of the DB which are rendered void or ineffective by the said failure to comply.

**9** .....**Disputes**

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

**Annex PROCEDURAL RULES**

1. Unless otherwise agreed by the Employer and the Contractor, the DB shall visit the site at intervals of not more than one hundred forty (140) days, including times of critical construction events, at the request of either the Employer or the Contractor. Unless otherwise agreed by the Employer, the Contractor and the DB, the period between consecutive visits shall not be less than seventy (70) days, except as required to convene a hearing as described below.
2. The timing of and agenda for each site visit shall be as agreed jointly by the DB, the Employer and the Contractor, or in the absence of agreement, shall be decided by the DB. The purpose of site visits is to enable the DB to become and remain acquainted with the progress of the Contract and of any actual or potential problems or claims, and, as far as reasonable, to prevent potential problems or claims from becoming disputes.
3. Site visits shall be attended by the Employer, the Contractor and the Project Manager and shall be co-ordinated by the Employer in co-operation with the Contractor. The Employer shall ensure the provision of appropriate conference facilities and secretarial and copying services. At the conclusion of each site visit and before leaving the site, the DB shall prepare a report on its activities during the visit and shall send copies to the Employer and the Contractor.
4. The Employer and the Contractor shall furnish to the DB one copy of all documents which the DB may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the performance of the Contract. All communications between the DB and the Employer or the Contractor shall be copied to the other Party. If the DB comprises three persons, the Employer and the Contractor shall send copies of these requested documents and these communications to each of these persons.
5. If any dispute is referred to the DB in accordance with GC Sub-Clause 45.3, the DB shall proceed in accordance with GC Sub-Clause 45.3 and these Rules. Subject to the time allowed to give notice of a decision and other relevant factors, the DB shall:
  - (a) act fairly and impartially as between the Employer and the Contractor, giving each of them a reasonable opportunity of putting his case and responding to the other's case, and
  - (b) adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.
6. The DB may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation

and arguments from the Employer and the Contractor be presented to it prior to or at the hearing.

7. Except as otherwise agreed in writing by the Employer and the Contractor, the DB shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the Employer, the Contractor and the Project Manager, and to proceed in the absence of any Party who received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.
8. The Employer and the Contractor empower the DB, among other things, to:
  - (a) establish the procedure to be applied in deciding a dispute,
  - (b) decide upon the DB's own jurisdiction, and as to the scope of any dispute referred to it,
  - (c) conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Guidelines,
  - (d) take the initiative in ascertaining the facts and matters required for a decision,
  - (e) make use of its own specialist knowledge, if any,
  - (f) decide upon the payment of financing charges in accordance with the Contract,
  - (g) decide upon any provisional relief such as interim or conservatory measures,
  - (h) open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute, and
  - (i) appoint, should the DB so consider necessary and the Parties agree, a suitable expert at the cost of the Parties to give advice on a specific matter relevant to the dispute.
9. The DB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DB shall make and give its decision in accordance with GC Sub-Clause 45.3, or as otherwise agreed by the Employer and the Contractor in writing. If the DB comprises three persons:
  - (a) it shall convene in private after a hearing, in order to have discussions and prepare its decision;

- (b) it shall endeavour to reach a unanimous decision: if this proves impossible the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the Employer and the Contractor; and
- (c) if a Member fails to attend a meeting or hearing, or to fulfil any required function, the other two Members may nevertheless proceed to make a decision, unless:
  - (i) either the Employer or the Contractor does not agree that they do so, or
  - (ii) the absent Member is the chairman and he/she instructs the other Members to not make a decision.



## Section VIII. Particular Conditions (PC)

### Notes for the Employer

This Section consists of Part A, Contract Data, which contains data specific to each Contract and Part B, Specific Provisions, which contains clauses specific to each contract. The contents of this Section supplement the GC.

The Specific Provisions in Part B shall be drafted/ completed by the Employer in accordance with the Project and/ or Employer's country specific requirements and circumstances.

The "*Notes for the Employer*", "boxed" notes and italicized notes are not part of the PC, but contain guidelines and instructions for the Employer. They shall be deleted from the actual Bidding Document to be issued to the Bidders, except for the data required for CD 1.1 & 4.1 [*Contractor's name and address*] and CD 1.1 [*Contractor's Representative's Name*] which require the relevant data to be filled in prior to signing of the Contract.



## Particular Conditions (PC)

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

### Part A - Contract Data (CD)

*[The Employer shall insert relevant data prior to the issue of the Bidding Document except for the data required for CD 1.1 & 4.1 (Contractor's name and address) and CD 1.1 (Contractor's Representative's Name) which may be filled in prior to signing of the Contract once such data is available. Where a number of days is to be inserted it is desirable for the number to be a multiple of seven for consistency with the Conditions of Contract.]*

Conditions	Sub-Clause	Data
<b>Borrower's name</b>	1.1	<i>[insert Borrower's name]</i>
<b>Contractor's name and address</b>	1.1 & 4.1	<i>[insert Contractor's name and address]</i>
<b>Contractor's representative's name</b>	1.1	<i>[insert the name of the Contractor's Representative]</i>
<b>Employer's name and address</b>	1.1 & 4.1	<i>[insert Employer's name and address]</i>
<b>Project Manager's name and address</b>	1.1 & 4.1	<i>[insert Project Manager's name and address]</i>
<b>Sections of the Facilities</b>	1.1	<i>[If Sections are used, then state "Refer to Table: Summary of Sections of the Facilities"; otherwise, delete this entire CD 1.1.]</i>
<b>Law governing Contract and used for its interpretation</b>	5.1	Laws of <i>[insert the country]</i>
<b>Ruling language</b>	5.2	<i>[insert name of ruling language]</i>
<b>Language for communications</b>	5.3	<i>[insert name of language for communications, if different from the ruling language. Otherwise, delete this entire CD 5.3.]</i>
<b>Period for supply of Spare Parts (Mandatory Spare Parts and Recommended Spare Parts)</b>	7.3(a) and (b)	<i>[insert number of years after the Operational Acceptance, during which the Contractor is to make all spare parts, special tools etc. available. The number of years should be consistent with ITB16.2(b) in case of Single-Stage Two-Envelope Bidding and ITB 14.2(b)]</i>

Conditions	Sub-Clause	Data
		<i>in case of Two-Stage One-Envelope Bidding.]</i>
<b>Commencement</b>	8.1(c)	<p><i>[When access to and possession of the whole of the Site can be given by the Effective Date, delete this entire CD 8.1(c).</i></p> <p><i>When access to and possession of any part(s) of the Site cannot be given before the Effective Date, insert the following which should be consistent with CD 10.2.</i></p> <p><i>“[insert the number] ..... days after the Effective Date” or “refer to Table 2: Partial Site Access and Possession below”.]</i></p>
<b>Time for Completion</b>	8.2	<i>[insert the time for completion of the whole of the Facilities]</i>
<b>Employer’s Responsibilities: Number of Days for Site Access and Possession</b>	10.2	<p><i>[When access to and possession of the whole of the Site can be given by the Effective Date, insert the following.</i></p> <p><i>“By the Effective Date”</i></p> <p><i>When access to and possession of any part(s) of the Site cannot be given by the Effective Date, insert the following.</i></p> <p><i>“[insert the number] ..... days after the Effective Date” or “refer to Table 2: Partial Site Access and Possession below”.]</i></p>

Conditions	Sub-Clause	Data
<b>Contract Price</b>	11.2	<p><i>[If the Contract Price is subject to adjustment during the performance of the Contract, insert the following. Otherwise, delete this entire CD11.2.]</i></p> <p>The Contract Price shall be adjusted in accordance with the provisions of Appendix 2 (<i>Price Adjustment</i>) to the Contract Agreement.</p>
<b>The Disbursement Procedure</b> (a) local currency (b) foreign currency	12.3(a) 12.3(b)	<p>(a) local currency: <i>[insert the relevant disbursement procedure as set forth in the Loan Agreement]</i></p> <p>(b) foreign currency: <i>[insert the relevant disbursement procedure as set forth in the Loan Agreement]</i></p> <p>The brochures describing JICA's Disbursement Procedures are available at :  <i>[https://www.jica.go.jp/english/our_work/types_of_assistance/oda_loans/oda_op_info/procedure ]</i></p> <p><i>[State the relevant disbursement procedure as set forth in the Loan Agreement]</i></p>
<b>Advance payment</b>	13.2.1	<p><i>[Insert percentage as indicated in Appendix 1 (Payment Terms and Procedures)]</i> % of the Contract Price for the whole of the Facilities or each part thereof as indicated in Appendix 1 (<i>Payment Terms and Procedures</i>) and in the same currency(ies) ofin which the Contract Price or such part thereof is denominated.</p>
<b>Performance Security</b>	13.3.1 & 13.3.2	<p>The Performance Security shall be in the form of a <i>[insert either one of "demand guarantee" or "surety bond"]</i> in the amount(s) of <i>[insert percentage]</i> % of the Contract Price and in the same currency(ies) in which the Contract Price is denominated.</p>



<b>Conditions</b>	<b>Sub-Clause</b>	<b>Data</b>
<b>failure to attain completion time guarantee</b>		
a. Amount / rate of liquidated damages	26.2	<i>[insert percentage]</i> % of the Contract Price or Section thereof, per day.
b. Maximum amount of liquidated damages	28.3(b)	<i>[insert percentage not exceeding 10]</i> % of the Contract Price
<b>Maximum amount of liquidated damages</b>		
a. For failure to attain completion time guarantee	26.2	<i>[insert percentage not exceeding 10]</i> % of the Contract Price.
b. For failure to attain functional guarantee	28.3(b) & 28.4	<i>[insert percentage not exceeding 10]</i> % of the Contract Price.
<b>Bonus for early Completion</b>	26.3	<i>[Insert the data below, if bonus is applicable. Otherwise, delete all below in its entirety and state "This entire CD 26.3 is not applicable.".]</i>
a. Amount/ rate of bonus		<i>[insert percentage]</i> % of the Contract Price per day.
b. Maximum amount of bonus		<i>[insert percentage not less than 10]</i> % of the Contract Price.
<b>Defects Liability Period</b>	27.2	365 days.
<b>Maximum amount of liquidated damages for failure to attain functional guarantee</b>	28.3(b) & 28.4	<i>[insert percentage not exceeding 10]</i> % of the Contract Price.
<b>Limitation of liability</b>	30.1(b)	<i>[If the aggregate liability is equivalent to the Contract Price, then delete all below and insert "This entire CD 30.1(b) is not applicable.". Otherwise, select one of the two options below as appropriate and delete the other.]</i>  The multiplier of the Contract Price shall be: <i>[insert multiplier]</i>  <i>[or]</i>  The aggregate liability of the Contractor shall be: <i>[insert amount of the aggregate liability]</i>

<b>Conditions</b>	<b>Sub-Clause</b>	<b>Data</b>
<b>Periods for submission of evidence of insurance</b>		<i>[Insert period for submission of evidence of insurance. Period may be from 14 days to 28 days.]</i>
a. by Contractor	34.3	_____days
b. by Employer	34.5	<i>[If evidence of insurances has been shown or provided to the Bidders during the bidding stage, then, delete below and state “This entire CD 34.5 is not applicable”. Otherwise indicate the relevant number of days.]</i>  _____days
<b>Insurances procured and maintained by the Employer</b>	34.5	<i>[If the Employer shall at its expenses take out and maintain any insurances, specify the insurances, which shall be consistent with Appendix 3 (Insurance Requirements) to the Contract Agreement. Otherwise, delete this entire CD 34.5.]</i>
<b>Provisional Sums</b>	39.4 (b)	<i>[insert percentage] %</i>  <i>[If there are Provisional Sums, insert a percentage, which shall, in any case, not be less than 15%, for adjustment of Provisional Sums. Otherwise delete the above in its entirety and state “This entire CD 39.4(b) is not applicable.”]</i>
<b>Date by which the DB shall be appointed</b>	45.1	<i>[insert: “28 day after the Effective Date”]</i>
<b>The DB shall be comprise of</b>	45.1	<i>[insert either: “One sole Member” or “Three Members”, as appropriate]</i>
<b>Appointment (if not agreed) to be made by</b>	45.2	<i>[insert: “The International Chamber of Commerce”]</i>
<b>Arbitration:</b>	45.5(a)	(i) administrated by  <i>[insert name of the arbitration institution. Otherwise, delete this CD 45.5 (a) (i).]</i>  (ii) conducted under  <i>[insert name of the arbitration rules. Otherwise, delete this entire CD 45.5 (a) (ii).]</i>

**Table 1: Summary of Sections of the Facilities**



<b>Section Name/ Description (Sub-Clause 1.1)</b>	<b>Time for Completion (Sub-Clause 8.2)</b>	<b>Liquidated Damages for Failure to Attain Completion Guarantees (Sub-Clause 26.2)</b>	<b>Number of Days for Completion of Guarantee Test (Calculated from Date of Completion (Sub-Clause 25.2.2)</b>

**Table 2: Partial Site Access and Possession**

<b>Part</b>	<b>Detailed Description</b>	<b>Number of Days for Site Access and Possession (calculated from Effective Date) (Sub-Clause 10.2)</b>

## Part B - Specific Provisions

### Guidance for preparing Specific Provisions

#### Notes for the Employer

Specific Provisions of the PC are intended to address country, project, and contract specific requirements not covered by the GC. Whoever drafts the Specific Provisions should be thoroughly familiar with the provisions of the GC and with any specific requirements of the Contract. Legal advice is recommended when amending provisions or drafting new ones.

The Dispute Board (DB) provided for in GC Clause 45 is a Standing DB which is appointed soon after the Contractor commences the works and which remains in place for the duration of the Contract. A Standing DB typically visits the Site on a regular basis. During the Site visit or in any other timing, the Standing DB would also be available to assist the Parties by giving advice to avoid any disputes. Due to this dispute avoidance function, JICA strongly recommends the use of Standing DBs in all projects financed by JICA.

If only there are specific justifiable reasons, however, Dispute Boards can also be appointed when there is an actual dispute. This type of DB is called an Ad-hoc DB. Unlike a Standing DB, an Ad-hoc DB is by its very nature not available to exercise any dispute avoidance function as it is only appointed after a specific dispute referred to it has arisen.

The Employer, in consultation with JICA, shall decide which type of a dispute board is appropriate taking into account all relevant circumstances of the project. The choice for a particular project could be one of the following:

- (a) Appointment of a Standing DB (strongly recommended by JICA)
- (b) Appointment of an Ad-hoc DB
- (c) No use of DB

Upon JICA's agreement to the DB mechanism chosen, the Employer shall proceed with the incorporation of it into the Contract by revising the relevant DB related Specific Provision provided below. Necessary guidance is given for (b) appointment of an Ad-hoc DB and (c) No use of DB hereinunder.

"Guidance for preparing Specific Provisions" shall be deleted from the actual Bidding Document to be issued to the Bidders.

## DB Related Specific Provisions

### Appointment of an Ad-hoc DB

When “(b) Appointment of an Ad-hoc DB” is selected, the relevant CD should be provided as below.

Conditions	Sub-Clause	Data
Date by which the DB shall be appointed	45.1	[insert “This CD45.1 is not applicable.”]

Also, the relevant SP shall be revised as below.

**Sub-Clause 39.4** [Insert the following in Part B-Specific Provisions (SP).]

### Provisional Sums

Delete the third paragraph hereinafter and substitute:

“As an exception to the above, the Provisional Sum for the cost of the DB shall be used, in accordance with GC Sub-Clause 45.1 (*Appointment of the Dispute Board*), for payments to the Contractor of the Employer’s share (one-half) of the invoices of the DB for its fees and expenses.

No prior instruction of the Project Manager shall be required with respect to the work of the DB.

The following shall apply to payments under the Provisional Sum of the cost of the DB:

- (a) Requests for any payment under the Provisional Sum shall be submitted with all necessary substantiations including:
  - (i) invoices prepared by the DB members and provided to the Contractor for payment/ reimbursement of their fees and/or expenses; and
  - (ii) evidence of payment of such invoiced amounts in full.
- (b) The Contractor’s overhead, profit, etc., shall not be included in the Provisional Sums for the cost of the DB.
- (c) The Project Manager’s approval shall be based upon the invoices of the DB and evidence of payment of such invoiced amounts in full by the Contractor.”

[If neither a Standing DB nor an Ad-hoc DB is intended to be provided for, insert the following.]

Delete the paragraphs after “As an exception to the above” in their entirety.”

**Sub-Clause 45.1  
Appointment of the  
Dispute Board**

*[Insert the following in Part B (SP).]*

Delete GC Sub-Clause 45.1 and substitute:

“Disputes shall be adjudicated by a DB in accordance with GC Sub-Clause 45.3 (*Obtaining Dispute Board's Decision*). The Parties shall jointly appoint a DB by the date twenty-eight 28 days after a Party gives notice to the other Party of its intention to refer a dispute to a DB in accordance with GC Sub-Clause 45.3.

The DB shall comprise, as stated in the Contract Data, either one or three suitably qualified persons (“the members”). If the number is not so stated and the Parties do not agree otherwise, the DB shall comprise three persons.

If the DB is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The Parties shall consult both these members and shall agree upon the third member, who shall be appointed to act as chairman.

However, if a list of potential members is included in the Contract, the members shall be selected from those on the list, other than anyone who is unable or unwilling to accept appointment to the DB.

The agreement between the Parties and either the sole member (“adjudicator”) or each of the three members shall incorporate by reference the General Conditions of Dispute Board Agreement contained in the Appendix to these General Conditions, with such amendments as are agreed between them.

The terms of the remuneration of either the sole member or each of the three members shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

If at any time the Parties so agree, they may appoint a suitably qualified person or persons to replace any one or more members of the DB. Unless the Parties agree otherwise, the appointment will come into effect if a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment. The replacement shall be appointed in the same

manner as the replaced person was required to have been nominated or agreed upon, as described in this Sub-Clause.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DB (including each member) shall expire when the DB has given its decision on the dispute referred to it under GC Sub-Clause 45.3 (*Obtaining Dispute Board's Decision*), unless other disputes have been referred to the DB by that time under GC Sub-Clause 45.3, in which event the relevant date shall be when the DB has also given decisions on those disputes.”

**Sub-Clause 45.3**  
**Obtaining Dispute**  
**Board's Decision**

[*Insert the following in Part B (SP).*]

Delete GC Sub-Clause 45.3 entirely and substitute:

“If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the work on the Facilities, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Project Manager, then after a DB has been appointed pursuant to GC Sub-Clauses 45.1 (*Appointment of the Dispute Board*) and 45.2 (*Failure to Agree on the Composition of the Dispute Board*) either Party may refer the dispute in writing to the DB for its decision, with copies to the other Party and the Project Manager. Such reference shall state that it is given under this Sub-Clause.

For a DB of three persons, the DB shall be deemed to have received such reference on the date when it is received by the chairman of the DB.

Both Parties shall promptly make available to the DB all information, access to the Site, and appropriate facilities, as the DB may require for the purposes of making a decision on such dispute. The DB shall be deemed to be not acting as arbitrator(s).

Within eighty-four (84) days after receiving such reference, or the advance payment referred to in Clause 6 of the Appendix - General Conditions of Dispute Board Agreement, whichever date is later, or within such other period as may be proposed by the DB and approved by both Parties, the DB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. However, if neither of the Parties has paid in full the invoices submitted by each member pursuant to Clause 6 of the Appendix, the DB shall not be obliged to give its decision until such invoices have been paid in full. The decision shall be binding

on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the work in accordance with the Contract.

If either Party is dissatisfied with the DB's decision, then either Party may, within twenty-eight (28) days after receiving the decision, give notice to the other Party of its dissatisfaction. If the DB fails to give its decision within the period of eighty-four (84) days (or as otherwise approved) after receiving such reference or such payment, then either Party may, within twenty-eight (28) days after this period has expired, give notice to the other Party of its dissatisfaction.

In either event, this notice of dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in GC Sub-Clause 45.6 (*Failure to Comply with Dispute Board's Decision*) and GC Sub-Clause 45.7 (*No Dispute Board in Place*), neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Sub-Clause.

If the DB has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within twenty-eight (28) days after it received the DB's decision, then the decision shall become final and binding upon both Parties.”

## **Appendix**

### **General Conditions of Dispute Board Agreement**

#### **Clause 2**

*[Insert the following in Part B (SP).]*

#### **General Provisions**

Delete the entire Clause and substitute:

“The Dispute Board Agreement shall take effect when the Employer, the Contractor and each of the Members (or Member) have respectively each signed a dispute board agreement.

When the Dispute Board Agreement has taken effect, the Employer and the Contractor shall each give notice to the Member accordingly. If the Member does not receive either notice within six months after entering into the Dispute Board Agreement, it shall be void and ineffective.

This employment of the Member is a personal appointment. No assignment or subcontracting of the Dispute Board Agreement is permitted without the prior written agreement of all the parties to it and of the Other Members (if any).”

**Clause 4**

*[Insert the following in Part B (SP).]*

**General Obligation of the Member**

Delete sub-paragraph 4 (i) and (k) and renumber sub-paragraph 4 (j) as sub-paragraph 4(i).

**Clause 5**

*[Insert the following in Part B (SP).]*

**General Obligation of Employer and the Contractor**

Delete the last paragraph entirely.

**Clause 6**

*[Insert the following in Part B (SP).]*

**Payment**

Delete the entire Clause and substitute:

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

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

(i) each working day spent reading submissions, attending hearings (if any), preparing decisions, or making site visits (if any); and

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

(b) all reasonable expenses incurred in connection with the Member's duties, including the cost of secretarial services, telephone calls, courier charges, faxes and telexes, travel expenses, hotel and subsistence costs; a receipt shall be required for each item in excess of five percent of the daily fee referred to in sub-paragraph (a) of this Clause; and

(c) any taxes properly levied in the country where the site is located on payments made to the Member (unless a national or permanent resident of the country where the site is located) under this Clause 6.

The daily fee shall be as specified in the Dispute Board

### Agreement.

Immediately after the Dispute Board Agreement takes effect, the Member shall, before engaging in any activities under the Dispute Board Agreement, submit to the Contractor, with a copy to the Employer, an invoice for (a) an advance of twenty-five (25) percent of the estimated total amount of daily fees to which he/she will be entitled and (b) an advance equal to the estimated total expenses that he/she shall incur in connection with his/her duties. Payment of such invoice shall be made by the Contractor upon his receipt of the invoice. The Member shall not be obliged to engage in activities under the Dispute Board Agreement until each of the Members has been paid in full for invoices submitted under this paragraph.

Thereafter the Member shall submit to the Contractor, with a copy to the Employer, invoices for the balance of his/her daily fees and expenses, less the amounts advanced. The DB shall not be obliged to render its decision until invoices for all daily fees and expenses of each Member for making a decision shall have been paid in full.

Unless paid earlier in accordance with the above, the Contractor shall pay each of the Member's invoices in full within twenty-eight (28) calendar days after receiving each invoice and shall apply to the Employer (in the Statements under the Contract) for reimbursement of one-half of the amounts of these invoices. The Employer shall then pay the Contractor in accordance with the Contract.

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the Dispute Board Agreement, the Employer shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the DB; and without prejudice to the Employer's rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in GC Sub-Clause 12.4 of the Conditions of Contract.

If the Member does not receive payment of the amount due within twenty-eight (28) days after submitting a valid invoice, the Member may (i) suspend his/her services (without notice) until the payment is received, and/or (ii) resign his/her appointment by giving notice to the Employer and the Contractor. The notice shall take effect when received by them both. Any such notice shall be final and binding on the Employer, the Contractor and the



Member.”

**Clause 7** [Insert the following in Part B (SP).]

**Default of the Member** The title of the Clause is replaced by “*Default of the Member*”.

Delete the entire Clause and substitute:

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

**Clause 8** [Insert the following in Part B (SP).]

**Disputes** The title of the Clause is replaced by “*Disputes*”.

Delete the entire Clause and substitute:

“Any dispute or claim arising out of or in connection with this Dispute Board Agreement, or the breach, termination or invalidity thereof, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with these Rules of Arbitration.”

**Clause 9** [Insert the following in Part B (SP).]

Delete the entire Clause.

**Annex** [Insert the following in Part B (SP).]

**PROCEDURAL  
RULES**

Delete the entire Rules and substitute:

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

2. The DB shall proceed in accordance with GC Sub-Clause 45.3 and these Rules. Subject to the time allowed to give notice of a

decision and other relevant factors, the DB shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

6. The DB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DB shall make and give its decision in accordance with GC Sub-Clause 45.3, or as otherwise agreed by the Employer and the Contractor in writing. If the DB comprises three persons:

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

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

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

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

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

**No use of DB**

[When “(c) No use of DB” is selected, the relevant CD should be stated as follows:]

Conditions	Sub-Clause	Data
<b>Date by which the DB shall be appointed</b>	45.1	[insert “This CD 45.1 is not applicable.”]
<b>The DB shall be comprised of</b>	45.1	[insert “This CD 45.1 is not applicable.”]
<b>Appointment (if not agreed) to be made by</b>	45.2	[insert “This CD 45.2 is not applicable.”]



## Section IX. Contract Forms

### Notes for the Employer

This Section contains the Letter of Acceptance, the Contract Agreement and Appendices to the Contract Agreement which, once completed, will form part of the Contract.

The structure and contents of the Contract Agreement shall not be modified as they are linked with the GC.

The Employer shall select one out of the two alternative forms of Performance Security provided in this Section and delete the other from the actual Bidding Document to be issued to the Bidder.

The Standard forms listed below shall be filled in by the Employer during the bidding stage, following the instructions and guidance given in each form.

- (a) Appendix 1. Payment Terms and Procedures.
- (b) Appendix 3. Insurance Requirements.
- (c) Appendix 4. Time Schedule
- (d) Appendix 6. Eligible Source Countries of Japanese ODA Loans.
- (e) Appendix 7. List of Documents for Approval or Review
- (f) Appendix 8. Functional Guarantees

The other Standard Forms shall be filled in and sent to the successful Bidder only after evaluation of Bids has been completed and prior to the signing of the Contract.

The form of Advance Payment Security shall be filled in and submitted by the Contractor (successful Bidder) after the signing of the Contract.

The Letter of Acceptance will be the basis for formation of the Contract in accordance with ITB 39.3 (in case of Single-Stage Two-Envelope Bidding) or ITB 52.3 (in case of Two-Stage One-Envelope Bidding), which provides that the Letter of Acceptance shall constitute a binding Contract, until a formal Contract is executed.



# Table of Forms

<b>Letter of Acceptance</b> .....	<b>2</b>
<a href="#">[Option A: Single-Stage Two-Envelop Bidding]</a>	
<b>Contract Agreement</b> .....	<b>3</b>
<a href="#">[Option B: Two-Stage One-Envelope Bidding]</a>	
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## Letter of Acceptance

*[insert letterhead paper of the Employer]*

*[insert date]*

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

Subject: *Notification of Award Contract No. \_\_\_\_*

This is to notify you that your Bid dated *[insert date]* for execution of the *[insert name of the Contract and the number of the lot as stated in BDS]* for the Contract Price in the aggregate of *[insert amount in words and figures]* *[insert name of currency]*, as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by *[Name of the Employer]*.

You are requested to furnish the Performance Security within twenty-eight (28) days in accordance with the Conditions of Contract, using for that purpose one of the Performance Security Forms included in Section IX, Contract Forms, of the Bidding Document.

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

Name and Title of Signatory: \_\_\_\_\_

Name of Agency: \_\_\_\_\_

Attachment: Memoranda *[Insert the list of memoranda (if any) as referred in GC Sub-Clause 1.1 (definition of the Letter of Acceptance.)]*



[Option A: Single-Stage Two-Envelope Bidding]

## Contract Agreement

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

(1) [*insert name of Employer*], a corporation incorporated under the laws of [*insert country of Employer*] and having its principal place of business at [*insert address of Employer*] (hereinafter called “the Employer”), and (2) [*insert name of Contractor*], a corporation incorporated under the laws of [*insert country of Contractor*] and having its principal place of business at [*insert address of Contractor*] (hereinafter called “the Contractor”).

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

NOW IT IS HEREBY AGREED as follows:

**Article 1.**  
**Contract**  
**Documents**

1.1 Contract Documents (Reference General Conditions (“GC”) Clause 2)

The following documents shall constitute the Contract between the Employer and the Contractor, and each shall be read and construed as an integral part of the Contract:

- (a) This Contract Agreement and the Appendices hereto.
- (b) Letter of Acceptance.
- (c) Letter of Technical Bid.
- (d) Letter of Price Bid.
- (e) Addenda, if any.
- (f) Particular Conditions
- (g) General Conditions.
- (h) Employer’s Requirements.
- (i) Other completed Bidding Forms submitted with the Bid.
- (j) Acknowledgment of Compliance with Guidelines for Procurement under Japanese ODA Loans.
- (k) [*Any other documents shall be added here*]

1.2 Order of Precedence (Reference GC Clause 2)

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (*Contract Documents*) above.

1.3 Definitions (Reference GC Clause 1)

Capitalized words and phrases used herein shall have the same meanings as are ascribed to them in the General Conditions.

**Article 2.  
Contract Price  
and Terms of  
Payment**

2.1 Contract Price (Reference GC Clause 11)

The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. The Contract Price shall be the aggregate of: [*insert amount(s) in foreign currency(ies) in words and figures*] and [*insert amount in local currency in words and figures*], as specified in Grand Summary, or such other sums as may be determined in accordance with the terms and conditions of the Contract.

2.2 Terms of Payment (Reference GC Clause 12)

The Contract Price shall be paid by the Employer to the Contractor at the times, in the manner, and in accordance with GC Clause 12 and the provisions of Appendix 1 (*Payment Terms and Procedures*) hereto.

**Article 3.  
Appendices**

3.1 The Appendices listed in the attached List of Appendices shall be deemed to form an integral part of this Contract Agreement.

3.2 Reference in the Contract to any Appendix shall mean the Appendices attached hereto, and the Contract shall be read and construed accordingly.

IN WITNESS whereof the Employer and the Contractor have caused this Agreement to be executed on the day and year first above written.

Signature :

Signature :

Title :

Title :

for and on behalf of the Employer  
in the presence of:

for and on behalf the Contractor in the  
presence of:

Witness;

Witness;

Name :

Name :

Signature :

Signature :

Address :

Address :

## APPENDICES

- Appendix 1 Payment Terms and Procedures
- Appendix 2 Price Adjustment
- Appendix 3 Insurance Requirements
- Appendix 4 Time Schedule
- Appendix 5 List of Approved Subcontractors
- Appendix 6 Eligible Source Countries of Japanese ODA Loans
- Appendix 7 List of Documents for Approval or Review
- Appendix 8 Functional Guarantees

[Option B: Two-Stage One-Envelope Bidding]

## Contract Agreement

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

(1) [*insert name of Employer*], a corporation incorporated under the laws of [*insert country of Employer*] and having its principal place of business at [*insert address of Employer*] (hereinafter called “the Employer”), and (2) [*insert name of Contractor*], a corporation incorporated under the laws of [*insert country of Contractor*] and having its principal place of business at [*insert address of Contractor*] (hereinafter called “the Contractor”).

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

NOW IT IS HEREBY AGREED as follows:

**Article 1.**  
**Contract**  
**Documents**

1.1 Contract Documents (Reference General Conditions (“GC”) Clause 2)

The following documents shall constitute the Contract between the Employer and the Contractor, and each shall be read and construed as an integral part of the Contract:

- (a) This Contract Agreement and the Appendices hereto.
- (b) Letter of Acceptance
- (c) Letter of Second Stage Bid.
- (d) Addenda, if any.
- (e) Particular Conditions
- (f) General Conditions.
- (g) Employer’s Requirements.
- (h) Other completed Bidding Forms submitted with the Bid.
- (i) Acknowledgment of Compliance with Guidelines for Procurement under Japanese ODA Loans.
- (j) [*Any other documents shall be added here*]

1.2 Order of Precedence (Reference GC Clause 2)

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (*Contract Documents*) above.

1.3 Definitions (Reference GC Clause 1)

Capitalized words and phrases used herein shall have the same meanings as are ascribed to them in the General Conditions.

**Article 2.  
Contract Price  
and Terms of  
Payment**

2.1 Contract Price (Reference GC Clause 11)

The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. The Contract Price shall be the aggregate of: [*insert amount(s) in foreign currency(ies) in words and figures*] and [*insert amount in local currency in words and figures*], as specified in Grand Summary, or such other sums as may be determined in accordance with the terms and conditions of the Contract.

2.2 Terms of Payment (Reference GC Clause 12)

The Contract Price shall be paid by the Employer to the Contractor at the times, in the manner, and in accordance with GC Clause 12 and the provisions of Appendix 1 (*Payment Terms and Procedures*) hereto.

**Article 3.  
Appendices**

3.1 The Appendices listed in the attached List of Appendices shall be deemed to form an integral part of this Contract Agreement.

3.2 Reference in the Contract to any Appendix shall mean the Appendices attached hereto, and the Contract shall be read and construed accordingly.

IN WITNESS whereof the Employer and the Contractor have caused this Agreement to be executed on the day and year first above written.

Signature :

Signature :

Title :

Title :

for and on behalf of the Employer  
in the presence of:

for and on behalf the Contractor in the  
presence of:

Witness;

Witness;

Name :

Name :

Signature :

Signature :

Address :

Address :

**APPENDICES**

- Appendix 1 Payment Terms and Procedures
- Appendix 2 Price Adjustment
- Appendix 3 Insurance Requirements
- Appendix 4 Time Schedule
- Appendix 5 List of Approved Subcontractors
- Appendix 6 Eligible Source Countries of Japanese ODA Loans
- Appendix 7 List of Documents for Approval or Review
- Appendix 8 Functional Guarantees

[Common for Option A: Single-Stage Two-Envelope Bidding and Option B: Two-Stage One-Envelope Bidding]

## Appendix 1. Payment Terms and Procedures

### Notes for the Employer

The following payment terms and procedures are given as a guideline suitable for supply and installation contracts. If additional Price Schedules are introduced, suitable payment terms in respect of such additional schedules must be added.

With reference to GC Clause 12 (*Terms of Payment*), if any item of plant and installation services is to be paid according to quantity supplied or work done, the provisions for measurement and evaluation should be described under the relevant Schedule below.

In accordance with the provisions of GC Clause 12 (*Terms of Payment*), the Employer shall pay the Contractor in the following manner and within the periods of time specified in GC Sub-Clause 12.2, on the basis of the price breakdown included in the Price Schedule. Payments will be made in the currencies quoted by the Bidder. Applications for payment in respect of part deliveries may be made by the Contractor as work proceeds.

### TERMS OF PAYMENT

#### Schedule No. 1: Plant Supplied from Abroad (outside the Employer's country)

In respect of plant and equipment supplied from abroad, payments shall be made as follows:

- (a) Ten percent (10%) of the total CIP amount as an advance payment within the period specified in GC Sub-Clause 12.2, after receipt of invoice and the Advance Payment Security in accordance with GC Sub-Clause 13.2.
- (b) Eighty percent (80%) of the total or pro rata CIP amount upon Incoterm "CIP", upon delivery to the carrier within the period specified in GC Sub-Clause 12.2, after receipt of invoice and the following documents.  
*[The Employer shall state the required documents, such as a negotiable bill of lading, a non-negotiable sea way bill, an airway bill, a railway consignment note, a road consignment note, an insurance certificate, etc.]*
- (c) Five percent (5%) of the total or pro rata CIP amount upon issue of the Completion Certificate, within the period specified in GC Sub-Clause 12.2 after receipt of invoice.
- (d) Five percent (5%) of the total or pro rata CIP amount upon issue of the Operational Acceptance Certificate, within the period specified in GC Sub-Clause 12.2, after receipt of invoice.

#### Schedule No. 2: Plant Supplied from Within the Employer's Country

In respect of plant and equipment supplied from within the Employer's country, the following payments shall be made:

- (a) Ten percent (10%) of the total EXW amount as an advance payment within period specified in GC Sub-Clause 12.2, after receipt of invoice, and the Advance Payment Security in accordance with GC Sub-Clause 13.2.
- (b) Eighty percent (80%) of the total or pro rata EXW amount upon Incoterm “Ex-Works,” upon delivery to the carrier within the period specified in GC Sub-Clause 12.2, after receipt of invoice and the following documents.  
*[the Employer shall state the required documents, such as a railway consignment note, a road consignment note, an insurance certificate, etc.]*
- (c) Five percent (5%) of the total or pro rata EXW amount upon issue of the Completion Certificate, within the period specified in GC Sub-Clause 12.2, after receipt of invoice.
- (d) Five percent (5%) of the total or pro rata EXW amount upon issue of the Operational Acceptance Certificate, within the period specified in GC Sub-Clause 12.2, after receipt of invoice.

#### Schedule No. 3: Design Services

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

- (a) Ten percent (10%) of the total design services amount as an advance payment within the period specified in GC Sub-Clause 12.2, after receipt of invoice, and the Advance Payment Security in accordance with GC Sub-Clause 13.2.
- (b) Ninety percent (90%) of the total or pro rata design services amount upon approval of design in accordance with GC Clause 20 by the Project Manager within the period specified in GC Sub-Clause 12.2, after receipt of invoice.

#### Schedule No. 4: Installation and Other Services

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

- (a) Ten percent (10%) of the total installation services amount as an advance payment within the period specified in GC Sub-Clause 12.2, days after receipt of invoice, and the Advance Payment Security in accordance with GC Sub-Clause 13.2.
- (b) Eighty percent (80%) of the measured value of work performed by the Contractor, as identified in the said Programme of Performance, during the preceding month, as evidenced by the Project Manager’s approval of the Contractor’s application, will be made monthly within the period specified in GC Sub-Clause 12.2, after receipt of invoice.
- (c) Five percent (5%) of the total or pro rata value of installation services performed by the Contractor as evidenced by the Project Manager’s approval of the Contractor’s monthly



applications, upon issue of the Completion Certificate, within the period specified in GC Sub-Clause 12.2, after receipt of invoice.

- (d) Five percent (5%) of the total or pro rata value of installation services performed by the Contractor as evidenced by the Project Manager's approval of the Contractor's monthly applications, upon issue of the Operational Acceptance Certificate, within the period specified in GC Sub-Clause 12.2, after receipt of invoice.

Schedule No. 5. Mandatory Spare Parts

Payment in respect of any item included in this Schedule No. 5 shall be made based on the actual quantity supplied and delivered to the Site by the Contractor and approved by the Project Manager.

Schedule No. 6. Recommended Spare Parts

Payment in respect of any item included in this Schedule No, 6 shall be made based on the actual quantity supplied and delivered to the Site by the Contractor and approved by the Project Manager.

**ANNEXES**

*[Insert forms and certificates to be used for the payment application/ approval procedure.]*

[Common for Option A: Single-Stage Two-Envelope Bidding and Option B: Two-Stage One-Envelope Bidding]

## Appendix 2. Price Adjustment

### Notes for the Employer

Where the Contract Period (excluding the Defects Liability Period) exceeds eighteen (18) months or local or foreign inflation is expected to be high, it is normal procedure that prices payable to the Contractor shall be subject to adjustment during the performance of the Contract to reflect changes occurring in the cost of labour and material components.

If the prices are to remain firm and fixed for the duration of the Contract, the Employer shall not include the following provision and the tables of adjustment data, and instead, shall state “*The prices are to remain firm and fixed for the duration of the Contract.*” under this Appendix 2.

Based on the Schedule of Adjustment Data proposed by the selected Bidder, the formula, indices and coefficients shall all be agreed during the contract negotiations between the Employer and the selected Bidder.

If so provided in the Contract Data Sub-Clause 11.2, the amounts payable to the Contractor shall be adjusted for rises or falls in the cost of labour, goods and other inputs to the work on the Facilities, by the addition or deduction of the amounts determined by the formulae prescribed in this Appendix. To the extent that full compensation for any rise or fall in costs is not covered by the provisions of this or other Clauses, the Contract Price shall be deemed to have included amounts to cover the contingency of other rises and falls in costs.

The adjustment to be applied to the amount otherwise payable to the Contractor, as valued in accordance with the Appendix 1 (*Payment Terms and Procedures*) to the Contract Agreement, and approved by the Project Manager, shall be determined from formulae for each of the currencies in which the Contract Price is payable. No adjustment is to be applied to work valued on the basis of cost or current prices.

### TABLE OF ADJUSTMENT DATA

In this Appendix, “table of adjustment data” means the completed table of adjustment data for local and foreign currencies included below. If there is no such table of adjustment data, this Appendix shall not apply.

For the purposes of this Appendix, the cost indices or reference prices stated in the table of adjustment data shall be used. If their source is in doubt, it shall be determined by the Project Manager. For this purpose, reference shall be made to the values of the indices at stated dates for the purposes of clarification of the source; although these dates (and thus these values) may not correspond to the base cost indices.

In cases where the “currency of index” is not the relevant currency of payment, each index shall be converted into the relevant currency of payment at the selling rate, established by the central bank of the country where the Site is located, of this relevant currency on the above date for which the index is required to be applicable.

Until such time as each current cost index is available, the Project Manager shall determine a provisional index for the issue of payment approvals. When a current cost index is available, the adjustment shall be recalculated accordingly.

If the Contractor fails to attain the Completion of the Facilities within the Time for Completion and any extension granted under the Contract, adjustment of prices thereafter shall be made using either (i) each index or price applicable on the date 49 days prior to the expiry of the Time for Completion and such extensions, or (ii) the current index or price, whichever is more favourable to the Employer.

The weightings (coefficients) for each of the factors of cost stated in the table(s) of adjustment data shall only be adjusted if they have been rendered unreasonable, unbalanced or inapplicable, as a result of Changes under GC Clause 39.

(I) TABLE A. LOCAL CURRENCY

*[The Employer shall insert the completed Table A. Local Currency of the Schedule of Adjustment Data hereunder, prior to signing of the Contract, when the table below is completed.]*

(i)	(ii)	(iii)	(iv)		(v)	(vi)
Index Code	Index Description	Source of Index	Base Cost Index		Total Amount (Each Index)	Bidder's proposed weighting
			Value	Date		
	Non-adjustable	-	-	-		a: _____
						b: _____
						c: _____
						d: _____
						e: _____
<b>Total</b>						<b>1.00</b>

## (II) TABLE B. FOREIGN CURRENCY

[The Employer shall insert the completed Table B. Foreign Currency of the Schedule of Adjustment Data hereunder, prior to signing of the Contract, when the table below is completed.]

Payment Currency: \_\_\_\_\_

(i) Index Code	(ii) Index Description	(iii) Source of Index	(iv) Base Cost Index		(v) Total in Source Currency		(vi) Total in Payment Currency		(vii) Bidder's proposed weighting
			Value	Date	Type	Amount	Exchange Rate	Amount	
	Non-adjustable	-	-	-	-	-			a: _____
									b: _____
									c: _____
									d: _____
									e: _____
<b>Total</b>									<b>1.00</b>

**PRICE ADJUSTMENT FORMULA**

The formulae shall be as follows.

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

“P<sub>n</sub>” is the adjustment multiplier to be applied to the amount of payment in accordance with Appendix 1 (*Payment Terms and Procedures*) to the Contract Agreement taking place in the period “n”, this period being a month unless otherwise stated in the Contract.

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

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

“Ln”, “En”, “Mn”, ... are the current cost indices or reference prices for period “n”, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the date 49 days prior to the last day of the period “n”; and

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

[Common for Option A: Single-Stage Two-Envelope Bidding and Option B: Two-Stage One-Envelope Bidding]

### Appendix 3. Insurance Requirements

#### Notes for the Employer

The Employer shall fill in this appendix details of insurances in the table given. Moreover, the Employer shall insert insurances and their details which he proposes to provide under the Contract. The completed appendix shall be included in the Bidding Document and in the Contract Documents.

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

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

(a) Cargo Insurance

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

Amount [in currency(ies)]	Deductible limits [in currency(ies)]	Parties insured [names]	From [place]	To [place]

(b) Installation All Risks Insurance

Covering physical loss or damage to the Facilities at the Site, occurring prior to Operational Acceptance of the Facilities, with an extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the Defects Liability Period while the Contractor is on the Site for the purpose of performing its obligations during the Defects Liability Period.

<b>Amount</b> [in currency(ies)]	<b>Deductible limits</b> [in currency(ies)]	<b>Parties insured</b> [names]

(c) Third Party Liability Insurance

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

<b>Amount</b> [in currency(ies)]	<b>Deductible limits</b> [in currency(ies)]	<b>Parties insured</b> [names]

(d) Automobile Liability Insurance

Covering use of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the execution of the Contract, comprehensive insurance in accordance with statutory requirements.

(e) Workers' Compensation

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

(f) Employer's Liability

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

(g) Other Insurances

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

*[The Employer shall provide here details of any insurance other than those listed above, if required to be provided by the Contractor under the Contract.]*

Details:

<b>Amount</b> [in currency(ies)]	<b>Deductible limits</b> [in currency(ies)]	<b>Parties insured</b> [names]

### **Insurances to Be Taken Out By The Employer**

#### **Notes for the Employer**

If the Employer proposes to take out and maintain any or all of the above insurances itself, or any other insurances in respect of the Facilities, either in its own name or in the joint names of itself and the Contractor, it shall provide details below prior to issuance of the Bidding Document. Pursuant to GC Sub-Clause 34.5, the Contractor and the Contractor's Subcontractors shall be named as co-insured under all such policies.

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

Details:

<b>Amount</b> [in currency(ies)]	<b>Deductible limits</b> [in currency(ies)]	<b>Parties insured</b> [names]



*[Common for Option A: Single-Stage Two-Envelope Bidding and Option B: Two-Stage One-Envelope Bidding]*

#### **Appendix 4. Time Schedule**

##### **Notes for the Employer**

The Employer should normally provide in the Bidding Document under this Appendix, a time schedule to be followed by the Contractor during the performance of the Contract.

This schedule shall be prepared in accordance with the information regarding the Time(s) for Completion given in the Section II, Bid Data Sheet and Section VIII, Particular Conditions, Part A - Contract Data, and should indicate periods of time (e.g., weeks or months) and not specify calendar dates. All periods should be shown from the Effective Date of the Contract.

The time schedule shall be amended as necessary based on that submitted by the successful Bidder and shall be included as Appendix 4 to the Contract Agreement replacing this Appendix, before the Contract is signed.

*[Common for Option A: Single-Stage Two-Envelope Bidding and Option B: Two-Stage One-Envelope Bidding]*

## **Appendix 5. List of Approved Subcontractors**

### **Notes for the Employer**

The List of Approved Subcontractors of Section IV, Bidding Forms as submitted by the successful Bidder and amended as necessary prior to award of the Contract shall be included as Appendix 5, before the Contract is signed.

*[Common for Option A: Single-Stage Two-Envelope Bidding and Option B: Two-Stage One-Envelope Bidding]*

### **Appendix 6. Eligible Source Countries of Japanese ODA Loans**

#### **Notes for the Employer**

The Employer shall insert here the same information and provisions as to the Eligible Source Countries applicable for the Contactor, and for the goods and services to be supplied under the Contract, as included in Section V, which should be drafted citing all relevant information and provisions from the Loan Agreement.

[Common for Option A: Single-Stage Two-Envelope Bidding and Option B: Two-Stage One-Envelope Bidding]

### **Appendix 7. List of Documents for Approval or Review**

#### **Notes for the Employer**

The Employer shall clearly identify the documents for approval, and documents for review under the Contract and list out separately here. If amendments have been made to the list during contract negotiations, those amendment shall also be reflected in this Appendix 7, prior to the signing of the Contract.

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

A. Approval

- 1.
- 2.
- 3.

B. Review

- 1.
- 2.
- 3.

[Common for Option A: Single-Stage Two-Envelope Bidding and Option B: Two-Stage One-Envelope Bidding]

## Appendix 8. Functional Guarantees

### Notes for the Employer

The Employer shall prepare and include this Appendix in the Bidding Document.

Moreover, the Employer shall make sure that it is consistent with other parts of the Bidding Document, in particular Section III. Evaluation and Qualification Criteria, Section IV. Bidding Forms and Section VI. Employer's Requirements and Section VIII. Particular Conditions of Contract. A sample document is given below for the reference and guidance of the drafter of this Appendix.

#### 1. General

This Appendix sets out:

- (a) the functional guarantees referred to in GC Clause 28 (*Functional Guarantees*);
- (b) the preconditions to the validity of the functional guarantees, either in production and/or consumption, set forth below;
- (c) the minimum level of the functional guarantees; and
- (d) the formula for calculation of liquidated damages for failure to attain the functional guarantees.

#### 2. Preconditions

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

[List any conditions for the carrying out of the Guarantee Test referred to in GC Clause 25.2.]

#### 3. Functional Guarantees

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

3.1 **Production Capacity:** [List here the production capacity that the Contractor is to guarantee, making sure to use, as functional guarantees, the figures offered by the Contractor in its Bid]

**and/or**

3.2 **Raw Materials and Utilities Consumption:** [List here the guaranteed items of consumption per unit of production (e.g., kg, tons, kcal, kWh, etc.) that the Contractor is to guarantee, making sure to use, as functional guarantees, the figures offered by the Contractor in its bid]

#### 4. Failure in Guarantees and Liquidated Damages

4.1 Failure to Attain Guaranteed Production Capacity

If the production capacity of the Facilities attained in the guarantee test, pursuant to GC Sub-Clause 25.2, is less than the guaranteed figure specified in para. 3.1 above, but the actual production capacity attained in the guarantee test is not less than the minimum level specified in para. 4.3 below, and the Contractor elects to pay liquidated damages to the Employer in lieu of making changes, modifications and/or additions to the Facilities, pursuant to GC Sub-Clause 28.3, then the Contractor shall pay liquidated damages at the rate stated below.

*[Insert amount in the same currency(ies) of the Contract Price]* for every complete *one* percent (1%) of the deficiency in the production capacity of the Facilities, or at a proportionately reduced rate for any deficiency, or part thereof, of less than a complete one percent (1%)

#### 4.2 Raw Materials and Utilities Consumption in Excess of Guaranteed Level

*[To be specified in the appropriate wording for the type of Facilities, if there are consumption guarantees.]*

If the actual measured figure of specified raw materials and utilities consumed per unit (or their average total cost of consumption) exceeds the guaranteed figure specified in para. 3.2 above (or their specified average total cost of consumption), but the actual consumption attained in the Guarantee Test, pursuant to GC Sub-Clause 25.2, is not more than the maximum level specified in para. 4.3 below, and the Contractor elects to pay liquidated damages to the Employer in lieu of making changes, modifications and/or additions to the Facilities pursuant to GC Sub-Clause 28.3, then the Contractor shall pay liquidated damages at the rate at the rate stated below.

*[Insert amount in the same currency(ies) of the Contract Price]* for every complete *one* percent (1%) of the excess consumption of the Facilities, or part thereof, of less than a complete one percent (1%)

*[The rate of liquidated damages specified in paras. 4.1 and 4.2 above shall be at least equivalent to the rate specified in Section III, Evaluation and Qualification Criteria for the comparison of functional guarantees provided by the Bidders.]*

#### 4.3 Minimum Levels

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

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

**and/or**

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

# Performance Security

## Option 1: Demand Guarantee

### Notes for the Employer

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.

*[Guarantor letterhead or SWIFT identifier code]*

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

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

**PERFORMANCE GUARANTEE No.:** *[insert guarantee reference number]*

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

We have been informed that *[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. *[insert reference number of the contract]* dated *[insert date]* with the Beneficiary, for the execution of *[insert name of the contract and brief description of the Facilities]* (hereinafter called "the Contract").

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

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* (*[insert amount in words]*),<sup>1</sup> such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for its demand or the sum specified therein.

This guarantee shall expire and be returned to us, no later than the *[insert the day]* day of *[insert month]*, *[insert year]*<sup>2</sup>, and any demand for payment under it must be received by us at this office indicated above on or before that date.

<sup>1</sup> *The Guarantor shall insert an amount representing the percentage of the Contract Price specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency(cies) of the Contract or a freely convertible currency acceptable to the Beneficiary.*

<sup>2</sup> *Insert the date twenty-eight (28) days after the expected expiration date of the Defects Liability Period.*



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

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*[signature(s)]*

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

## Option 2: Surety Bond

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

WHEREAS the Contractor has entered into a written Agreement with the Employer dated the [*insert date*] day of [*insert month*], [*insert year*], for [*insert name of contract and brief description of Plant and Installation Services*] in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

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

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

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

Any suit under this Bond must be instituted before the expiration of one year from the date of the Operational Acceptance.

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

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

SIGNED ON \_\_\_\_\_ on behalf of \_\_\_\_\_

By \_\_\_\_\_ in the capacity of \_\_\_\_\_

In the presence of \_\_\_\_\_

SIGNED ON \_\_\_\_\_ on behalf of \_\_\_\_\_

By \_\_\_\_\_ in the capacity of \_\_\_\_\_

In the presence of \_\_\_\_\_

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

# Advance Payment Security

## Demand Guarantee

### Notes for the Employer

The Employer should note that in the event of an extension of the Time for Completion of the Contract, the Employer may 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.

[*Guarantor letterhead or SWIFT identifier code*]

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

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

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

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

We have been informed that [*insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture*] (hereinafter called “the Applicant”) has entered into Contract No.[*insert reference number of the Contract*] dated [*insert date*] with the Beneficiary, for the execution of [*insert name of Contract and brief description of Facilities*] (hereinafter called “the Contract”).

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of [*insert amount in figures*] ([*insert amount in words*]) is to be made against an advance payment guarantee.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of [*insert amount in figures*]( [*insert amount in words*])<sup>1</sup> upon receipt by us of the Beneficiary’s complying demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the

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<sup>1</sup> The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.

Applicant used the advance payment for purposes other than toward the execution of the work on the Facilities.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Applicant on its account number [*insert number*] at [*insert name and address of Applicant's bank*].

The maximum amount of this guarantee shall be progressively reduced in proportion to the value of the work on the Facilities executed by the Contractor, as indicated in copies of the approved payment applications which shall be presented to us. This guarantee shall expire and be returned to us, at the latest, upon our receipt of documentation indicating that the initial Contract Price less provisional sums, has been approved for payment, or on [*insert day*] day of [*insert month*], [*insert year*], whichever is earlier<sup>2</sup>. Consequently, any demand for payment under this guarantee must be received by the Guarantor at its office on or before that date.

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

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[*signature(s)*]

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

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<sup>2</sup> *Insert the expected expiration date of the Time for Completion.*

Japan International Cooperation Agency

URL:<https://www.jica.go.jp>

E-mail: [lpsd@jica.go.jp](mailto:lpsd@jica.go.jp)

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