

SMALL WORKS

**STANDARD BIDDING DOCUMENTS
UNDER JAPANESE ODA LOANS**

PROCUREMENT OF SMALL WORKS



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

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version 1.1



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STANDARD BIDDING DOCUMENTS UNDER JAPANESE ODA LOANS (PROCUREMENT OF SMALL WORKS)

April 2013

Preface

These Standard Bidding Documents for Procurement of Small Works (SBD (Small Works)) have been prepared by Japan International Cooperation Agency (JICA).

These SBD (Small Works) are consistent with the Guidelines for Procurement under Japanese ODA Loans, April 2012 and their use is **required** for small works contracts to be financed, in whole or in part, by JICA under the aforesaid Guidelines. The use of these SBD (Small Works) is also encouraged for contracts under the Guidelines for Procurement published in October 1999 or March 2009, as these SBD (Small Works) reflect recent best practices of public procurement and JICA's policy.

These SBD (Small Works) have been prepared for use in contracts financed by JICA, involving "small" contracts – valued at generally less than US\$10 million by International Competitive Bidding (ICB), though it may also be adapted to National Competitive Bidding (NCB). These documents are intended as a model in the award of admeasurement (unit prices or unit rates in a bill of quantities) and lump sum types of contracts, which are the most common in works contracting.

The structure and the provisions of these SBD (Small Works) are harmonized with the Standard Bidding Documents for Procurement of Small Works of the Multilateral Development Banks, except where specific considerations within JICA have required a change.

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

Summary Description

A brief description of these documents is given below.

SBD for Procurement of Small Works

Invitation for Bids (IFB)

A form of “Invitation for Bids” is provided at the beginning of these SBD (Small Works) for information.

PART 1 – BIDDING PROCEDURES

Section I. Instructions to Bidders (ITB)

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

Section II. Bid Data Sheet (BDS)

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

Section III. Evaluation and Qualification Criteria

This Section specifies the criteria to determine the lowest evaluated Bid and the qualifications of the Bidder to perform the contract.

Section IV. Bidding Forms

This Section includes the forms which are to be completed by the Bidder and submitted as part of its Bid

Section V. Eligible Source Countries of Japanese ODA Loans

This Section contains information regarding eligible source countries under Japanese ODA Loans.

PART 2 – WORKS REQUIREMENTS

Section VI. Works Requirements

This Section contains the Scope of Works, the Specification, the Drawings, and supplementary information that describe the Works to be procured.

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 contains clauses specific to each contract. The contents of this Section modify or supplement the General Conditions and shall be prepared by the Employer.

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 contract award.

Notes for Users

The use of these Standard Bidding Documents for Procurement of Small Works (SBD (Small Works)) published by JICA is **required** for all small works contracts to be financed by Japanese ODA Loans.

These SBD (Small Works) have been prepared as standard documents, which shall be used without suppressing or adding text to the standard sections of the document to be used without modification, 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 Documents prepared by the Employer contain modifications from the Standard ITB and/or Standard GC included in these SDB (Smaller Works), JICA will not consider them valid and the Standard ITB and/or Standard GC, as defined above, shall apply.**

All information and data particular to each individual contract and required by the Bidders in order to prepare responsive Bids must be provided by the Employer, prior to issuing the Bidding Documents, 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 Works Requirements (Section VI), the Particular Conditions (Section VIII), Contract Forms (Section IX). Unless specifically agreed with JICA, the Particular Conditions shall not materially alter the provisions of the General Conditions.

The following directions should be observed when using these SBD (Small Works):

- (i) Specific details, such as the name of the Employer, address for Bid submission, etc., should be furnished in the spaces indicated by italicized notes inside brackets.
- (ii) The footnotes, “boxed” notes and italicized notes in these SBD (Small Works), except those applying to forms to be filled out by Bidders or instructions for the Bidders, are not part of the Bidding Documents, but contain guidelines and instructions for the Employer. Do not incorporate them in the actual Bidding Documents.
- (iii) Where alternative Clauses or texts are shown, select those which best suit the particular works and discard the alternative text which is not used.
- (iv) These SBD (Small Works) are to be used when a prequalification process has not taken place before bidding and, therefore, assessment of qualification requirements is to be carried out at the bidding stage. While the most common pricing method for civil works contracts is through Bills of Quantities using unit prices, lump sum contracts may be used for works that can be defined in their full physical and qualitative characteristics before Bids are called, or where the risks of substantial design variations are minimal – usually construction of buildings, and series of small structures, such as bus shelters or school ablution units. In lump sum contracts, the concept of priced “activity schedules” has been introduced, to enable payments to be made as “activities” are completed. Payments can also be made on the basis of percentage completion of each activity. Examples of activities are:

- In highway repaving contracts: each kilometer completed.
- In a project for constructing many individual housing or classroom units: each of those units.
- In the construction of a multi-story building: excavation; foundation structures; structural concrete (or steel) per floor; cladding, per foot: services (electrical, water, sewers, drains), each payable as a percentage completed in relation to the service for the whole building.

The time allowed for preparing and submitting Bids should not be too short and should be adequate enough for Bidders to properly study the Bidding Documents, visit the site and prepare complete and responsive Bids.

A form of Invitation for Bids, which is not part of the Bidding Documents, is given below for reference.

BIDDING DOCUMENTS

for

Procurement of

[insert identification of the Works]

Employer: *[insert name of Employer]*

Country: *[insert name of Country]*

Project: *[insert name of Project]*

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

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INVITATION FOR BIDS

Notes on Invitation for Bids

In case Bids are invited openly from contractors, 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 Borrower's country; and
- (b) with sending copies of the invitation to JICA.

The Invitation for Bids provides information that enables potential Bidders to decide whether to participate. Apart from a summary description of the works, the Invitation for Bids should also indicate any important Bid evaluation criteria (for example, technical alternatives) or qualification requirement (for example, a requirement for a minimum level of experience in works similar to those for which the Invitation for Bids is issued).

The Invitation for Bids should be consistent with the information contained in Section II, Bid Data Sheet.

Form of Invitation for Bids

Date: *[date of issuance of IFB]*

Loan Agreement N^o: *[insert Loan Agreement number]*

IFB N^o: *[insert number of Invitation for Bids]*

1. The *[insert name of Borrower]* has received¹ a loan from Japan International Cooperation Agency (JICA) towards the cost of *[insert name of Project]*. It is intended that part of the proceeds of this loan will be applied to eligible payments under the Contract² for *[insert title of Contract]*.
2. 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 Loan Agreement.
3. The *[insert name of the Employer]* now invites sealed Bids from eligible Bidders for the construction and completion of *[insert brief description of the works]*³ (“the Works”).
4. Interested eligible Bidders may obtain further information from and inspect the Bidding Documents at the office of *[insert name of appropriate purchasing unit]*⁴ *[insert mailing address of appropriate office for inquiry and issuance of Bidding Documents and/or facsimile numbers]*.
5. A complete set of Bidding Documents 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 Borrower’s currency or in a convertible currency]*.⁵
6. The provisions in the Instructions to Bidders and in the General Conditions of Contract are the provisions of the Standard Bidding Documents under Japanese ODA Loans for the Procurement of Small Works.
7. Bids must be delivered to the address above⁶ on or before *[insert time]* on *[insert date]*⁷ and must be accompanied by a security of *[insert fixed sum]*.
8. Bids will be opened in the presence of Bidders’ representatives who choose to attend at *[insert time and date]* at the offices of *[insert address of appropriate office]*.

[Insert name of office]

[Insert name of person in charge officer]

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

[Insert telephone number, indicate country and city code]

[Insert facsimile number]

[Insert E-mail address]

Notes

1. Substitute “has applied for,” if appropriate.
2. Substitute “contracts” where Bids are called concurrently for multiple contracts. Add a new para. 4 and renumber paras 4 - 8 as follows: “Bidders may bid for one or several contracts, as further defined in the Bidding Documents. Bidders wishing to offer discounts in case they are awarded

more than one contract will be allowed to do so, provided those discounts are included in the Letter of Bid.”

3. A brief description of the Works or Goods should be provided, including quantities, location of project, and other information necessary to enable potential Bidders to decide whether or not to respond to the invitation. Bidding Documents may require Bidders to have specialized experience or capabilities; such requirements should also be included in this paragraph.
4. The office for inquiry and issuance of Bidding Documents and that for Bid submission may or may not be the same.
5. The fee, to defray printing and mailing/shipping costs, should be nominal.
6. Substitute the Employer’s address for Bid submission if different from its address for inquiry and issuance of Bidding Documents.
7. The time allowed for preparation of the Bid submission should be sufficient for Bidders to gather all the information required - preferably sixty (60) days, but in any case not less than forty-five (45) days after the date when the documents are available for distribution or the date of the advertisement, whichever is later.

PART 1 – BIDDING PROCEDURES

Section I. Instructions to Bidders

Notes on Instructions to Bidders

Section I, Instructions to Bidders, provides the information necessary for Bidders to prepare responsive Bids in accordance with the requirements of the Employer. It also gives information on Bid submission, opening, and evaluation, and on the award of the Contract.

The use of the Standard Instructions to Bidders set forth in Section I of these Standard Bidding Documents for the Procurement of Small Works (version 1.1) published by JICA in April, 2013 (hereafter referred to as “Standard ITB”), in all Bidding Documents for small construction works financed by Japanese ODA Loans is **required**, and they shall be used without modification. 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 will not be part of the Contract.

Section I. Instructions to Bidders

[Note to the Employer: The instructions to Bidders governing all bidding process for small works funded with Japanese ODA Loans are the Standard Instructions to Bidders included in the Standard Bidding Documents for Procurement of Small Works (SBD (Small Works)) (version 1.1) published by JICA in April 2013.

A copy of the Standard Instructions to Bidders may be attached to the Bidding Documents prepared by the Employer for reference purposes only. If the Instructions to Bidders in the Bidding Documents prepared by the Employer contain modifications from the Standard Instructions to Bidders, JICA will not consider them valid and the Standard Instructions to Bidders, as defined above, shall apply.

Instead of attaching a copy of the Standard Instructions to Bidders, the Employer may use the following introductory text.]

The Instructions to Bidders governing this bidding process are the “Instructions to Bidders” included in Section I of the Standard Bidding Documents for Procurement of Small Works (version 1.1), published by JICA in April, 2013. Those Instructions to Bidders are available on the JICA’s web site shown below:

http://www.jica.go.jp/english/our_work/types_of_assistance/oda_loans/oda_op_info/guide/tender/index.html

A copy of the Instructions to Bidders is not attached to these Bidding Documents.

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Section I - Instructions to Bidders

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**, issues these Bidding Documents (hereinafter referred to as “Bidding Documents”) for the procurement of Small Works as specified in Section VI, Works Requirements. The name, identification, and number of the lot(s) (Contract(s)) comprising this bidding process are **specified in the BDS**.
 - 1.2 Throughout these Bidding Documents:
 - (a) the term “in writing” means communicated in written form and delivered against receipt;
 - (b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and
 - (c) “day” means calendar day.
2. **Source of Funds**
 - 2.1 The Borrower **specified in the BDS** has received or has applied for a Japanese ODA Loan from Japan International Cooperation Agency (hereafter 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 **specified in the BDS**. The Borrower intends to apply a portion of the proceeds of the loan to eligible payments under the contract(s) for which these Bidding Documents are 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 will take appropriate measures for finance.
3. **Corrupt and Fraudulent**
 - 3.1 It is JICA’s policy to require that Bidders and Contractors, as well as Borrowers, under contracts funded with Japanese ODA

Practices

Loans and other Japanese ODA, 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 Bidder or 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 corrupt or fraudulent practices in competing for, or in executing, another contract funded with Japanese ODA Loans or other Japanese ODA; and
- (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.

“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 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 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, or (ii) three (3) years have passed since such debarment decision.

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 the subcontractor, who has a direct contract with the Contractor, was debarred by the World Bank Group on 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, or (ii) three (3) years have passed since such debarment decision. 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 Furthermore, Bidders shall be aware of the provision stated in Clause 57 of the General Conditions.

4. Eligible Bidders

4.1 A Bidder may be a firm that is a single entity or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such agreement supported by a letter of intent. In the case of a JV all members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution.

4.2 A Bidder shall not have a conflict of interest. A Bidder shall not be employed 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 the Borrower's professional personnel, who are directly or indirectly involved in any part of: (i) the preparation of the Bidding Documents for the Contract, (ii) 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 Bidder or as a member of a JV. A firm (including its affiliate), if acting in the capacity of a subcontractor in one Bid, may participate in other Bids, only in that capacity.
- (d) A firm having any other form of conflict of interest other than (a) through (c) above shall be disqualified.

4.3 A Bidder shall be from any of the eligible source countries as indicated in Section V, Eligible Source Countries of Japanese ODA Loans.

4.4 A 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 A Bidder shall provide such evidence of eligibility satisfactory to the Employer, as the Employer shall reasonably request.

5. Eligible Materials, Equipment and Services

5.1 The materials, equipment and services to be supplied under the Contract and financed by JICA shall have their origin in any of the eligible source countries indicated in Section V, Eligible Source Countries of Japanese ODA Loans. At the Employer's request, Bidders may be required to provide evidence of the origin of materials, equipment and services.

5.2 For purposes of ITB 5.1 above, "origin" means the place where the materials and equipment are mined, grown, produced or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that is substantially different in its basic characteristics or in purpose or utility from its components.

B. Contents of Bidding Documents

6. Sections of

6.1 The Bidding Documents consist of Parts 1, 2, and 3, which

Bidding Documents

include all the Sections indicated below, and should be read in conjunction with any addenda issued in accordance with ITB 8.

PART 1 Bidding Procedures

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

PART 2 Works Requirements

- Section VI. Works 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 Documents.

6.3 Unless obtained directly from the Employer, the Employer is not responsible for the completeness of the Bidding Documents, responses to requests for clarification, the minutes of the pre-bid meeting (if any), or addenda to the Bidding Documents 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 Documents and to furnish with its Bid all information and documentation as is required by the Bidding Documents.

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

7.1 A Bidder requiring any clarification of the Bidding Documents shall contact the Employer in writing at the Employer's address **specified in the BDS** or raise its inquiries 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 Documents in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. If so **specified in the BDS**, the Employer shall also

promptly publish its response at the web page **identified in the BDS**. Should the clarification result in changes to the essential elements of the Bidding Documents, the Employer shall amend the Bidding Documents following the procedure under ITB 8 and ITB 22.2.

- 7.2 The Bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the Bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense.
- 7.3 The Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
- 7.4 If so **specified in the BDS**, the Bidder's designated representative is invited to attend a pre-bid meeting. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 7.5 The Bidder is requested to submit any questions in writing, to reach the Employer not later than one (1) week before the meeting.
- 7.6 Minutes of the pre-bid meeting, if applicable, including the text of the questions asked by Bidders, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Documents in accordance with ITB 6.3. Any modification to the Bidding Documents that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting. Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

8. Amendment of Bidding Documents

- 8.1 At any time prior to the deadline for submission of Bids, the Employer may amend the Bidding Documents by issuing addenda.
- 8.2 Any addendum issued shall be part of the Bidding Documents

and shall be communicated in writing to all who have obtained the Bidding Documents 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 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 the following:
- (a) Letter of Bid;
 - (b) completed Schedules, including priced Bill of Quantities¹, in accordance with ITB 12 and 14, or as **specified in the BDS**;
 - (c) Bid Security in accordance with ITB 19;
 - (d) Acknowledgement of Compliance with Guidelines for Procurement under Japanese ODA Loans (Form ACK), which shall be signed and dated by the Bidder's authorized representative;
 - (e) alternative Bids, if permissible, in accordance with ITB 13;
 - (f) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2;
 - (g) documentary evidence in accordance with ITB 17 establishing the Bidder's qualifications to perform the

¹ In a lump sum contract, delete "Bill of Quantities" and replace with "Activity Schedule."

contract if its Bid is accepted;

(h) Technical Proposal in accordance with ITB 16; and

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

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

12. Letter of Bid and Schedules

12.1 The Letter of Bid, Schedules, and all documents listed under ITB 11, shall be prepared using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITB 20.2. All blank spaces shall be filled in with the information requested.

13. Alternative Bids

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

13.2 When alternative times for completion are explicitly invited, a statement to that effect will be **included in the BDS**, as will the method of evaluating different times for completion.

13.3 Except as provided under ITB 13.4 below, Bidders wishing to offer technical alternatives to the requirements of the Bidding Documents must first price the Employer's design as described in the Bidding Documents and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Employer.

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

14. Bid Prices and Discounts

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

- 14.2 The Bidder shall submit a Bid for the whole of the Works described in ITB 1.1 by filling in prices for all items of the Works, as identified in Section IV, Bidding Forms. In case of admeasurement contracts, the Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Bill of Quantities.
- 14.3 The price to be quoted in the Letter of Bid, in accordance with ITB 12.1, shall be the total price of the Bid, excluding any discounts offered.
- 14.4 The Bidder shall quote any discounts and indicate the methodology for their application in the Letter of Bid, in accordance with ITB 12.1.
- 14.5 Unless otherwise **specified in the BDS** and the Contract, the prices quoted by the Bidder shall be fixed. If the prices quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract, the Bidder shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data in Section IV, Bidding Forms, and the Employer may require the Bidder to justify its proposed indices and weightings.
- 14.6 If so specified in BDS 1.1, Bids are invited for individual lots (contracts) or for any combination of lots (packages). Bidders wishing to offer any price reduction (discount) for the award of more than one Contract shall specify in their Letter of Bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITB 14.4, provided the Bids for all lots (contracts) are opened at the same time.
- 14.7 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 date twenty-eight (28) days prior to the deadline for submission of Bids, shall be included in the rates and prices and the total Bid Price submitted by the Bidder.
- 15. Currencies of Bid and Payment**
- 15.1 The currency(ies) of the Bid 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 Bidders may be required by the Employer to justify, to the Employer's satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Schedule of Adjustment Data are reasonable, in which case a detailed breakdown of the foreign currency requirements shall be provided by Bidders.

15.3 The foreign currency requirements generally include the following:

- (a) expatriate staff and labour employed directly on the Works;
- (b) social, insurance, medical and other charges relating to such expatriate staff and labour, and foreign travel - expenses;
- (c) imported materials, both temporary and permanent, including fuels, oil and lubricants required for the Works;
- (d) depreciation and usage of imported Plant and Contractor's Equipment, including spare parts, required for the Works;
- (e) foreign insurance and freight charges for imported materials, Plant and Contractor's Equipment, including spare parts; and
- (f) overhead expenses, fees, profit, and financial charges arising outside the Employer's country in connection with the Works.

**16. Documents
Comprising the
Technical
Proposal**

16.1 The Bidder shall furnish a Technical Proposal including a 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 adequacy of the Bidders' proposal to meet the work requirements and the completion time.

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

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

**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 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, 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, to determine the Contract Price, the fixed portion of the Bid Price shall be adjusted by the factor **specified in the BDS**.
 - (c) In any case, Bid evaluation shall be based on the Bid Price without taking into consideration the applicable correction from those indicated above.

19. Bid Security

- 19.1 The Bidder shall furnish as part of its Bid 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 financial institution (such as insurance, bonding or surety company);
 - (b) an irrevocable letter of credit;
 - (c) a cashier's or certified check; or
 - (d) another security **specified in the BDS**,

from a reputable source from an eligible source country. If the unconditional guarantee is issued by a 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 days (28) 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 unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's signing the Contract and furnishing of the Performance Security pursuant to ITB 42.

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 Letter of 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 41; or

(ii) furnish a Performance Security in accordance with ITB 42.

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 constituted into a legally enforceable JV at the time of bidding, the Bid Security shall be in the names of all future partners as named in the letter of intent referred to in ITB 4.1 and ITB 11.2.

20. Format and Signing of Bid

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

20.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as **specified in the BDS** and shall be attached to the Bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Bid where entries or amendments

have been made shall be signed or initialed by the person signing the Bid.

20.3 In case the Bidder is a JV, the Bid shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.

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

D. Submission and Opening of Bids

21. Sealing and Marking of Bids

21.1 The Bidder shall enclose the original and all copies of the Bid, including alternative Bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as "ORIGINAL", "ALTERNATIVE" and "COPY." These envelopes containing the original and the copies shall then be enclosed in one single envelope.

21.2 The inner and outer envelopes shall:

- (a) bear the name and address of the Bidder;
- (b) be addressed to the Employer in accordance with ITB 22.1;
- (c) bear the specific identification of this bidding process specified in BDS 1.1; and
- (d) bear a warning not to open before the time and date for Bid opening.

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

22. Deadline for Submission of Bids

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

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

23. Late Bids

23.1 The Employer shall not consider any Bid that arrives after the deadline for submission of Bids, in accordance with ITB 22.

Any Bid received by the Employer after the deadline for submission of Bids shall be declared late, rejected, and returned unopened to the Bidder.

24. Withdrawal, Substitution, and Modification of Bids

24.1 A Bidder may withdraw, substitute, or modify its Bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 20.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Bid must accompany the respective written notice. All notices must be:

- (a) prepared and submitted in accordance with ITB 20 and ITB 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” “SUBSTITUTION,” “MODIFICATION;” and
- (b) received by the Employer prior to the deadline prescribed for submission of Bids, in accordance with ITB 22.

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

24.3 No Bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of Bids and the expiration of the period of Bid validity specified by the Bidder on the Letter of 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 25.3 all Bids received by the deadline, at the date, time and place **specified in the BDS**, in the presence of Bidders’ designated representatives and anyone who choose to attend.

25.2 First, envelopes marked “WITHDRAWAL” shall be opened and read out and the envelope with the corresponding Bid shall not be opened, but returned to the Bidder. No Bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Bid opening. Next, envelopes marked “SUBSTITUTION” shall be opened and read out and exchanged with the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Bid opening. Envelopes marked “MODIFICATION” shall be opened and read out with the corresponding Bid. No Bid modification shall be permitted

unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Bid opening. Only Bids that are opened and read out at Bid opening shall be considered further.

25.3 All other envelopes shall be opened one at a time, reading out:

- (a) the name of the Bidder;
- (b) whether there is a modification;
- (c) the total Bid Price, per lot (contract) if applicable, including any discounts and alternative Bids;
- (d) the presence or absence of a Bid Security; and
- (e) any other details as the Employer may consider appropriate.

Only discounts and alternative Bids read out at Bid opening 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).

25.4 The Employer shall prepare a record of the Bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot (contract) if applicable, including any discounts and alternative Bids; and 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.

E. Evaluation and Comparison of Bids

26. Confidentiality

26.1 Information relating to the evaluation of Bids and recommendation of Contract award, shall not be disclosed to Bidders or any other persons not officially concerned with the bidding process until information on Contract award is communicated to all Bidders in accordance with ITB 40.

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 a Bidder wishes to contact the Employer on any matter related to the bidding process, it shall

do so in writing.

- 27. Clarification of Bids**
- 27.1 To assist in the examination, evaluation, and comparison of the Bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its Bid, 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, including any voluntary increase or decrease, in the prices or substance of the Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Bids, in accordance with ITB 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 Documents;
 - (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Documents; and
 - (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Documents.
- 29. Preliminary Examination of Bids**
- 29.1 The Employer shall examine the Bid to confirm that all documents and information requested in ITB 11.1 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 Bid. If any of these documents or information is missing, the Bid shall be rejected.
- (a) Letter of Bid;
 - (b) written confirmation of authorization to commit the Bidder;
 - (c) Bid Security;
 - (d) Technical Proposal; and

(e) Priced Bill of Quantities².

30. Qualification of the Bidder

30.1 The Employer shall determine to its satisfaction whether Bidders meet the qualifying criteria specified in Section III, Evaluation and Qualification Criteria, during the evaluation of Bids. Instead of determining the qualification of all the Bidders, the Employer may carry out the assessment of the qualification criteria specified in Section III, Evaluation and Qualification Criteria, for the Bidder who submitted the lowest evaluated and substantially responsive Bid only.

30.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant ITB 17.

30.3 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 if the assessment of the Bidder's qualification was conducted for the lowest evaluated Bidder only, in accordance with ITB 30.1, the Employer shall proceed to the next lowest evaluated Bid to make a similar determination.

31. Determination of Responsiveness

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

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

(a) if accepted, would:

(i) affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or

(ii) limit in any substantial way, inconsistent with the Bidding Documents, the Employer's rights or the Bidder's obligations under the proposed Contract; or

(b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Bids.

31.3 The Employer shall examine the technical aspects of the Bid submitted in accordance with ITB 16, Technical Proposal, in particular, to confirm that all requirements of Section VI, Works Requirements, have been met without any material deviation,

² In a lump sum contract, delete "Priced Bill of Quantities" and replace with "Activity Schedule."

reservation or omission.

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

**32. Nonmaterial
Nonconformities**

32.1 Provided that a Bid is substantially responsive, the Employer may waive any nonconformities in the Bid that do not constitute a material deviation, reservation, or omission.

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

32.3 Provided that a Bid is substantially responsive, the Employer shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component. The adjustment shall be made using the method specified in Section III, Evaluation and Qualification Criteria.

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

- 33.2 Bidders 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**.
- 35. Subcontractors** 35.1 Unless otherwise **stated in the BDS**, the Employer does not intend to execute any specific elements of the Works by subcontractors selected in advance by the Employer (nominated subcontractors).
- The Bidders planning to subcontract any of the key activities indicated in Section III, Evaluation and Qualification Criteria, shall clearly identify the proposed specialist subcontractor(s) in Forms ELI-2 and EXP-2(b) in Section IV, Bidding Forms. Such proposed specialist subcontractors(s) shall meet the corresponding qualification requirements specified in Section III, Evaluation and Qualification.
- 36. Evaluation of Bids** 36.1 The Employer shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.
- 36.2 To evaluate a Bid, the Employer shall consider the following:
- (a) the Bid Price, excluding Provisional Sums and the provision, if any, for contingencies in the Summary Bill of Quantities for admeasurement contracts or Activity Schedule for lump sum contracts, but including Daywork items, where priced competitively;
 - (b) price adjustment for correction of arithmetic errors in accordance with ITB 33.1;
 - (c) price adjustment due to discounts offered in accordance with ITB 14.4;
 - (d) price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 32.3;
 - (e) converting the amount resulting from applying (a) to (d) above, if relevant, to a single currency in accordance with ITB 34; and
 - (f) the additional evaluation factors specified in Section III, Evaluation and Qualification Criteria.
- 36.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of

the Contract, shall not be taken into account in Bid evaluation.

36.4 If these Bidding Documents allow Bidders to quote separate prices for different lots (contracts), the methodology to determine the lowest evaluated price of the lot (contract) combinations, including any discounts offered in the Letter of Bid, is specified in Section III, Evaluation and Qualification Criteria.

36.5 If the Bid for an admeasurement contract which results in the lowest evaluated Bid Price, is seriously unbalanced or front loaded in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the Employer may require that the amount of the Performance Security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.

37. Comparison of Bids

37.1 The Employer shall compare the evaluated prices of all substantially responsive Bids established in accordance with ITB 36.2 to determine the lowest evaluated Bid.

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

38.1 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

39. Award Criteria

39.1 Subject to ITB 38.1, the Employer shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated Bid and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

40. Notification of Award

40.1 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 Works (hereinafter and in the Conditions of Contract and Contract Forms called “the Accepted Contract Amount”). At the same time, the Employer shall also notify all other Bidders of the results of the bidding.

40.2 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;
- (d) name and address of supplier; and
- (e) award date and amount of the Contract.

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

40.4 After notification of award, unsuccessful Bidders may request, in writing, to the Employer a debriefing seeking explanations on the grounds on which their Bids were not selected. The Employer shall promptly respond, in writing, to any unsuccessful Bidder who, after notification of award in accordance with ITB 40.1, requests a debriefing.

41. Signing of Contract

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

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

42. Performance Security

42.1 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 General Conditions of Contract, subject to ITB 36.5, 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.

42.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or to 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.

Section II. Bid Data Sheet

Notes on Bid Data Sheet

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

The Bid Data Sheet (BDS) contains information and provisions that are specific to a particular bidding process. The Employer must specify in the BDS only the information that the ITB request 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 clause.

Bid Data Sheet

A. General	
ITB 1.1	The number of the Invitation for Bids is: <i>[insert number of the Invitation for Bids]</i>
ITB 1.1	The Employer is: <i>[insert name of the Employer]</i>
ITB 1.1	The name, identification and number of the lot(s) (contract(s)) comprising this bidding process are: <i>[insert number and identification of lot(s) (contract(s))]</i>
ITB 2.1	The Borrower is: <i>[insert name of the Borrower]</i>
ITB 2.1	The number of the Loan Agreement is: <i>[insert Loan Agreement Number]</i> The amount of a Japanese ODA Loan is: <i>[insert amount in Japanese Yen]</i> The signed date of the Loan Agreement is: <i>[insert signed date of the Loan Agreement]</i>
ITB 2.1	The name of the Project is: <i>[insert name of the Project]</i>
ITB 2.2	The applicable Guidelines for Procurement under Japanese ODA Loans are those published in <i>[insert one of the following: April 2012, March 2009, or October 1999]</i> .
ITB 3.1(c)	A list of debarred firms and individuals is available at the World Bank's website: www.worldbank.org/debarr
B. Bidding Documents	
ITB 7.1	For clarification purposes only, the Employer's address is: <i>[insert the corresponding information as required below. This address may be the same as or different from that specified under ITB 22.1 for Bid submission.]</i> Attention: <i>[insert full name of person, if applicable]</i> Street Address: <i>[insert street address and number]</i> Floor/Room number: <i>[insert floor and room number, if applicable]</i> City: <i>[insert name of city or town]</i> ZIP Code: <i>[insert postal (ZIP) code, if applicable]</i> Country: <i>[insert name of country]</i> Telephone: <i>[insert telephone number, including country and city codes]</i>

	Facsimile number: <i>[insert facsimile number, including country and city codes]</i> Electronic mail address: <i>[insert email address, if applicable]</i>
ITB 7.1	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. <i>[Insert the Employer’s web page if responses to requests for clarifications will be published on the Employer’s web page, otherwise omit.]</i>
ITB 7.4	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 “Not Applicable” in the spaces provided below for the date, time and place.]</i> Date: _____ Time: _____ Place: _____ A site visit conducted by the Employer <i>[insert “will be” or “will not be”, as appropriate]</i> organized.
ITB 8.2	Addenda, if any, <i>[select “will” or “will not”, as appropriate]</i> be published on the Employer’s web page.
C. Preparation of Bids	
ITB 10.1	The language of the Bid is: <i>[insert one of the following: Japanese, English, Spanish or French.]</i>
ITB 11.1 (b)	The following Schedules shall be submitted with the Bid: <i>[insert schedules that must be submitted with the Bid, including the priced Bill of Quantities for admeasurement contracts and Activity Schedule for lump sum contracts.]</i>
ITB 11.1 (i)	The Bidder shall submit with its Bid the following additional documents: <i>[List any additional documents not already listed in ITB 11.1 that must be submitted with the Bid. If no additional document is to be submitted, insert “none”].</i>
ITB 13.1	<i>[The following provision should be included and the required corresponding information inserted only if alternative Bids will be considered. Otherwise, delete this BDS 13.1.]</i> Alternative Bids <i>[insert “shall be”]</i> permitted.
ITB 13.2	Alternative times for completion <i>[insert “will be” or “will not be”, as</i>

	<p><i>appropriate]</i> permitted.</p> <p>If alternative times for completion are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria.</p>
ITB 13.4	<p>Alternative technical solutions shall be permitted for the following parts of the Works: <i>[List the parts of the Works]</i></p> <p>If alternative technical solutions are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria.</p>
ITB 14.5	<p><i>[Price adjustment is mandatory for contracts with longer duration than 18 months or when local or foreign inflation is expected to be high.]</i></p> <p><i>[The following provision should be included only if the prices quoted by the Bidder are subject to price adjustment. Otherwise, delete this BDS 14.5.]</i></p> <p>The prices quoted by the Bidder shall be subject to adjustment during the performance of the Contract. The Bidder is required to furnish the indices and weighting for the price adjustment formulae in the Schedule of Adjustment Data.</p>
ITB 14.7	<p><i>[The following provision should be included and the corresponding information inserted only if duties, taxes and other levies will be exempted, reimbursed, or paid by the Employer on behalf of the Contractor. Otherwise, delete this BDS 14.7.]</i></p> <p>Duties, taxes and other levies indicated below shall be <i>[choose one of the following: “exempted”, “reimbursed”, “paid by the Employer on behalf of the Contractor”, as appropriate.]</i>:</p> <p><i>[List duties, taxes and other levies.]</i></p>
ITB 15.1	<p>The currency(ies) of the Bid shall be as described below:</p> <p>The unit rates and prices shall be quoted by the Bidder separately in the following currencies:</p> <p>(i) for those inputs to the Works that the Bidder expects to supply from within the Employer’s country, in <i>[insert the name of the currency of the Employer’s country]</i>, and further referred to as “the local currency”; and</p> <p>(ii) for those inputs to the Works that the Bidder expects to supply from outside the Employer’s country (referred to as “the foreign currency requirements”), in <i>[insert Japanese Yen and/or other international trading currency or currencies]</i>.</p>
ITB 18.1	<p>The Bid validity period shall be: <i>[insert a number of days]</i> days.</p> <p><i>[This period should be realistic, allowing sufficient time to evaluate the Bids, bearing in mind the complexity of the Works and the time required</i></p>

	<i>for obtaining references, clarifications, clearances, and approvals (including JICA's concurrence) and for notification of the award. Normally the validity period should not exceed 120 days.]</i>
ITB 18.3 (a)	The Bid Price shall be adjusted by the following factor: <i>[insert factor for adjustment]</i> <i>[The local currency portion of the Contract Price shall be adjusted by a factor reflecting local inflation during the period of extension, and the foreign currency portion of the Contract Price shall be adjusted by a factor reflecting the international inflation (in the country of the foreign currency) during the period of extension.]</i>
ITB 18.3 (b)	The fixed portion of the Bid Price shall be adjusted by the following factor: <i>[insert factor for adjustment]</i> <i>[The local currency portion of the fixed portion of the Contract Price shall be adjusted by a factor reflecting local inflation during the period of extension, and the foreign currency portion of the fixed portion of the Contract Price shall be adjusted by a factor reflecting the international inflation (in the country of the foreign currency) during the period of extension.]</i>
ITB 19.1	The amount and currency of the Bid Security shall be <i>[Insert amount and currency of the Bid Security. The amount should be approximately 2% of the estimated cost of the Contract.]</i>
ITB 19.2(d)	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>
ITB 20.1	In addition to the original of the Bid, the number of copies is: <i>[insert number of copies]</i> .
ITB 20.2	The written confirmation of authorization to sign on behalf of the Bidder shall consist of: <i>[Insert the name and description of the documentation required to demonstrate the authority of the signatory to sign the Bid.]</i>
D. Submission and Opening of Bids	
ITB 22.1	For <u>Bid submission purposes</u> only, the Employer's address is: <i>[This address may be the same as or different from that specified under provision ITB 7.1 for clarifications.]</i> Attention: <i>[insert full name of person, if applicable]</i> Street Address: <i>[insert street address and number]</i> Floor/Room number: <i>[insert floor and room number, if applicable]</i> City: <i>[insert name of city or town]</i>

	<p>ZIP Code: <i>[insert postal (ZIP) code, if applicable]</i></p> <p>Country: <i>[insert name of country]</i></p> <p>The deadline for Bid submission is:</p> <p>Date: <i>[insert day, month, and year, e.g., 15 June, 2013]</i></p> <p>Time: <i>[insert time, and identify if a.m. or p.m., e.g. 10:30 a.m.]</i></p> <p><i>[The date and time should be the same as those provided in the Invitation for Bids, unless subsequently amended pursuant to ITB 22.2.]</i></p>
ITB 25.1	<p>The Bid opening shall take place at:</p> <p>Street Address: <i>[insert street address and number]</i></p> <p>Floor/Room number: <i>[insert floor and room number, if applicable]</i></p> <p>City : <i>[insert name of city or town]</i></p> <p>Country: <i>[insert name of country]</i></p> <p>Date: <i>[insert day, month, and year, e.g., 15 June, 2013]</i></p> <p>Time: <i>[insert time, and identify if a.m. or p.m., e.g. 10:30 a.m.]</i></p> <p><i>[The date and time should be the same as those given for the deadline for submission of Bids (ITB 22).]</i></p>
E. Evaluation and Comparison of Bids	
ITB 34.1	<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 the 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, 2013, the date not be earlier than 30 days prior to, nor later than, the date of Bid opening specified in ITB 25.1.]</i></p> <p>The Employer will convert the amounts in various currencies in which the Bid Price, corrected pursuant to ITB 33, is payable (excluding Provisional Sums but including Daywork where priced competitively) to the single currency identified above at the selling rates established for similar transactions by the authority specified and on the date stipulated above.</p>
ITB 35.1	<p><i>[Insert the following only if the Employer intends to execute any specific elements of the Works by subcontractors selected in advance (nominated subcontractors). Otherwise, delete this BDS 35.1.]</i></p> <p>At this time the Employer intends to execute certain specific parts of the Works by subcontractors selected in advance. <i>[List the specific parts of the Works and the respective nominated subcontractors.]</i></p>

Section III. Evaluation and Qualification Criteria

Notes on Evaluation and Qualification Criteria

This section contains all the criteria that the Employer shall use to evaluate Bids and qualify Bidders. In accordance with ITB 30 and ITB 36, 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 for the Bidders contained in this Section III should be included in the actual Bidding Documents issued by the Employer.

Evaluation and Qualification Criteria

1. Evaluation

1.1 Evaluation of Technical Bids

1.1.1 Assessment of adequacy of Technical Proposal with Requirements

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

1.1.2 Personnel

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

No.	Position	Total Work Experience (years)	Experience in Similar Works (years)
1	Project Manager		
2	<i>e.g. Chief Engineer(s)¹</i>		
3	<i>e.g. Health & Safety (Accident Prevention)² Officer</i>		
4			
5			

Notes for the Employer:

1 Chief Engineer(s) or Section Manager(s) who is(are) responsible for the major activities should be evaluated.

2 The personnel for the key position include an accident prevention officer, as appropriate.

Alternative candidates for key positions should not be evaluated.

Insert requirements for multiple contracts, if necessary.

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

1.1.3 Equipment

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

No.	Equipment Type and Characteristics	Minimum Number required
1		
2		
3		
4		

5		
<p><i>Notes for the Employer:</i> <i>The items listed shall be limited to major items of equipment that are crucial to the proper and timely execution of the contract, and items that Bidders may not readily be able to purchase, hire, or lease in the required time frame.</i></p> <p><i>Insert requirements for multiple contracts, if necessary.</i></p>		

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

1.2 Evaluation of Price Bids

[Any adjustments in price that result from the procedures outlined below shall be added, for purposes of comparative evaluation only, to arrive at an “Evaluated Bid Price.” Bid Prices quoted by Bidders shall remain unaltered.]

In addition to the criteria listed in ITB 36.2 (a) – (c) the following criteria shall apply

1.2.1 Quantifiable Nonmaterial Nonconformities and Omissions

[The evaluated cost of quantifiable nonconformities is determined as follows: Pursuant to ITB 32.3 and ITB 36.2 (d), the cost of all quantifiable nonmaterial nonconformities or omissions shall be evaluated. The Employer will make its own assessment of the cost of any nonmaterial nonconformities and omissions for the purpose of ensuring fair comparison of Bids, except for the omissions stated in ITB 14.2 which shall be treated in accordance with said clause.]

1.2.2 Other Factors

The following factors and methods will apply under ITB 36.2 (f):
 The following additional criteria will be used in the evaluation: *[If applicable, insert a list of additional criteria.]*

.....

The relevant evaluation method shall be as follows: *[Insert the evaluation method.]*

.....

1.2.3 Award Criteria for Multiple Contracts (ITB 36.4):

[Insert the following text in case of multiple contracts, as necessary. Otherwise delete this EQC clause.

*“Lots/Packages:
 Bidders have the option to bid for any one or more lots/packages. Bids will be evaluated lot/package-wise, taking into account discounts offered, if any, for combined*

lots/packages. The contract(s) will be awarded to the Bidder or Bidders offering the lowest evaluated cost to the Employer for combined lots/packages, subject to the selected Bidder(s) meeting the required qualification criteria for lot or combination of lots/packages as the case may be.”]

1.3 Alternative Completion Times, if permitted under ITB 13.2, will be evaluated as follows:

.....
.....

1.4 Alternative Technical Solutions for Specified Parts, if permitted under ITB 13.4, will be evaluated as follows:

.....
.....

2. Qualification

(i) Exchange Rate for Qualification Criteria

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

- (a) For construction turnover or financial data required for each year - Exchange rate prevailing on the last day of the respective calendar year.
 - (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.

(ii) Qualification Criteria for Multiple Contracts: *[Insert the following text in case of Multiple Contracts. Otherwise delete this EQC clause.*

“Criteria for qualification are the aggregate minimum requirement, or any other reasonable requirements set forth by the Employer, for respective lots as specified under Sub-Factors 2.3.2, 2.4.2(a), 2.4.2(b), 2.5.1(i), 2.5.1(ii) below.”]

Eligibility and Qualification Criteria		Compliance Requirements			Documentation		
No.	Factor	Requirement	Single Entity	Joint Venture (existing or intended)		Submission Requirements	
				All Parties Combined	Each Member		One Member
2.1. Eligibility							
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, with attachments
2.1.2	Conflict of Interest	No conflicts of interest in ITB 4.2	Must meet requirement	N/A	Must meet requirement	N/A	Letter of 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	N/A	Letter of Bid Form ACK

Eligibility and Qualification Criteria		Compliance Requirements			Documentation		
No.	Factor	Requirement	Single Entity	Joint Venture (existing or intended)		Submission Requirements	
				All Parties Combined	Each Member		One Member
2.2. Historical Contract Non-Performance							
2.2.1	History of Non-Performing Contracts	Non-performance of a contract (i) did not occur as a result of contractor's default since 1 st January [insert year]. ¹	Must meet requirement (ii)	N/A	Must meet requirement (ii)	N/A	Form CON
2.2.2	Pending Litigation	All pending litigation shall in total not represent more than [insert percentage figure] ² % of the Bidder's net worth and shall be treated as resolved against the Bidder.	Must meet requirement (ii)	N/A	Must meet requirement (ii)	N/A	Form CON
2.2.3	Litigation History	No consistent history of court/arbitral award decisions ³ against the Bidder (iii) since 1 st January [insert year]. ⁴	Must meet requirement (ii)	N/A	Must meet requirement (ii)	N/A	Form CON
Notes for the Bidder							
(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. 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.							
(iii) The Bidder shall provide accurate information on the related Bidding Form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the last five (5) years. A consistent history of awards against the Bidder or any member of a joint venture may result in failure of the Bid.							

Notes for the Employer

1. Year should usually be one (1) or two (2) years prior to the Bid submission deadline.
2. The percentage should be normally within the range of 50% to 100% of a Bidder's net worth.
3. The criterion for rejection should be that of numerous arbitral awards or court decisions against the Bidder, taking the number and amount of contracts executed. As an indicative example, the occurrence of one (1) or two (2) adverse cases over five (5) years for a contractor handling, on average, ten (10) construction jobs simultaneously, should not be a cause for rejection. If dispute resolution is found relatively frequently in the business of the Bidder, it may indicate an attitude of the management of the firm that could be dangerous for the Employer if the Bidder were awarded the contract, and further investigation with previous Employers may be warranted.
4. Year should usually be five (5) years prior to the Bid submission deadline.

Eligibility and Qualification Criteria		Compliance Requirements			Documentation		
No.	Factor	Requirement	Single Entity	Joint Venture (existing or intended)		Submission Requirements	
				All Parties Combined	Each Member		One Member
2.3. Financial Situation							
2.3.1	Financial Performance	The audited balance sheets or, if not required by the laws of the Bidder's country, other financial statements acceptable to the Employer, for the last <i>[insert number of years]</i> years ¹ shall be submitted and must demonstrate the current soundness of the Bidder's financial position and indicate its prospective long-term profitability. As the minimum requirement, a Bidder's net worth calculated as the difference between total assets and total liabilities should be positive. ²	Must meet requirement	N/A	Must meet requirement	N/A	Form FIN – 1 with attachments
2.3.2	Average Annual Construction Turnover	Minimum average annual construction turnover of USD <i>[insert amount in USD]</i> ³ , calculated as total certified payments received for contracts in progress and/ or completed, within the last <i>[insert number]</i> years, ⁴ divided by <i>[insert number]</i> years. ⁵ <i>[insert requirements for multiple contracts, if necessary.]</i>	Must meet requirement	Must meet requirement	Must meet <i>[insert number]</i> % ⁶ of the requirement	Must meet <i>[insert number]</i> % ⁷ of the requirement	Form FIN – 2

Notes for the Employer

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. Firms owned by individuals and partnerships may not be required to maintain audited balance sheets by the laws of their countries of origin; in such cases, the Employer may relax the audit requirement, but should request other acceptable financial statements.*
2. *The financial information provided by a Bidder should be reviewed in its entirety to allow a truly informed judgment, and the pass-fail decision on the financial position of the Bidder should be given on this basis. Any abnormal features which may lead to financial problems should alert the Employer to seek expert professional advice for further review and interpretation.*
3. *The amount stated should normally not be less than twice the estimated annual turnover in the proposed Works contract (based on a straight-line projection of the Employer's estimated cost, including contingencies, over the contract duration). The multiplier of 2 may be reduced for very large contracts but should not be less than 1.5.*
4. *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.*
5. *Same number of years as in 4 above.*
6. *Usually not less than 25% of the requirement for each member of a JV.*
7. *Usually not less than 40% of the requirement for one member of a JV.*

Eligibility and Qualification Criteria		Compliance Requirements			Documentation	
No.	Factor	Requirement	Single Entity	Joint Venture (existing or intended)		Submission Requirements
				All Parties Combined	Each Member	
2.4. Experience						
2.4.1	General Construction Experience	Experience under construction contracts in the role of prime contractor (single entity or JV member), subcontractor, or management contractor ⁽ⁱ⁾ for at least the last <i>[insert number]</i> years ¹ , starting 1 st January <i>[insert year]</i> .	Must meet requirement	N/A	Must meet requirement	Form EXP – 1
2.4.2 (a)	Specific Construction Experience	A minimum number of <i>[insert number of contracts]</i> ² similar ⁽ⁱⁱ⁾ contracts that have been satisfactorily and substantially ⁽ⁱⁱⁱ⁾ completed as a prime contractor (single entity or JV member) ^(iv) between 1st January <i>[insert year]</i> ³ and Bid submission deadline. <i>[insert requirements for multiple contracts, if necessary.]</i>	Must meet requirement	N/A	N/A	Form EXP – 2 (a)
2.4.2 (b)		For the above or other contracts completed and under implementation as prime contractor (single entity or JV member), management contractor or subcontractor ^(vi) between 1 st January <i>[insert year]</i> ⁴ and Bid submission deadline, a minimum construction experience in the following key activities successfully completed ^(vii) <i>[list activities indicating volume, number or rate of production as applicable.]</i> ⁵ <i>[insert requirements for multiple contracts, if necessary.]</i> ^(viii)	Must meet requirement (can be a specialist subcontractor ^r)	Must meet requirement (can be a specialist subcontractor)	N/A	Form EXP – 2 (b)

Notes for the Bidder

- (i) A management contractor is a firm which takes on the role of contract management as a “general” contractor of sort could do. It does not normally perform directly the construction work(s) 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 work contract.
- (ii) The similarity shall be based on the physical size, complexity, methods/technology and/or other characteristics described in Section VI, Works Requirements. Summation of number of small value contracts (less than the value specified under requirement) to meet the overall requirement will not be accepted.
- (iii) Substantial completion shall be based on 80% or more of the works completed under the contract.
- (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.
- (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.
- (vi) For contracts under which the Bidder participated as a JV member or subcontractor, only the Bidder’s share, by value, shall be considered to meet this requirement.
- (vii) Volume, number or rate of production of any key activity can be demonstrated in one or more contracts combined if executed during same time period. The rate of production shall be the annual production rate for the key construction activity (or activities). For the rate of production, either the average during the entire period or in any one or more years during the period should be specified.
- (viii) The minimum experience requirement for multiple contracts will be the sum of the minimum requirements for respective individual contracts.

Notes for the Employer

1. *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.*
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 works constructed in the past.*
3. *The time range is normally five (5) years, and may be extend up to a period of ten (10) years for large-scale projects.*
4. *Same as that stipulated in Sub-Factor 2.4.2 (a) above.*
5. *List the monthly or annual production rate for the key construction activity (or activities) in the proposed contract or works, e.g., “one million m³ of rock placed in rockfill dams in one year; X tons of asphalt concrete per month place in road paving; Y m³ of concrete place in ... etc.” The rates should be a percentage (say about 80 percent) of the estimated production rate of the key activity (or activities) in the contract or Works as needed to meet the expected construction schedule with due allowance for adverse climatic condition.*

Eligibility and Qualification Criteria		Compliance Requirements			Documentation		
No.	Factor	Requirement	Single Entity	Joint Venture (existing or intended)		Submission Requirements	
				All Parties Combined	Each Member		One Member
2.5. Financial Resources							
2.5.1	Financial Resources	(i) The Bidder shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as USD [<i>insert amount in USD</i>] ¹ for the subject contract(s) net of the Bidders other commitments. <i>[insert requirements for multiple contracts, if necessary]</i> (ii) The Bidders shall also demonstrate, to the satisfaction of the Employer, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments. <i>[insert requirements for multiple contracts, if necessary]</i>	Must meet requirement	Must meet requirement	Must meet [insert number] ² % of the requirement	Must meet [insert number] ³ % of the requirement	Form FIR – 1
Notes for the Employer							
1. 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 monthly payment certificate, (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.							

- 2. Usually not less than 25% of the requirement for each member of a JV.**
- 3. Usually not less than 40% of the requirement for one member of a JV.**

Section IV. Bidding Forms

Notes on Bidding Forms

The Employer shall include in the Bidding Documents all Bidding Forms that the Bidder shall fill out and include in its Bid. As specified in this section, these forms are the Letter of Bid and relevant Schedules, the Bid Security, the Technical Proposal Form, and the Bidder's Qualification Information Forms.

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Letter of Bid

Date: *[insert date of Bid submission]*
Loan Agreement No.: *[insert No of Loan]*
IFB No.: *[insert number]*
Alternative No.: *[insert identification No. if
this is a Bid for an alternative]*

To: *[insert full name of Employer]*

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, 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 execute in conformity with the Bidding Documents the following Works: *[insert a brief description of the Works];*
- (e) The total price of our Bid, excluding any discounts offered in item (f) below is:
[In case of only one lot, insert the total price of the Bid in words and figures, indicating the various amounts and the respective currencies];

[In case of multiple lots, insert the total price of each lot];
[In case of multiple lots, insert the total price of all lots (sum of all lots)];
- (f) 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.];*
- (g) 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 Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

- (h) If our Bid is accepted, we commit to obtain a Performance Security in accordance with the Bidding Documents;
- (i) 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), other than alternative Bids submitted in accordance with ITB 13;
- (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 and corruption.

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

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

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

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

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

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

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

Schedule of Adjustment Data

Table A. Local Currency

[In this Table A, the Employer shall indicate the necessary information in columns (a), (b), (c) and (d), and shall also provide a fixed value in A and a range of values in B, C, D and E of column (f). For complex works contracts, it may be necessary to specify several families of price adjustment formulae for the different works involved and to prepare the corresponding adjustment tables.]

(a)	(b)	(c)	(d)	(e)	(f)
Index code	Index description	Source of index	Base value and date	Bidder's related currency amount	Bidder's proposed weighting
	Nonadjustable	—	—	—	A: _____ B: _____ C: _____ D: _____ E: _____
Total					1.00

The Bidder shall fill in column (e) and specify a value within the ranges given by the Employer in B, C, D and E of column (f), so that the total weighting equals 1.00.

Table B. Foreign Currency (FC)

[In this Table B, the Employer shall indicate the necessary information in columns (a) and (b), and shall also provide a fixed value in A and a range of values in B, C, D and E of column (g). For complex works contracts, it may be necessary to specify several families of price adjustment formulae for the different works involved and to prepare the corresponding adjustment tables.]

Currency: _____ *[Insert name of currency; if the Bidder wishes to quote in more than one foreign currency then this table should be repeated for each foreign currency.]*

(a)	(b)	(c)	(d)	(e)	(f)	(g)
Index code	Index description	Source of index	Base value and date	Bidder's related source currency in type/amount	Equivalent in FC for payment	Bidder's proposed weighting
	Nonadjustable	—	—	—		A: _____ B: _____ C: _____ D: _____ E: _____
Total						1.00

The Bidder shall indicate the type of currency and columns (c), (d), (e) and (f), and specify a value within the ranges given by the Employer in B, C, D and E of column (g), so that the total weighting equals 1.00.

Schedules

Bill of Quantities [*Admeasurement Contract*]

Activity Schedule [*Lump sum Contract*]

[For a sample of the Bill of Quantities, in the case of unit price contracts, refer to Section IV. Bidding Forms of the Standard Bidding Documents for Procurement of Works, October 2012.]

Technical Proposal

- Site Organization
- Method Statement
- Mobilization Schedule
- Construction Schedule
- Safety Plan
- Personnel
- Equipment
- *[Others]*

Site Organization

[Insert Organization Information]

Method Statement

[Insert Method of Statement]

Mobilization Schedule

[Insert Mobilization Schedule]

Construction Schedule

[Insert Construction Schedule]

Safety Plan

[Insert Safety Plan]

Form PER -1: Proposed Personnel

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

Bidder’s Legal Name: *[insert full name]*

IFB No. *[insert number]*

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

[The Bidder shall provide the names of suitably qualified personnel to meet the specified requirements stated in Section III, Evaluation and Qualification Criteria, Clause 1.1.2.]

1.	Title of position*
	Name
2.	Title of position*
	Name
3.	Title of position*
	Name
4.	Title of position*
	Name

*As listed in Section III.

Form PER -2: Resume of Proposed Personnel

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

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

Joint Venture Party Legal Name: *[insert full name]*

IFB No. *[insert number]*

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

[The Bidder shall provide the data on the experience of the personnel indicated in Form PER-1, in the form below:]

Name of Bidder

Position					
Personnel information	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">Name</td> <td style="padding: 5px;">Date of birth</td> </tr> <tr> <td colspan="2" style="padding: 5px;">Professional qualifications</td> </tr> </table>	Name	Date of birth	Professional qualifications	
	Name	Date of birth			
Professional qualifications					
Present employment	Name of employer				
	Address of employer				
	Telephone	Contact (manager / personnel officer)			
	Fax	E-mail			
	Job title	Years with present employer			

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

From	To	Company / Project / Position / Relevant technical and management experience

Form EQU: Equipment

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

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

Joint Venture Party Legal Name: *[insert full name]*

IFB No. *[insert number]*

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

[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 1.1.3. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Bidder.]

Item of equipment		
Equipment information	Name of manufacturer	Model and power rating
	Capacity	Year of manufacture
Current status	Current location	
	Details of current commitments	
Source	Indicate source of the equipment <input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured	

Omit the following information for equipment owned by the Bidder.

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

Bidder's Qualification

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: Bidder's Party Information Form
- Form CON: Historical Contract Non-Performance
- Form FIN -1: Financial Situation
- Form FIN -2: Average Annual Construction Turnover
- Form FIR -1: Financial Resources
- Form FIR -2: Current Contract Commitments
- Form EXP -1: General Construction Experience
- Form EXP -2(a): Specific Construction Experience
- Form EXP -2(b): Construction 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:]

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 street/ number/ town or city/ country]</i>
Bidder's authorized representative information Name: <i>[insert full name]</i> Address: <i>[inset street/ number/ town or city/ country]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers, including country and city codes]</i> E-mail address: <i>[insert E-mail address]</i>
1. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITB 4.3. <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1. 2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

Form ELI - 2: Bidder's Party 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 the Bidder is a JV) as well as any specialist subcontractor proposed to be used by the Bidder for any part of the Contract resulting from this process.]

Bidder's legal name: <i>[insert full name]</i>
Bidder's Party legal name: <i>[insert full name of Bidder's party]</i>
Bidder's Party country of registration: <i>[insert country of registration]</i>
Bidder's Party year of incorporation: <i>[insert year of incorporation]</i>
Bidder's Party legal address in country of registration: <i>[insert street/ number/ town or city/ country]</i>
Bidder's Party authorized representative information Name: <i>[insert full name]</i> Address: <i>[insert street/ number/ town or city/ country]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers, including country and city codes]</i> E-mail address: <i>[insert E-mail address]</i>
1. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITB 4.3. 2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

Form CON: Historical Contract Non-Performance

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

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

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

IFB No. *[insert number]*

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

[The following table shall be filled in for the Bidder and for each member of a JV.]

1. History of Non-Performing Contracts

Non-Performing Contracts			
<input type="checkbox"/> Contract non-performance did not occur since 1 st January <i>[insert year]</i> , in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.2.1.			
<input type="checkbox"/> Contract(s) not performed since 1 st January <i>[insert year]</i> , in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.2.1 is (are) indicated below:			
Year	Non- performed portion of contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and USD equivalent)
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[insert complete contract name, number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Reason(s) for non-performance: <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>

2. Pending Litigation

Pending Litigation				
<input type="checkbox"/> No pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.2.2.				
<input type="checkbox"/> Pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.2.2 is indicated below:				
Year of dispute	Amount in dispute (currency)	Outcome as Percentage of Net Worth	Contract Identification	Total Contract Amount (current value, currency, exchange rate and USD equivalent)
<i>[insert year]</i>	<i>[insert amount]</i>	<i>[insert percentage]</i>	Contract Identification: <i>[indicate complete contract name, number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/ city/ country]</i> Matter in dispute: <i>[indicate main issues in dispute]</i> Status of dispute: <i>[Indicate if it is being treated by the Adjudicator, under Arbitration or being dealt with by the Judiciary]</i>	<i>[insert amount]</i>

3. Litigation History

Litigation History		
<input type="checkbox"/> No court/arbitral award decisions against the Bidder since 1 st January <i>[insert year]</i> , in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.2.3.		
<input type="checkbox"/> Court/ arbitral award decisions against the Bidder since 1 st January <i>[insert year]</i> , in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.2.3, are indicated below:		
Year of award	Contract Identification	Total Contract Amount (current value, currency, exchange rate and USD equivalent)
<i>[insert year]</i>	Contract Identification: <i>[indicate complete contract name, number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Matter in dispute: <i>[indicate main issues in dispute]</i> Party who initiated the dispute: <i>[indicate "Employer" or "Contractor"]</i> Status of dispute: <i>[Indicate if it is being treated by the Adjudicator, under Arbitration or being dealt with by the Judiciary]</i>	<i>[insert amount]</i>

Form FIN - 1: Financial Situation

[The following table shall be filled in for the Bidder and for each member of a JV.]

Date: [insert day, month, year]
 Bidder’s Legal Name: [insert full name]
 Bidder’s Party 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
Statement of Financial Position (Information from Balance Sheet)					
Total Assets (TA)					
Total Liabilities (TL)					
Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Information from Income Statement					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Profits After Taxes (PAT)					

2. Financial documents

The Bidder and its parties shall provide copies of the financial statements for *[number of years]* years pursuant Section III, Evaluation and Qualification Criteria Sub-Factor 2.3.1. The financial statements shall:

- (a) reflect the financial situation of the Bidder or in case of JV, of each member, and not of an affiliated entity (such as parent company or group member).
 - (b) be independently audited or certified in accordance with local legislation.
 - (c) be complete, including all notes to the financial statements.
 - (d) correspond to accounting periods already completed and audited.
- Attached are copies of financial statements* for the *[number of years]* years required above; and complying with the requirements.

* 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 Construction Turnover

[The following table shall be filled in for the Bidder and for each member of a JV.]

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

Bidder’s Legal Name: *[insert full name]*

Bidder’s Party Legal Name: *[insert full name]*

IFB No. *[insert number]*

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

Annual Turnover Data (Construction only)			
Year	Amount and Currency	Exchange rate	USD equivalent
<i>[indicate year]</i>	<i>[insert amount and indicate currency]</i>	<i>[insert applicable exchange rate]</i>	<i>[insert amount in USD equivalent]</i>
Average Annual Construction Turnover *			

* Total USD equivalent for all years divided by the total number of years, in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.2.

Form FIR - 1: Financial Resources

[The following table shall be filled in for the Bidder and for each member of a JV.]

Date: *[insert day, month, year]*
 Bidder's Legal Name: *[insert full name]*
 Bidder's Party Legal Name: *[insert full name]*
 IFB No. *[insert number]*
 Page *[insert page number]* of *[insert total number]* page

[Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject contract or contracts as specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.5.1.]

Financial Resources		
No.	Source of financing	Amount (USD equivalent)
1		
2		
3		

Form FIR - 2: Current Contract Commitments

[The following table shall be filled in for the Bidder and for each member of a JV.]

Date: *[insert day, month, year]*
 Bidder’s Legal Name: *[insert full name]*
 Bidder’s Party Legal Name: *[insert full name]*
 IFB No. *[insert number]*
 Page *[insert page number]* of *[insert total number]* page

[Bidders and each member of a JV should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued, in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.5.1.]

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

Form EXP - 1: General Construction Experience

[The following table shall be filled in for the Bidder and for each member of a JV.]

Date: *[insert day, month, year]*
 Bidder's Legal Name: *[insert full name]*
 Bidder's Party Legal Name: *[insert full name]*
 IFB No. *[insert number]*
 Page *[insert page number]* of *[insert total number]* page

[Identify contracts that demonstrate continuous construction work over the past [number] years pursuant to Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4.1. List contracts chronologically, according to their commencement (starting) dates.]

General Construction Experience			
Starting Year	Ending Year	Contract Identification	Role of Bidder
<i>[indicate year]</i>	<i>[indicate year]</i>	Contract name: <i>[insert full name]</i> Brief description of the Works performed by the Bidder: <i>[describe Works performed briefly]</i> Amount of contract: <i>[insert amount in currency, mention currency used, exchange rate and USD equivalent]</i> Name of Employer: <i>[indicate full name]</i> Address: <i>[indicate street/number/town or city/country]</i>	<i>[insert "Prime Contractor (Single entity or JV member) or "Subcontractor" or "Management Contractor"]</i>

Form EXP - 2(a): Specific Construction Experience

[The following table shall be filled in for contracts performed by the Bidder and by each member of a JV.]

Date: *[insert day, month, year]*
 Bidder’s Legal Name: *[insert full name]*
 Bidder’s Party Legal Name: *[insert full name]*
 IFB No. *[insert number]*
 Page *[insert page number]* of *[insert total number]* page

[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. <i>[insert number] of [insert number of similar contracts required]</i>	Information	
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 a percentage of participation]</i>	<i>[insert amount(s) and currency(ies) of participation]</i>
Employer’s Name:	<i>[insert full name]</i>	
Address:	<i>[indicate street / number / town or city / country]</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>	

Similar Contract No. <i>[insert number] of [insert number of similar contracts required]</i>	Information
Description of the similarity in accordance with Sub-Factor 2.4.2(a) of Section III:	
1. Physical size of required works items	<i>[insert physical size of items]</i>
2. Complexity	<i>[insert description of complexity]</i>
3. 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, Works Requirements]</i>

Form EXP - 2(b): Construction Experience in Key Activities

[The following table shall be filled in for Contracts performed by the Bidder and by each member of a JV.]

Date: *[insert day, month, year]*
 Bidder’s Legal Name: *[insert full name]*
 Bidder’s Party 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

[Fill out one (1) form per contract, in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4.2(b).]

1. Key Activity No (1): _____: *[insert brief description of the Activity, emphasizing its specificity]*

Total Quantity of Activity under the contract: _____

Contract with Similar Key Activities				
Item	Information			
Contract Identification	<i>[insert contract name and 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		Management Contractor	Sub-contractor
	Single entity <input type="checkbox"/>	JV member <input type="checkbox"/>	<input type="checkbox"/>	<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>	
Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year <i>[Insert extent of participation indicating actual quantity of key activity successfully completed in the role performed]</i>	Total quantity in the contract (i)	Percentage participation (ii)	Actual Quantity Performed (i) x (ii)	
Year 1				
Year 2				
Year 3				

Year 4			
Employer's Name:	<i>[insert full name]</i>		
Address:	<i>[indicate street / number / town or city / country]</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>		

2. Activity No. (2) _____

3. Activity No. (3) _____

Form ACK

Acknowledgement of Compliance with Guidelines for Procurement under Japanese ODA Loans

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 Guidelines for Procurement under Japanese ODA Loans, hereby certify on behalf of the Bidder and myself that all information provided in the Bid submitted by the Bidder for *[insert Loan No and name of the Project]* is true, correct and accurate to the best of the Bidder’s and my knowledge and belief. I further certify, on behalf of the Bidder, that:

- (i) the Bid has been prepared and submitted in full compliance with the terms and conditions set forth in the Guidelines for Procurement under Japanese ODA Loans (hereinafter referred to as the “Guidelines”); and
- (ii) the Bidder has not, directly or indirectly, taken any action which is or constitutes a corrupt, fraudulent, collusive or coercive act or practice in violation of the Guidelines and is not subject to any conflict of interest as stipulated in the relevant section of the Guidelines.

<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.¹

<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

¹ The starting date should be revised to “request for price quotation,” if the Borrower is selected through the International Shopping”; to "appointment", if a contractor is selected through the Direct Contracting; or “Commencement of actual selection/bidding process”, if the Borrower wishes to adopt procurement procedures other than ICB, Limited International Shopping, International Shopping, or Direct Contracting.

decision.

- D) I certify, on behalf of the Bidder, that if selected to undertake services in connection with the Contract, the Bidder shall carry out such services in continuing compliance with the terms and conditions of the Guidelines.
- E) I further certify, on behalf of the Bidder, that if the Bidder is requested, directly or indirectly, to engage in any corrupt or fraudulent action under any applicable law, such as the payment of a rebate, at any time during a process of public procurement, 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://www2.jica.go.jp/en/odainfo/index.php>

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) 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:

Form of Bid Security

(Bank Guarantee)

[Guarantor letterhead or SWIFT identifier code]

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

IFB No.: *[Employer to 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]* under the Loan Agreement No.*[insert Loan Agreement Number]* (“the L/A”).

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 Letter of Bid (hereinafter called “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 Documents.

This guarantee will expire and shall be returned to the Applicant: (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 (28) 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 as indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458¹.

[signature(s)]

[Note: All italicized text is for use in preparing this form and shall be deleted from the final product.]

¹ As the case may be, ICC Publication No. 758 (or subsequent ICC Publications) may be used. In such cases, modify the Publication number.

Form of Bid Security (Bid Bond)

BOND NO. *[insert Bond No.]*

BY THIS BOND *[name of Bidder]* as Principal (hereinafter called “the Principal”), and *[name, legal title, and address of surety]*, authorized to transact business in *[name of country of Employer]*, as Surety (hereinafter called “the Surety”), are held and firmly bound unto *[name of Employer]* as Obligee (hereinafter called “the Employer”) in the sum of *[amount of Bond]*¹ *[amount in words]*, for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has submitted a written Bid to the Employer dated the *[insert day]* day of *[insert month]*, 20 *[insert year]*, for the construction of *[name of Contract]* (hereinafter called the “Bid”).

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

- (a) withdraws its Bid during the period of Bid validity specified in the Form of Bid; or
- (b) having been notified of the acceptance of its Bid by the Employer during the period of Bid validity; (i) fails or refuses to execute the Contract Form, if required; or (ii) fails or refuses to furnish the Performance Security in accordance with the Instructions to Bidders;

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

The Surety hereby agrees that its obligation will remain in full force and effect up to and including the date 28 days after the date of expiration of the Bid validity as stated in the Invitation to Bid or extended by the Employer at any time prior to this date, notice of which extension(s) to the Surety being hereby waived.

IN TESTIMONY WHEREOF, the Principal and the Surety have caused these presents to be executed in their respective names this *[insert day]* day of *[insert month]* ,20 *[insert year]*.

Principal: _____

Surety: _____
Corporate Seal (where appropriate)

(Signature)

(Signature)

¹ The amount of the Bond shall be denominated in the currency of the Employer’s country or the equivalent amount in a freely convertible currency.

Section V. Eligible Source Countries of Japanese ODA Loans

[Specify the Eligible Source Countries]

PART 2 – WORKS REQUIREMENTS

Section VI. Works Requirements

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Scope of Works

Specifications

Notes for Preparing Technical Specifications

These **Notes for Preparing Specifications** are intended only as information for the Employer or the person drafting the Bidding Documents. They should **not** be included in the final documents.

Precise and clear Specifications are a prerequisite for Bidders to respond realistically and competitively to the requirements of the Employer without qualifying or conditioning their Bids. In the context of international competitive bidding, the Specifications must be drafted to permit the widest possible competition and, at the same time, present a clear statement of the required standards of workmanship, materials, and performance of the goods and services to be procured. Only if this is done will the objectives of economy, efficiency, and equality in procurement be realized, responsiveness of Bids be ensured, and the subsequent task of Bid evaluation facilitated. The Specifications should require that all goods and materials to be incorporated in the Works be new, unused, of the most recent or current models, and incorporate all recent improvements in design and materials unless provided otherwise in the Contract. A clause setting out the scope of the Works is often included at the beginning of the Specifications, and it is customary to give a list of the Drawings. Where the Contractor is responsible for the design of any part of the Permanent Works, the extent of his obligations must be stated.

Samples of Specifications from previous similar projects in the same country are useful in this respect. The metric units should be used. Most Specifications are normally written specially by the Employer or Project Manager to suit the contracts for Works in hand. There are no standard Specifications for universal application in all sectors in all countries, but there are established principles and practices that are reflected in these documents.

There are considerable advantages in standardizing General Specifications for repetitive Works in recognized public sectors, such as highways, ports, railways, urban housing, irrigation, and water supply, in the same country or region where similar conditions prevail. The General Specifications should cover all classes of workmanship, materials, and equipment commonly involved in construction, although not necessarily to be used in a particular Works Contract. Deletions or addenda should then adapt the General Specifications to the particular Works.

Care must be taken in drafting Specifications to ensure that they are not restrictive. In the specification of standards for goods, materials, and workmanship, recognized international standards should be used as much as possible. Where other particular standards are used, whether national standards of the Borrower's country or other standards, the Specifications should state that goods, materials, and workmanship meeting other authoritative standards that ensure substantially equal or higher quality than the standards mentioned, will also be

acceptable. To that effect, the following clause may be inserted in the Particular Conditions or Specifications.

Sample Clause:

“Equivalency of Standards and Codes

Wherever reference is made in the Contract to specific standards and codes to be met by the goods and materials to be furnished, and work performed or tested, the provisions of the latest current edition or revision of the relevant standards and codes in effect shall apply, unless otherwise expressly stated in the Contract. Where such standards and codes are national, or relate to a particular country or region, other authoritative standards that ensure a substantially equal or higher quality than the standards and codes specified will be accepted subject to the Project Manager’s prior review and written consent. Differences between the standards specified and the proposed alternative standards must be fully described in writing by the Contractor and submitted to the Project Manager at least twenty-eight (28) days prior to the date when the Contractor desires the Project Manager’s consent. In the event the Project Manager determines that such proposed deviations do not ensure substantially equal or higher quality, the Contractor shall comply with the standards specified in the documents.”

Alternative Technical Proposals

Employers should decide whether technical solutions to specified parts of the Works are to be permitted. Alternatives are appropriate in cases where obvious (and potentially less costly) alternatives are possible to the technical solutions specified in the Bidding Documents for certain elements of the Works, taking into consideration the comparative specialized advantage of potential Bidders. For example:

- pile foundations (proprietary methods and different material)
- bridge foundations (open well, caissons, piles, etc.)
- columns, beams, decking (reinforced concrete, prestressed concrete, steel, etc.)
- proprietary methods for post-tensioning concrete
- lining of canals
- pipeline materials, coating, jointing
- road surfacing (asphalt, concrete, etc.)
- transmission tower design and erection
- street lighting
- offshore foundations
- offshore trestle spans

The Employer should provide a description of the selected parts of the Works with appropriate references to Drawings, Specifications, Bill of Quantities, and Design or Performance criteria, stating that the alternative solutions shall be at least structurally and functionally equivalent to the basic design parameters and specifications.

Such alternative solutions shall be accompanied by all information necessary for a complete

evaluation by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, proposed construction methodology, and other relevant details. Technical alternatives permitted in this manner shall be considered by the Employer each on its own merits and independently of whether the Bidder has priced the item as described in the Employer's design included with the Bidding Documents.

Drawings

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

Supplementary Information

PART 3 – CONDITIONS OF CONTRACT AND CONTRACT FORMS

Section VII. General Conditions (GC)

Notes on Conditions of Contract

The Conditions of Contract comprises two parts:

- (a) **Standard General Conditions** – GC (Section VII of the Bidding Documents); and
- (b) **Particular Conditions** – PC (Section VIII of the Bidding Documents).

The use of the Standard GC, in all Bidding Documents/Contracts for small construction works financed by Japanese ODA Loans is **required**, and they shall be used without any modification. A copy of the Standard GC may be attached to the Bidding Documents/Contract prepared by the Employer for reference purposes only. If the General Conditions in the Bidding Documents/Contract prepared by the Employer contain modifications from the Standard GC, JICA will not consider them valid and the Standard GC, as defined above, shall apply.

The Standard GC can be used for both smaller admeasurement contracts and lump sum contracts and have been developed on the basis of considerable international experience in the drafting and management of contracts, bearing in mind a trend in the construction industry towards simpler, more straightforward language.

The use of these standard conditions of contract for all small works will ensure comprehensiveness of coverage, better balance of rights or obligations between Employer and Contractor, general acceptability of its provisions, and savings in time and cost for Bid preparation and review, leading to more economical prices.

Any amendments and additions to the General Conditions, specific to the contract in hand, should be introduced in the Particular Conditions. The Standard GC, read in conjunction with the Particular Conditions and other documents listed therein, should be a complete document expressing fairly the rights and obligations of both parties.

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)

[Note to the Employer: The General Conditions governing Contracts funded with Japanese ODA Loans are the Standard General Conditions of Contract (hereinafter referred to as "Standard GC") set forth in Part 3, Section VII of these Standard Bidding Documents for Procurement of Small Works (version 1.1) (SBD (Small Works) published by JICA in April, 2013.

A copy of the Standard GC may be attached to Bidding Documents/Contracts prepared by the Employer for reference purposes only. If the General Conditions in the Bidding Documents/Contracts prepared by the Employer contain modifications from the Standard GC, JICA will not consider these General Conditions valid and the Standard GC, as defined above, shall apply.

Instead of attaching a copy of the Standard GC, the Employer may use the following introductory text.]

The General Conditions governing this Contract are the Standard General Conditions of Contract set forth in Part 3, Section VII of the Standard Bidding Documents for Procurement of Small Works (version 1.1) published by JICA in April, 2013. Those General Conditions of Contract are available on the JICA's web site shown below:

http://www.jica.go.jp/english/our_work/types_of_assistance/oda_loans/oda_op_info/guide/tender/index.html

A copy of these General Conditions is not attached to these Bidding Documents/this Contract.

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General Conditions

A. General

- 1. Definitions**
- 1.1 The following words and expressions shall have the meanings hereby assigned to them.
- (a) “Accepted Contract Amount” means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.
 - (b) “Activity Schedule” is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works in a lump sum contract. It includes a lump sum price for each activity, which is used for valuations and for assessing the effects of Variations and Compensation Events.
 - (c) “Adjudicator” is the single person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in Clause 23.
 - (d) “Bill of Quantities” means the priced and completed Bill of Quantities forming part of the Bid.
 - (e) “Compensation Events” are those defined in Clause 41.
 - (f) “Completion Date” is the date of completion of the Works as certified by the Project Manager, in accordance with Sub-Clause 52.1.
 - (g) “Contract” is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in Sub-Clause 2.3.
 - (h) “Contractor” is the party whose Bid to carry out the Works has been accepted by the Employer.
 - (i) “Contractor’s Bid” is the completed Bidding Document submitted by the Contractor to the Employer.
 - (j) “Contract Price” is the Accepted Contract Amount stated in the Letter of Acceptance and thereafter as adjusted in accordance with the Contract.
 - (k) “days” are calendar days; “months” are calendar months.
 - (l) “Dayworks” are varied work inputs subject to payment on a time basis for the Contractor’s employees and Equipment, in addition to payments for associated

Materials and Plant.

- (m) “Defect” is any part of the Works not completed in accordance with the Contract.
- (n) “Defects Liability Certificate” is the certificate issued by Project Manager upon correction of defects by the Contractor.
- (o) “Defects Liability Period” is the period pursuant to Sub-Clause 33.1 and calculated from the Completion Date.
- (p) “Drawings” means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Employer in accordance with the Contract, include calculations and other information provided or approved by the Project Manager for the execution of the Contract.
- (q) “Employer” is the party who employs the Contractor to carry out the Works, **as specified in the PC**.
- (r) “Equipment” is the Contractor’s machinery and vehicles brought temporarily to the Site to construct the Works.
- (s) “In writing” or “written” means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- (t) “Intended Completion Date” is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is **specified in the PC**. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.
- (u) “Letter of Bid” means the document entitled Letter of Bid, which was completed by the Contractor and includes the signed offer to the Employer for the Works.
- (v) “Materials” are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- (w) “Permanent Works” means the permanent works to be executed by the Contractor under the Contract.
- (x) “Plant” is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
- (y) “Project Manager” is the person **named in the PC** (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of

the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.

- (z) “PC” means Particular Conditions of Contract.
- (aa) “Site” is the area **defined as such in the PC**.
- (bb) “Site Investigation Reports” are those that were included in the Bidding Documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.
- (cc) “Specification” means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.
- (dd) “Start Date” is **given in the PC**. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.
- (ee) “Subcontractor” is a person or corporate body who has a contract with the Contractor to carry out a part of the work in the contract, which includes work on the Site.
- (ff) “Taking-Over Certificate” is the certificate issued by Project Manager upon deciding that the whole of the Works is completed for the purposes of taking-over.
- (gg) “Temporary Works” are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
- (hh) “Variation” is an instruction given by the Project Manager which varies the Works.
- (ii) “Works” means the Permanent Works and the Temporary Works, or either of them as appropriate.

- 2. Interpretation**
- 2.1 In interpreting these GC, words indicating one gender include all genders. Words indicating the singular also include the plural and words indicating the plural also include the singular. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager shall provide instructions clarifying queries about these GC.
 - 2.2 If sectional completion is **specified in the PC**, references in the GC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion

Date for the whole of the Works).

- 2.3 The documents forming the Contract shall be interpreted in the following order of priority:
- (a) Contract Agreement,
 - (b) Letter of Acceptance,
 - (c) Letter of Bid,
 - (d) Particular Conditions of Contract,
 - (e) General Conditions of Contract,
 - (f) Specification,
 - (g) Drawings,
 - (h) Bill of Quantities¹, and
 - (i) any other document **listed in the PC** as forming part of the Contract.
- 3. Language and Law** 3.1 The language of the Contract and the law governing the Contract are **stated in the PC**.
- 4. Project Manager's Decisions** 4.1 Except where otherwise specifically stated, the Project Manager shall decide contractual matters between the Employer and the Contractor in the role representing the Employer.
- 5. Delegation** 5.1 **Unless otherwise specified in the PC**, the Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may revoke any delegation after notifying the Contractor.
- 6. Communications** 6.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.
- 7. Subcontracting** 7.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.
- 8. Other Contractors** 8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as **referred to in the PC**. The Contractor shall also provide

¹ *In lump sum contracts, delete "Bill of Quantities" and replace with "Activity Schedule."*

facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification, which shall constitute a Compensation Event.

9. Personnel and Equipment

- 9.1 The Contractor shall employ the key personnel and use the equipment identified in its Bid, to carry out the Works or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.
- 9.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven (7) days and has no further connection with the work in the Contract.

10. Employer's and Contractor's Risks

- 10.1 The Employer carries the risks which are specified as Employer's risks in the Contract, and the Contractor carries the risks which are specified as Contractor's risks in the Contract.

11. Employer's Risks

- 11.1 From the Start Date until the Defects Liability Certificate has been issued, the following are Employer's risks:
- (a) The risk of loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to:
 - (i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works; or
 - (ii) negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.
 - (b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in the Employer's design, or due to war, hostilities (whether war declared or not), invasion, act of foreign enemies, rebellion, terrorism, revolution, insurrection, military or usurped power, civil war, riot, commotion of disorder or radioactive contamination directly affecting the country where the Works are to be executed.

11.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer's risk except loss or damage due to:

- (a) a Defect which existed on the Completion Date,
- (b) an event occurring before the Completion Date, which was not itself an Employer's risk, or
- (c) the activities of the Contractor on the Site after the Completion Date.

12. Contractor's Risks

12.1 From the Starting Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer's risks are Contractor's risks.

13. Insurance

13.1 The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles **stated in the PC** for the following events which are due to the Contractor's risks:

- (a) loss of or damage to the Works, Plant, and Materials;
- (b) loss of or damage to Equipment;
- (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
- (d) personal injury or death.

13.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

13.3 If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.

13.4 Alterations to the terms of an insurance shall not be made

- without the approval of the Project Manager.
- 13.5 Both parties shall comply with any conditions of the insurance policies.
- 14. Site Data**
- 14.1 The Contractor shall be deemed to have examined any Site Data **referred to in the PC**, supplemented by any information available to the Contractor.
- 15. Contractor to Construct the Works**
- 15.1 The Contractor shall construct and install the Works in accordance with the Specification and Drawings.
- 16. The Works to Be Completed by the Intended Completion Date**
- 16.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.
- 17. Approval by the Project Manager**
- 17.1 The Contractor shall be responsible for design of the Temporary Works in accordance with the requirements specified in the Specification.
- 17.2 The Contractor shall submit design documents of the Temporary Works to the Project Manager for his approval.
- 17.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.
- 17.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.
- 17.5 All Drawings prepared by the Contractor for the execution of the Temporary or Permanent Works, are subject to prior approval by the Project Manager before their use.
- 18. Safety**
- 18.1 The Contractor shall:
- (a) comply with all applicable safety regulations;
 - (b) take care for the safety of all persons entitled to be on the Site;
 - (c) use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons;
 - (d) provide fencing, lighting, guarding and watching of the Works until completion and taking over under Clause 53;

and

- (e) provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.

18.2 **If so specified in the PC**, the Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents.

18.3 **If so specified in the PC**, the Contractor shall make appropriate measures for HIV-AIDS prevention at the Site.

19. Discoveries

19.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.

20. Possession of the Site

20.1 The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date **stated in the PC**, the Employer shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.

21. Access to the Site

21.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

22. Instructions by the Project Manager

22.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.

23. Appointment of the Adjudicator

23.1 If the Employer and the Contractor so agree, disputes shall be referred to an Adjudicator for decision. The Adjudicator shall be appointed jointly by the Employer and the Contractor, by the date twenty-eight (28) days after a party gives notice to the other party of its intention to refer a dispute to the Adjudicator. If the Employer and the Contractor do not agree on the appointment of the Adjudicator, the Employer will request the Appointing Authority **designated in the PC**, to appoint the Adjudicator within fourteen (14) days of receipt of such request.

23.2 Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new

Adjudicator shall be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within thirty (30) days, the Adjudicator shall be designated by the Appointing Authority **designated in the PC** at the request of either party, within fourteen (14) days of receipt of such request.

23.3 If the Employer and the Contractor agree not to appoint an Adjudicator, the Project Manager shall act as the Adjudicator in accordance with the Sub-Clauses 24.1, 24.2 and 24.4, acting fairly, impartially and at the cost of the Employer.

24. Procedure for Disputes

24.1 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 Works, then after an Adjudicator has been appointed pursuant to Sub-Clauses 23.1 and 23.2, either party may refer the dispute in writing to the Adjudicator 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.

24.2 The Adjudicator shall give a decision in writing within twenty-eight (28) days of receipt of such reference or within a period otherwise agreed by the Employer and the Contractor.

24.3 The Adjudicator shall be paid by the hour at the **rate specified in the PC**, together with reimbursable expenses of the types **specified in the PC**, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator.

24.4 The decision shall be binding on the 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.

If either party is dissatisfied with the Adjudicator's decision, then either party may, within twenty-eight (28) days after receiving the decision, give a notice of dissatisfaction to the other party indicating its dissatisfaction and intention to commence arbitration. If the Adjudicator fails to give its decision within the period specified in Sub-Clause 24.2 after receiving such reference, then either party may, within twenty-eight (28) days after this period has expired, give a notice of dissatisfaction to the other party.

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. 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 Adjudicator 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 Adjudicator's decision, then the decision shall become final and binding upon both parties

24.5 Amicable Settlement

Where a notice of dissatisfaction has been given under Sub-Clause 24.4 above, both parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both parties agree otherwise, the party giving a notice of dissatisfaction in accordance with Sub-Clause 24.4 above should move to commence arbitration after the fifty-sixth (56) day from the day on which a notice of dissatisfaction was given, even if no attempt at an amicable settlement has been made.

24.6 Arbitration

Any dispute between the parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 24.5 above and in respect of which the Adjudicator'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 foreign contractors (or if the lead partner is a foreign contractor, in case of JV), international arbitration 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 domestic contractors, 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 Sub-Clause 3.1.

B. Time Control

25. Program

25.1 Within the time **stated in the PC**, after the date of the Letter of

Acceptance, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works. In the case of a lump sum contract, the activities in the Program shall be consistent with those in the Activity Schedule.

- 25.2 An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.
- 25.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period **stated in the PC**. In the case of a lump sum contract, the Contractor shall provide an updated Activity Schedule within fourteen (14) days of being instructed to by the Project Manager.
- 25.4 The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.

26. Extension of the Intended Completion Date

- 26.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.
- 26.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within twenty-one (21) days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

27. Acceleration

- 27.1 When the Employer wants the Contractor to finish before the Intended Completion Date, the Project Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Employer and the Contractor.
- 27.2 If the Contractor's priced proposals for an acceleration are accepted by the Employer, they are incorporated in the Contract

Price and treated as a Variation.

**28. Delays
Ordered by the
Project
Manager**

28.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works, which shall constitute a Compensation Event.

**29. Management
Meetings**

29.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.

29.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

30. Early Warning

30.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.

30.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

C. Quality Control

**31. Identifying
Defects**

31.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.

32. Tests

32.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall

be a Compensation Event.

33. Correction of Defects

33.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which extends over three-hundred sixty-five (365) days calculated from the Completion Date, **except if otherwise stated in the PC**. If a Defect is corrected under this Sub-Clause, the Defect Liability Period shall be extended to the extent that the Works cannot be used for the purposes for which they are intended. However, in no event shall the Defect Liability Period extend beyond twenty-four (24) months after the Completion Date.

33.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.

34. Uncorrected Defects

34.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.

D. Cost Control

35. Contract Price

35.1 In the case of an admeasurement contract, the Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities is used to calculate the amount to be paid. The Contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.

35.2 In the case of a lump sum contract, the Activity Schedule shall contain the priced activities for the Works to be performed by the Contractor. The Activity Schedule is used to monitor and control the performance of activities on which basis the Contractor will be paid. If payment for Materials on Site shall be made separately, the Contractor shall show delivery of Materials to the Site separately on the Activity Schedule.

36. Changes in the Contract Price

36.1 In the case of an admeasurement contract:

(a) If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than twenty-five (25) percent, provided the change exceeds one (1) percent of the Accepted Contract Amount, the Project Manager shall adjust the rate to allow for the change.

(b) The Project Manager shall not adjust rates from changes in

quantities if thereby the Accepted Contract Amount is exceeded by more than fifteen (15) percent, except with the prior approval of the Employer.

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

36.2 In the case of a lump sum contract, the Activity Schedule shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor's own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule.

37. Variations

37.1 All Variations shall be included in updated Programs, and, in the case of a lump sum contract, also in the Activity Schedule, produced by the Contractor.

37.2 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.

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

37.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.

37.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.

37.6 In the case of an admeasurement contract, if the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in Sub-Clause 36.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of

new rates for the relevant items of work.

38. Cash Flow Forecasts

38.1 When the Program, or, in the case of a lump sum contract, the Activity Schedule, is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract.

39. Payment Certificates

39.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.

39.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.

39.3 The value of work executed shall be determined by the Project Manager.

39.4 The value of work executed shall comprise:

(a) In the case of an admeasurement contract, the value of the quantities of work in the Bill of Quantities that have been completed; or

(b) In the case of a lump sum contract, the value of work executed shall comprise the value of completed activities in the Activity Schedule.

39.5 The value of work executed shall include the valuation of Variations and Compensation Events.

39.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

40. Payments

40.1 Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within twenty-eight (28) days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made. **Unless otherwise stated in the PC**, the applicable interest rate shall be at the annual rate of three (3) percentage points above the discount rate of the central bank in the country of the currency(ies) of payment, or if not available, the interbank offered rate, and shall be paid in such

currency.

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

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

41. Compensation Events

41.1 The following shall be Compensation Events:

- (a) The Employer does not give access to a part of the Site by the Site Possession Date pursuant to Sub-Clause 20.1.
- (b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
- (c) The Project Manager orders a delay or does not issue Drawings, the Specification, or instructions required for execution of the Works on time.
- (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
- (e) The Project Manager unreasonably does not approve a subcontract to be let.
- (f) Ground conditions are substantially more adverse than could reasonably have been assumed on the date twenty-eight (28) days prior to the latest date for submission of Bids from the information issued to Bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
- (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
- (h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- (i) The advance payment is delayed.
- (j) The effects on the Contractor of any of the Employer's

Risks.

- (k) The Project Manager unreasonably delays issuing a Taking-Over Certificate.

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

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

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

42. Tax

42.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date twenty-eight (28) days prior to the latest date for submission of Bids and the date of the last Taking-Over Certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of Clause 44.

43. Currencies

43.1 The Contract Price shall be paid in the currency or currencies in which the Bid Price was expressed in the Letter of Bid.

44. Price Adjustment

44.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the PC**. If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

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

where:

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

A_c and B_c are coefficients **specified in the PC**, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency “c;” and

I_{mc} is the index prevailing at the end of the month being invoiced and I_{oc} is the index prevailing twenty-eight (28) days prior to the latest date for submission of Bids for inputs payable; both in the specific currency “c.”

The cost indices or reference prices stated in the Schedule of Adjustment Data shall be used.

44.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

45. Retention

45.1 The Employer shall retain from each payment due to the Contractor the proportion **stated in the PC** until Completion of the whole of the Works.

45.2 Upon the issue of a Taking-Over Certificate for the Works by the Project Manager, in accordance with Sub-Clause 52.1, the first half of the total amount retained shall be repaid to the Contractor and the second half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected. The Contractor may substitute the second half of the retention money with an “on demand” Bank guarantee.

46. Liquidated Damages

46.1 The Contractor shall pay liquidated damages to the Employer at the rate per day **stated in the PC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the PC**. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor’s liabilities.

46.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any

overpayment of liquidated damages by the Contractor by adjusting the next payment certificate.

47. Bonus

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

48. Advance Payment

48.1 The Employer shall make advance payment to the Contractor of the amounts **stated in the PC** by the date **stated in the PC**, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest shall not be charged on the advance payment.

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

49. Securities

49.1 The Performance Security shall be provided to the Employer within twenty-eight (28) days after receiving the Letter of Acceptance, and issued in an amount **specified in the PC**, by a bank or surety acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid and enforceable until the Contractor has executed and completed the Works and remedied any Defects. .

49.2 The Performance Security shall be returned to the Contractor within twenty-eight (28) days from the end of the Defect Liability Period.

50. Dayworks

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

50.2 All work to be paid for as Dayworks shall be recorded by the

Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two (2) days of the work being done.

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

51. Cost of Repairs

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

E. Finishing the Contract

52. Completion

52.1 The Contractor shall request the Project Manager to issue a Taking-Over Certificate for the Works, and the Project Manager shall do so upon deciding that the whole of the Works is completed for the purposes of taking-over.

53. Taking Over

53.1 The Employer shall take over the Site and the Works within seven (7) days of the Project Manager's issuing a Taking-Over Certificate.

54. Final Account

54.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within fifty-six (56) days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within fifty-six (56) days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

55. Operating and Maintenance Manuals

55.1 If "as built" drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates **stated in the PC**.

56. Termination

56.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

56.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:

(a) the Contractor stops work for more than twenty-eight (28)

days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;

- (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within twenty-eight (28) days;
- (c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within eighty-four (84) days of the date of the Project Manager's certificate;
- (e) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
- (f) the Contractor does not maintain a Security, which is required;
- (g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as **defined in the PC**;
- (h) if the Contractor, in the judgment of the Employer, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract, pursuant to Sub-Clause 57.1; or
- (i) if the Contractor continuously fails to comply with the instructions provided by the Project Manager.

56.3 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under Sub-Clause 56.2 above, the Project Manager shall decide whether the breach is fundamental or not.

56.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.

56.5 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

57. Corrupt or Fraudulent Practices

57.1 If the Employer determines, based on reasonable evidence, that the Contractor has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Employer may, after giving fourteen (14)

days notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site, and the provisions of Clause 56 shall apply as if such expulsion had been made under Sub-Clause 56.2.

57.2 Should any employee of the Contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the Works, then that employee shall be removed in accordance with Clause 9.

58. Payment upon Termination

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

58.2 If the Contract is terminated for the Employer's convenience or because of a fundamental breach of the Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.

59. Property

59.1 After termination in accordance with Sub-Clause 58.1, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and these entities may then use any Equipment, Materials, Plant, Temporary Works supplied by the Contractor under the Contract and documents of a technical nature made by or on behalf of the Contractor.

The Employer shall then give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Employer, these items may be sold by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

60. Release from Performance

60.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has

been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

Section VIII. Particular Conditions (PC)

Notes on Particular Conditions

The PC complement the 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 Works. Whenever there is a conflict, the provisions herein shall prevail over those in the GC.

Note that the PC provisions take precedence over those in the GC.

Clause numbers in the PC correspond to those in the GC.

Except where otherwise indicated, all PC should be filled in by the Employer prior to issuance of the Bidding Documents. Schedules and reports to be provided by the Employer should be annexed.

Particular Conditions (PC)

A. General	
GC 1.1 (q)	The Employer is <i>[insert name, address, and name of authorized representative]</i> .
GC 1.1 (t)	The Intended Completion Date for the whole of the Works shall be <i>[insert date]</i> <i>[If different dates are specified for completion of the Works by section (“sectional completion” or milestones), these dates should be listed here.]</i>
GC 1.1 (y)	The Project Manager is <i>[insert name, address, and name of authorized representative]</i> .
GC 1.1 (aa)	The Site is located at <i>[insert address of Site]</i> and is defined in drawings No. <i>[insert numbers]</i>
GC 1.1 (dd)	The Start Date shall be <i>[insert date]</i> .
GC 2.2	Sectional Completions are: <i>[insert nature and dates, if appropriate]</i>
GC 2.3 (i)	The following documents also form part of the Contract: <i>[list documents]</i>
GC 3.1	The language of the Contract is <i>[insert one of the following: “Japanese”, “English”, “Spanish” or “French”]</i> . The law that applies to the Contract is the law of <i>[insert name of country]</i> .
GC 5.1	<i>[The following provision should be included only if the Project Manager may not delegate any of his duties and responsibilities. Otherwise, delete this PC 5.1.]</i> The Project manager may not delegate any of his duties and responsibilities.
GC 8.1	Schedule of Other Contractors: <i>[insert Schedule of Other Contractors, if appropriate]</i>
GC 13.1	The minimum insurance amounts and deductibles shall be: (a) for loss or damage to the Works, Plant and Materials: <i>[insert amounts]</i> . (b) for loss or damage to Equipment: <i>[insert amounts]</i> . (c) for loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract: <i>[insert amounts]</i> . (d) for personal injury or death: (i) of the Contractor’s employees: <i>[insert amounts]</i> . (ii) of other people: <i>[insert amounts]</i> .
GC 14.1	Site Data are: <i>[list Site Data]</i>

<p>GC 18.2</p>	<p>Appointment of an accident prevention officer [<i>“is” or “is not”</i>] necessary under the Contract.</p> <p><i>[If the Employer considers it necessary to appoint an accident prevention officer under the subject Contract, the following statement should be added to Sub-Clause 18.2:</i></p> <p><i>“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 execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.</i></p> <p><i>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.”]</i></p>
<p>GC 18.3</p>	<p>Appropriate measures for HIV-AIDS prevention at the project site [<i>“are” or “are not”</i>] necessary under the Contract.</p> <p><i>[The following clauses may be added to Sub-Clause 18.3 in order to help contain the spread of HIV/AIDS, considering circumstances particular to each individual project:</i></p> <p><i>“The Contractor shall conduct an HIV-AIDS awareness program via an approved service provider, and shall undertake such other measures as are specified in the 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.</i></p> <p><i>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 labor (including all the Contractor's employees, all subcontractors and Consultants' 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 program, (unless otherwise agreed) of all Site staff and labor.</i></p> <p><i>The Contractor shall include in the program to be submitted for the execution of the Works under Clause 25 an alleviation program for Site staff and labor and their families in respect of STI and STD including HIV/AIDS. The STI, STD and HIV/AIDS alleviation program shall indicate when, how and at what cost the Contractor plans to satisfy the requirements</i></p>

	<i>of this Sub-Clause and the related specification. For each component, the program shall detail the resources to be provided or utilized and any related subcontracting proposed. The program shall also include provision of a detailed cost estimate with supporting documentation. Payment to the Contractor for preparation and implementation of this program shall not exceed the Provisional Sum dedicated for this purpose.”]</i>
GC 20.1	The Site Possession Date(s) shall be: <i>[insert location(s) and date(s)]</i>
GC 23.1 & GC 23.2	Appointing Authority for the Adjudicator: <i>[insert name of Authority]</i> .
GC 24.3	Hourly rate and types of reimbursable expenses to be paid to the Adjudicator: <i>[insert hourly fees and reimbursable expenses]</i> .
B. Time Control	
GC 25.1	The Contractor shall submit for approval a Program for the Works within <i>[insert number]</i> days from the date of the Letter of Acceptance.
GC 25.3	The period between Program updates is <i>[insert number]</i> days.
C. Quality Control	
GC 33.1	<i>[The following provision should be included only if the Defect Liability Period extends over a period other than 365 days starting from the Completion Date. Otherwise, delete this PC 33.1.]</i> The Defects Liability Period is: <i>[insert number]</i> days.
D. Cost Control	
GC 40.1	<i>[The following provision should be included only if the interest rate is different from 3 percentage points above the discount rate of the central bank in the country of the currency(ies) of payment. Otherwise, delete this PC 40.1.]</i> The interest rate is: <i>[insert rate]</i>

<p>GC 44.1</p>	<p>The Contract <i>[insert “is” or “is not”]</i> subject to price adjustment in accordance with Clause 44, and the following information regarding coefficients <i>[specify “does” or “does not”]</i> apply.</p> <p>The coefficients for adjustment of prices are:</p> <p>(a) For currency <i>[insert name of currency]</i>:</p> <p>(i) <i>[insert percentage]</i> percent non adjustable element (coefficient A).</p> <p>(ii) <i>[insert percentage]</i> percent adjustable element (coefficient B).</p> <p>(b) For currency <i>[insert name of currency]</i>:</p> <p>(i) <i>[insert percentage]</i> percent non adjustable element (coefficient A).</p> <p>(ii) <i>[insert percentage]</i> percent adjustable element (coefficient B).</p> <p>The Index I for local currency shall be <i>[insert index]</i>.</p> <p>The Index I for the specified international currency shall be <i>[insert index]</i>.</p> <p><i>[These proxy indices shall be proposed by the Contractor, subject to acceptance by the Project Manager]</i></p> <p>The Index I for currencies other than the local currency and the specified international currency shall be <i>[insert index]</i>.</p> <p><i>[These proxy indices shall be proposed by the Contractor, subject to acceptance by the Project Manager.]</i></p>
<p>GC 45.1</p>	<p>The proportion of payments retained is: <i>[insert percentage]</i></p> <p><i>[The retention amount is usually close to 5% and in no case exceeds 10% of each payment.]</i></p>
<p>GC 46.1</p>	<p>The liquidated damages for the whole of the Works are <i>[insert percentage of the final Contract Price]</i> per day. The maximum amount of liquidated damages for the whole of the Works is <i>[insert percentage]</i> of the final Contract Price.</p> <p><i>[Usually liquidated damages are set about 0.10% per day, and the total amount shall not exceed 10% of the Contract Price. If Sectional Completion and Damages per Section have been agreed, the latter should be specified here.]</i></p>
<p>GC 47.1</p>	<p><i>[The following clauses may be added to Sub-Clause 47.1.]</i></p> <p><i>The Bonus for the whole of the Works is [insert percentage of final Contract Price] per day. The maximum amount of Bonus for the whole of the Works is [insert percentage] of the final Contract Price.</i></p> <p><i>[If early completion would provide benefits to the Employer, this Clause should remain; otherwise delete. The Bonus is usually numerically equal to the liquidated damages.]</i></p>

GC 48.1	The Advance Payments shall be: <i>[insert amount(s)]</i> and shall be paid to the Contractor no later than <i>[insert date(s)]</i> .
GC 49.1	The Performance Security will be in the form of a demand guarantee in the amount(s) of <i>[insert percentage. An amount of 5 to 10% of the Contract Price is commonly specified for Performance Bank Guarantee.]</i> percent of the Accepted Contract Amount.
E. Finishing the Contract	
GC 55.1	The date by which operating and maintenance manuals are required is <i>[insert date]</i> . The date by which “as built” drawings are required is <i>[insert date]</i> .
GC 56.2 (g)	The maximum number of days is: <i>[insert number; consistent with Sub-Clause 46.1 on liquidated damages]</i> .
GC 58.1	The percentage to apply to the value of the work not completed, representing the Employer’s additional cost for completing the Works, is <i>[insert percentage]</i> .

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 Contract award.

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Letter of Acceptance

[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 identification number, as given in the Bid Data Sheet]* for the Accepted Contract Amount of the equivalent of *[insert amount in numbers and words]* *[insert name of currency]*, as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose the of the Performance Security Form included in Section IX (Contract Forms) of the Bidding Documents.

Authorized Signature:

Name and Title of Signatory:

Name of Agency:

Attachment: Contract Agreement

Contract Agreement

THIS AGREEMENT made the *[insert date]* day of *[insert month]*, *[insert year]*, between *[insert name of the Employer]* (hereinafter “the Employer”), of the one part, and *[insert name of the Contractor]* (hereinafter “the Contractor”), of the other part:

WHEREAS the Employer desires that the Works known as *[name of the Contract]*.should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein,

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
 - (a) the Letter of Acceptance;
 - (b) the Letter of Bid;
 - (c) the Addenda Nos *[insert addenda numbers if any]*;
 - (d) the Particular Conditions;
 - (e) the General Conditions;
 - (f) the Specification;
 - (g) the Drawings;
 - (h) the completed Schedules; and
 - (i) Acknowledgement of Compliance with Guidelines for Procurement under Japanese ODA Loans

For the purpose of interpretation, the priority of the listed documents shall be in accordance with the above listed order.

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

Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of *[insert name of the borrowing country]* on the day, month and year indicated above.

Signed by: _____
for and on behalf of the Employer
in the presence of:

Signed by: _____
for and on behalf the Contractor
in the presence of:

Witness, Name, Signature, Address, Date

: _____
Witness, Name, Signature, Address, Date

Performance Security

(Demand Guarantee)

[Insert 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 Works]* (hereinafter called “the Contract”).

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

At the request of the 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]*),¹ such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary’s complying demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for its demand or the sum specified therein.

This guarantee shall expire, no later than the *[insert the day]* day of *[insert month]*, *[insert year]*², and any demand for payment under it must be received by us at this office indicated above on or before that date.

¹ The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency(cies) of the Contract or a freely convertible currency acceptable to the Beneficiary.

² Insert the date twenty-eight (28) days after the expected expiration date of the Defect Liability Period. The Employer should note that in the event of an extension of the time for completion of the Contract, the

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 458³, except that the supporting statement under Article 15(a) is hereby excluded.

[signature(s)]

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

Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months][one year]*, in response to the Beneficiary’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”

³ As the case may be, ICC Publication No. 758 (or subsequent ICC Publications) may be used. In such cases, modify the Publication number.

Advance Payment Security

(Demand Guarantee)

[Insert 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 of the Contract]* with the Beneficiary, for the execution of *[insert name of Contract and brief description of Works]* (hereinafter called “the Contract”).

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum *[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]*)⁴ upon receipt by us of the Beneficiary’s complying demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

- (a) has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or
- (b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary’s bank stating that the advance payment referred to

⁴ 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.

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 by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of documentation indicating full repayment by the Contractor of the amount of the advance payment, or on the *[insert day]* day of *[insert month]*, *[insert year]*,⁵ whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 458⁶, except that the supporting statement under Article 15(a) is hereby excluded.

[signature(s)]

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

⁵ Insert the expected expiration date of the time for completion of the Contract. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months]**[one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

⁶ As the case may be, ICC Publication No. 758 (or subsequent ICC Publications) may be used. In such cases, modify the Publication number.

Retention Money Security

(Demand Guarantee)

[Insert Guarantor letterhead or SWIFT identifier code]

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

Date: *[Insert date of issue]*

RETENTION MONEY GUARANTEE No.: *[Insert guarantee reference number]*

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

We have been informed that *[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called “the Applicant”) has entered into Contract No. *[insert reference number of the Contract]* dated *[insert date]* with the Beneficiary, for the execution of *[insert name of Contract and brief description of Works]* (hereinafter called “the Contract”).

Furthermore, we understand that, according to the conditions of the Contract, the Beneficiary retains moneys up to the limit set forth in the Contract (“the Retention Money”), and that when the Taking-Over Certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, payment of the second half is to be made against a Retention Money guarantee.

At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* (*[insert amount in words]*)⁷ 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 show grounds for its demand or the sum specified therein.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary’s bank stating that the second half of the Retention Money as referred to above has been credited to the Applicant on its account number *[insert account’s number]* at *[insert name and address of Applicant’s bank]*.

⁷ The Guarantor shall insert an amount representing the amount of the second half of the Retention Money denominated either in the currency(ies) of the second half of the Retention Money as specified in the Contract, or in a freely convertible currency acceptable to the Beneficiary.

This guarantee shall expire no later than the *[insert day]* day of *[insert month]*, *[insert year]* ⁸, and any demand for payment under it must be received by us at the office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 458 ⁹, except that the supporting statement under Article 15(a) is hereby excluded.

[signature(s)]

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

⁸ Insert the same expiry date as set forth in the Performance Security, representing the date twenty-eight days (28) after the expected expiration date of the Defect Liability Period. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months]**[one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

⁹ As the case may be, ICC Publication No. 758 (or subsequent ICC Publications) may be used. In such cases, modify the Publication number.