

WORKS

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

PROCUREMENT OF WORKS



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

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Revisions

April 2023

This revision incorporates a change reflecting the revision of *Guidelines for Procurement under Japanese ODA Loans, April 2012* dated April 2023 regarding one bid per bidder principle stipulated in ITB 4.2(c).

Editorial enhancements have also been made.

Preface

This Standard Bidding Document for Procurement of Works (SBD (Works)) has been prepared by the Japan International Cooperation Agency (JICA) for the use of the Projects financed, in whole or in part, by its Official Development Assistance (ODA) loans. This SBD (Works) is intended to be used for the civil works of admeasurement (unit price or rate) type designed by the Employer and to be procured through international competitive bidding (ICB).

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

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

Summary Description

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

SBD for Procurement of Works

Invitation for Bids (IFB)

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

PART 1 – BIDDING PROCEDURES

Option A – Two-Envelope Bidding (alternative Section I and II to be used for Two-Envelope bidding procedure)

Section I. Instructions to Bidders (ITB)

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

Section II. Bid Data Sheet (BDS)

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

Option B – One-Envelope Bidding (alternative Section I and II to be used for One-Envelope bidding procedure)

Section I. Instructions to Bidders (ITB)

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

Section II. Bid Data Sheet (BDS)

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

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

Section III. Evaluation and Qualification Criteria (EQC)

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

Section IV. Bidding Forms

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

Section V. Eligible Source Countries of Japanese ODA Loans

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

PART 2 – WORKS REQUIREMENTS

Section VI. Works Requirements

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

PART 3 – CONDITIONS OF CONTRACT AND CONTRACT FORMS

Section VII. General Conditions (GC)

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

Section VIII. Particular Conditions (PC)

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

Section IX. Contract Forms

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

Notes for Users (Employers)

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

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

Bidding Procedure

Documents Structure

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



II. The Bid Submitted by Bidder	
Two-Envelope Bidding	One-Envelope Bidding
<p><u>Technical Bid</u></p> <p>(a) Letter of Technical Bid, in accordance with ITB 12.1.</p> <p>(b) Bid Security, in accordance with ITB 19.</p> <p>(c) Power of Attorney, authorizing the signatory of the Bids to commit the Bidder, in accordance with ITB 20.2 and ITB 20.3.</p> <p>(d) Copy of the JV Agreement, or Letter of Intent to enter into a JV including a draft agreement in the case of a Bid submitted by a JV in accordance with ITB 4.1.</p> <p>(e) Documentary evidence in accordance with ITB 17 establishing the Bidder's eligibility and qualifications to perform the Contract if its Bid is accepted.</p> <p>(f) Technical Proposal in accordance with ITB 16.</p> <p>(g) Acknowledgement of Compliance with the Guidelines for Procurement under Japanese ODA Loans (Form ACK), which shall be signed and dated by the Bidder's authorized representative.</p> <p>(h) Any other document required in BDS 11.2(h).</p>	<p>(a) Letter of Bid, in accordance with ITB 12.1.</p> <p>(b) Completed Schedules in accordance with ITB 12.1 and ITB 14, including priced Bill of Quantities, and completed Schedule of Adjustment Data (if any required in accordance with ITB 14.5).</p> <p>(c) Bid Security, in accordance with ITB 19.</p> <p>(d) Power of Attorney, authorizing the signatory of the Bids to commit the Bidder, in accordance with ITB 20.2 and ITB 20.3.</p> <p>(e) Copy of the JV Agreement, or Letter of Intent to enter into a JV including a draft agreement in the case of a Bid submitted by a JV in accordance with ITB 4.1.</p> <p>(f) Documentary evidence in accordance with ITB 17 establishing the Bidder's eligibility and qualifications to perform the Contract if its Bid is accepted.</p> <p>(g) Technical Proposal in accordance with ITB 16.</p> <p>(h) Acknowledgement of Compliance with the Guidelines for Procurement under Japanese ODA Loans (Form ACK), which shall be signed and dated by the Bidder's authorized representative.</p>
<p><u>Price Bid</u></p> <p>(a) Letter of Price Bid, in accordance with ITB 12.1;</p> <p>(b) Completed Schedules in accordance with ITB 12.1 and ITB 14, including priced Bill of Quantities, and completed Schedule of Adjustment Data (if any required in accordance with ITB 14.5) but excluding any Schedule(s) required in ITB 11.2.</p> <p>(c) Any other document required in BDS 11.3(c).</p>	<p>(i) Any other document required in BDS 11.1(i).</p>



III. Contract Documents Issued by Employer & submitted by Bidder	
Two-Envelope Bidding	One-Envelope Bidding
<ul style="list-style-type: none"> (a) Contract Agreement. (b) Letter of Acceptance. (c) Letter of Technical Bid. (d) Letter of Price Bid. (e) Addenda, if any. (f) Particular Conditions – Part A. (g) Particular Conditions – Part B. (h) General Conditions. (i) Specification. (j) Drawings (k) Completed Schedules. (l) Acknowledgment of Compliance with Guidelines for Procurement under Japanese ODA Loans. (m) Any other document forming part of the Contract. 	<ul style="list-style-type: none"> (a) Contract Agreement. (b) Letter of Acceptance. (c) Letter of Bid. (d) Addenda, if any. (e) Particular Conditions – Part A. (f) Particular Conditions – Part B. (g) General Conditions. (h) Specification. (i) Drawings. (j) Completed Schedules. (k) Acknowledgment of Compliance with Guidelines for Procurement under Japanese ODA Loans. (l) Any other document forming part of the Contract.

Invitation for Bids: Following Prequalification

Notes for the Employer

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

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

When preparing the Invitation for Bids:

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

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

Form of Invitation for Bids

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

1. The *[insert name of Borrower]* has received¹ a loan from the Japan International Cooperation Agency (JICA) towards the cost of *[insert name of Project]* and intends to apply part of the proceeds towards payments under the contract² for *[insert name of Contract]*.
2. The *[insert name of Employer]* now invites sealed Bids from prequalified eligible Bidders for the construction and completion of *[insert name of the works]* (“the Works”).
3. Bidding will be conducted through procedures in accordance with the applicable Guidelines for Procurement under Japanese ODA Loans, and is open to all prequalified Bidders from eligible source countries, as defined in the Prequalification Document and in the Bidding Document.
4. Interested prequalified Bidders may obtain further information from and inspect the Bidding Document during office hours at:
[insert name of office]
[insert name of person in charge]
[insert mailing address]
[insert office hours]
[insert tel. no. with country and city codes]
[insert fax no. with country and city codes]
[insert email address]
5. The Bidding Document may be purchased by interested prequalified Bidders on the submission of a written application to the address above and upon payment of a non-refundable fee of *[insert amount in currency of Employer’s country or in a convertible currency]*³. The method of payment will be *[insert method of payment]*⁴. The document will be sent by *[insert delivery procedure]*.
6. Bids must be delivered to the address above⁵ on or before *[insert time]* on *[insert date]* and must be accompanied by a security of *[insert fixed amount]*.
7. Bids will be opened in the presence of Bidders’ representatives who choose to attend at the offices as specified in the Bidding Document.

[insert name of office]

[insert name of person in charge]

[insert mailing address]

[insert tel. no. with country and city codes]

[insert fax no. with country and city codes]

[insert email address]

Notes for the Employer

1. Substitute "has applied for" if appropriate.
2. Substitute "contracts" where Bids are called concurrently for multiple lots. Add a new para 4 as follows and renumber paras 4 - 7: "Bidders may submit bids for one lot or more lots, as further defined in the Bidding Document. Bidders wishing to offer discounts in case they are awarded more than one lot will be allowed to do so, provided those discounts are included in the Letter of Price Bid or Letter of Bid, as applicable."
3. The fee, to defray printing and mailing/shipping costs, should be nominal.
4. For example, cashier's check, direct deposit to a specified account number, etc.
5. Substitute "below" and insert the Employer's address for Bid submission (right below this paragraph), if it is different from its address for issuance of Bidding Document".

Invitation for Bids: Without Prequalification

Notes for the Employer

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

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

When preparing the Invitation for Bids:

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

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

Form of Invitation for Bids

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

1. The [insert name of Borrower] has received¹ a loan from the Japan International Cooperation Agency (JICA) towards the cost of [insert name of Project] and intends to apply part of the proceeds towards payments under the contract² for [insert name of Contract].
2. The [insert name of Employer] now invites sealed Bids from eligible Bidders for the construction and completion of [insert brief description of the works]³ (“the Works”).
3. Bidding will be conducted through procedures in accordance with the applicable Guidelines for Procurement under Japanese ODA Loans, and is open to all Bidders from eligible source countries, as defined in the Bidding Document.
4. Interested Bidders may obtain further information from and inspect the Bidding Document during office hours at:
[insert name of office]
[insert name of person in charge]
[insert mailing address]
[insert office hours]
[insert tel. no. with country and city codes]
[insert fax no. with country and city codes]
[insert email address]
5. The Bidding Document may be purchased by interested Bidders on the submission of a written application to the address above and upon payment of a non-refundable fee of [insert amount in currency of Employer’s country or in a convertible currency].⁴ The method of payment will be [insert method of payment]⁵. The document will be sent by [insert delivery procedure].
6. Bids must be delivered to the address above⁶ on or before [insert time] on [insert date] and must be accompanied by a security of [insert fixed sum].
7. Bids will be opened in the presence of Bidders’ representatives who choose to attend at the offices as specified in the Bidding Document.

[insert name of office]

[insert name of person in charge]

[insert mailing address]

[insert tel. no. with country and city codes]

[insert fax no. with country and city codes]

[insert email address]

Notes for the Employer

1. Substitute “has applied for” if appropriate.
2. Substitute “contracts” where Bids are called concurrently for multiple lots. Add a new para. 4 as follows and renumber paras 4 - 7: “Bidders may submit bids for one lot or more lots, as further defined in the Bidding Document. Bidders wishing to offer discounts in case they are awarded more than one lot will be allowed to do so, provided those discounts are included in the Letter of Price Bid or Letter of Bid, as applicable.”
3. A brief description of the works 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 Document may require Bidders to have specialized experience or capabilities; such requirements should also be included in this paragraph.
4. The fee, to defray printing and mailing/shipping costs, should be nominal.
5. For example, cashier’s check, direct deposit to a specified account number, etc.
6. Substitute “below” and insert the Employer’s address for Bid submission (right below this paragraph), if it is different from its address for issuance of Bidding Document.

BIDDING DOCUMENT

for

Procurement of

[insert name of the Works]

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

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PART 1 – BIDDING PROCEDURES

OPTION A: Two-Envelope Bidding

Section I. Instructions to Bidders

Notes for the Employer

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

The use of the Standard Instructions to Bidders set forth in Section I of the Standard Bidding Document for the Procurement of Works, (hereafter referred to as “Standard ITB”) is **required** in all bidding documents for the civil works of admeasurement (unit price or rate) type designed by the Employer and, to be procured through international competitive bidding (ICB) and financed by Japanese ODA Loans, and they shall be used without modification.

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

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

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

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

Section I. Instructions to Bidders

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A. General

1. Scope of Bid

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

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

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

- 1.2 Throughout this Bidding Document:

- (a) the 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;
- (c) “day” means calendar day;
- (d) “firm” means a private entity, a state-owned enterprise or institution; and
- (e) “Joint Venture” or “JV” means any combination of two or more firms in the form of a joint venture, consortium, association or other unincorporated grouping under an existing agreement or with the intention to enter into such an agreement supported by a formal letter of intent.

2. Source of Funds

- 2.1 The Borrower **specified in the BDS** has received or has applied for a Japanese ODA Loan from the Japan International Cooperation Agency (hereinafter referred to as “JICA”), with the number, in the amount and on the signed date of the Loan Agreement **specified in the BDS**, towards the cost of the Project. The Borrower intends to apply a portion of the proceeds of the Loan to payments under the contract(s) for which this Bidding Document is issued.
- 2.2 Disbursement of a Japanese ODA Loan by JICA will be subject, in all respects, to the terms and conditions of the Loan Agreement, including the disbursement procedures and the

applicable Guidelines for Procurement under Japanese ODA Loans **specified in the BDS**. No party other than the Borrower shall derive any rights from the Loan Agreement or have any claim to the loan proceeds.

2.3 The above Loan Agreement will cover only a part of the project cost. As for the remaining portion, the Borrower, the Project Executing Agency and the Employer will take appropriate measures for finance through other sources **specified in the BDS**.

3. Corrupt and Fraudulent Practices

3.1 It is JICA's policy to require that the Bidders and the Contractors, as well as the Borrowers, the Project Executing Agencies and the Employers, under contracts funded with Japanese ODA Loans and other Japanese ODA, to observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, JICA:

- (a) will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.
- (b) will recognize a Contractor as ineligible, for a period determined by JICA, to be awarded a contract funded with Japanese ODA Loans if it at any time determines that the Bidder or the Contractor has engaged in any corrupt or fraudulent practice in competing for, or in executing, another contract funded with Japanese ODA Loans or other Japanese ODA. The list of ineligible firms and individuals is available at the electronic address **specified in the BDS**.
- (c) will recognize a Contractor as ineligible to be awarded a contract funded with Japanese ODA Loans if the Contractor or subcontractor, who has a direct contract with the Contractor, is debarred under the cross debarment decisions by the Multilateral Development Banks. Such period of ineligibility shall not exceed three (3) years from (and including) the date on which the cross debarment is imposed.

“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 a 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 If the Employer determines, based on reasonable evidence, that any Bidder has engaged in any corrupt or fraudulent practice, the Employer may disqualify such Bidder after notifying the grounds of such disqualification.
- 3.3 Furthermore, the Bidders shall be aware of the provision stated in Sub-Clause 15.6 of the Conditions of Contract.

4. Eligible Bidders

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

- (a) all members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms.
- (b) The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution.
- (c) A Bid submitted by a JV shall include a copy of the JV Agreement entered into by all members. Alternatively, a formal letter of intent to enter into a JV in the event of a successful Bid shall be signed by all members and submitted with the Bid, together with a copy of the proposed Agreement. The JV Agreement or the proposed JV Agreement, as the case may be, shall indicate at least the part(s) of the Works to be executed by each member.

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

- (a) A firm shall be disqualified from providing goods or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of a project that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm. This provision does not apply to the various firms (consultants, contractors, or suppliers) only due to the reason that those firms together are performing the Contractor's obligations under a turnkey or design and build contract.
- (b) A firm that has a close business relationship with a professional personnel of the Borrower (or the Project Executing Agency, or the Employer), who are directly or indirectly involved in any part of: (i) the preparation of the Prequalification Document (if any prepared) and/or the Bidding Document for the Contract, (ii) the prequalification evaluation (if any conducted) and/or the Bid evaluation, or (iii) the supervision of such contract, shall be disqualified.
- (c) Based on the "One Bid Per Bidder" principle, which is to

ensure fair competition, a firm and any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm shall not be allowed to submit more than one Bid, either individually as a single firm or as a member of a JV. However, this does not limit a firm (including its affiliate) participating in one Bid individually or as a member of a JV and at the same time, the firm (including its affiliate) participating in other Bids as a subcontractor but NOT acting as a specialized subcontractor (refer to ITB16.2). A firm (including its affiliate) acting as a specialized subcontractor or as a subcontractor in any Bid may participate in other Bids as a specialized subcontractor or as a subcontractor. (Refer to “the Guidelines for Procurement under Japanese ODA Loans (Ver.1.1, April 2012)”, CL 1.07(3), Notes 3).

(d) A firm having any other form of conflict of interest other than (a) through (c) above shall also be disqualified.

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

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

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

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

5. Eligible Goods and Services

5.1 The goods and services comprising the Works to be supplied under the Contract and financed by JICA shall meet the requirements specified in Section V, Eligible Source Countries of Japanese ODA Loans.

B. Contents of Bidding Document

6. Sections of Bidding Document

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

PART 1 Bidding Procedures

- Section I. Instructions to Bidders (ITB)

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

PART 2 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 Document.

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

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

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

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

essential elements of the Bidding Document, the Employer shall amend the Bidding Document following the procedure under ITB 8 and ITB 22.2.

- 7.2 The Bidder is advised to visit and examine the Site 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 seven (7) days before the meeting.
- 7.6 Minutes of the pre-bid meeting, if applicable, including the text of the questions asked by the Bidders, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3. Any modification to the Bidding Document that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting. Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

8. Amendment of Bidding Document

- 8.1 At any time prior to the deadline for submission of Bids, the Employer may amend the Bidding Document by issuing addenda.

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

C. Preparation of Bids

- 9. Cost of Bidding** 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- 10. Language of Bid** 10.1 The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Employer, shall be written in the language **specified in the BDS**. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language of Bid, in which case, for purposes of interpretation of the Bid, such translation shall govern.
- 11. Documents Comprising the Bid** 11.1 The Bid shall comprise two envelopes submitted simultaneously, one called the Technical Bid containing the documents listed in ITB 11.2 and the other the Price Bid containing the documents listed in ITB 11.3, both envelopes enclosed together in an outer single envelope.
- 11.2 The Technical Bid shall comprise the following:
- (a) Letter of Technical Bid, in accordance with ITB 12.1;
 - (b) Bid Security, in accordance with ITB 19;
 - (c) Power of Attorney, authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2 and ITB 20.3;
 - (d) copy of the JV Agreement, or Letter of Intent to enter into a JV including a draft agreement in the case of a Bid submitted by a JV in accordance with ITB 4.1;
 - (e) documentary evidence in accordance with ITB 17

establishing the Bidder's eligibility and qualifications to perform the Contract if its Bid is accepted;

- (f) Technical Proposal in accordance with ITB 16;
- (g) Acknowledgement of Compliance with the Guidelines for Procurement under Japanese ODA Loans (Form ACK), which shall be signed and dated by the Bidder's authorized representative; and
- (h) any other document **required in the BDS**.

11.3 The Price Bid shall comprise the following:

- (a) Letter of Price Bid, in accordance with ITB 12;
- (b) Completed Schedules in accordance with ITB 12.1 and ITB 14, including priced Bill of Quantities, and completed Schedule of Adjustment Data (if any required in accordance with ITB 14.5) but excluding any Schedule(s) required in ITB 11.2.
- (c) any other document **required in the BDS**.

12. Letter of Bid and Schedules

12.1 The Bidder shall complete the Letters of Technical Bid and Price Bid and the Schedules, including the Bill of Quantities, and the Schedule of Adjustment Data (only if required in ITB 14.5), using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.

13. Alternatives to the Bid Requirements and Alternative Bids

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

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

Only the alternative Bids, if any, submitted by the Bidder

whose Base Bid is determined to be the lowest evaluated Bid under ITB 36.1 shall be considered by the Employer.

14. Bid Prices and Discounts

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

14.2 The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Bidder shall be deemed covered by the rates and/or prices for other items in the Bill of Quantities and will not be paid for separately by the Employer.

For the purpose of evaluation, any item against which no rate or price is entered by the Bidder shall be assumed to be not included in the Bid. However provided that the Bid is determined to be substantially responsive notwithstanding this omission, the average price of the item quoted by the substantially responsive Bidders will be added to the Bid Price and the total cost of the Bid so determined will be used for price comparison.

14.3 The price to be quoted in the Letter of Price Bid, in accordance with ITB 12.1, shall be the total price of the Bid, excluding any discounts offered. Absence of the total bid price in the Letter of Price Bid may result in the rejection of the Bid.

14.4 The Bidder shall quote any discounts and the methodology for their application in the Letter of Price Bid, in accordance with ITB 12.1.

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

14.6 **If so specified in BDS 1.1**, Bids are being invited for multiple lots. The Bidders wishing to offer any discounts (including price reduction) for the award of more than one lot shall specify in their Letter of Price Bid, discounts applicable to

such award. Discounts shall be submitted in accordance with ITB 14.4, provided the Bids for all lots are opened at the same time.

- 14.7 **Unless otherwise provided in the BDS**, all duties, taxes, and 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.
- 14.8 The exact amounts of the Provisional Sums shall be indicated in the completed Bill of Quantities in the following manner:
- (a) The exact amounts and currencies of the Specified Provisional Sums and contingency allowance, if any, shall be **as specified in the BDS**.
 - (b) The amount of the Provisional Sum, if any, for the Daywork shall be derived by the Bidder (by entering rates and/or prices in the Schedule of Daywork Rates in the Bill of Quantities) and indicated in the Summary of the completed Bill of Quantities.

The Bidder shall be aware of the provisions stated in Sub-Clauses 1.1.4.10, 13.5 and 13.6 of the Conditions of Contract.

15. Currencies of Bid and Payment

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

16. Technical Proposal and Subcontractors

- 16.1 The Bidder shall furnish as part of the Technical Bid, 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 substantial responsiveness of the Bidder's proposal to meet the Work Requirements and the completion time.
- 16.2 **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 Bidder may propose to subcontract any of the key activities for which experience of proposed subcontractors has been evaluated at the Prequalification stage, or otherwise indicated in Section III, Evaluation Qualification Criteria 2.4.2 (b) (specialized subcontractor). In such a case,

- (a) the Bidder may list one or more subcontractor(s) against any of the key activities aforementioned. Quoted rates and prices will be deemed to apply whichever subcontractor is appointed by the Contractor, and no adjustment of the rates and prices will be permitted;
- (b) the Bidder shall clearly identify the proposed subcontractor(s) in Forms ELI-3 and EXP-2(b) in Section IV, Bidding Forms and submit the Schedule of Subcontractors, as part of its Technical Proposal, listing out all subcontractors so proposed; and
- (c) substitution of the proposed subcontractor(s) shall not be allowed after the Bid submission deadline date prescribed by the Employer in accordance with ITB 22.1.

If the prequalification process was conducted prior to the bidding process, the Bidder shall name and list out in the Schedule of Subcontractors, the same subcontractor(s) whose experience in the key activities was evaluated in the prequalification, except only for such changes as are explicitly approved by the Employer in accordance with ITB 17.2.

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

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

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

- 17.2 Any change in the structure or formation of the Bidder after being prequalified and invited to bid (including, in the case of a JV, any change in the structure or formation of any member thereto) shall be subject to the written approval of the Employer prior to the deadline for submission of Bids. Such approval shall be denied if:
- (a) such change has not taken place by the free choice of the firms involved;
 - (b) as a consequence of the change, the Bidder no longer substantially meets the qualification criteria set forth in the Prequalification Document; or
 - (c) in the opinion of the Employer, the change may result in a substantial reduction in competition.

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

18. Period of Validity of Bids

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

In any case, Bid evaluation shall be based on the Bid Price

without taking into consideration the effect of the adjustment indicated in the above paragraph.

19. Bid Security

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

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

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

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

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

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

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

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

19.6 The Bid Security may be forfeited:

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

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

20. Format and Signing of Bid

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

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

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

20.2 The original of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall be in the form of a Power of Attorney included in the Technical Bid. All pages of the Bid where entries or amendments have been made shall be signed or initialed by the person signing the Bid.

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

- 20.4 Any interlineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.
- 20.5 The Bidders shall clearly mark "CONFIDENTIAL" any information which they regard as confidential to their business. Such information may include proprietary information, trade secrets, or commercial or financially sensitive information.

D. Submission and Opening of Bids

21. Sealing and Marking of Bids

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

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

- 21.2 The inner and outer envelopes shall be:
- (a) clearly marked with the name and address of the Bidder;
 - (b) addressed to the Employer in accordance with ITB 22.1; and

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

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

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

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

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

22. Deadline for Submission of Bids

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

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

23. Late Bids

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

24. Withdrawal, Substitution, and Modification of Bids

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

(a) prepared and submitted in accordance with ITB 20 and ITB 21 (except that withdrawals notices do not require copies), and in addition, the respective outer envelopes

shall be clearly marked “WITHDRAWAL”, “SUBSTITUTION” or “MODIFICATION”, and

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

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

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

25. Bid Opening

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

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

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

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

25.4 Next, outer envelopes marked “MODIFICATION” shall be opened. No Technical Bid and/or Price Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at the opening of Technical Bids. Only the Technical Bids, both Original as well as Modification, are to be opened and read out at the opening of Technical Bids. Price Bids, both Original as well as Modification, shall remain unopened in accordance with ITB 25.1.

25.5 Next, all other envelopes holding the Technical Bids shall be opened one at a time, reading out:

- (a) the name of the Bidder;
- (b) whether there is a withdrawal, substitution, or modification;
- (c) whether there is an alternative Bid without opening its envelope;
- (d) the presence or absence of a Bid Security; and
- (e) any other details as the Employer may consider appropriate.

Only Technical 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).

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

- (a) the name of the Bidder;
- (b) whether there is a withdrawal, substitution, or modification;
- (c) whether there is an alternative Bid; and
- (d) the presence or absence of a Bid Security.

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

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

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

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

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

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

E. Evaluation and Comparison of Bids

26. Confidentiality

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

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

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

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

27. Clarification of Bids

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

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

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

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

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

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

**29. Preliminary
Examination of
Technical Bids**

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

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

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

**30. Qualification of the
Bidders**

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

30.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 17. For the purposes of this determination, only the qualification of the legal entity(ies) comprising the Bidder shall be considered. In particular, the qualifications of affiliated entities (such as the parent company(ies), group companies, subsidiaries or other affiliates) shall not be considered unless they are parties to the Bidder under a JV in accordance with ITB 4.1 or as specialized subcontractors to be employed in accordance with ITB 16.2 for the key activities listed in Section III Evaluation and Qualification Criteria 2.4.2(b).

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

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

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

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

Furthermore, if the specialized subcontractor proposed in accordance with ITB 16.2 does not meet the corresponding criteria for the key activities specified in Section III Evaluation and Qualification Criteria 2.4.2(b), the Bidder who proposed such a specialized subcontractor shall be disqualified.

31. Determination of Responsiveness of Technical Bids

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

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

(a) if accepted, would

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

31.3 The Employer shall examine the Technical Bid submitted in accordance with ITB 16 and Section III, Evaluation and Qualification Criteria, in particular, to confirm that all requirements of Section VI, Works Requirements have been met without any material deviation, reservation or omission.

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

**32. Nonmaterial
Nonconformities**

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

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

32.3 Provided that a Technical Bid is substantially responsive, the Employer shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component. Adjustment to the rates and prices of the Bill of Quantities shall be made in accordance with ITB 14.2.

**33. Correction of
Arithmetical
Errors**

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

- (a) where there 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) where 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) where there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetical error, in which case the amount in figures shall prevail subject to (a) and (b) above.

33.2 The 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**. The Employer will convert the amounts in various currencies in which the Bid Price, corrected pursuant to ITB 33, is denominated to the single currency identified above at the selling rates established for similar transactions by the authority **specified in the BDS** and on the date **stipulated in the BDS**.

35. Evaluation of Price Bids

35.1 To evaluate a Price Bid, the Employer shall consider the following:

- (a) the Bid Price, excluding the Specified Provisional Sums and contingency allowance, if any in the Grand Summary of the Bill of Quantities, but including the Provisional Sum for Daywork when 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) the additional evaluation factors specified in Section III,

Evaluation and Qualification Criteria;

- (e) price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 32.3; and
- (f) converting the amount resulting from applying (a) to (e) above, if relevant, to a single currency in accordance with ITB 34.

35.2 If price adjustment is allowed in accordance with ITB 14.5, the estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in Bid evaluation.

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

36. Comparison of Bids

36.1 The Employer shall compare the evaluated prices of all substantially responsive Bids established in accordance with ITB 35.1 to determine the lowest evaluated Bid.

36.2 If the Bid, which results in the lowest Evaluated Bid Price, is seriously unbalanced or front loaded in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analyses for any or all items of the 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.

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

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

For the purposes of this ITB 36.3, an abnormally low Bid is

one where the Bid price, in combination with other elements of the Bid, appears so low that it raises material concerns as to the capability of the Bidder to perform the Contract for the offered Bid Price.

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

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

F. Award of Contract

38. Award Criteria

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

39. Notification of Award

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

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

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

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

40. Signing of Contract

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

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

41. Performance Security

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

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

42. Notification to Unsuccessful Bidders and Debriefing

42.1 As promptly as possible upon the successful Bidder signing the Contract and furnishing the Performance Security pursuant to ITB 41, the Employer shall notify all unsuccessful Bidders of the results of the bidding.

42.2 After receipt of the Employer's notification pursuant to ITB 42.1 above, the unsuccessful Bidders (including those rejected on the grounds of their Technical Bids not being substantially responsive) may request in writing to the Employer a debriefing seeking an explanation of the grounds on which their Bids were not selected. The Employer shall promptly respond in writing to any unsuccessful Bidder who requests a debriefing in accordance with this Clause.

Section II. Bid Data Sheet

Notes for the Employer

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

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

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

The following directions should be observed when filling the BDS:

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

Bid Data Sheet

A. General									
ITB 1.1	<p>The number of the Invitation for Bids is: <i>[insert Invitation for Bid number]</i></p> <p>The Employer is: <i>[insert name of Employer]</i> located in <i>[insert name of country of Employer/ Borrower]</i>.</p> <p>The Project is: <i>[insert name of Project]</i></p> <p>The name of the Contract is: <i>[insert name of Contract]</i></p> <p>The multiple lots of the Project for which the Bids are being invited are: <i>[if the Bids are being invited for multiple lots of the Project, insert “as indicated in the table below” and list out the relevant lot numbers and contract names in the table. Otherwise delete the table below entirety and insert “not applicable”.]</i></p> <table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Lot Number</th> <th style="text-align: center;">Contract Name</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><i>[insert lot number]</i></td> <td style="text-align: center;"><i>[insert contract name]</i></td> </tr> <tr> <td style="text-align: center;"><i>[insert lot number]</i></td> <td style="text-align: center;"><i>[insert contract name]</i></td> </tr> <tr> <td style="text-align: center;"><i>[insert lot number]</i></td> <td style="text-align: center;"><i>[insert contract name]</i></td> </tr> </tbody> </table>	Lot Number	Contract Name	<i>[insert lot number]</i>	<i>[insert contract name]</i>	<i>[insert lot number]</i>	<i>[insert contract name]</i>	<i>[insert lot number]</i>	<i>[insert contract name]</i>
Lot Number	Contract Name								
<i>[insert lot number]</i>	<i>[insert contract name]</i>								
<i>[insert lot number]</i>	<i>[insert contract name]</i>								
<i>[insert lot number]</i>	<i>[insert contract name]</i>								
ITB 2.1	<p>The Borrower is: <i>[insert name of Borrower]</i></p> <p>The number of the JICA Loan Agreement is: <i>[insert JICA Loan Agreement number]</i></p> <p>The amount of a Japanese ODA Loan is: <i>[insert amount in Japanese Yen]</i></p> <p>The signed date of the Loan Agreement is: <i>[insert signed date of the Loan Agreement]</i></p>								
ITB 2.2	<p>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>.</p>								
ITB 2.3	<p>The other sources of finance are: <i>[insert other sources of finance]</i></p>								
ITB 3.1(b)	<p>The list of ineligible firms and individuals is available at the JICA’s website: www.jica.go.jp/english/our_work/compliance</p>								
ITB 3.1(c)	<p>The list of debarred firms and individuals is available at the World Bank’s website: www.worldbank.org/debarr</p>								
ITB 4.5	<p>This bidding <i>[select “is” or “is not”, as appropriate.]</i> subject to prequalification.</p>								
B. Contents of Bidding Document									
ITB 7.1	<p>For clarification purposes only, the Employer’s address is: Attention: <i>[insert full name of person, if applicable]</i></p>								

	<p>Mailing Address: <i>[insert mailing address]</i></p> <p>Email: <i>[insert email address(es), if applicable]</i></p> <p>Responses to any request for clarification, if any, <i>[select “will” or “will not”, as appropriate]</i> be published on the Employer’s web page indicated below.</p> <p>Web Page: <i>[Insert the Employer’s web page if responses to requests for clarifications will be published on the Employer’s web page. Otherwise insert “N/A”.]</i></p>
ITB 7.4	<p>A Pre-bid meeting <i>[insert “will” or “will not”, as appropriate]</i> take place at the following date, time and place:</p> <p><i>[If a pre-bid meeting will take place, insert the date, time and place information in the spaces provided below. Otherwise insert “N/A” in the spaces provided below for the date, time and place.]</i></p> <p>Date : _____</p> <p>Time : _____</p> <p>Place : _____</p> <p>A site visit at the time of the pre-bid meeting conducted by the Employer <i>[insert “will be” or “will not be”, as appropriate]</i> organized.</p>
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 11.2 (h)	<p>The Bidder shall submit the following additional documents in its Technical Bid:</p> <p><i>[List any additional document not already listed in ITB 11.2 that must be submitted with the Technical Bid. If there is no additional document, state “none”.]</i></p>
ITB 11.3 (c)	<p>The Bidder shall submit the following additional documents in its Price Bid:</p> <p><i>[List any additional document not already listed in ITB 11.3 that must be submitted with the Price Bid. If there is no additional document, state “none”.]</i></p>
ITB 13.1	Alternative times for completion <i>[insert “will be” or “will not be”, as appropriate]</i> permitted.
ITB 13.2	Alternative Bids <i>[insert “will be” or “will not be”, as appropriate]</i> permitted.
ITB 14.5	The prices quoted by the Bidder shall: <i>[Insert “be adjustable” or “not be adjustable; consequently, the Bidder is not required to furnish the indices and weightings for the price adjustment formulae in the Schedule of</i>

	<p><i>Adjustment Data”, as appropriate.]</i> <i>[Price adjustment is recommended for contracts with longer duration than 18 months or when local or foreign inflation is expected to be high.]</i></p>															
<p>ITB 14.7</p>	<p><i>[This ITB 14.7 shall be consistent with Sub-Clauses 1.16 of the Conditions of Contract.]</i></p> <p>In accordance with Sub-Clause 14.1 of the General Conditions of Contract, Contractor’s Equipment, including essential spare parts therefor, imported by the Contractor for the sole purpose of executing the Contract shall be exempted from the payment of import duties and taxes upon importation.</p> <hr/> <p><i>[The Employer shall choose subparagraphs (a) and/or (b) of the following paragraph, as applicable and complete, indicating clearly which taxes, duties and levies are exempted and the relevant exemption categories (as described below), in accordance with the Exchange Notes between the Employer’s country and the Government of Japan, and under the law of the Employer’s country. If none is applicable, delete the following paragraph in its entirety.]</i></p> <p>In addition to the above:</p> <p>(a) duties, taxes and levies listed in the table below shall be exempted. Such exempted duties, taxes and levies are fallen into two categories, namely:</p> <p>(i) “No Pay” category: The Contractor shall be entitled to exemption from duties, taxes and levies falling into this category, without having to make any payment arising from or out of or in connection with such liabilities.</p> <p>(ii) “Pay & Reimburse” category: The Contractor shall be entitled to exemption from duties, taxes and levies, falling into this category, provided that the Contractor first makes all payments arising from or out of or in connection with such liabilities and then applies for their reimbursement from the relevant authority, following the procedure prescribed by such authority.</p> <table border="1" data-bbox="488 1478 1395 1776"> <thead> <tr> <th>No.</th> <th>Duty/ Tax/ Levy</th> <th>Exemption Category</th> </tr> </thead> <tbody> <tr> <td>1</td> <td><i>[insert duty/ tax/ levy]</i></td> <td><i>[indicate whether “No Pay” or “Pay & Reimburse”]</i></td> </tr> <tr> <td>2</td> <td><i>[insert duty/ tax/ levy]</i></td> <td><i>[indicate whether “No Pay” or “Pay & Reimburse”]</i></td> </tr> <tr> <td>3</td> <td><i>[insert duty/ tax/ levy]</i></td> <td><i>[indicate whether “No Pay” or “Pay & Reimburse”]</i></td> </tr> <tr> <td>etc.</td> <td></td> <td></td> </tr> </tbody> </table> <p>(b) duties, taxes and levies listed below shall be paid by the Employer on behalf of the Contractor: <i>[insert list of duties, taxes and levies].</i></p>	No.	Duty/ Tax/ Levy	Exemption Category	1	<i>[insert duty/ tax/ levy]</i>	<i>[indicate whether “No Pay” or “Pay & Reimburse”]</i>	2	<i>[insert duty/ tax/ levy]</i>	<i>[indicate whether “No Pay” or “Pay & Reimburse”]</i>	3	<i>[insert duty/ tax/ levy]</i>	<i>[indicate whether “No Pay” or “Pay & Reimburse”]</i>	etc.		
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3	<i>[insert duty/ tax/ levy]</i>	<i>[indicate whether “No Pay” or “Pay & Reimburse”]</i>														
etc.																

ITB 14.8

[There are the Specified Provisional Sums and contingency allowance.]

The Amounts and Currencies of the Specified Provisional Sums shall be as follows:

[The Employer shall fill in the table below, Item No, Description, and Local and Foreign currency portions of the Amount for each Provisional Sum as indicated in the Schedule of Specified Provisional Sums in the Bill of Quantities.]

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

[Contingency allowance shall be usually calculated by multiplication of the predetermined percentage (to be indicated by the Employer in the Bidding Document) and the base cost (Total of the Bills plus Provisional Sums, to be derived by the Bidder in its Price Bid). As an alternative to this percentage addition, a fixed amount can be predetermined by the Employer, based on the estimated contract value, and inserted as a figure (common to each Bidder) in the Bidding Document.]

The Employer, as per the guidance given above, may choose, either Option A (i.e.: to insert a determined percentage) or Option B (i.e.: to insert a fixed amount) below, as appropriate, and delete the other.

So as to make Item (E) (i.e.: Add contingency allowance) of the Grand Summary of the Bill of Quantities consistent with this ITB provision: if option A is chosen, indicate the relevant percentage in the item description, and if Option B is chosen, insert the relevant local and foreign currency portions of the Amount in the respective 'Amount' columns.]

Contingency allowance shall be as follows:

[Choose one of the following options, as applicable and delete the other.]

[Option A]

[insert the applicable percentage] of the Bid Price in the currency or currencies in which the Bid Price is expressed in the Bid submitted by the Bidder.]

[Option B]

[insert the applicable fixed amount in the applicable currency or currencies]

	<p><i>[If there are no amount allocated in Specified Provisional Sums or contingency allowance in the Bill of Quantities, delete all above and state “This BDS 14.8 is not applicable.”]</i></p>								
<p>ITB 15.1</p>	<p>The currency(ies) of the Bid shall be as described below:</p> <p>(a) the inputs to the Works that the Bidder expects to supply from within the Employer’s country shall be quoted in <i>[insert the name of the currency of the Employer’s country]</i>, referred to as “the local currency”, to <i>[insert number of decimal places]</i> decimal place(s); and</p> <p>(b) the inputs to the Works that the Bidder expects to supply from outside the Employer’s country (referred to as “the foreign currency”), shall be quoted in:</p> <p>(i) Japanese Yen (JPY), with no decimal places; and/or</p> <p>(ii) <i>[other international trading currency or currencies, if any]</i> to <i>[insert number of decimal places]</i> decimal place(s).</p>								
<p>ITB 16.2</p>	<p>At this time the Employer <i>[insert “intends” or “does not intend”, as appropriate]</i> to execute certain specific parts of the Works by subcontractors (i.e.: nominated Subcontractors) selected in advance.</p> <p><i>[If the Employer intends to employ nominated Subcontractors, include the following paragraph, listing the nominated Subcontractors in the table. Otherwise delete it in its entirety.]</i></p> <p>The specific parts of the Works and the nominated Subcontractors to be employed for each part are as indicated below:</p> <table border="1" data-bbox="431 1350 1409 1539"> <thead> <tr> <th data-bbox="431 1350 849 1388">Part of the Works</th> <th data-bbox="849 1350 1409 1388">Nominated Subcontractor</th> </tr> </thead> <tbody> <tr> <td data-bbox="431 1388 849 1440"><i>[insert specific part]</i></td> <td data-bbox="849 1388 1409 1440"><i>[insert name of nominated Subcontractor]</i></td> </tr> <tr> <td data-bbox="431 1440 849 1493"><i>[insert specific part]</i></td> <td data-bbox="849 1440 1409 1493"><i>[insert name of nominated Subcontractor]</i></td> </tr> <tr> <td data-bbox="431 1493 849 1539"><i>[insert specific part]</i></td> <td data-bbox="849 1493 1409 1539"><i>[insert name of nominated Subcontractor]</i></td> </tr> </tbody> </table>	Part of the Works	Nominated Subcontractor	<i>[insert specific part]</i>	<i>[insert name of nominated Subcontractor]</i>	<i>[insert specific part]</i>	<i>[insert name of nominated Subcontractor]</i>	<i>[insert specific part]</i>	<i>[insert name of nominated Subcontractor]</i>
Part of the Works	Nominated Subcontractor								
<i>[insert specific part]</i>	<i>[insert name of nominated Subcontractor]</i>								
<i>[insert specific part]</i>	<i>[insert name of nominated Subcontractor]</i>								
<i>[insert specific part]</i>	<i>[insert name of nominated Subcontractor]</i>								
<p>ITB 18.1</p>	<p>The Bid validity period shall be <i>[insert a number of days required for evaluation, approval and award plus contingency]</i> days.</p> <p><i>[This period should be realistic, allowing sufficient time to evaluate the Bids, bearing in mind the complexity of the Works and the time required 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></p>								
<p>ITB 18.3 (a)</p>	<p><i>[Insert the following only in case of fixed price contract. Delete it in its</i></p>								

	<p><i>entirety in case of adjustable price contract, and state “This BDS 18.3(a) is not applicable.”.]</i></p> <p>The local and foreign currency portions of the Contract price shall be adjusted by using the following formula:</p> $BP_A = BP_o \left(1 + \frac{DP \times AF}{365} \right)$ <p>Where:</p> <p>“BP_A” is the local (or foreign) portion of Bid Price as adjusted for the delay in award of the Contract.</p> <p>“BP_O” is the local (or foreign) portion of Bid Price as stated in the Letter of Bid.</p> <p>“DP” is the period of delay, calculated as a number of days between the award date and the date, fifty-six (56) days after the expiry date of the initial bid validity period</p> <p>“AF” is:</p> <p>(a) in the case of the local currency, the average annual consumer inflation of the Employer’s country, calculated from the data officially released by the relevant authority of the Employer’s country, responsible for release of such data, considering the period of past three (3) years from the date, one (1) month prior to the award date.</p> <p>(b) in the case of the foreign currency, the average annual consumer inflation of the country of the foreign currency, calculated from the data officially released by the relevant authority of that country, responsible for release of such data, considering the period of past three (3) years from the date, one (1) month prior to the award date.</p>
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 between 1.5% to 2.5% of the estimated contract value.</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>]
D. Submission and Opening of Bids	
ITB 22.1	For <u>Bid submission purposes</u> only, the Employer’s address is: Attention: [<i>insert full name of person, if applicable</i>] Mailing Address: [<i>insert mailing address</i>]

	<p>The deadline for Bid submission is: Date: <i>[insert day, month, and year, e.g., 15 June 2018]</i> Time: <i>[insert time, and identify if a.m. or p.m., e.g., 10:30 a.m.]</i></p>
ITB 25.1	<p>The Technical Bid opening shall take place at: Mailing Address: <i>[insert mailing address]</i> Date: <i>[insert day, month, and year, e.g., 15 June 2018]</i> Time: <i>[insert time, and identify if a.m. or p.m., e.g., 10:30 a.m.]</i> <i>[The date should be the same as that given for the deadline for submission of Bids (ITB 22).]</i></p>
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 name of the source of exchange rates (e.g., the Central Bank in the Employer's country).]</i></p> <p>The date for the exchange rate shall be: <i>[insert day, month and year, e.g. 15 June 2018, the date not earlier than thirty (30) days prior to, nor later than, the date of Bid opening specified in ITB 25.1.]</i></p>

OPTION B: One-Envelope Bidding

Section I. Instructions to Bidders

Notes for the Employer

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

The use of the Standard Instructions to Bidders set forth in Section I of the Standard Bidding Document for the Procurement of Works, (hereafter referred to as “Standard ITB”) is **required** in all bidding documents for the civil works of admeasurement (unit price or rate) type designed by the Employer and, to be procured through international competitive bidding (ICB) and financed by Japanese ODA Loans, and they shall be used without modification.

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

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

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

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

Section I. Instructions to Bidders

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A. General

1. Scope of Bid

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

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

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

- 1.2 Throughout this Bidding Document:

- (a) the 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;
- (c) “day” means calendar day;
- (d) “firm” means a private entity, a state-owned enterprise or institution; and
- (e) “Joint Venture” or “JV” means any combination of two or more firms in the form of a joint venture, consortium, association or other unincorporated grouping under an existing agreement or with the intention to enter into such an agreement supported by a formal letter of intent.

2. Source of Funds

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

- 2.2 Disbursement of a Japanese ODA Loan by JICA will be subject, in all respects, to the terms and conditions of the Loan Agreement, including the disbursement procedures and the

applicable Guidelines for Procurement under Japanese ODA Loans **specified in the BDS**. No party other than the Borrower shall derive any rights from the Loan Agreement or have any claim to the loan proceeds.

2.3 The above Loan Agreement will cover only a part of the project cost. As for the remaining portion, the Borrower, the Project Executing Agency and the Employer will take appropriate measures for finance through other sources **specified in the BDS**.

3. Corrupt and Fraudulent Practices

3.1 It is JICA's policy to require that the Bidders and the Contractors, as well as the Borrowers, the Project Executing Agencies and the Employers, under contracts funded with Japanese ODA Loans and other Japanese ODA, to observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, JICA:

- (a) will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.
- (b) will recognize a Contractor as ineligible, for a period determined by JICA, to be awarded a contract funded with Japanese ODA Loans if it at any time determines that the Bidder or the Contractor has engaged in any corrupt or fraudulent practice in competing for, or in executing, another contract funded with Japanese ODA Loans or other Japanese ODA. The list of ineligible firms and individuals is available at the electronic address **specified in the BDS**.
- (c) will recognize a Contractor as ineligible to be awarded a contract funded with Japanese ODA Loans if the Contractor or subcontractor, who has a direct contract with the Contractor, is debarred under the cross debarment decisions by the Multilateral Development Banks. Such period of ineligibility shall not exceed three (3) years from (and including) the date on which the cross debarment is imposed.

“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 a 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 If the Employer determines, based on reasonable evidence, that any Bidder has engaged in any corrupt or fraudulent practice, the Employer may disqualify such Bidder after notifying the grounds of such disqualification.
- 3.3 Furthermore, the Bidders shall be aware of the provision stated in Sub-Clause 15.6 of the Conditions of Contract.

4. Eligible Bidders

- 4.1 The Bidder may be a single firm or a JV. In the case of a JV:
 - (a) all members shall be jointly and severally liable for the

execution of the Contract in accordance with the Contract terms.

- (b) The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution.
- (c) A Bid submitted by a JV shall include a copy of the JV Agreement entered into by all members. Alternatively, a formal letter of intent to enter into a JV in the event of a successful Bid shall be signed by all members and submitted with the Bid, together with a copy of the proposed Agreement. The JV Agreement or the proposed JV Agreement, as the case may be, shall indicate at least the part(s) of the Works to be executed by each member.

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

- (a) A firm shall be disqualified from providing goods or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of a project that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm. This provision does not apply to the various firms (consultants, contractors, or suppliers) only due to the reason that those firms together are performing the Contractor's obligations under a turnkey or design and build contract.
- (b) A firm that has a close business relationship with a professional personnel of the Borrower (or the Project Executing Agency, or the Employer), who are directly or indirectly involved in any part of: (i) the preparation of the Prequalification Document (if any prepared) and/or the Bidding Document for the Contract, (ii) the prequalification evaluation (if any conducted) and/or the Bid evaluation, or (iii) the supervision of such contract, shall be disqualified.
- (c) Based on the "One Bid Per Bidder" principle, which is to ensure fair competition, a firm and any affiliate that

directly or indirectly controls, is controlled by, or is under common control with that firm shall not be allowed to submit more than one Bid, either individually as a single firm, or as a member of a JV. However, this does not limit a firm (including its affiliate) participating in one Bid individually or as a member of a JV and at the same time, the firm (including its affiliate) participating in other Bids as a subcontractor but NOT acting as a specialized subcontractor (refer to ITB16.2). A firm (including its affiliate) acting as a specialized subcontractor or as a subcontractor in any Bid may participate in other Bids as a specialized subcontractor or as a subcontractor. (Refer to “the Guidelines for Procurement under Japanese ODA Loans (Ver.1.1, April 2012)”, CL 1.07(3), Notes 3).

(d) A firm having any other form of conflict of interest other than (a) through (c) above shall also be disqualified.

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

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

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

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

5. Eligible Goods and Services

5.1 The goods and services comprising the Works to be supplied under the Contract and financed by JICA shall meet the requirements specified in Section V, Eligible Source Countries of Japanese ODA Loans.

B. Contents of Bidding Document

6. Sections of Bidding Document

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

PART 1 Bidding Procedures

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

PART 2 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 Document.

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

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

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

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

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

- 7.2 The Bidder is advised to visit and examine the Site 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 seven (7) days before the meeting.
- 7.6 Minutes of the pre-bid meeting, if applicable, including the text of the questions asked by the Bidders, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3. Any modification to the Bidding Document that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting. Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

8. Amendment of Bidding Document

- 8.1 At any time prior to the deadline for submission of Bids, the Employer may amend the Bidding Document by issuing addenda.

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

C. Preparation of Bids

- 9. Cost of Bidding** 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- 10. Language of Bid** 10.1 The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Employer, shall be written in the language **specified in the BDS**. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language of Bid, in which case, for purposes of interpretation of the Bid, such translation shall govern.
- 11. Documents Comprising the Bid** 11.1 The Bid shall comprise the following:
- (a) Letter of Bid, in accordance with ITB 12.1;
 - (b) completed Schedules, in accordance with ITB 12.1 and 14, including priced Bill of Quantities and completed Schedule of Adjustment Data (if any required in accordance with ITB 14.5);
 - (c) Bid Security, in accordance with ITB 19;
 - (d) Power of Attorney, authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2 and ITB 20.3;
 - (e) copy of the JV Agreement, or Letter of Intent to enter into a JV including a draft agreement in the case of a Bid submitted by a JV in accordance with ITB 4.1;
 - (f) documentary evidence in accordance with ITB 17 establishing the Bidder's eligibility and qualifications to

perform the Contract if its Bid is accepted;

- (g) Technical Proposal in accordance with ITB 16;
- (h) Acknowledgement of Compliance with the Guidelines for Procurement under Japanese ODA Loans (Form ACK), which shall be signed and dated by the Bidder's authorized representative; and
- (i) any other document **required in the BDS**.

12. Letter of Bid and Schedules

- 12.1 The Bidder shall complete the Letter of Bid and the Schedules, including the Bill of Quantities and the Schedule of Adjustment Data (only if required in ITB 14.5), using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.

13. Alternatives to the Bid Requirements and Alternative Bids.

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

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

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

14. Bid Prices and Discounts

- 14.1 The prices and discounts (including any price reduction) quoted by the Bidder in the Letter of Bid and in the Bill of Quantities shall conform to the requirements specified below.
- 14.2 The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Bidder shall be deemed covered by the rates and/or prices for other items in the Bill of Quantities and will not be paid for separately by the

Employer.

For the purpose of evaluation, any item against which no rate or price is entered by the Bidder shall be assumed to be not included in the Bid. However provided that the Bid is determined to be substantially responsive notwithstanding this omission, the average price of the item quoted by the substantially responsive Bidders will be added to the Bid Price and the total cost of the Bid so determined will be used for price comparison.

- 14.3 The price to be quoted in the Letter of Bid, in accordance with ITB 12.1, shall be the total price of the Bid, excluding any discounts offered. Absence of the total bid price in the Letter of Bid may result in the rejection of the Bid.
- 14.4 The Bidder shall quote any discounts and the methodology for their application in the Letter of Bid, in accordance with ITB 12.1.
- 14.5 **Unless otherwise specified in the BDS** and the Conditions of Contract, the rates and prices quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract. In such a case, the Bidder shall furnish the indices and/or weightings for the price adjustment formulae in the Schedule of Adjustment Data and the Employer may require the Bidder to justify its proposed indices and weightings.
- 14.6 **If so specified in BDS 1.1**, Bids are being invited for multiple lots. The Bidders wishing to offer any discounts (including price reduction) for the award of more than one lot shall specify in their Letter of Bid, discounts applicable to such award. Discounts shall be submitted in accordance with ITB 14.4, provided the Bids for all lots are opened at the same time.
- 14.7 **Unless otherwise provided in the BDS**, all duties, taxes, and 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.
- 14.8 The exact amounts of the Provisional Sums shall be indicated in the completed Bill of Quantities in the following manner:
 - (a) The exact amounts and currencies of the Specified

Provisional Sums and contingency allowance, if any, shall be **as specified in the BDS**.

- (b) The amount of the Provisional Sum, if any, for the Daywork shall be derived by the Bidder (by entering rates and/or prices in the Schedule of Daywork Rates in the Bill of Quantities) and indicated in the Summary of the completed Bill of Quantities.

The Bidder shall be aware of the provisions stated in Sub-Clauses 1.1.4.10, 13.5 and 13.6 of the Conditions of Contract.

15. Currencies of Bid and Payment

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

16. Technical Proposal and Subcontractors

- 16.1 The Bidder shall furnish as part of the Bid, 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 substantial responsiveness of the Bidder's proposal to meet the Work Requirements and the completion time.
- 16.2 **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 Bidder may propose to subcontract any of the key activities for which experience of proposed subcontractors has been evaluated at the Prequalification stage, or otherwise indicated in Section III, Evaluation Qualification Criteria 2.4.2 (b) (specialized subcontractor). In such a case,

- (a) the Bidder may list one or more subcontractor(s) against any of the key activities aforementioned. Quoted rates and prices will be deemed to apply whichever subcontractor is appointed by the Contractor, and no adjustment of the rates and prices will be permitted;
- (b) the Bidder shall clearly identify the proposed

subcontractor(s) in Forms ELI-3 and EXP-2(b) in Section IV, Bidding Forms and submit the Schedule of Subcontractors, as part of its Technical Proposal, listing out all subcontractors so proposed; and

- (c) substitution of the proposed subcontractor(s) shall not be allowed after the Bid submission deadline date prescribed by the Employer in accordance with ITB 22.1.

If the prequalification process was conducted prior to the bidding process, Bidder shall name and list out in the Schedule of Subcontractors, the same subcontractor(s) whose experience in the key activities was evaluated in the prequalification, except only for such changes as are explicitly approved by the Employer in accordance with ITB 17.2.

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

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

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

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

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

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

a substantial reduction in competition.

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

18. Period of Validity of Bids

18.1 Bids shall remain valid for the period **specified in the BDS** after the Bid submission deadline date prescribed by the Employer in accordance with ITB 22.1. A Bid valid for a shorter period shall be rejected by the Employer as non-responsive.

18.2 In exceptional circumstances, prior to the expiration of the Bid validity period, the Employer may request the Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. The Bid Security shall also be extended for twenty-eight (28) days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its Bid, except as provided in ITB 18.3.

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

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

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

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

19. Bid Security

19.1 The Bidder shall furnish as part of its 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 a non-bank financial institution (such as an insurance, bonding or surety company);

(b) an irrevocable standby letter of credit;

- (c) a cashier's or certified check; or
- (d) another security **specified in the BDS**,

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

- 19.3 Any Bid not accompanied by a substantially responsive Bid Security shall be rejected by the Employer as non-responsive.
- 19.4 The Bid Security of the unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's signing the Contract and furnishing the Performance Security pursuant to ITB 41.
- 19.5 The Bid Security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required Performance Security.
- 19.6 The Bid Security may be forfeited:
 - (a) if a Bidder withdraws its Bid during the period of Bid validity specified by the Bidder on the 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 40; or
 - (ii) furnish a Performance Security in accordance with ITB 41.
- 19.7 The Bid Security of a JV shall be in the name of the JV that submits the Bid. If the JV has not been legally constituted into a legally enforceable JV at the time of bidding, the Bid Security shall be in the names of all future members as named in the letter of intent referred to in ITB 4.1.

20. Format and Signing of Bid

- 20.1 The Bidder shall prepare one original of the Bid comprising the documents as described in ITB 11 and clearly mark it

“ORIGINAL.” Alternative Bids, if permitted in accordance with ITB 13.2, shall be clearly marked “ALTERNATIVE BID - ORIGINAL.”

In addition, the Bidder shall submit copies of the Bid, in the number **specified in the BDS** and clearly mark them “COPY.” Copies of Alternative Bids if any, shall be clearly marked “ALTERNATIVE BID - COPY.”

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

- 20.2 The original of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall be in the form of a Power of Attorney included in the Bid. All pages of the Bid where entries or amendments have been made shall be signed or initialed by the person signing the Bid.
- 20.3 A bid submitted by a JV shall be signed by an authorized representative of the JV accompanied by a Power of Attorney from each member of the JV giving that authorized representative the power to sign on their behalf and legally bind them all. Such power shall also be given by a person duly authorized to do so on behalf of each member evidenced by a Power of Attorney.
- 20.4 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.
- 20.5 The Bidders shall clearly mark “CONFIDENTIAL” any information which they regard as confidential to their business. Such information may include proprietary information, trade secrets, or commercial or financially sensitive information.

D. Submission and Opening of Bids

21. Sealing and Marking of Bids

- 21.1 The Bidder shall enclose:
- (a) in a sealed envelope, duly marked as “ORIGINAL”, all documents comprising the Bid, as described in ITB 11;
 - (b) in sealed envelopes, duly marked as “COPY”, all required copies of the Bid, sequentially numbered; and
 - (c) if alternative Bids are permitted in accordance with ITB 13.2, and if relevant:
 - (i) in an envelope marked “ALTERNATIVE BID -

ORIGINAL”, the alternative Bid; and

- (ii) in the envelope marked “ALTERNATIVE BID - COPY”, all required copies of the alternative Bid, sequentially numbered.

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

21.2 The inner and outer envelopes shall be:

- (a) clearly marked with the name and address of the Bidder;
- (b) addressed to the Employer in accordance with ITB 22.1; and
- (c) clearly marked with the specific identification of this bidding process **specified in BDS 1.1.**

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

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

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

22. Deadline for Submission of Bids

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

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

23. Late Bids

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

24. Withdrawal,

24.1 A Bidder may withdraw, substitute, or modify its Bid after it has

**Substitution, and
Modification of
Bids**

been submitted and prior to the deadline for submission of Bids, by sending a written notice, duly signed by an authorized representative, and shall include a copy of the Power of Attorney in accordance with ITB 20.2 and ITB 20.3. The corresponding substitution or modification of the Bid must accompany the respective written notice. All notices must be:

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

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

24.3 No Bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of Bids and the expiration of the period of Bid validity specified by the Bidder on the 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 25.5 all Bids received by the deadline, at the date, time and place **specified in the BDS**, in the presence of the Bidders’ designated representatives and anyone who choose to attend.

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.

25.3 Next, envelopes marked “SUBSTITUTION” shall be opened and read out and exchanged with the corresponding Bid being substituted, which are to be returned to the Bidder unopened. 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.

25.4 Next, 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.

25.5 Next, all other envelopes shall be opened one at a time, reading out:

- (a) the name of the Bidder;
- (b) whether there is a withdrawal, substitution, or modification;
- (c) the total Bid Price including any discounts and in the case of bidding for multiple lots, the total price for each lot together with the sum of the total prices for all lots including any discounts;
- (d) whether there is an alternative Bid without opening its envelope;
- (e) the presence or absence of a Bid Security; and
- (f) any other details as the Employer may consider appropriate.

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

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

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

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

E. Evaluation and Comparison of Bids

- 26. Confidentiality**
- 26.1 Information relating to the evaluation of Bids and recommendation of Contract award shall not be disclosed to the Bidders or any other persons not officially concerned with the bidding process until information on Contract award is communicated to all Bidders in accordance with ITB 39.
- The use by any Bidder of confidential information related to this bidding process may result in the rejection of its Bid.
- 26.2 Any attempt by a Bidder to influence the Employer in the evaluation of the Bids or Contract award decisions may result in the rejection of its Bid.
- 26.3 Notwithstanding ITB 26.2, from the time of Bid opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the bidding process, it shall do so in writing.
- 27. Clarification of Bids**
- 27.1 To assist in the examination, evaluation, and comparison of the Bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its Bid, giving a reasonable time for a response. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer's request for clarification and the response shall be in writing. No change, in the substance or prices of the Bid including any voluntary increase or decrease in the prices, shall be sought, offered, or permitted, except to confirm the correction of arithmetical errors discovered by the Employer in the evaluation of the Bids, in accordance with ITB 33.
- 27.2 If a Bidder does not provide clarifications of its Bid by the date and time set in the Employer's request for clarification, its Bid may be rejected.
- 28. Deviations, Reservations, and Omissions**
- 28.1 During the evaluation of Bids, the following definitions apply:
- (a) "Deviation" is a departure from the requirements specified in the Bidding Document;
 - (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and
 - (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding

Document.

29. Preliminary Examination of 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) Power of Attorney to commit the Bidder;

(c) Bid Security;

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

(e) Priced Bill of Quantities.

30. Qualification of the Bidders

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

30.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant ITB 17. For the purposes of this determination, only the qualification of the legal entity(ies) comprising the Bidder shall be considered. In particular, the qualifications of affiliated entities (such as the parent company(ies), group companies, subsidiaries or other affiliates) shall not be considered unless they are parties to the Bidder under a JV in accordance with ITB 4.1 or as specialized subcontractors to be employed in accordance with ITB 16.2 for the key activities listed in Section III Evaluation and Qualification Criteria 2.4.2(b).

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

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

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

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

Furthermore, if the specialized subcontractor proposed in accordance with ITB 16.2 does not meet the corresponding criteria for the key activities specified in Section III Evaluation and Qualification Criteria 2.4.2(b), the Bidder who proposed such a specialized subcontractor shall be disqualified.

31. Determination of Responsiveness of Bids

- 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 11.1.

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

(a) if accepted, would

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

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

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

- 31.3 The Employer shall examine the technical aspects of the Bid submitted in accordance with ITB 16 and Section III, Evaluation and Qualification Criteria, in particular, to confirm that all requirements of Section VI, Works Requirements have been met without any material deviation, reservation or omission.

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

**32. Nonmaterial
Nonconformities**

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

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. Adjustment to the rates and prices of the Bill of Quantities shall be made in accordance with ITB 14.2.

**33. Correction of
Arithmetical
Errors**

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

(a) where there 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) where 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) where there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetical error, in which case the amount in figures shall prevail subject to (a) and (b) above.

33.2 The 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**. The Employer will convert the amounts in various currencies in which the Bid Price, corrected pursuant to ITB 33, is denominated to the single currency identified above at the selling rates established for similar transactions by the authority **specified in the BDS** and on the date **stipulated in the BDS**.

35. Evaluation of Bids

35.1 To evaluate a Bid, the Employer shall consider the following:

- (a) the Bid Price, excluding the Specified Provisional Sums and contingency allowance, if any in the Grand Summary of the Bill of Quantities, but including the Provisional Sum for Daywork when 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) the additional evaluation factors specified in Section III, Evaluation and Qualification Criteria;
- (e) price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 32.3; and
- (f) converting the amount resulting from applying (a) to (e) above, if relevant, to a single currency in accordance with ITB 34.

35.2 If price adjustment is allowed in accordance with ITB 14.5, the estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in Bid evaluation.

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

36. Comparison of Bids

36.1 The Employer shall compare the evaluated prices of all substantially responsive Bids established in accordance with ITB 35.1 to determine the lowest evaluated Bid.

- 36.2 If the Bid, which results in the lowest Evaluated Bid Price, is seriously unbalanced or front loaded in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analyses for any or all items of the 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.
- 36.3 In the event of identification of a potentially abnormally low Bid, the Employer shall seek written clarifications from the Bidder, including detailed price analyses of its Bid Price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Bidding Document.

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

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

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

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

F. Award of Contract

38. Award Criteria

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

39. Notification of Award

- 39.1 Prior to the expiration of the period of Bid validity, the Employer shall notify the successful Bidder, in writing, that its Bid has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the “Letter of Acceptance”) shall specify the sum that the Employer will pay the Contractor in consideration of the execution and completion of the Works (hereinafter and in the Conditions of Contract and Contract Forms called “the Accepted Contract Amount”).
- 39.2 After a contract has been determined to be eligible for financing under Japanese ODA Loans, the following information may be made public by JICA:
- (a) name of each Bidder who submitted a Bid;
 - (b) Bid Prices as read out at Bid Opening;
 - (c) name and address of the successful Bidder; and
 - (d) signing date and amount of the contract.
- 39.3 Until a formal contract is prepared and executed, the Letter of Acceptance shall constitute a binding Contract.

40. Signing of Contract

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

41. Performance Security

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

and forfeiture of the Bid Security. In that event the Employer may award the Contract to the next lowest evaluated Bidder whose Bid is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.

42. Notification to Unsuccessful Bidders and Debriefing

42.1 As promptly as possible upon the successful Bidder signing the Contract and furnishing the Performance Security pursuant to ITB 41, the Employer shall notify all unsuccessful Bidders of the results of the bidding.

42.2 After receipt of the Employer's notification pursuant to ITB 42.1 above, the unsuccessful Bidders may request in writing to the Employer a debriefing seeking an explanation of the grounds on which their Bids were not selected. The Employer shall promptly respond in writing to any unsuccessful Bidder who requests a debriefing in accordance with this Clause.

Section II. Bid Data Sheet

Notes for the Employer

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

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

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

The following directions should be observed when filling the BDS:

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

Bid Data Sheet

A. General									
ITB 1.1	<p>The number of the Invitation for Bids is: <i>[insert Invitation for Bid number]</i></p> <p>The Employer is: <i>[insert name of Employer]</i>, located in <i>[insert name of country of Employer/ Borrower]</i>.</p> <p>The Project is: <i>[insert name of Project]</i></p> <p>The name of the Contract is: <i>[insert name of Contract]</i></p> <p>The multiple lots of the Project for which the Bids are being invited are: <i>[If the Bids are being invited for multiple lots of the Project, insert “as indicated in the table below” and list out the relevant lot numbers and contract names in the table. Otherwise delete the table below entirety and insert “not applicable”.]</i></p> <table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Lot Number</th> <th style="text-align: center;">Contract Name</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><i>[insert lot number]</i></td> <td style="text-align: center;"><i>[insert contract name]</i></td> </tr> <tr> <td style="text-align: center;"><i>[insert lot number]</i></td> <td style="text-align: center;"><i>[insert contract name]</i></td> </tr> <tr> <td style="text-align: center;"><i>[insert lot number]</i></td> <td style="text-align: center;"><i>[insert contract name]</i></td> </tr> </tbody> </table>	Lot Number	Contract Name	<i>[insert lot number]</i>	<i>[insert contract name]</i>	<i>[insert lot number]</i>	<i>[insert contract name]</i>	<i>[insert lot number]</i>	<i>[insert contract name]</i>
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<i>[insert lot number]</i>	<i>[insert contract name]</i>								
<i>[insert lot number]</i>	<i>[insert contract name]</i>								
ITB 2.1	<p>The Borrower is: <i>[insert name of Borrower]</i></p> <p>The number of the JICA Loan Agreement is: <i>[insert JICA Loan Agreement number]</i></p> <p>The amount of a Japanese ODA Loan is: <i>[insert amount in Japanese Yen]</i></p> <p>The signed date of the Loan Agreement is: <i>[insert signed date of the Loan Agreement]</i></p>								
ITB 2.2	<p>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>.</p>								
ITB 2.3	<p>The other sources of finance are: <i>[insert other sources of finance]</i></p>								
ITB 3.1(b)	<p>The list of ineligible firms and individuals is available at the JICA’s website: www.jica.go.jp/english/our_work/compliance</p>								
ITB 3.1(c)	<p>The list of debarred firms and individuals is available at the World Bank’s website: www.worldbank.org/debarr</p>								
ITB 4.5	<p>This bidding <i>[select “is” or “is not”, as appropriate]</i> subject to prequalification.</p>								
B. Contents of Bidding Document									
ITB 7.1	<p>For clarification purposes only, the Employer’s address is: Attention: <i>[insert full name of person, if applicable]</i></p>								

	<p>Mailing Address: <i>[insert mailing address]</i></p> <p>Email: <i>[insert email address(es), if applicable]</i></p> <p>Responses to any request for clarification, if any, <i>[select “will” or “will not”, as appropriate]</i> be published on the Employer’s web page indicated below.</p> <p>Web Page: <i>[Insert the Employer’s web page if responses to requests for clarifications will be published on the Employer’s web page. Otherwise insert “N/A”.]</i></p>
ITB 7.4	<p>A Pre-bid meeting <i>[insert “will” or “will not”, as appropriate]</i> take place at the following date, time and place:</p> <p><i>[If a pre-bid meeting will take place, insert the date, time and place information in the spaces provided below. Otherwise insert “N/A” in the spaces provided below for the date, time and place]</i></p> <p>Date : _____</p> <p>Time : _____</p> <p>Place : _____</p> <p>A site visit at the time of the pre-bid meeting conducted by the Employer <i>[insert “will be” or “will not be”, as appropriate]</i> organized.</p>
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 (i)	The Bidder shall submit the following additional documents in its Bid: <i>[List any additional document not already listed in ITB 11.1 that must be submitted with the Bid. If there is no additional document, state “none”.]</i>
ITB 13.1	Alternative times for completion <i>[insert “will be” or “will not be”, as appropriate]</i> permitted.
ITB 13.2	Alternative Bids <i>[insert “will be” or “will not be”, as appropriate]</i> permitted.
ITB 14.5	<p>The prices quoted by the Bidder shall: <i>[Insert “be adjustable” or “not to be adjustable; consequently, the Bidder is not required to furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data”, as appropriate.]</i></p> <p><i>[Price adjustment is recommended for contracts with longer duration than 18 months or when local or foreign inflation is expected to be high.]</i></p>
ITB 14.7	<p><i>[This ITB 14.7 shall be consistent with Sub-Clauses 1.16 of the Conditions of Contract.]</i></p> <p>In accordance with Sub-Clause 14.1 of the General Conditions of Contract,</p>

Contractor’s Equipment, including essential spare parts therefor, imported by the Contractor for the sole purpose of executing the Contract shall be exempted from the payment of import duties and taxes upon importation.

[The Employer shall choose subparagraphs (a) and/or (b) of the following paragraph, as applicable and complete, indicating clearly which taxes, duties and levies are exempted and the relevant exemption categories (as described below), in accordance with the Exchange Notes between the Employer’s country and the Government of Japan, and under the law of the Employer’s country. If none is applicable, delete the paragraph in its entirety.]

In addition to the above:

(a) duties, taxes and levies listed in the table below shall be exempted. Such exempted duties, taxes and levies are fallen into two categories, namely:

(i) “No Pay” category: The Contractor shall be entitled to exemption from duties, taxes and levies falling into this category, without having to make any payment arising from or out of or in connection with such liabilities.

(ii) “Pay & Reimburse” category: The Contractor shall be entitled to exemption from duties, taxes and levies, falling into this category provided that the first makes all payments arising from or out of or in connection with such liabilities, and then apply for their reimbursement from the relevant authority, following the procedure prescribed by such authority.

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

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

[insert list of duties, taxes and levies]

ITB 14.8

[There are the Specified Provisional Sums and contingency allowance.]

The Amounts and Currencies of the Specified Provisional Sums shall be as follows:

[The Employer shall fill in the table below, Item No, Description, and Local and Foreign currency portions of the Amount for each Provisional Sum as indicated in the Schedule of Specified Provisional Sums in the Bill of Quantities]

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

[Contingency allowance shall usually be calculated by multiplication of the predetermined percentage (to be indicated by the Employer in the Bidding Document) and the base cost (Total of the Bills plus Provisional Sums, to be derived by the Bidder in its Bid). As an alternative to this percentage addition, a fixed amount can be predetermined by the Employer, based on the estimated contract value, and inserted as a figure (common to each Bidder) in the Bidding Document.]

The Employer, as per the guidance given above, may choose, either Option A (i.e.: to insert a determined percentage) or Option B (i.e.: to insert a fixed amount) below, as appropriate, and delete the other.

So as to make Item (E) (i.e.: Add contingency allowance) of the Grand Summary of the Bill of Quantities consistent with this ITB provision: if option A is chosen, indicate the relevant percentage in the item description, and if Option B is chosen, insert the relevant local and foreign currency portions of the Amount in the respective 'Amount' columns.]

Contingency allowance shall be as follows:

[Choose one of the following options, as applicable and delete the other.]

[Option A]

[insert the applicable percentage] of the Bid Price in the currency or currencies in which the Bid Price is expressed in the Bid submitted by the Bidder.]

[Option B]

[insert the applicable fixed amount in the applicable currency or currencies]

	<p><i>[If there are no amount allocated in Specified Provisional Sums or contingency allowance in the Bill of Quantities, delete all above and state “This BDS 14.8 is not applicable.”]</i></p>								
ITB 15.1	<p>The currency(ies) of the Bid shall be as described below:</p> <p>(a) the inputs to the Works that the Bidder expects to supply from within the Employer’s country shall be quoted in <i>[insert the name of the currency of the Employer’s country]</i>, referred to as “the local currency”, to <i>[insert number of decimal places]</i> decimal place(s); and</p> <p>(b) the inputs to the Works that the Bidder expects to supply from outside the Employer’s country (referred to as “the foreign currency”), shall be quoted in:</p> <p>(i) Japanese Yen (JPY), with no decimal places; and/or</p> <p>(ii) <i>[other international trading currency or currencies, if any]</i> to <i>[insert number of decimal places]</i> decimal place(s).</p>								
ITB 16.2	<p>At this time the Employer <i>[insert “intends” or “does not intend”, as appropriate]</i> to execute certain specific parts of the Works by subcontractors (i.e.: nominated Subcontractors) selected in advance.</p> <p><i>[If the Employer intends to employ nominated Subcontractors, insert the following paragraph, listing the nominated Subcontractors in the table. Otherwise delete it in its entirety.]</i></p> <p>The specific parts of the Works and the nominated Subcontractors to be employed for each part are as indicated below:</p> <table border="1" data-bbox="431 1199 1378 1373"> <thead> <tr> <th data-bbox="431 1199 813 1241">Part of the Works</th> <th data-bbox="813 1199 1378 1241">Nominated Subcontractor</th> </tr> </thead> <tbody> <tr> <td data-bbox="431 1241 813 1283"><i>[insert specific part]</i></td> <td data-bbox="813 1241 1378 1283"><i>[insert name of nominated Subcontractor]</i></td> </tr> <tr> <td data-bbox="431 1283 813 1325"><i>[insert specific part]</i></td> <td data-bbox="813 1283 1378 1325"><i>[insert name of nominated Subcontractor]</i></td> </tr> <tr> <td data-bbox="431 1325 813 1367"><i>[insert specific part]</i></td> <td data-bbox="813 1325 1378 1367"><i>[insert name of nominated Subcontractor]</i></td> </tr> </tbody> </table>	Part of the Works	Nominated Subcontractor	<i>[insert specific part]</i>	<i>[insert name of nominated Subcontractor]</i>	<i>[insert specific part]</i>	<i>[insert name of nominated Subcontractor]</i>	<i>[insert specific part]</i>	<i>[insert name of nominated Subcontractor]</i>
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<i>[insert specific part]</i>	<i>[insert name of nominated Subcontractor]</i>								
ITB 18.1	<p>The Bid validity period shall be <i>[insert a number of days required for evaluation, approval and award plus contingency]</i> days.</p> <p><i>[This period should be realistic, allowing sufficient time to evaluate the Bids, bearing in mind the complexity of the Works and the time required 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></p>								
ITB 18.3 (a)	<p><i>[Insert the following only in case of fixed price contract. Delete it in its entirety in case of adjustable price contract, and state “This BDS 18.3(a) is</i></p>								

	<p><i>not applicable.</i>”.]</p> <p>The local and foreign currency portions of the Contract price shall be adjusted by using the following formula:</p> $BP_A = BP_o \left(1 + \frac{DP \times AF}{365} \right)$ <p>Where:</p> <p>“BP_A” is the local (or foreign) portion of Bid Price as adjusted for the delay in award of the Contract.</p> <p>“BP_O” is the local (or foreign) portion of Bid Price as stated in the Letter of Bid.</p> <p>“DP” is the period of delay, calculated as a number of days between the award date and the date, fifty-six (56) days after the expiry date of the initial bid validity period</p> <p>“AF” is:</p> <p>(a) in the case of the local currency, the average annual consumer inflation of the Employer’s country, calculated from the data officially released by the relevant authority of the Employer’s country, responsible for release of such data, considering the period of past three (3) years from the date, one (1) month prior to the award date.</p> <p>(b) in the case of the foreign currency, the average annual consumer inflation of the country of the foreign currency, calculated from the data officially released by relevant authority of that country, responsible for release of such data, considering the period of past three (3) years from the date, one (1) month prior to the award date.</p>
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 between 1.5% to 2.5% of the estimated contract value.</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>]
D. Submission and Opening of Bids	
ITB 22.1	<p>For <u>Bid submission purposes</u> only, the Employer’s address is:</p> <p>Attention: [<i>insert full name of person, if applicable</i>]</p> <p>Mailing Address: [<i>insert mailing address</i>]</p> <p>The deadline for Bid submission is:</p>

	<p>Date: <i>[insert day, month, and year, e.g., 15 June 2018]</i></p> <p>Time: <i>[insert time, and identify if a.m. or p.m., e.g., 10:30 a.m.]</i></p>
ITB 25.1	<p>The Bid opening shall take place at:</p> <p>Mailing Address: <i>[insert mailing address]</i></p> <p>Date: <i>[insert day, month, and year, e.g., 15 June 2018]</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 should be the same as that 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 name of the source of exchange rates (e.g., the Central Bank in the Employer's country)]</i></p> <p>The date for the exchange rate shall be: <i>[insert day, month and year, e.g., 15 June 2018, the date not earlier than thirty (30) days prior to, nor later than, the date of Bid opening specified in ITB 25.1]</i></p>

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

Notes for the Employer

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

This Section has been drafted based on the Two-Envelope Bidding Procedure. Therefore, in case of One-Envelope Bidding Procedure, Item 1.1 *Evaluation of Technical Bid* and Item 1.2 *Evaluation of Price Bid* shall be changed to Item 1.1 *Technical Evaluation* and Item 1.2 *Price Evaluation*, respectively. The wording “Technical Bid” appeared in Item 1.1(b) shall be changed to “Bid”.

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

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

Evaluation and Qualification Criteria (Following Prequalification)

1. Evaluation

1.1 Evaluation of Technical Bid

The evaluation of the Technical Bids consists of the following:

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

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

- (i) mobilisation of key construction equipment and personnel for the execution of the Works
- (ii) adequately supervising and controlling of the execution of the Works by the appropriate allocation of staff
- (iii) planning and scheduling of all work activities in such a manner that the Works will be completed on time and meet with all Contract requirements
- (iv) execution of the Works fully in accordance with all Contract requirements including but not limited to work methods, material sourcing, etc.
- (v) carrying out all operations for the execution of the Works safely and in an environmental friendly manner

1.1.1 Personnel

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

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

Notes for the Employer

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

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

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

Alternative candidates for key positions shall not be evaluated.

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

1.1.2 Construction Equipment

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

No.	Equipment Type and Required Performance Characteristics	Minimum Requirement (Number of Units)
1		
2		
3		
4		
5		

Notes for the Employer:

(a) *The items listed shall be limited to major items of construction equipment that are essential to the proper and timely execution of the Works, and items that Bidders may not readily be able to purchase, hire, or lease in the required time frame.*

(b) *Insert requirements for award of multiple lots, if applicable.*

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

1.1.3 Other Evaluation Criteria

[If applicable, state other criteria. Otherwise state “N/A”.]

.....
.....

1.2 Evaluation of Price Bid

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

1.2.1 Other Evaluation Criteria (ITB 35.1(d))

[If other criteria are permitted under ITB 35.1(d), state them below. Otherwise state “N/A”.]

.....
.....

1.2.2 Award Criteria for Multiple Lots (ITB 35.3)

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

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

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

1.3 Alternative Times for Completion (ITB 13.1)

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

Time for Completion of the Works shall be: *[insert number of days indicated in CD 1.1.3.3 of Section VIII, Particular Conditions]*. No credit will be given for earlier completion.

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

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

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

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

[The adjustment rate of 0.2% per week is a reasonable figure. Alternatively, the rate may be a fixed amount per month, or pro rata per week, of delay related to the loss of benefits to the Employer.]

The accepted period between the Minimum Designated Period and the Maximum Designated Period should be such that the percentage or amount corresponding to the Maximum Designated Period should be less than or equal to the percentage or maximum amount of delay damages specified in CD 8.7 of Section VIII, Particular Conditions.]

2. Qualification

(I) Qualification of the Bidder but not that of Bidder's Affiliate

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

(II) Exchange Rate for Qualification Criteria

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

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

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

(III) Update of Information

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

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

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

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

Notes for the Employer

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

This Section has been drafted based on the Two-Envelope Bidding Procedure. Therefore, in case of One-Envelope Bidding Procedure, Item 1.1 *Evaluation of Technical Bid* and Item 1.2 *Evaluation of Price Bid* shall be changed to Item 1.1 *Technical Evaluation* and Item 1.2 *Price Evaluation*, respectively. The wording “*Technical Bid*” appeared in Item 1.1(b) and Item 2.1 shall be changed to “*Bid*”.

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

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

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

Evaluation and Qualification Criteria (Without Prequalification)

1. Evaluation

1.1 Evaluation of Technical Bid

The evaluation of the Technical Bids consists of the following:

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

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

- (i) mobilisation of key construction equipment and personnel for the execution of the Works.
- (ii) adequately supervising and controlling the execution of the Works by the appropriate allocation of staff.
- (iii) planning and scheduling of all work activities in such a manner that the Works will be completed on time and meet with all Contract requirements.
- (iv) execution of the Works fully in accordance with all Contract requirements including but not limited to work methods, material sourcing, etc.
- (v) carrying out all operations for the execution of the Works safely and in an environmental friendly manner.

1.1.1 Personnel

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

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

Notes for the Employer:

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

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

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

Alternative candidates for key positions shall not be evaluated.

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

1.1.2 Construction Equipment

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

No.	Equipment Type and Required Performance Characteristics	Minimum Requirement (Number of Units)
1		
2		
3		
4		
5		

Notes for the Employer:

(a) *The items listed shall be limited to major items of construction equipment that are essential to the proper and timely execution of the Works, and items that Bidders may not readily be able to purchase, hire, or lease in the required time frame.*

(b) *Insert requirements for award of multiple lots, if applicable.*

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

1.1.3 Other Evaluation Criteria

[If applicable, state other criteria. Otherwise state “N/A”.]

.....
.....

1.2 Evaluation of Price Bid

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

1.2.1 Other Evaluation Criteria (ITB 35.1(d))

[If other criteria are permitted under ITB 35.1(d), state them below. Otherwise state “N/A”.]

.....
.....

1.2.2 Award Criteria for Multiple Lots (ITB 35.3)

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

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

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

1.3 Alternative Times for Completion (ITB 13.1)

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

Time for Completion of the Works shall be: *[insert number of days indicated in CD 1.1.3.3 of Section VIII, Particular Conditions]*. No credit will be given for earlier completion.

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

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

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

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

[The adjustment rate of 0.2% per week is a reasonable figure. Alternatively, the rate may be a fixed amount per month, or pro rata per week, of delay related to the loss of benefits to the Employer.]

The accepted period between the Minimum Designated Period and the Maximum Designated Period should be such that the percentage or amount corresponding to the Maximum Designated Period should be less than or equal to the percentage or maximum amount of delay damages specified in CD 8.7 of Section VIII, Particular Conditions.]

2. Qualification

(I) Qualification of the Bidder but not of that of Bidder's Affiliate

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

(II) Exchange Rate for Qualification Criteria

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

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

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

(III) Qualification Criteria for Award of Multiple Lots

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

"The criteria for qualification is 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, 2.3.3, 2.4.2(a) and 2.4.2(b) below."]

2.1 Eligibility

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

2.2 Historical Contract Non-Performance and Litigation

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

Notes for the Bidders

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

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

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

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

2.3 Financial Situation and Capabilities

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

Eligibility and Qualification Criteria			Compliance Requirements				Documentation
No.	Factor	Requirement	Single Firm	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
		<i>[insert requirements for award of multiple lots, if applicable.]</i>					
2.3.3	Financial Capabilities	<p>The Bidder shall demonstrate, to the satisfaction of the Employer that it currently (as of the Bid submission deadline), 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>⁷ for the subject contract(s) net of the Bidder's all other commitments, both current and future.</p> <p><i>[insert requirements for award of multiple lots, if applicable]</i></p>	Must meet requirement	Must meet requirement	N/A	N/A	Form FIN –3 and FIN –4

Eligibility and Qualification Criteria			Compliance Requirements			Documentation	
No.	Factor	Requirement	Single Firm	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
<i>Notes for the Employer</i>							
<p>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.</p> <p>2. The amount stated should normally not be less than twice the estimated annual turnover in the proposed contract (based on a straight-line projection of the Employer's estimated contract value, including contingencies, over the contract duration). The multiplier of 2 may be reduced for very large contracts but in any case, should not be less than 1.5.</p> <p>3. The time period is normally five (5) years or more, but may be reduced to not less than three (3) years (in agreement with JICA) under special country circumstances, such as to provide opportunities for a newly privatized construction industry with only a short record of experience, etc.</p> <p>4. Same number of years as in 3. above.</p> <p>5. Usually not less than 25% of the requirement for each member of a JV.</p> <p>6. Usually not less than 40% of the requirement for one member of a JV.</p> <p>7. Indicate the construction cash flow requirement for a number of months, determined as the total time needed by the Employer to pay a contractor's invoice, allowing for (a) the actual time consumed for construction, from the beginning of the month invoiced, (b) the time needed by the Engineer 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.</p>							
$\text{Monthly Amount} = \frac{\text{Estimated Contract Value (inclusive of Taxes and Duties)}}{\text{Contract Period in Months}}$							

2.4 Experience

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

Eligibility and Qualification Criteria			Compliance Requirements			Documentation	
No.	Factor	Requirement	Single Firm	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
		<p><i>construction method, technology and/or other characteristics including part of the requirements that may be met by subcontractors, if permitted, in accordance with ITB 16.2]</i></p> <p><i>[insert requirements for award of multiple lots, if applicable.]^(vii)</i></p>					
		<p>(b) For the above or other contracts completed and under implementation as prime contractor⁽ⁱ⁾ (single firm or JV member) or subcontractor^(vi) between 1st January [<i>insert year</i>]⁴ and Bid submission deadline, a minimum experience in the following key activities successfully completed⁽ⁱⁱⁱ⁾ [<i>list activities indicating number, length, area or volume as applicable.</i>]</p> <p><i>[insert requirements for award of multiple lots, if applicable.]^(vii)</i></p>	<p>Must meet requirement</p> <p>Following activities can be met through a specialized subcontractor:</p> <p><i>[specify activities, which may be met through a specialized subcontractor; if none, then state "N/A"]</i></p>	<p>Must meet requirement^(v)</p> <p>Following activities can be met through a specialized subcontractor:</p> <p><i>[specify activities, which may be met through a specialized subcontractor; if none, then state "N/A"]</i></p>	N/A	<p>Must meet requirement</p> <p>Following requirements shall be met by one member:</p> <p><i>[specify activities which shall be met by one member. If none, then state: "N/A"]</i></p>	<p>Form ELI –3</p> <p>Form EXP –2(b) with attachment</p> <p>Schedule of Subcontractors</p>

Eligibility and Qualification Criteria			Compliance Requirements			Documentation	
No.	Factor	Requirement	Single Firm	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
<u>Notes for the Bidders</u>							
<p>(i) For the purposes of this criterion, a 'management contractor' is also considered as a prime contractor. A firm which takes on the role of contract management is referred herein as 'management contractor'. A management contractor does not normally perform directly the 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.</p> <p>(ii) Summation of number of small value contracts (less than the value specified under requirement) to meet the overall requirement will not be accepted.</p> <p>(iii) Completion shall be evidenced by submission of copy of end-user certificates such as Taking-over Certificates and Completion Certificates as required to be submitted as attachment to Form EXP-2(a) or Form EXP-2(b) of Section IV, Bidding Forms.</p> <p>(iv) For contracts under which the Bidder participated as a JV member, only the Bidder's share, by value, shall be considered to meet this requirement.</p> <p>(v) In case of a JV, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single firm. In determining whether the JV meets the requirement of total number of contracts, only the number of contracts completed by all members, each of value equal or more than the minimum value required, shall be aggregated.</p> <p>(vi) For contracts under which the Bidder participated as a JV member or subcontractor, only the Bidder's share, by value and role, shall be considered to meet this requirement.</p> <p>(vii) The minimum experience requirement for award of multiple lots will be the sum of the minimum requirements for respective individual lots.</p>							
<u>Notes for the Employer</u>							
<ol style="list-style-type: none"> 1. <i>The time period is usually five (5) years or more, but may be reduced to not less than three (3) years (in agreement with JICA) under special country circumstances, such as to provide opportunities for a newly privatized construction industry with only a short record of experience.</i> 2. <i>The range of contract numbers should be one (1) to three (3), depending on the size, value, nature and complexity of the subject contract.</i> 3. <i>The time period is usually five (5) years, and may be extended up to a period of ten (10) years for large-scale projects.</i> 4. <i>Same as that stipulated in Sub-Factor 2.4.2 (a) above.</i> 							

Section IV. Bidding Forms

Notes for the Employer

This Section includes the forms which are to be completed by the Bidder and submitted as part of its Bid and the Employer shall include herein all forms that the Bidder shall fill out and include in its Bid. As specified in this section, these forms are the Letter of Bid and relevant Schedules, the Bid Security, the Bill of Quantities, the Technical Proposal Form, and the Bidder's Qualification Information Forms.

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

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

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

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

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

Section IV. Bidding Forms

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

The Bid Submitted by Bidder	
Two-Envelope Bidding	One-Envelope Bidding
<p><u>Technical Bid</u></p> <p>(a) Letter of Technical Bid, in accordance with ITB 12.1.</p> <p>(b) Bid Security, in accordance with ITB 19.</p> <p>(c) Power of Attorney, authorizing the signatory of the Bids to commit the Bidder, in accordance with ITB 20.2 and ITB 20.3.</p> <p>(d) Copy of the JV Agreement, or Letter of Intent to enter into a JV including a draft agreement in the case of a Bid submitted by a JV in accordance with ITB 4.1.</p> <p>(e) Documentary evidence in accordance with ITB 17 establishing the Bidder's eligibility and qualifications to perform the Contract if its Bid is accepted.</p> <ol style="list-style-type: none"> i. Form ELI -1: Bidder Information Form. ii. Form ELI -2: JV Member Information Form. iii. Form ELI -3: Subcontractor Information Form. iv. Form CON: Historical Contract Non-Performance and Litigation. v. Form FIN -1: Financial Situation. vi. Form FIN -2: Average Annual Turnover. 	<p>(a) Letter of Bid, in accordance with ITB 12.1.</p> <p>(b) Completed Schedules in accordance with ITB 12.1 and 14, including priced Bill of Quantities, and completed Schedule of Adjustment Data, (if any required to be submitted under ITB 14.5).</p> <p>(c) Bid Security, in accordance with ITB 19.</p> <p>(d) Power of Attorney, authorizing the signatory of the Bids to commit the Bidder, in accordance with ITB 20.2 and ITB 20.3.</p> <p>(e) Copy of the JV Agreement, or Letter of Intent to enter into a JV including a draft agreement in the case of a Bid submitted by a JV in accordance with ITB 4.1.</p> <p>(f) Documentary evidence in accordance with ITB 17 establishing the Bidder's eligibility and qualifications to perform the Contract if its Bid is accepted.</p> <ol style="list-style-type: none"> i. Form ELI -1: Bidder Information Form. ii. Form ELI -2: JV Member Information Form. iii. Form ELI -3: Subcontractor Information Form. iv. Form CON: Historical Contract Non-Performance and Litigation. v. Form FIN -1: Financial Situation. vi. Form FIN -2: Average Annual Turnover.

Two-Envelope Bidding	One-Envelope Bidding
<ul style="list-style-type: none"> vii. Form FIN -3: Financial Resources. viii. Form FIN -4: Current Contract Commitments. ix. Form EXP -1: General Experience. * x. Form EXP -2(a): Specific Experience. * xi. Form EXP -2(b): Experience in Key Activities. * <p>(f) Technical Proposal in accordance with ITB 16.</p> <ul style="list-style-type: none"> i. Site Organization. ii. Method Statement. iii. Mobilization Schedule. iv. Construction Schedule. v. Health and Safety Plan. vi. Environmental Plan. vii. Schedule of Subcontractors. viii. Form PER -1: Proposed Personnel. ix. Form PER -2: Resume of Proposed Personnel. x. Form EQU: Construction Equipment. <p>(g) Acknowledgement of Compliance with the Guidelines for Procurement under Japanese ODA Loans (Form ACK) which shall be signed and dated by the Bidder's authorized representative.</p> <p>(h) Any other document required in BDS 11.2(h).</p>	<ul style="list-style-type: none"> vii. Form FIN -3: Financial Resources. viii. Form FIN -4: Current Contract Commitments. ix. Form EXP -1: General Experience. * x. Form EXP -2(a): Specific Experience. * xi. Form EXP -2(b): Experience in Key Activities. * <p>(g) Technical Proposal in accordance with ITB 16.</p> <ul style="list-style-type: none"> i. Site Organization. ii. Method Statement. iii. Mobilization Schedule. iv. Construction Schedule. v. Health and Safety Plan. vi. Environmental Plan vii. Schedule of Subcontractors. viii. Form PER -1: Proposed Personnel. ix. Form PER -2: Resume of Proposed Personnel. x. Form EQU: Construction Equipment. <p>(h) Acknowledgement of Compliance with the Guidelines for Procurement under Japanese ODA Loans (Form ACK) which shall be signed and dated by the Bidder's authorized representative.</p> <p>(i) Any other document required in the BDS 11.1(i).</p>
<p><u>Price Bid</u></p> <p>(a) Letter of Price Bid, in accordance with ITB 12.1.</p> <p>(b) Completed Schedules in accordance with ITB 12.1 and 14, including priced Bill of Quantities, and completed Schedule of Adjustment Data, (if any required to be submitted under ITB 14.5) but excluding any Schedule(s) required in ITB 11.2.</p> <p>(c) Any other document required in BDS 11.3(c).</p>	

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

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<Option A: Two-Envelope Bidding>

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

Letter of Technical Bid

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

To: *[insert full name of Employer]*

We, the undersigned, declare that:

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

Name of the Bidder¹ *[insert name of the Bidder]*

Name of the person duly authorized to sign the Bid on behalf of the Bidder² *[insert complete name of person duly authorized to sign the Bid]*

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

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

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

Notes for the Bidders

1. In the case of a Bid submitted by a Joint Venture, specify the name of the Joint Venture as Bidder.
2. Person signing the Bid shall have the Power of Attorney given by the Bidder to be included in the Technical Bid.

<Option A: Two-Envelope Bidding>

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

Letter of Price Bid

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

To: *[insert full name of Employer]*

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Document, including addenda issued in accordance with Instructions to Bidders (ITB) 8: *[insert the number and issuing date of each addendum]*;
- (b) We offer to execute in conformity with the Bidding Document and Technical Bid the following Works: *[insert a brief description of the Works]*;
- (c) The total price of our Bid, excluding any discounts offered in item (d) below is:
[In case of only one lot, insert the total Bid Price in words and figures, indicating the amounts in the respective currencies.]

[In case of multiple lots, insert:

- (i) *the total price of each lot; and*
- (ii) *the sum of the total prices of all lots];*
indicating the amounts in the respective currencies.];

- (d) The discounts offered and the methodology for their application are:

The discounts offered are: *[specify in detail each discount offered]*

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

- (e) Our Bid shall be valid for a period of *[specify the number of calendar days]* days from the date fixed for the Bid submission deadline in accordance with the Bidding Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

- (f) If our Bid is accepted, we commit to obtain a Performance Security in accordance with the Bidding Document;
- (g) We understand that this Bid, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed; and
- (h) We understand that you are not bound to accept the lowest evaluated Bid or any other Bid that you may receive.

Name of the Bidder¹ [*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*]

Notes for the Bidders

1. In the case of a Bid submitted by a Joint Venture, specify the name of the Joint Venture as Bidder.

<Option B: One-Envelope Bidding>

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

Letter of Bid

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

To: *[insert full name of Employer]*

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Document, including addenda issued in accordance with Instructions to Bidders (ITB) 8: *[insert the number and issuing date of each addendum]*;
- (b) We, including subcontractors meet the eligibility requirements in accordance with ITB 4 and ITB 5.
- (c) We, including subcontractors have no conflict of interest in accordance with ITB 4;
- (d) We offer to execute in conformity with the Bidding Document 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 amounts in the respective currencies.]

[In case of multiple lots, insert:

(i) the total price of each lot; and

(ii) the sum of the total prices of all lots];

in words and figures, indicating the amounts in the respective currencies.]

- (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 Document, 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 Document;
- (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);
- (j) We understand that this Bid, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- (k) We understand that you are not bound to accept the lowest evaluated Bid or any other bid that you may receive; and
- (l) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any type of fraud or corruption.

Name of the Bidder¹ [*insert name of the Bidder*]

Name of the person duly authorized to sign the Bid on behalf of the Bidder² [*insert complete name of person duly authorized to sign the Bid*]

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

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

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

Notes for the Bidders

1. In the case of a Bid submitted by a Joint Venture, specify the name of the Joint Venture as Bidder.
2. Person signing the Bid shall have the Power of Attorney given by the Bidder to be included in the Bid.

Schedule of Adjustment Data

Table A. Local Currency

Notes for the Employer

The Employer shall indicate the necessary information in columns (i), (ii) and (iii), and shall also provide a fixed value in 'a' and a range of values in 'b', 'c', 'd' and 'e' of column (vi).

Column (iv) shall be left blank in the Bidding Document, and shall be filled in with the relevant Values and Dates, prior to contract signing, as stated in note 3 below.

For very large and/or complex contracts, it may be necessary to specify several price adjustment formulae for the different classes of pay items involved and to prepare the corresponding adjustment tables.

(i)	(ii)	(iii)	(iv)		(v)	(vi)
Index Code	Index Description	Source of Index	Base Cost Index ³		Total Amount ¹ (Each Index)	Bidder's proposed weighting ²
			Value	Date		
	Non-adjustable	—	—	—		a: _____
						b: _____
						c: _____
						d: _____
						e: _____
Total						1.00

Notes for the Bidders

1. The Bidder shall fill in column (v), the Total Amount of each index component (i.e.: labour, material, equipment, etc as stated in column (ii)) quoted in the local currency.

The Total Amount of the relevant "*Non-adjustable*" component shall also be indicated in the corresponding cell.

2. The Bidder shall specify a value within the ranges given by the Employer in 'b', 'c', 'd' and 'e' of column (vi), so that the total weighting equals 1.00.

3. The Values and the Dates of the Base Cost Index(ices) will be provided by the Employer prior to contract signing.

Table B. Foreign Currency¹

Notes for the Employer

The Employer shall indicate the necessary information in columns (i) and (ii), and shall also provide a fixed value in ‘a’ and a range of values in ‘b’, ‘c’, ‘d’ and ‘e’ of column (vii).

For very large and/or complex contracts, it may be necessary to specify several price adjustment formulae for the different classes of pay items involved and to prepare the corresponding adjustment tables.

Payment Currency²: _____

(i)	(ii)	(iii)	(iv)		(v)		(vi)		(vii)
Index Code	Index Description	Source of Index ³	Base Cost Index ⁴		Total in Source Currency ⁵		Total in Payment Currency ⁶		Bidder’s proposed weighting ⁷
			Value	Date	Currency	Amount	Exchange Rate	Amount	
	Non-adjustable	—	—	—	—	—			a: _____
									b: _____
									c: _____
									d: _____
									e: _____
Total									1.00

Notes for the Bidders

1. If so provided in BDS 15.1, the Bidder may quote in more than one foreign currency and, then this table should be repeated for each of those foreign currencies.
2. The Bidder shall indicate at the top of the table, the foreign payment currency.
3. The Bidder shall indicate the source of each index in column (iii).
4. The Bidder may leave the Values and the Dates of the Base Cost Indices in column (iv) blank. If they are not available prior to submission of the Bid, due to absence of the relevant publication. However, the Bidder shall provide such Values and Dates prior to contract signing.
5. The Bidder shall fill in Column (v), the Total Amount of each index component (i.e.: labour, material, equipment, etc as stated in column (ii)) to be procured in a particular Source Currency.

For the purposes of this Schedule, the “Source Currency” of any index component means the currency, in which that index component is intended to be procured by the Bidder.

If the Source Currency of any index component is as same as the Payment Currency of this table, the Bidder may leave the corresponding cell of column (v) blank.

6. The Bidder shall derive the Total Amount in Payment Currency in Column (vi) by applying the exchange rate prevailing on the Base Date (as defined in GC Sub-Clause 1.1.3.1), as published by the central bank of the country of the source currency, to the Total Amount in Source Currency in column (v).

The Total Amount of the “*Non-adjustable*” component quoted in the subject foreign currency shall also be indicated in the corresponding cell.

7. The Bidder shall specify a value within the ranges given by the Employer in ‘b’, ‘c’, ‘d’ and ‘e’ of column (vii), so that the total weighting equals 1.00.

Bill of Quantities

Notes for the Employer

Objectives

The objectives of the Bill of Quantities are:

- (a) to provide sufficient information on the quantities of Works to be performed to enable Bids to be prepared efficiently and accurately; and
- (b) when a contract has been entered into, to provide a priced Bill of Quantities for use in the periodic valuation of Works executed.

In order to attain these objectives, the Bill of Quantities should be well-structured and coherent, and its layout and content should be as simple and brief as possible.

The following the guidance and directions should be complied with when preparing the Bill of Quantities.

Content

The Bill of Quantities should be divided generally into the following sections:

- (a) Preamble;
- (b) Work Items (grouped into part Bills);
- (c) Daywork Schedule;
- (d) Schedule of Provisional Sums; and
- (e) Grand Summary.

Preamble

The Preamble should:

- (a) contain the provisions that describe the inclusiveness (and/or the exclusiveness where appropriate) of the unit prices, and
- (b) set out the methods of measurement which has been used for measurement of estimated quantities in the Bill of Quantities and that is to be used for measurement of actual quantities executed (i.e. re-measurement).

Method of Measurement

The method of measurement is to set forth the procedure according to which the Bill of Quantities shall be prepared and priced, and the quantities of work expressed and measured. It shall be clearly stated in the Preambles so that the Bidder can quote rates and prices more precisely and realistically.

Many national and international measurement rules have been prepared. One such set of rules is the Civil Engineering Standard Method of Measurement (CESMM) of the Institution of Civil Engineers in the United Kingdom.

Where there are items or classes of work, if any, which the method of measurement indicated

in the Preambles has not provided for, the method of measurement applicable for such items or classes of work should be clearly described in the relevant part or section of the Specification or any other document forming part of the Contract.

Work Items

All works should be itemized in sufficient detail to distinguish between the different classes of Works, or between Works of the same nature carried out in different locations or in other circumstances which may give rise to different considerations of cost.

The items should be grouped into sections (i.e.: part Bills such as Bill No. 1 and Bill No. 2) to distinguish between those parts of the Works that by nature, location, access, timing, or any other special characteristics may give rise to different methods of construction, phasing of the Works, or considerations of cost. General items common to all parts of the Works may be grouped as a separate section (e.g. Bill No. 1: General Items) in the Bill of Quantities.

When a series of Price Adjustment Formulae is used, each Price Adjustment Formula should relate to the appropriate section(s) in the Bill of Quantities.

Item Descriptions

The items shall be described in accordance with the work classification of the method of measurement adopted. Each item description shall identify the work covered by the respective item, but the exact nature and extent of the work is to be ascertained from the Drawings, Specification and Conditions of Contract, as the case may be, read in conjunction with the relevant work classification of the method of measurement.

The drafter shall make sure that details provided in item descriptions shall be consistent with the Preambles to the Bill of Quantities, Specification, Drawings and the Conditions of Contract, where applicable.

Quantities

The quantities shall be computed net using dimensions from the Drawings, unless directed otherwise by a measurement rule in the method of measurement or by the Contract, and no allowance shall be made for bulking, shrinkage or waste. Quantities may be rounded up or down where appropriate. Fractional quantities are not generally necessary and should not be given to more than one place of decimals. Spurious accuracy should be avoided.

Units of Measurement

The following units of measurement and abbreviations are recommended for use (unless other national units are mandatory in the country of the Employer).

Unit	Abbreviation
cubic meter	m ³ or cu m
hectare	ha
hour	h
kilogram	kg
lump sum	sum
metre	m
metric ton (1,000 kg)	tn
millimetre	mm
month	mon
number	nr
square meter	m ² or sq m
square millimetre	mm ² or sq mm
week	wk

Ground and Excavation Levels

Before drafting the descriptions for earthwork related items, the drafter should first make sure that the Original Surface (i.e. the surface of the ground before any work has been carried out) and the Final Surface (i.e. the surface to which excavation is to be carried out) have been clearly indicated in the Drawing.

In the description of each item for work involving excavation, boring, or driving, the Commencing Surface (i.e. the surface of the ground before any work covered by the item has been carried out) should be identified where commencing surface is not also the Original Surface.

In the description of each item for work involving excavation, the Excavated Surface (i.e.: the surface to which excavation included in the work covered by the item is to be carried out) should be identified where the Excavated Surface is not also the Final Surface.

The depths of work should be measured from the Commencing Surface to the Excavated Surface, as defined.

Daywork Schedule

A Daywork Schedule should be included if the probability of work of a minor or incidental nature, outside the items included in the Bill of Quantities, is relatively high. To facilitate checking by the Employer of the competitiveness of rates quoted by the Bidders, the Daywork Schedule should normally comprise:

- (a) a list of the various classes of Labour, Materials, and Contractor's Equipment for which basic Daywork rates or prices are to be inserted by the Bidder, together with a statement of the conditions under which the Contractor will be paid for work executed on a Daywork basis; and
- (b) a percentage to be entered by the Bidder against each basic Daywork Subtotal amount for Labour, Materials, and Contractor's Equipment representing the Contractor's profit, overheads, supervision, and all other charges.

Provisional Sums**Specified Provisional Sums**

The estimated cost of:

- (a) specialized work to be carried out, or special goods to be supplied by a nominated Subcontractor; or
- (b) work or service which is known to be required and the scope of which can be defined but cannot be completely designed or specified in detail;

should be specified in the relevant part of the Bill of Quantities (i.e. Schedule of Specified Provisional Sums) as a Specified Provisional Sum with an appropriate brief description.

Where the nominated Subcontractors are engaged (in respect of the Specified Provisional Sums falling into the category of (a) above), a separate bidding procedure is normally carried out by the Employer to select the respective nominated Subcontractors. Any facilities, amenities, attendance, etc., to be provided by the Contractor for the use and convenience of the nominated Subcontractor shall be deemed to be included within the percentage for the overhead charges and profit stated in the Contract Data 13.5(b)(ii) of the Particular Conditions: Part A.

The Provisional Sums for the cost of a Dispute Board (DB)

The Provisional Sum for the cost of a Dispute Board (DB) is one such Specified Provisional Sum which falls into the category of (b) above. This Provisional Sum shall be included to cover a portion of the cost of the Dispute Board which consists only of its Regular Cost and the Employer's share (one-half) of its Non-Regular Cost as specified in Sub-Clause 20.2 of the Particular Conditions: Part B: Specific Provisions.

The Employer shall indicate in the Schedule of Specified Provisional Sums, an amount equivalent to the Employer's estimate of the portion of the cost of the DB covered under the Provisional Sum. Unlike other Specified Provisional Sums, no Contractor's profits, overheads, etc. shall be included or payable on this Provisional Sum. When preparing the Employer's estimate above, reference shall be made to the table below which shows allocation of the various fees and expenses of the DB between the Regular Cost and Non-Regular Cost.

Fees and Expenses		Cost of the DB	
Item No.	Description	Regular Cost	Non-Regular Cost
1.	Retainer fees	<i>All.</i>	<i>None.</i>
2.	Daily fees	<i>only for regular Site visits.</i>	<i>for dispute referrals and work not accomplished during regular Site visits.</i>
3.	Expenses	<i>only for regular Site</i>	<i>for dispute referrals</i>

	(a) international travel (b) local transport (c) accommodation (d) printing/ photocopying (e) international telephone calls (f) document courier services (g) postage (h) others	<i>visits.</i>	<i>and work not accomplished during regular Site visits.</i>
	Total	$\sum RC$	$\sum NRC$
Provisional Sum for the cost of the DB = $\sum RC + \frac{\sum NRC}{2}$			

Contingency Allowance

Allowance for additional costs which may arise during the implementation of the Project due to unforeseen circumstances should be made by allocating contingency allowance in the Grand Summary and not by artificially increasing the quantity of any item of work or class of work. Allocation of this contingency allowance will make the resulting Bid Price a more realistic final contract value and thereby facilitate budgetary approval by avoiding the need to obtain supplementary approvals as the future need arises. When determining the value of this contingency allowance, the effect of price escalations (if allowed under the contract adjustments) on the estimated contract value, should be taken into account so that it can cover not only quantity and work contingencies but also price contingencies.

Line Items to Address Social Clauses

The Employer shall decide whether the cost to comply with the requirements of the so called “social clauses” (Sub-Clauses 6.1 through 6.24 of the General Conditions), to the scope and extent specified in the Specification, is to be considered by the Bidder as part of its overhead or reflected as a cost associated with one or more-line items in the Bill of Quantities addressing such requirements. As a general rule, such cost should be part of the Bidder’s overhead unless the cost to comply with the requirements of some or all of the “social clauses” represents a large component of the Works, as specified in the Specification. If line items are included in the Bill of Quantities, the facilities may be measured and paid through monthly instalments to make the Employer able to control the implementation of the facilities and services to be provided.

The following example illustrates when the cost to comply with the social clauses could be

included by the Contractor as part of the general overheads and when as a part of line items. In regard to HIV-AIDS Prevention under Sub-Clause 6.7 of the General Conditions of Contract, in some countries the government has public programs for HIV/AIDS and the Contractor will only need to create a support basis which cost can and should be included in its overhead. Additionally, in many civil works contracts (like in urban areas), workers do not live in the construction site but at their homes and the issue could be addressed in a different manner. In cases of civil works in remote locations where the cost of such support is of a higher value, then it should be an item in the Bill of Quantities (e.g. Bill No 1).

Grand Summary

The Grand Summary should contain a tabulation of the separate parts of the Bill of Quantities carried forward, with the Specified Provisional Sums, and contingency allowance where applicable.

A. Preamble

Notes for the Employer

The Preamble is an essential part of the Bill of Quantities as it sets out the general principles based on which the Bill of Quantities is prepared and priced. The following paragraphs have been drafted for the reference of the Employer and they shall be modified or supplemented as appropriate, considering the country, project and work specific requirements.

The Preamble shall be consistent with the General and Particular Conditions of Contract, Specification, Drawing and any other document forming part of the Contract. The Employer shall make sure that the Preamble is attached to the priced Bill of Quantities when compiling the Contract documents.

1. The Bill of Quantities shall be read in conjunction with the General and Particular Conditions of Contract, Specification, and Drawings.
2. The quantities given in the Bill of Quantities are estimated and provisional, and are given to provide a common basis for bidding. The payment shall be made based on the actual quantities of the work executed in accordance with the Contract.
3. The rates and prices in the priced Bill of Quantities shall, except insofar as it is otherwise provided under the Contract, include all costs for construction plant, labour, supervision, materials, erection, maintenance, insurance, profit, taxes, and duties, together with all general risks, liabilities, and obligations set out or implied in the Contract.
4. A rate or price shall be entered against each item in the Bill of Quantities, irrespective of whether quantities are stated or not. Items against which no rate or price is entered in the priced Bill of Quantities shall be deemed to be covered by the rates or prices entered for other items therein, and will not be paid for separately.
5. The whole cost of complying with the provisions of the Contract shall be included in the items provided in the priced Bill of Quantities, and where no items are provided, the cost shall be deemed to be included in the rates or prices entered for the related items of work.
6. General requirements, directions and/or descriptions of work and materials are not necessarily repeated or summarized in the Bill of Quantities. Relevant sections of the Contract documents shall be referred before entering prices against each item in the priced Bill of Quantities.
7. Provisional Sums included and so designated in the Bill of Quantities shall be expended in whole or in part at the direction and discretion of the Engineer in accordance with Sub-Clause 13.5 or Sub-Clause 13.6 of the General Conditions of Contract, as applicable. Notwithstanding the above, the Provisional Sum for the cost of the DB shall require no prior instruction of the Engineer.

8. No Contractor's overhead charges or profit shall be included or payable on the Provisional Sum for the cost of the DB.
9. The method of measurement of completed work for payment shall be in accordance with [*The Employer shall insert the name of a standard reference guide, or full details of the methods to be used.*]
10. Any unit rates and/or prices quoted in the Bill of Quantities in:
 - (a) [*The Employer shall insert name of local currency, as indicated in BDS 15.1.*], there shall be [*The Employer shall insert number of decimal places.*] decimal places below zero.
 - (b) Japanese Yen (JPY), there shall be no decimal places below zero.
 - (c) [*The Employer shall insert name of any other foreign currency, as indicated in BDS 15.1.*], there shall be [*The Employer shall insert number of decimal places*] decimal places below zero.

Any price(s) resulting from computations (such as unit price multiplied by quantity) shall be rounded down to the nearest decimal place(s) as indicated for each relevant currency above.

11. Where there are any items of work provided in the Bills of Quantities for complying with requirements of sub-clauses 6.1 through 6.24 of the General Conditions of Contract, payment for such items are made only by monthly instalments upon the Contractor's compliance with all contract requirement with respect of that item, for each month, to the satisfaction of the Engineer.

B. Work Items

Notes for the Employer

The following paragraphs and the part Bills have been included only for the reference of the Employer and/or the Employer's consultant, and they shall be modified or supplemented as appropriate, considering the country, project and work specific requirements.

They shall also be consistent with the General and Particular Conditions of Contract, Specification, Drawing and any other document forming part of the Contract. Where appropriate, the work items should be categorised into part Bills considering their nature and scope, and timing of execution.

1. The Bill of Quantities contains the following part Bills, Schedules and the Summary:
 - Bill No. 1 - General Items;
 - Bill No. 2 - Earthworks;
 - Bill No. 3 - Culverts and Bridges;
 - Bill No. 4 - Roads and Pavings;
 - Daywork Schedule;
 - Schedule of Specified Provisional Sums; and
 - Grand Summary.
2. The Bill of Quantities shall be priced in the currency(ies) specified below.
 - (a) [*The Employer shall insert name of local currency as indicated in BDS 15.1.*]
 - (b) Japanese Yen (JPY).
 - (c) [*The Employer shall insert name of any other foreign currency(ies), as indicated in BDS 15.1.*]

Bill No. 1: General Items

<i>Item no.</i>	<i>Description</i>	<i>Unit</i>	<i>Quantity</i>	<i>Rate</i>		<i>Amount</i>	
				<i>Local</i>	<i>Foreign</i>	<i>Local</i>	<i>Foreign</i>
101	Performance Security.	sum	item				
102	Insurance.	sum	item				
103	—etc.—						
111	Security of the Site.	mon	24				
112	Health and Safety management.	mon	24				
113	Environmental Protection.	mon	24				
114	—etc.—						
121	Establishment and removal of Facilities for Contractor's Personnel.	sum	item				
122	Maintenance of Facilities for Contractor's Personnel.	mon	24				
123	—etc.—						
131	Establishment and Removal of office and office equipment for use of Engineer.	nr	1				
132	Maintenance of office and office equipment for use of the Engineer.	mon	24				
133	—etc.—						
151	Traffic diversions: establishment and removal.	sum	item				
152	Maintenance of traffic diversions.	mon	24				
153	Establishment and removal of access road.	sum	item				
154	Maintenance of access roads.	mon	24				
155	—etc.—						
Total for Bill No. 1 (carried forward to Grand Summary, p. ____)						-----	-----

Bill No. 2: Earthworks

Item no.	Description	Unit	Quantity	Rate		Amount	
				Local	Foreign	Local	Foreign
201							
202							
203							
204							
205							
206							
207							
208							
209							
210							
Total for Bill No. 2 (carried forward to Grand Summary, p. ____)						-----	-----

Bill No. 3: Culverts and Bridges

<i>Item no.</i>	<i>Description</i>	<i>Unit</i>	<i>Quantity</i>	<i>Rate</i>		<i>Amount</i>	
				<i>Local</i>	<i>Foreign</i>	<i>Local</i>	<i>Foreign</i>
301							
302							
303							
304							
305							
306							
307							
308							
309							
310							
Total for Bill No. 3 (carried forward to Grand Summary, p. ____)						-----	-----

Bill No. 4: Roads and Pavings

<i>Item no.</i>	<i>Description</i>	<i>Unit</i>	<i>Quantity</i>	<i>Rate</i>		<i>Amount</i>	
				<i>Local</i>	<i>Foreign</i>	<i>Local</i>	<i>Foreign</i>
401							
402							
403							
404							
405							
406							
407							
408							
409							
410							
Total for Bill No. 4 (carried forward to Grand Summary, p. ____)						-----	-----

C. Daywork Schedule

Notes for the Employer

A “Daywork Schedule” is commonly found in contracts where the likely incidence of a minor or incidental work cannot be covered by definitive descriptions and approximate quantities in the Bill of Quantities. The preferred alternative is to value the additional work in accordance with Sub-Clauses 13.1 and 13.2 of the Conditions of Contract. A Daywork Schedule normally has the disadvantage of not being competitive among the Bidders, who may therefore load the rates assigned to some or all the items. If a Daywork Schedule is to be included at all in the Bidding Document, it is preferable to include nominal quantities against the items most likely to be used, and to carry the sum of the extended amounts forward into the Bid Summary in order to make the basic Schedule of Daywork Rates competitive.

The total amount assigned to such competitive daywork is regarded as a Provisional Sum to be expended under the direction and at the discretion of the Engineer. A limitation on quantity should not apply, and the unit rate quoted should be remain unchanged whatever quantities of work are ordered.

The Employer or the consultant on his behalf, shall list out in the Daywork Schedules below, items of Labour, Material and the Contractor’s Equipment, likely to be required in case of work not covered under the Contract, considering the nature, extent and scope of the Works, project and the locality. Nominal quantities for each item shall be indicated as realistically as possible predicting the likelihood of any future requirement. The units of measurement shall be consistent with those specified in the Preambles, Specification or any other relevant document forming part of the Contract.

Daywork (for Labour, Materials or Equipment) shall indicate profit and overheads separately which facilitates the addition of further items of daywork, if needed, as the basic cost can then be checked more easily. An alternative is to make daywork rates all-inclusive of the Contractor’s overhead and profit, etc., in which case, paragraph 3, 4 or 5 and the relevant Daywork Schedule should be modified accordingly

General

1. Reference should be made to Sub-Clause 13.6 of the General Conditions. Work shall not be executed on a daywork basis except by a written order of the Engineer. The Bidders shall enter basic rates for daywork items in the Schedules, which rates shall apply to any quantity of daywork ordered by the Engineer. Nominal quantities have been indicated against each item of daywork, and the extended total for daywork shall be carried forward as a Provisional Sum to the Grand Summary. Unless payment is at current rate or as otherwise adjusted, payments for daywork shall be subject to price adjustment in accordance with the provisions in the Conditions of Contract. The basic rates applied to daywork items may be quoted and payable in a single currency (either local currency or foreign currency) or multiple currencies (both local and foreign currencies), as appropriate.

Daywork Labour

2. In calculating payments due to the Contractor for the execution of daywork, the hours for labour will be reckoned from the time of arrival of the labour at the work location to execute the particular item of daywork to the time of return to the original place of departure. Only the time of classes of labour directly doing work ordered by the Engineer and for which they are competent to perform will be measured. The time of gangers (charge hands) actually doing work with the gangs will also be measured but the time of foremen or other supervisory personnel supervising the work will not be measured.
3. The Contractor shall be entitled to payment in respect of the total time that labour is employed on daywork, calculated at the basic rates entered by him in the **Schedule of Daywork Rates: 1. Labour**, together with an additional percentage payment on basic rates representing the Contractor's profit, overheads, etc., as described below:
 - (a) The basic rates for labour shall be deemed to cover all direct costs to the Contractor, including (but not limited to) the amount of wages paid to such labour, transportation time, overtime, subsistence allowances, and any sums paid to or on behalf of such labour for social benefits in accordance with all laws and regulations of [the *country of the Employer*].
 - (b) The additional percentage to be quoted by the Bidder shall be applied to basic costs incurred under (a) above, and this additional percentage payment shall be deemed to cover the Contractor's profit, overheads, superintendence, liabilities, and insurances and allowances to labour, timekeeping, and clerical and office work, the use of consumable stores, water, lighting, and power; the use and repair of stagings, scaffolding, workshops, and stores, portable power tools, manual plant, and tools; supervision by the Contractor's staff, foremen, and other supervisory personnel; and charges incidental to the foregoing.

Daywork Materials

4. The Contractor shall be entitled to payment in respect of materials used for daywork (except for materials for which the cost is included in the percentage addition to labour costs as detailed heretofore), at the basic rates entered by him in the **Schedule of Daywork Rates: 2. Materials**, together with an additional percentage payment on the basic rates representing the Contractor's profit, overhead charges, etc., as described below:
 - (a) the basic rates for materials shall be calculated on the basis of the invoiced price, freight, insurance, handling expenses, damage, losses, etc., and shall provide for delivery to store for stockpiling at the Site.
 - (b) the additional percentage shall be quoted by the Bidder and applied to the basic cost incurred under (a) above, and this additional percentage payment shall be deemed to cover the Contractor's profit, overheads, administrative costs and all other charges related to the procurement and supply of such material.

- (c) the cost of hauling materials for use on work ordered to be carried out as daywork from the store or stockpile on the Site to the place where it is to be used:
 - (i) shall not be included in the basic rate or percentage above; and
 - (ii) shall be paid separately under Schedule of Daywork Rates 1. Labour and/or Schedule of Daywork Rates 3. Contractor's Equipment, as appropriate.

Daywork Contractor's Equipment

5. The Contractor shall be entitled to payments in respect of Contractor's Equipment (including those already on Site) employed on daywork at the basic rates entered by him in the **Schedule of Daywork Rates: 3. Contractor's Equipment**, together with an additional percentage payment on basic rates representing the Contractor's profit, overheads, etc., as described below:
- (a) The basic rates for equipment shall be deemed to cover all direct cost to the Contractor including (but not limited to) the depreciation, interest, indemnity, and insurance, repairs, maintenance, supplies, fuel, lubricants, and other consumables directly related to the use of such equipment.
 - (b) The additional percentage shall be quoted by the Bidder and applied to the basic cost incurred under (a) above and this additional percentage payment shall be deemed to cover the Contractor's profit, overheads, administrative costs and all other charges related to the use of such equipment.
 - (c) The cost of drivers, operators, and assistants:
 - (i) shall not be included in the basic rate or percentage above; and
 - (ii) shall be paid for separately under Schedule of Daywork Rates 1. Labour.

Notes for the Employer

An alternative to the separate payment stated in subparagraph (c)(i), (sometimes adopted for administrative convenience) is to include the cost of drivers, operators, and assistants in the basic rates for Contractor's Equipment. The subparagraph 5 should then be modified accordingly.

6. In calculating the payment due to the Contractor for Contractor's Equipment employed on Daywork, only the actual number of working hours will be eligible for payment, except that where applicable and agreed with the Engineer, the travelling time from the part of the Site where the Contractor's Equipment was located when ordered by the Engineer to be employed on Daywork and the time for return journey thereto shall be included for payment.

Schedule of Daywork Rates: 1. Labour

<i>Item No.</i>	<i>Description</i>	<i>Unit</i>	<i>Nominal Quantity</i>	<i>Rate</i>		<i>Extended Amount</i>	
				<i>Local</i>	<i>Foreign</i>	<i>Local</i>	<i>Foreign</i>
D101							
D102							
D103							
D104							
D105							
D106							
D107							
D108							
D109							
D110							
<i>Subtotal</i>							
Allow ___ percent ¹ of Subtotal for Contractor's profit, overheads, etc.							
Total Daywork for Labour (carried forward to Daywork Summary, p.____)						-----	-----

Notes for the Bidders

1. The Bidder shall indicate the percentage for Contractor's profit, overheads, etc. in accordance with paragraph 3(b) above.

Schedule of Daywork Rates: 2. Materials

Item No.	Description	Unit	Nominal Quantity	Rate		Extended Amount	
				Local	Foreign	Local	Foreign
D201							
D202							
D203							
D204							
D205							
D206							
D207							
D208							
D209							
D210							
Subtotal							
Allow ____ percent ¹ of Subtotal for Contractor's profit, overheads, etc.							
Total Daywork for Materials (carried forward to Daywork Summary, p.____)						-----	-----

Notes for the Bidders

1. The Bidder shall indicate the percentage for Contractor's profit, overheads, etc. in accordance with paragraph 4(b) above.

Schedule of Daywork Rates: 3. Contractor’s Equipment

Item No.	Description	Unit	Nominal Quantity	Rate		Extended Amount	
				Local	Foreign	Local	Foreign
D301							
D302							
D303							
D304							
D305							
D306							
D307							
D308							
D309							
D310							
Subtotal							
Allow ____ percent ¹ of Subtotal for Contractor’s profit, overheads, etc.							
Total Daywork for Contractor’s Equipment (carried forward to Daywork Summary, p. ____)						----	----

Notes for the Bidders

1. The Bidder shall indicate the percentage for Contractor’s profit, overheads, etc. in accordance with paragraph 5(b) above.

Daywork Summary

Description	<i>Amount</i>	
	<i>Local</i>	<i>Foreign</i>
1. Total for Daywork: Labour		
2. Total for Daywork: Materials		
3. Total for Daywork: Contractor's Equipment		
Total for Daywork (Provisional Sum) (carried forward to Grand Summary, p. _)	-----	-----

Schedule of Specified Provisional Sums

Notes for the Employer:

The local and foreign currency portions of the Amount shall be inserted for each Provisional Sum, under the respective 'Amount' columns.

For the Provisional Sum for the cost of the DB, in accordance with Sub-Clause 13.5 of the Particular Conditions: Part B: Specific Provisions, the Employer's Estimate of the summation of the following costs of the DB shall be inserted.

(a) Regular Cost (retainer fees of DB members plus daily fees of the DB members for regular Site visits plus all expenses of regular Site visits of the DB members).

(b) One-half of Non-Regular Cost (1/2nd of all fees and expenses other than those included in the Regular Cost.)

Item No.	Description	Amount	
		Local	Foreign
1	Supply and install equipment in pumping station	[sum]	[sum]
2	Provide for ventilation system in subway tunnel	[sum]	[sum]
3			
4			
etc.			
xx	Cost of Dispute Board (DB)	[sum]	[sum]
	Total (carried forward to Grand Summary (C), p. ____)	[sum]	[sum]

Notes for the Bidders

1. Provisional Sums included and designated above shall be expended in whole or in part at the direction of the Engineer and in accordance with Sub-Clause 13.5 of the General Conditions. Notwithstanding the above, the Provisional Sum for the cost of the DB shall require no prior instruction of the Engineer.
2. No Contractor's overhead charges or profit shall be included or payable on the Provisional Sum for the Cost of the DB.

Grand Summary

Notes for the Employer

For item (C), the local and foreign currency portions of the total Estimated Cost of the Specified Provisional Sums, as indicated in the Schedule of Specified Provisional Sums shall be inserted under the respective 'Amount' columns.

Moreover, in item (E), out of the two options provided in BDS 14.8:

- (a) if option A is chosen; insert the applicable percentage in “(...%)”.
- (b) if option B is chosen; delete “(...%)” together with note 1, and then insert the relevant local and foreign currency portions of the Amount under the respective 'Amount' columns.

With regard to item (F), in the case of One-Envelope Bidding, replace “Letter of Price Bid” by “Letter of Bid”.

	Description	Page	Amount	
			Local	Foreign
	Bill No. 1: General Items			
	Bill No. 2: Earthworks			
	Bill No. 3: Culverts and Bridges			
	Bill No. 4: Roads and Pavings			
	—etc.—			
(A)	Total of Bills			
(B)	Total for Daywork (Provisional Sum)			
(C)	Specified Provisional Sums		[sum]	[sum]
(D)	Total of Bills Plus Provisional Sums (A + B + C)			
(E)	Add contingency allowance (...%)		[sum] ¹	[sum] ¹
(F)	Bid Price (D + E) [carried forward to Letter of Price Bid]			

Notes for the Bidders

1. The Bidder shall derive the local and foreign currency portion of this Amount, applying the relevant percentage indicated in BDS 14.8.

Technical Proposal

- Site Organization
- Method Statement
- Mobilization Schedule
- Construction Schedule
- Health and Safety Plan
- Environmental Plan
- Schedule of Subcontractors
- Personnel:
 - o Form PER-1: Proposed Personnel
 - o Form PER -2: Resume of Proposed Personnel
- Construction Equipment
 - o Form EQU: Construction Equipment
- [*others*]

Site Organization

Notes for the Employer

The Employer shall briefly but as clearly as possible describe the relevant submission requirements for the Bidder to comply with.

[The Bidder shall insert the organization information.]

Method Statement

Notes for the Employer

The Employer shall briefly but as clearly as possible describe the relevant submission requirements for the Bidder to comply with.

[The Bidder shall insert the Method of Statement.]

Mobilization Schedule

Notes for the Employer

The Employer shall briefly but as clearly as possible describe the relevant submission requirements for the Bidder to comply with.

[The Bidder shall insert the Mobilization Schedule.]

Construction Schedule

Notes for the Employer

The Employer shall briefly but as clearly as possible describe the relevant submission requirements for the Bidder to comply with.

[The Bidder shall insert the Construction Schedule.]

Health and Safety Plan

Notes for the Employer

The Employer shall briefly but as clearly as possible describe the relevant submission requirements for the Bidder to comply with.

[The Bidder shall insert the Health and Safety Plan.]

Environmental Plan

Notes for the Employer

The Employer shall briefly but as clearly as possible describe the relevant submission requirements for the Bidder to comply with.

[The Bidder shall insert the Environmental Plan.]

Form PER -1: Proposed Personnel

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

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

JV Member Legal Name: *[insert full name]*

IFB No: *[insert number]*

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

[The Bidder shall provide the names of suitably qualified personnel to meet the specified requirements stated in Section III, Evaluation and Qualification Criteria, Clause 1.1.1. 'Title of Position' shall be filled in with key positions as listed in the above Clause.]

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

Form PER -2: Resume of Proposed Personnel

Date: [insert day, month, year]

Bidder's Legal Name: [insert full name]

JV Member Legal Name: [insert full name]

IFB No: [insert number]

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

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

Name of Bidder:

Position:		
Personnel information	Name:	Date of birth:
	Professional qualifications:	
Present employment	Name of employer:	
	Address of employer:	
	Telephone:	Contact (manager / personnel officer):
	Fax:	Email:
	Job title:	Years with present employer:

[The Bidder shall summarize professional experience over the last 20 years, in a reverse chronological order. Indicate particular technical and managerial experience relevant to the position of the proposed personnel.]

From	To	Relevant Technical and Management Experience
		Company : Project : Position : Experience:
		Company : Project : Position : Experience:
		Company : Project : Position : Experience:
		Company : Project : Position : Experience:

Form EQU: Construction Equipment

Date: [insert day, month, year]

Bidder's Legal Name: [insert full name]

JV Member Legal Name: [insert full name]

IFB No: [insert number]

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

[The Bidder shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III, Evaluation and Qualification Criteria, Clause 1.1.2. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Bidder.]

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

Notes for the Employer

The Employer shall choose out of the two options given below:

- (a) Option I : if prequalification was carried out prior to the bidding process.
- (b) Option II : if Bidder's qualification will be assessed at the bidding stage.

[Option I: Following Prequalification]

In accordance with Section III, Evaluation and Qualification Criteria, Clause 2, the Bidder shall update the information given during the corresponding prequalification exercise to demonstrate that he continues to meet the criteria used at the time of prequalification using the following forms:

- Form ELI -1 : Bidder Information Form
- Form ELI -2 : JV Member Information Form
- Form ELI -3 : Subcontractor Information Form
- Form CON : Historical Contract Non-Performance and Litigation
- Form FIN -1 : Financial Situation
- Form FIN -2 : Average Annual Turnover
- Form FIN -3 : Financial Resources
- Form FIN -4 : Current Contract Commitments

[Option II: Without Prequalification]

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

- Form ELI -1 : Bidder Information Form
- Form ELI -2 : JV Member Information Form
- Form ELI -3 : Subcontractor Information Form
- Form CON : Historical Contract Non-Performance and Litigation
- Form FIN -1 : Financial Situation
- Form FIN -2 : Average Annual Turnover
- Form FIN -3 : Financial Resources
- Form FIN -4 : Current Contract Commitments
- Form EXP -1 : General Experience
- Form EXP -2(a) : Specific Experience
- Form EXP -2(b) : Experience in Key Activities

Form ELI -1: Bidder Information Form

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

IFB No.: *[insert number]*

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

[Bidders shall provide the following information. The documents listed/ stated as required shall be submitted as attachments hereto.]

Bidder's legal name: <i>[insert full name]</i>
In case of a JV, legal name of the representative member and of each member: <i>[insert full name of each member in the JV and specify the representative member.]</i>
Bidder's actual or intended country of registration: <i>[insert country of registration]</i>
Bidder's actual or intended year of incorporation: <i>[insert year of incorporation]</i>
Bidder's legal address in country of registration: <i>[insert mailing address]</i>
Bidder's authorized representative information Name: <i>[insert full name]</i> Address: <i>[insert mailing address]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers, including country and city codes]</i> Email address: <i>[insert email address]</i>
<ol style="list-style-type: none"> 1. Attached are copies of original documents of Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above. 2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

Form ELI -2: JV Member Information Form

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

IFB No.: *[insert number]*

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

[The following form is additional to Form ELI-1, and shall be completed to provide information relating to each JV member, in case if the Bidder is a JV. The documents listed/ stated as required shall be submitted as attachments hereto.]

Bidder's legal name: <i>[insert full name]</i>
JV Member's legal name: <i>[insert full name of JV member]</i>
JV Member's country of registration: <i>[insert country of registration]</i>
JV Member's year of incorporation: <i>[insert year of incorporation]</i>
JV Member's legal address in country of registration: <i>[insert mailing address]</i>
JV Member's authorized representative information Name: <i>[insert full name]</i> Address: <i>[insert mailing address]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers, including country and city codes]</i> Email address: <i>[insert email address]</i>
<ol style="list-style-type: none"> 1. Attached are copies of original documents of Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above. 2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

Form ELI -3: Subcontractor Information Form

Date: *[insert day, month, year]*IFB No.: *[insert number]*Page *[insert page number]* of *[insert total number]* pages

[The following form is additional to Form ELI-1 and ELI-2 (if applicable), and shall be completed to provide information relating to the specialized subcontractor(s) (if any) proposed to be used by the Bidder for the execution of the key activities listed in the Prequalification criteria or Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4.2(b), as appropriate. The documents listed/ stated as required shall be submitted as attachments hereto.]

Bidder's legal name: <i>[insert full name]</i>
Subcontractor's legal name: <i>[insert full name of Subcontractor]</i>
Subcontractor's country of registration: <i>[insert country of registration]</i>
Subcontractor's year of incorporation: <i>[insert year of incorporation]</i>
Subcontractor's legal address in country of registration: <i>[insert mailing address]</i>
Subcontractor's authorized representative information Name: <i>[insert full name]</i> Address: <i>[insert mailing address]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers, including country and city codes]</i> Email address: <i>[insert email address]</i>
<ol style="list-style-type: none"> 1. Attached are copies of original documents of Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above. 2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

Form CON: Historical Contract Non-Performance and Litigation

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

Date: [insert day, month, year]

Bidder's Legal Name: [insert full name]

JV Member's Legal Name: [insert full name]

IFB No.: [insert number]

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

1. History of Non-Performing Contracts

Non-Performing Contracts			
<p>In accordance with the Prequalification criteria or Section III, Evaluation and Qualification Criteria, Sub-Factor 2.2.1, as appropriate, since 1st January [The Employer shall insert year.]:</p> <p>[The Bidder shall indicate the applicable wording below by checking the appropriate box.]</p> <p><input type="checkbox"/> contract non-performance did not occur.</p> <p><input type="checkbox"/> contract non-performance occurred as indicated below:</p>			
Year	Non- performed portion of contract	Contract Identification	Total Contract Amount
[insert year]	[insert amount and percentage]	<ul style="list-style-type: none"> • Contract Identification: [insert complete contract name, number, and any other identification] • Name of Employer: [insert full name] • Address of Employer: [insert mailing address] • Telephone/Fax numbers: [insert telephone/fax numbers, including country and city codes] • Email address: [insert email address] • Reason(s) for non-performance: [indicate main reason(s)] 	[insert current value, currency, exchange rate and USD equivalent]

2. Pending Litigation

Pending Litigation				
<p>In accordance with the Prequalification criteria or Section III, Evaluation and Qualification Criteria, Sub-Factor 2.2.2, as appropriate:</p> <p><i>[The Bidder shall choose the relevant wording below by checking the appropriate box.]</i></p> <p><input type="checkbox"/> there is no pending litigation involving the Bidder.</p> <p><input type="checkbox"/> there is pending litigation involving the Bidder as indicated below:</p>				
Year of dispute	Amount in dispute (currency)	Outcome as Percentage of Net Worth	Contract Identification	Total Contract Amount
<i>[insert year]</i>	<i>[insert amount]</i>	<i>[insert percentage]</i>	<ul style="list-style-type: none"> • 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 mailing address]</i> • Telephone/Fax numbers: <i>[insert telephone/fax numbers, including country and city codes]</i> • Email address: <i>[insert email address]</i> • Party who initiated Litigation: <i>[indicate "Employer" or "Contractor"]</i> • Matter in dispute: <i>[indicate main issues in dispute]</i> 	<i>[insert current value, currency, exchange rate and USD equivalent]</i>

3. Litigation History

Litigation History		
<p>In accordance with the Prequalification criteria or Section III, Evaluation and Qualification Criteria, Sub-Factor 2.2.3, as appropriate, since 1st January [<i>The Employer shall insert year.</i>]:</p> <p>[<i>The Bidder shall choose the relevant wording below by checking the appropriate box</i>]</p> <p><input type="checkbox"/> there are no court orders against the Bidder.</p> <p><input type="checkbox"/> there are court orders against the Bidder as indicated below:</p>		
Year of award	Contract Identification	Total Contract Amount
[<i>insert year</i>]	<ul style="list-style-type: none"> • 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 mailing address</i>] • Telephone/Fax numbers: [<i>insert telephone/fax numbers, including country and city codes</i>] • Email address: [<i>insert email address</i>] • Matter in dispute: [<i>indicate main issues in dispute</i>] • Party who initiated litigation: [<i>indicate "Employer" or "Contractor"</i>] • Abstract of the Court Order: [<i>state concisely the court order concerning main issues in dispute</i>] 	[<i>insert current value, currency, exchange rate and USD equivalent</i>]

Form FIN -1: Financial Situation

[The following table shall be filled in for the Bidder, and for each JV member if the Bidder is a JV. The documents listed/ stated as required shall be submitted as attachments hereto.]

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

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

JV Member's Legal Name: *[insert full name]*

IFB No.: *[insert number]*

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

1. Financial data

Type of Financial information in (currency)	Historic information for previous <i>[insert number]</i> years (amount in currency, currency, exchange rate, USD equivalent)				
	Year 1	Year 2	Year 3	Year 4	Year 5
Information from Balance Sheet					
Total Assets (TA)					
Total Liabilities (TL)					
Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					
Information from Income Statement					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Profits After Taxes (PAT)					
Information from Cash Flow Statement					
Cash Flow from Operating Activities					

2. Financial documents

The Bidder and its parties shall provide copies of the financial statements¹ for the number of years indicated in the relevant Prequalification criteria or Section III, Evaluation and Qualification Criteria Sub-Factor 2.3.1, as appropriate. The financial statements shall:

- (a) reflect the financial situation of the legal entity(ies) comprising the Bidder, and not of the affiliated entities (such as parent company(ies), group companies or subsidiaries) of the Bidder unless they are parties to the Bidder under a JV in accordance with ITB 4.1.
- (b) be independently audited or certified in accordance with local legislation.
- (c) be complete, including all notes to the financial statements.
- (d) correspond to accounting periods already completed and audited.

Attached herewith are copies of financial statements for the number of years required above, and complying with the requirements.

Notes for the Bidders

1. If the most recent set of financial statements is for a period earlier than 12 months from the date of bid, the reason for this should be justified.

Form FIN -2: Average Annual Turnover

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

Date: [insert day, month, year]

Bidder's Legal Name: [insert full name]

JV Member's Legal Name: [insert full name]

IFB No.: [insert number]

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

Annual Turnover Data			
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 Turnover ¹			

Notes for the Bidders

1. Total USD equivalent for all years divided by the total number of years, in accordance with the Prequalification criteria or Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.2, as appropriate.

Form FIN -3: Financial Resources

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

Date: [insert day, month, year]

Bidder's Legal Name: [insert full name]

JV Member's Legal Name: [insert full name]

IFB No.: [insert number]

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

[Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject contract or contracts as specified in the Prequalification Criteria or Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.3, as appropriate.]

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

Notes for the Bidders

1. Sources of financing may include working capital (to be taken from FIN-1), Credit Line (to be substantiated by a letter from the bank issuing the line of credit), etc.

Form FIN -4: Current Contract Commitments

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

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

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

JV Member's Legal Name: *[insert full name]*

IFB No. *[insert number]*

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

[The Bidder and each JV member should provide information on their current commitments on all contracts that have been awarded, or for which a Letter of Intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full Taking-over Certificate/ Completion Certificate has yet to be issued, in accordance with the Prequalification Criteria or Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.3, as appropriate.]

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

Form EXP -1: General Experience

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

Date: [insert day, month, year]

Bidder's Legal Name: [insert full name]

JV Member's Legal Name: [insert full name]

IFB No.: [insert number]

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

[The Bidder shall identify contracts that demonstrate continuous experience pursuant to Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4.1 and list contracts chronologically, according to their commencement (starting) dates.]

General Construction Experience			
Starting Year	Ending Year	Contract Identification	Role of Bidder
[indicate year]	[indicate year]	<ul style="list-style-type: none"> • Contract name: [insert full name] • Brief description of the contract performed by the Bidder: [describe the contract performed briefly] • Amount of contract: [insert amount in currency, mention currency used, exchange rate and USD equivalent] • Name of Employer: [insert full name] • Address: [insert mailing address] 	[insert "Prime Contractor (single entity or JV member)" or "Subcontractor"]

Form EXP -2(a): Specific Experience

[The following table shall be filled in for the Bidder, and for each JV member if the Bidder is a JV. The documents listed/ stated as required shall be submitted as attachments hereto.]

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

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

JV Member's Legal Name: *[insert full name]*

IFB No.: *[insert number]*

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

[The Bidder shall fill out one (1) form per contract, in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4.2(a).]

Contract of Similar Size and Nature			
Similar Contract No.	Information		
<i>[insert number] of [insert number of similar contracts required]</i>			
Contract Identification	<i>[insert contract name and reference identification number, if applicable]</i>		
Award Date	<i>[insert day, month, year, e.g., 15 June 2015]</i>		
Completion Date	<i>[insert day, month, year, e.g., 03 October 2017]</i>		
Role in Contract <i>[check the appropriate box]</i>	Prime Contractor		
	Single entity <input type="checkbox"/>	JV member <input type="checkbox"/>	
Total Contract Amount	<i>[insert total contract amount and currency(ies)]</i>	USD <i>[insert exchange rate and total contract amount in USD equivalent]</i>	
If member in a JV, specify participation in total Contract amount	<i>[insert percentage participation]</i>	<i>[insert total contract amount and currency(ies)]</i>	USD <i>[insert exchange rate and total contract amount in USD equivalent]</i>
	<i>[describe participation in JV and work performed]</i>		
Employer's Name:	<i>[insert full name]</i>		
Address:	<i>[insert mailing address]</i>		

Contract of Similar Size and Nature	
Similar Contract No.	Information
<i>[insert number] of [insert number of similar contracts required]</i>	
Telephone/fax number	<i>[insert telephone/fax numbers, including country and city area codes]</i>
E-mail:	<i>[insert email address, if available]</i>
Description of the similarity in accordance with Sub-Factor 2.4.2(a) of Section III:	
1. Physical Size of Required Works items	<i>[insert physical size of items]</i>
2. Complexity	<i>[insert description of complexity]</i>
3. Construction Methods/ Technology	<i>[insert specific aspects of the methods/ technology involved in the contract]</i>
4. Other Characteristics	<i>[insert other characteristics as described in Section VI, Works Requirements]</i>
<p>Attached herewith are the copies of originals of:</p> <p>(a) abstracts of contract documents, JV Agreements, etc. evidencing that the size and nature of the above-mentioned contract meets the requirements specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4.2(a).</p> <p>(b) the end-user certificate(s) (i.e. Taking-over Certificate(s)/ Completion Certificate(s)), evidencing that the contract above-mentioned contract has been successfully completed.</p>	

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

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

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

JV Member's Legal Name: *[insert full name]*

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

IFB No.: *[insert number]*

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

1. Summary of Key Activities

[Fill out if the Bidder is a Single Firm / JV or proposes specialized subcontractors for the execution of any of the key activities.]

Summary of Single Firm / JV Member/ Subcontractor for Key Activities		
Key Activity		<i>Single Firm / JV Member/ Subcontractor</i>
No	Description	
1	<i>[insert name of Activity No. 1]</i>	<i>[insert full name(s) of Single Firm/JV Member(s)/Subcontractor(s)]</i> (i) _____ (ii) _____ (iii) _____
2	<i>[insert name of Activity No. 2]</i>	<i>[insert full name(s) of Single Firm/JV Member(s)/Subcontractor(s)]</i> (i) _____ (ii) _____ (iii) _____
3	<i>[insert name of Activity No. 3]</i>	<i>[insert full name(s) of Single Firm/JV Member(s)/Subcontractor(s)]</i> (i) _____ (ii) _____ (iii) _____
4	<i>[insert name of Activity No. 4]</i>	<i>[insert full name(s) of Single Firm/JV Member(s)/Subcontractor(s)]</i> (i) _____ (ii) _____

		(iii) _____
etc.	_____	_____

2. Contract Information

Key Activity No (1): [insert name of Key Activity]

[Fill out one (1) form per contracts performed by the Bidder (Single Firm/ JV member/ specialized subcontractor) as listed in the Summary of Key Activities above in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4.2(b). The documents listed/ stated as required shall be submitted as attachments hereto.]

(i) [insert full name of Single Firm /JV Member’s /Subcontractor’s Legal Name]

Contract with Similar Key Activities			
Item	Information		
Contract Identification	[insert contract name and number, if applicable]		
Award Date	[insert day, month, year, e.g., 15 June 2015]		
Completion Date	[insert day, month, year, e.g., 03 October 2017]		
Role in Contract [check the appropriate box]	Prime Contractor		Subcontractor
	Single entity <input type="checkbox"/>	JV member <input type="checkbox"/>	<input type="checkbox"/>
Total Contract Amount	[insert total contract amount and currency(ies)]	USD [insert Exchange rate and total contract amount in USD equivalent]	
[insert brief description of the Activity No. (1)]	[describe briefly how the corresponding minimum requirement is met.]		
Employer’s Name:	[insert full name]		
Address:	[indicate mailing address]		
Telephone/fax number	[insert telephone/fax numbers, including country and city area codes]		
Email:	[insert email address, if available]		

Contract with Similar Key Activities	
<p>Attached herewith are the copies of originals of:</p> <p>(a) abstracts of contract documents, sub-contract agreements, JV Agreements, etc. evidencing that the above activity meets the criteria specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4.2(b).</p> <p>(b) the end-user certificate(s) (i.e. Taking-over Certificate(s)/ Completion Certificate(s)) for the above-mentioned contract, evidencing that the above activity has been successfully carried out.</p>	

(ii) [*insert full name of Single Firm /JV Member's /Subcontractor's Legal Name*]

(iii) [*insert full name of Single Firm /JV Member's /Subcontractor's Legal Name*]

Key Activity No. (2):

Key Activity No. (3):

Form ACK

Acknowledgement of Compliance with Guidelines for Procurement under Japanese ODA Loans

Notes for the Employer

The Form ACK should be finalized by using the latest version of Form ACK, uploaded in the JICA webpage;
https://www.jica.go.jp/english/our_work/types_of_assistance/oda_loans/oda_op_info/guide/index.html

The “date of issuance of Invitation for Bids” under B) and B’) below should be both revised to:

- (a) “request for price quotation,” if a Contractor is selected through the International Shopping”;
- (b) to "appointment", if a Contractor is selected through the Direct Contracting; or
- (c) “Commencement of actual selection/bidding process”, if the Borrower wishes to adopt procurement procedures other than ICB, Limited International Bidding, International Shopping, or Direct Contracting.

The contact/ mailing address of JICA office in the project country should be stated in E) (2). Such address can be found in the webpage, URL of which has been given in E) (1). If there is no JICA office available in the country, E) (2) should be deleted in its entirety.

A) I, [*insert name and position of authorized signatory*], being duly authorized by [*insert name of Bidder/members of joint venture (“JV”)*] (hereinafter referred to as the “Bidder”) to execute this Acknowledgement of Compliance with the Guidelines for Procurement under Japanese ODA Loans, hereby certify on behalf of the Bidder and myself that:

- (i) all information provided in the Bid submitted by the Bidder and its subcontractors for [*insert name of the Project, and name, number and identification of lot(s) (contracts(s)) as stated in BDS 1.1*] is true, correct and accurate to the best of the Bidder’s and my knowledge and belief; and
- (ii) the Bidder or any of its subcontractors has not, directly or indirectly, taken any action which is or constitutes a corrupt or fraudulent practice and is not subject to any conflict of interest as stipulated in the relevant section of the Guidelines and the Bidding Document.

<If debarment for more than one year by the World Bank Group is NOT imposed, use the following sentence B).>

B) I certify that the Bidder has NOT been debarred by the World Bank Group for more than one year since the date of issuance of Invitation for Bids.

<If debarment for more than one year by the World Bank Group has been imposed BUT three (3) years have passed since the date of such debarment decision, use the following sentence B').>

- B') I certify that the Bidder has been debarred by the World Bank Group for a period more than one year BUT that on the date of issuance of Invitation for Bids at least three (3) years had passed since the date of such debarment decision. Details of the debarment are as follows:

name of the debarred firm	starting date of debarment	ending date of debarment	reason for debarment

- C) I certify that the Bidder will not enter into a subcontract with a firm which has been debarred by the World Bank Group for a period more than one year, unless on the date of the subcontract at least three (3) years have passed since the date of such debarment decision.
- D) I certify, on behalf of the Bidder and its subcontractors, that if selected to undertake works and services in connection with the Contract, the Bidder and its subcontractors shall carry out such works and services in continuing compliance with the terms and conditions of the Contract.
- E) I further certify, on behalf of the Bidder and its subcontractors, that if the Bidder and any of its subcontractors is requested, directly or indirectly, to engage in any corrupt or fraudulent practice under any applicable law, such as the payment of a rebate, at any time or any stage of a process of procurement such as negotiations, execution or implementation of contract (including amendment thereof), the Bidder shall report all relevant facts regarding such request to the relevant section in JICA (details of which are specified below) in a timely manner.

JICA's information desk on fraud and corruption (A report can be made to either of the offices identified below.)

- (1) JICA Headquarters: Legal Affairs Division, General Affairs Department

URL: <https://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) including the Employer or to take any other

action, required to or allowed to, be taken by the Bidder. The Bidder further acknowledges and agrees that JICA is not involved in or responsible for the procurement process in any way.

- F) If any of the statements made herein is subsequently proven to be untrue or incorrect based on facts subsequently determined, or if any of the warranties or covenants made herein is not complied with, the Bidder will accept, comply with, and not object to any remedies taken by the Employer and any sanctions imposed by or actions taken by JICA.

Authorized Signatory

[insert name of signatory; title]

For and on behalf of

[insert name of the Bidder]

Date: *[insert date]*

Form of Bid Security

(Bank Guarantee)

Notes for the Employer

In the case of One-Envelope Bidding, “Letters of Technical Bid and Price Bid” (in subparagraph (a) of the third paragraph) below shall be replaced with “Letter of Bid”.

[*Guarantor letterhead or SWIFT identifier code*]

Beneficiary: [*insert its name and address*]

IFB No.: [*insert number of Invitation for Bids*]

Date: [*insert date of issue*]

BID GUARANTEE No.: [*insert guarantee reference number*]

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

We have been informed that [*insert name of the Bidder, which in the case of a joint venture shall be the name of the joint venture (whether legally constituted or prospective) or the names of all members thereof*] (hereinafter called "the Applicant") has submitted or will submit to the Beneficiary its Bid (hereinafter called "the Bid") for the execution of [*insert description of contract*].

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

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

- (a) has withdrawn its Bid during the period of bid validity set forth in the Applicant's Letters of Technical Bid and Price Bid (“the Bid Validity Period”), or any extension thereto provided by the Applicant; or
- (b) having been notified of the acceptance of its Bid by the Beneficiary during the Bid Validity Period or any extension thereto provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to Bidders of the Beneficiary's bidding document.

This guarantee shall expire and be returned to us: (a) if the Applicant is the successful Bidder, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security issued to the Beneficiary in relation to such contract agreement; or (b) if the Applicant is not the successful Bidder, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the bidding process; or (ii) twenty-eight days after the end of the Bid Validity Period.

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

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

[signature(s)]

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

Section V. Eligible Source Countries of Japanese ODA Loans

Notes for the Employer

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

The Employer shall insert below, all relevant information and provisions cited from the Loan Agreement with JICA. If any additional documents are required to be submitted by the Bidder as evidence of compliance of the provisions above, such additional documents shall be listed in Section II, Bid Data Sheet: in the case of Two-Envelope bidding, under ITB 11.2(h) and/or ITB 11.3(c), as appropriate, and in the case of One-Envelope bidding, under ITB 11.1(i).

PART 2 –WORKS REQUIREMENTS

Section VI. Works Requirements

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Specification

Notes for the Employer

A precise and clear Specification is a prerequisite for the 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 (ICB), the Specification must be drafted to permit the widest possible competition and, at the same time, present a clear statement of the required standards of materials, Plant, other supplies, and workmanship to be provided. Only if this is done will the objectives of economy, efficiency, and non-discrimination in procurement be realized, responsiveness of Bids be ensured, and the subsequent task of Bid evaluation facilitated. The Specification should require that all materials, Plant, and other supplies to be incorporated in the Works are new, unused, of the most recent or current models, and incorporate all recent improvements in design and materials unless provided otherwise in the Contract.

A clause setting out the scope of the Works is often included at the beginning of the Specification, and it is customary to give a list of the Drawings. The Specification should also include, as appropriate, information of a technical nature, referring to the Specification or stating as specified/ described/ indicated in the Contract, in the following Sub-Clauses of the Conditions of Contract:

Sub-Clause		Information Required
1.1.6.7	Definition of "Site"	extent of the Site
1.8	Care and Supply of Documents	publications to be kept on Site
1.13 (a)	Compliance with Law	permissions having been or being obtained by the Employer
2.1	Right of Access to the Site	phased possession of foundations, structures, plant or means of access
4.1	Contractor's General Obligations	Contractor's design operation and maintenance manuals
4.6	Co-operation	timing of submission of the Contractor's Documents describing the requirements of possession of foundations, structure, plant or means of access

Sub-Clause		Information Required
4.7	Setting Out	setting-out points, lines and levels of reference
4.18	Protection of the Environment	restriction on emissions, surface discharges and effluent
4.19	Electricity, Water and Gas	details and prices of electricity, water, gas and other services if the services are to be available for the Contractor to use
4.20	Employer's Equipment and Free-Issue Material.	details of Employer's Equipment and free-issue material, if any
5.1	Definition of "nominated Subcontractor".	nominated Subcontractors
6.1	Engagement of Staff and Labour	arrangement for staff and labour, payment, feeding, transport and housing, where appropriate
6.6	Facilities for Staff and Labour	facilities for Contractor's Personnel and Employer's Personnel
6.13	Supply of Foodstuffs	provision of a sufficient supply of suitable food
7.2	Samples	samples of Materials
7.4	Testing	testing during manufacture and/or installation and construction
7.8	Royalties	payment of royalties, rents and others
8.3	Programme	sequence and timing of inspection and tests
10.2	Taking Over of Parts of the Works	use of any part of the Works by the Employer
17.7	Use of Employer's Accommodation/Facilities	the Employer-provided accommodation and facilities

The metric units should be used. Most Specifications are normally written specially by the Employer or his consultants 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 the **General Specification** 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 Specification 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 Specification

to the particular Works.

Care must be taken in drafting the Specification to ensure that they are not restrictive. In the specification of standards for materials, Plant, other supplies, and workmanship, recognized international standards should be used as much as possible. Where other particular standards are used, whether national standards of the Employer's country or other standards, the Specification should state that materials, Plant, other supplies, and workmanship meeting other authoritative standards, and which ensure substantially equal performance, as the standards mentioned, will also be acceptable.

Where excavation, boring, or driving is included in the Works, a comprehensive definition of rock (always a contentious topic in contract administration), should be provided in the Specification and this definition should be used for the purposes of measurement and payment. A sample description is given below for the reference of the drafter:

"Rock is defined as all materials that, in the opinion of the Engineer, require blasting, or the use of metal wedges and sledgehammers, or the use of compressed air drilling for their removal, and that cannot be extracted by ripping with a tractor of at least 150 brake horse power (BHP) with a single, rear-mounted, heavy-duty ripper."

Moreover, in the Bill of Quantities, Section IV, a separate pay item should be provided for the excavation of rock so that the Bidder can quote a suitable rate considering the removal method to be proposed by the Bidder.

Specific minimum requirements for "social clauses" (common collective name for provisions under Sub-Clauses 6.1 through 6.24 of the General Conditions), are to be detailed as part of the Specification at a level equivalent to the local norms, if they exist and at a level according to the country's regulations, or to minimum requirements when no local regulations exist (see "**Line Items to Address Social Clauses**" under the Notes for Preparing a Bill of Quantities, Section IV).

The following clause may be inserted in the Particular Conditions or the Specification:

Sample Clause: Equivalency of Standards and Codes

Wherever reference is made in the Contract to specific standards and codes to be met by the materials, Plant, and other supplies 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 substantial equivalence to the standards and codes specified will be accepted subject to the Engineer's prior review and written approval. Differences between the standards specified and the proposed alternative standards must be fully described in writing by the Contractor and submitted to the Engineer at least 28 days prior to the date when the Contractor desires the Engineer's approval. In the event the Engineer determines that such proposed deviations do not ensure substantially equal performance, the Contractor shall comply with the standards specified in the documents.

Drawings

Notes for the Employer

It is customary to bind the drawings in a separate volume, which is often larger than other volumes of the Contract documents. The size will be dictated by the scale of the drawings, which must not be reduced to the extent that details are rendered illegible.

A simplified map showing the location of the Site in relation to the local geography, including major roads, ports, airports, and railroads, is helpful.

The construction drawings, even if not fully developed, must show sufficient details to enable the Bidders to understand the type and complexity of the work involved and to price the Bill of Quantities.

Site Data

Notes for the Employer

The pursuant to Sub-Clause 4.10 of the Conditions of Contract, the Employer shall make available to the Bidders, all relevant data in the Employer's possession pertaining to the Site and the proposed Works, which may typically include the following:

- (a) topographical survey data
- (b) environmental and social baseline data
- (c) meteorological data and tidal data
- (d) ground investigation and ground condition data (i.e. geotechnical data, geological data)
- (e) utility records
- (f) land ownership data
- (g) ground water, surface water and hydrological data
- (h) orders, consents, permits, licenses and compliance requirements
- (i) as-built records of existing infrastructure
- (j) quality and environmental, health or safety systems to apply
- (k) details of any risks or hazards
- (l) any other physical constraints

If the Site Data is voluminous and the Employer finds it difficult to attach with the Bidding Document, the Employer may include only the list of such Site Data hereunder and issue them separately to the Bidders in CD(s)/ DVD(s).

Supplementary Information

Notes for the Employer

The Supplementary information may typically include any additional data or information relating to the Works, project, country or locality, which may be useful or helpful for the Bidder for preparation of its Bid.

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

Notes for the Employer

The Conditions of Contract comprise two parts:

- (a) **General Conditions** – GC (Section VII of this document), and
- (b) **Particular Conditions** – PC (Section VIII of this document).

The General Conditions of Contract set forth in Part 3, Section VII of this Standard Bidding Document for Procurement of Works are the MDB Harmonized Edition of the Conditions of Contract for Construction prepared and copyrighted by the International Federation of Consulting Engineers (*Fédération Internationale des Ingénieurs-Conseils*, or FIDIC), FIDIC 2010, all rights reserved. The use of these Standard GC is required in all bidding documents/contracts for the civil works of admeasurement (unit price or rate) type designed by the Employer and to be procured through international competitive bidding (ICB), and they shall be used without any modification.

A copy of the Standard GC shall be attached to the Bidding Document/Contract prepared by the Employer. If the General Conditions in the Bidding Document/Contract prepared by the Employer contain modifications from the Standard GC, JICA will not consider them valid and will require the Employer to revise the Bidding Document/ Contract so that the Standard GC, as defined above, shall apply. By virtue of a license agreement subscribed between JICA and FIDIC, JICA's Borrowers and their executing agencies are authorized the reproduction and translation of the MDB Harmonized Edition of FIDIC's General Conditions of Contract for the exclusive purpose of preparing Bidding Document in accordance with this Standard Bidding Document. Therefore, Borrowers and their executing agencies shall abstain from making any use of the Harmonized Edition of FIDIC's General Conditions of Contract, different from the use indicated herein.

The Particular Conditions (PC) complement the General Conditions (GC) to specify data and contractual requirements linked to the special circumstances of the country, the Employer, the Engineer, the sector, the overall project, and the Works. It is good practice to have a list of tax and custom regulations applicable in the country, to be provided as general information, attached to the Bidding Document.

This Section consists of Part A, Contract Data, which contains data specific to each contract, and Part B, Specific Provisions, which contains provisions specific to each contract. Moreover, Part B consists of a set of provisions prepared by JICA which shall be used **without modification**. In addition to those, country- or project-specific provisions must also be prepared and incorporated in each case. Whoever drafts the PC should be thoroughly familiar with the provisions of the GC and with any specific requirements of the Contract. Legal advice is recommended when amending provisions or drafting new ones. Note that the **PC provisions take precedence over those in the GC**. Clause numbers in the PC correspond to those in the GC.

Section VII. General Conditions (GC)

The Conditions of Contract for Construction MDB Harmonized Edition, attached to this Bidding Document/Contract (hereinafter referred to as “Standard GC”) have been prepared and copyrighted by the International Federation of Consulting Engineers (*Fédération Internationale des Ingénieurs-Conseils*, or FIDIC), FIDIC 2010, all rights reserved. This publication is exclusive for the use of JICA’s Borrowers and their project executing agencies as provided under the License Agreement dated August 1st, 2008, between JICA and FIDIC, and, consequently, no part of this publication may be reproduced, translated, adapted, stored in a retrieval system or communicated, in any form or by any means, whether mechanical, electronic, magnetic, photocopying, recording or otherwise, without prior permission in writing from FIDIC, except by the parties above and only for the exclusive purpose of preparing this Contract.

Conditions of Contract for **CONSTRUCTION**

FOR BUILDING AND ENGINEERING WORKS
DESIGNED BY THE EMPLOYER

Multilateral Development Bank Harmonised Edition
June 2010

General Conditions

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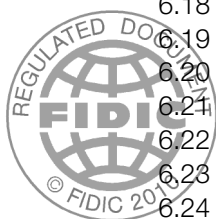
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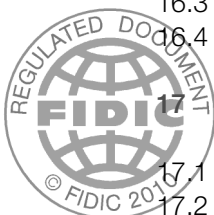
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General Conditions

1 General Provisions

1.1

Definitions

In the Conditions of Contract (“these Conditions”), which include Particular Conditions, Parts A and B, and these General Conditions, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

1.1.1

The Contract

1.1.1.1 “**Contract**” means the Contract Agreement, the Letter of Acceptance, the Letter of Tender, these Conditions, the Specification, the Drawings, the Schedules, and the further documents (if any) which are listed in the Contract Agreement or in the Letter of Acceptance.

1.1.1.2 “**Contract Agreement**” means the contract agreement referred to in Sub-Clause 1.6 [*Contract Agreement*].

1.1.1.3 “**Letter of Acceptance**” means the letter of formal acceptance, signed by the Employer, of the Letter of Tender, including any annexed memoranda comprising agreements between and signed by both Parties. If there is no such letter of acceptance, the expression “Letter of Acceptance” means the Contract Agreement and the date of issuing or receiving the Letter of Acceptance means the date of signing the Contract Agreement.

1.1.1.4 “**Letter of Tender**” means the document entitled letter of tender or letter of bid, which was completed by the Contractor and includes the signed offer to the Employer for the Works.

1.1.1.5 “**Specification**” means the document entitled specification, as included in the Contract, and any additions and modifications to the specification in accordance with the Contract. Such document specifies the Works.

1.1.1.6 “**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.

1.1.1.7 “**Schedules**” means the document(s) entitled schedules, completed by the Contractor and submitted with the Letter of Tender, as included in the Contract. Such document may include the Bill of Quantities, data, lists, and schedules of rates and/or prices.

1.1.1.8 “**Tender**” means the Letter of Tender and all other documents which the Contractor submitted with the Letter of Tender, as included in the Contract.



1.1.1.9 “**Bill of Quantities**”, “**Daywork Schedule**” and “**Schedule of Payment Currencies**” mean the documents so named (if any) which are comprised in the Schedules.

1.1.1.10 “**Contract Data**” means the pages completed by the Employer entitled contract data which constitute Part A of the Particular Conditions.

**1.1.2
Parties and Persons**

- 1.1.2.1 **“Party”** means the Employer or the Contractor, as the context requires.
- 1.1.2.2 **“Employer”** means the person named as employer in the Contract Data and the legal successors in title to this person.
- 1.1.2.3 **“Contractor”** means the person(s) named as contractor in the Letter of Tender accepted by the Employer and the legal successors in title to this person(s).
- 1.1.2.4 **“Engineer”** means the person appointed by the Employer to act as the Engineer for the purposes of the Contract and named in the Contract Data, or other person appointed from time to time by the Employer and notified to the Contractor under Sub-Clause 3.4 [*Replacement of the Engineer*].
- 1.1.2.5 **“Contractor’s Representative”** means the person named by the Contractor in the Contract or appointed from time to time by the Contractor under Sub-Clause 4.3 [*Contractor’s Representative*], who acts on behalf of the Contractor.
- 1.1.2.6 **“Employer’s Personnel”** means the Engineer, the assistants referred to in Sub-Clause 3.2 [*Delegation by the Engineer*] and all other staff, labour and other employees of the Engineer and of the Employer; and any other personnel notified to the Contractor, by the Employer or the Engineer, as Employer’s Personnel.
- 1.1.2.7 **“Contractor’s Personnel”** means the Contractor’s Representative and all personnel whom the Contractor utilises on Site, who may include the staff, labour and other employees of the Contractor and of each Subcontractor; and any other personnel assisting the Contractor in the execution of the Works.
- 1.1.2.8 **“Subcontractor”** means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Works; and the legal successors in title to each of these persons.
- 1.1.2.9 **“DB”** means the person or three persons appointed under Sub-Clause 20.2 [*Appointment of the Dispute Board*] or Sub-Clause 20.3 [*Failure to Agree on the Composition of the Dispute Board*].
- 1.1.2.10 **“FIDIC”** means the Fédération Internationale des Ingénieurs-Conseils, the international federation of consulting engineers.
- 1.1.2.11 **“Bank”** means the financing institution (if any) named in the Contract Data.
- 1.1.2.12 **“Borrower”** means the person (if any) named as the borrower in the Contract Data.

**1.1.3
Dates, Tests, Periods
and Completion**

- 1.1.3.1 **“Base Date”** means the date 28 days prior to the latest date for submission of the Tender.
- 1.1.3.2 **“Commencement Date”** means the date notified under Sub-Clause 8.1 [*Commencement of Works*].
- 1.1.3.3 **“Time for Completion”** means the time for completing the Works or a Section (as the case may be) under Sub-Clause 8.2 [*Time for Completion*], as stated in the Contract Data (with any extension under Sub-Clause 8.4 [*Extension of Time for Completion*]), calculated from the Commencement Date.



- 1.1.3.4 “**Tests on Completion**” means the tests which are specified in the Contract or agreed by both Parties or instructed as a Variation, and which are carried out under Clause 9 [*Tests on Completion*] before the Works or a Section (as the case may be) are taken over by the Employer.
- 1.1.3.5 “**Taking-Over Certificate**” means a certificate issued under Clause 10 [*Employer’s Taking Over*].
- 1.1.3.6 “**Tests after Completion**” means the tests (if any) which are specified in the Contract and which are carried out in accordance with the Specification after the Works or a Section (as the case may be) are taken over by the Employer.
- 1.1.3.7 “**Defects Notification Period**” means the period for notifying defects in the Works or a Section (as the case may be) under Sub-Clause 11.1 [*Completion of Outstanding Work and Remedying Defects*], which extends over 365 days except if otherwise stated in the Contract Data (with any extension under Sub-Clause 11.3 [*Extension of Defects Notification Period*]), calculated from the date on which the Works or Section is completed as certified under Sub-Clause 10.1 [*Taking Over of the Works and Sections*].
- 1.1.3.8 “**Performance Certificate**” means the certificate issued under Sub-Clause 11.9 [*Performance Certificate*].
- 1.1.3.9 “**day**” means a calendar day and “**year**” means 365 days.

1.1.4

Money and Payments

- 1.1.4.1 “**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.
- 1.1.4.2 “**Contract Price**” means the price defined in Sub-Clause 14.1 [*The Contract Price*], and includes adjustments in accordance with the Contract.
- 1.1.4.3 “**Cost**” means all expenditure reasonably incurred (or to be incurred) by the Contractor, whether on or off the Site, including overhead and similar charges, but does not include profit.
- 1.1.4.4 “**Final Payment Certificate**” means the payment certificate issued under Sub-Clause 14.13 [*Issue of Final Payment Certificate*].
- 1.1.4.5 “**Final Statement**” means the statement defined in Sub-Clause 14.11 [*Application for Final Payment Certificate*].
- 1.1.4.6 “**Foreign Currency**” means a currency in which part (or all) of the Contract Price is payable, but not the Local Currency.
- 1.1.4.7 “**Interim Payment Certificate**” means a payment certificate issued under Clause 14 [*Contract Price and Payment*], other than the Final Payment Certificate.
- 1.1.4.8 “**Local Currency**” means the currency of the Country.
- 1.1.4.9 “**Payment Certificate**” means a payment certificate issued under Clause 14 [*Contract Price and Payment*].
- 1.1.4.10 “**Provisional Sum**” means a sum (if any) which is specified in the Contract as



a provisional sum, for the execution of any part of the Works or for the supply of Plant, Materials or services under Sub-Clause 13.5 [*Provisional Sums*].

1.1.4.11 “**Retention Money**” means the accumulated retention moneys which the Employer retains under Sub-Clause 14.3 [*Application for Interim Payment Certificates*] and pays under Sub-Clause 14.9 [*Payment of Retention Money*].

1.1.4.12 “**Statement**” means a statement submitted by the Contractor as part of an application, under Clause 14 [*Contract Price and Payment*], for a payment certificate.

1.1.5

Works and Goods

1.1.5.1 “**Contractor’s Equipment**” means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any defects. However, Contractor’s Equipment excludes Temporary Works, Employer’s Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Permanent Works.

1.1.5.2 “**Goods**” means Contractor’s Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.

1.1.5.3 “**Materials**” means things of all kinds (other than Plant) intended to form or forming part of the Permanent Works, including the supply-only materials (if any) to be supplied by the Contractor under the Contract.

1.1.5.4 “**Permanent Works**” means the permanent works to be executed by the Contractor under the Contract.

1.1.5.5 “**Plant**” means the apparatus, machinery and vehicles intended to form or forming part of the Permanent Works, including vehicles purchased for the Employer and relating to the construction or operation of the Works.

1.1.5.6 “**Section**” means a part of the Works specified in the Contract Data as a Section (if any).

1.1.5.7 “**Temporary Works**” means all temporary works of every kind (other than Contractor’s Equipment) required on Site for the execution and completion of the Permanent Works and the remedying of any defects.

1.1.5.8 “**Works**” mean the Permanent Works and the Temporary Works, or either of them as appropriate.

1.1.6

Other Definitions

1.1.6.1 “**Contractor’s Documents**” means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract.

1.1.6.2 “**Country**” means the country in which the Site (or most of it) is located, where the Permanent Works are to be executed.



1.1.6.3 “**Employer’s Equipment**” means the apparatus, machinery and vehicles (if any) made available by the Employer for the use of the Contractor in the execution of the Works, as stated in the Specification; but does not include Plant which has not been taken over by the Employer.

1.1.6.4 “**Force Majeure**” is defined in Clause 19 [*Force Majeure*].

- 1.1.6.5 “**Laws**” means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.
- 1.1.6.6 “**Performance Security**” means the security (or securities, if any) under Sub-Clause 4.2 [*Performance Security*].
- 1.1.6.7 “**Site**” means the places where the Permanent Works are to be executed, including storage and working areas, and to which Plant and Materials are to be delivered, and any other places as may be specified in the Contract as forming part of the Site.
- 1.1.6.8 “**Unforeseeable**” means not reasonably foreseeable by an experienced contractor by the Base Date.
- 1.1.6.9 “**Variation**” means any change to the Works, which is instructed or approved as a variation under Clause 13 [*Variations and Adjustments*].
- 1.1.6.10 “**Notice of Dissatisfaction**” means the notice given by either Party to the other under Sub-Clause 20.4 [*Obtaining Dispute Board’s Decision*] indicating its dissatisfaction and intention to commence arbitration.

1.2

Interpretation

In the Contract, except where the context requires otherwise:

- (a) words indicating one gender include all genders;
- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) provisions including the word “agree”, “agreed” or “agreement” require the agreement to be record in writing;
- (d) “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record; and
- (e) the word “tender” is synonymous with “bid”, and “tenderer” with “bidder” and the words “tender documents” with “bidding documents”.

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

In these Conditions, provisions including the expression “Cost plus profit” require this profit to be one-twentieth (5%) of this Cost unless otherwise indicated in the Contract Data.

1.3

Communications

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:

- (a) in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the Contract Data; and delivered, sent or transmitted to the address for the recipient’s communications as stated in the Contract Data. However:
 - (i) if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
 - (ii) if the recipient has not stated otherwise when requesting an approval or



consent, it may be sent to the address from which the request was issued.

Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Engineer, a copy shall be sent to the Engineer or the other Party, as the case may be.

1.4

Law and Language

The Contract shall be governed by the law of the country or other jurisdiction stated in the Contract Data.

The ruling language of the Contract shall be that stated in the Contract Data.

The language for communications shall be that stated in the Contract Data. If no language is stated there, the language for communications shall be the ruling language of the Contract.

1.5

Priority of Documents

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

- (a) the Contract Agreement (if any),
- (b) the Letter of Acceptance,
- (c) the Letter of Tender,
- (d) the Particular Conditions - Part A,
- (e) the Particular Conditions - Part B,
- (f) these General Conditions,
- (g) the Specification,
- (h) the Drawings, and
- (i) the Schedules and any other documents forming part of the Contract.

If an ambiguity or discrepancy is found in the documents, the Engineer shall issue any necessary clarification or instruction.

1.6

Contract Agreement

The Parties shall enter into a Contract Agreement within 28 days after the Contractor receives the Letter of Acceptance, unless the Particular Conditions establish otherwise. The Contract Agreement shall be based upon the form annexed to the Particular Conditions. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Employer.

1.7

Assignment

Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party:

- (a) may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party, and
- (b) may, as security in favour of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.

1.8

Care and Supply of Documents

The Specification and Drawings shall be in the custody and care of the Employer. Unless otherwise stated in the Contract, two copies of the Contract and of each



subsequent Drawing shall be supplied to the Contractor, who may make or request further copies at the cost of the Contractor.

Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until taken over by the Employer. Unless otherwise stated in the Contract, the Contractor shall supply to the Engineer six copies of each of the Contractor's Documents.

The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Specification, the Contractor's Documents (if any), the Drawings and Variations and other communications given under the Contract. The Employer's Personnel shall have the right of access to all these documents at all reasonable times.

If a Party becomes aware of an error or defect in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.

1.9

Delayed Drawings or Instructions

The Contractor shall give notice to the Engineer whenever the Works are likely to be delayed or disrupted if any necessary drawing or instruction is not issued to the Contractor within a particular time, which shall be reasonable. The notice shall include details of the necessary drawing or instruction, details of why and by when it should be issued, and the nature and amount of the delay or disruption likely to be suffered if it is late.

If the Contractor suffers delay and/or incurs Cost as a result of a failure of the Engineer to issue the notified drawing or instruction within a time which is reasonable and is specified in the notice with supporting details, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost plus profit, which shall be included in the Contract Price.

After receiving this further notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

However, if and to the extent that the Engineer's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time, Cost or profit.

1.10

Employer's Use of Contractor's Documents

As between the Parties, the Contractor shall retain the copyright and other intellectual property rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor.

The Contractor shall be deemed (by signing the Contract) to give to the Employer a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This licence shall:

- (a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,



- (b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
- (c) in the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor.

The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Employer for purposes other than those permitted under this Sub-Clause.

1.11

Contractor's Use of Employer's Documents

As between the Parties, the Employer shall retain the copyright and other intellectual property rights in the Specification, the Drawings and other documents made by (or on behalf of) the Employer. The Contractor may, at his cost, copy, use, and obtain communication of these documents for the purposes of the Contract. They shall not, without the Employer's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.

1.12

Confidential Details

The Contractor's and the Employer's Personnel shall disclose all such confidential and other information as may be reasonably required in order to verify compliance with the Contract and allow its proper implementation.

Each of them shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any particulars of the Works prepared by the other Party without the previous agreement of the other Party. However, the Contractor shall be permitted to disclose any publicly available information, or information otherwise required to establish his qualifications to compete for other projects.

1.13

Compliance with Laws

The Contractor shall, in performing the Contract, comply with applicable Laws. Unless otherwise stated in the Particular Conditions:

- (a) the Employer shall have obtained (or shall obtain) the planning, zoning, building permit or similar permission for the Permanent Works, and any other permissions described in the Specification as having been (or to be) obtained by the Employer; and the Employer shall indemnify and hold the Contractor harmless against and from the consequences of any failure to do so; and
- (b) the Contractor shall give all notices, pay all taxes, duties and fees, and obtain all permits, licences and approvals, as required by the Laws in relation to the execution and completion of the Works and the remedying of any defects; and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so, unless the Contractor is impeded to accomplish these actions and shows evidence of its diligence.

1.14

Joint and Several Liability

If the Contractor constitutes (under applicable Laws) a joint venture, consortium or other unincorporated grouping of two or more persons:



- (a) these persons shall be deemed to be jointly and severally liable to the Employer for the performance of the Contract;
- (b) these persons shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these persons; and
- (c) the Contractor shall not alter its composition or legal status without the prior consent of the Employer.

**1.15
Inspections and Audit
by the Bank**

The Contractor shall permit the Bank and/or persons appointed by the Bank to inspect the Site and/or the Contractor's accounts and records relating to the performance of the Contract and to have such accounts and records audited by auditors appointed by the Bank if required by the Bank.

The **2** Employer

**2.1
Right of Access to
the Site**

The Employer shall give the Contractor right of access to, and possession of, all parts of the Site within the time (or times) stated in the Contract Data. The right and possession may not be exclusive to the Contractor. If, under the Contract, the Employer is required to give (to the Contractor) possession of any foundation, structure, plant or means of access, the Employer shall do so in the time and manner stated in the Specification. However, the Employer may withhold any such right or possession until the Performance Security has been received.

If no such time is stated in the Contract Data, the Employer shall give the Contractor right of access to, and possession of, the Site within such times as required to enable the Contractor to proceed without disruption in accordance with the programme submitted under Sub-Clause 8.3 [*Programme*].

If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost plus profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

However, if and to the extent that the Employer's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time, Cost or profit.

2.2

**Permits, Licences or
Approvals**

The Employer shall provide, at the request of the Contractor, such reasonable assistance as to allow the Contractor to obtain properly:

- (a) copies of the Laws of the Country which are relevant to the Contract but are not readily available, and
- (b) any permits, licences or approvals required by the Laws of the Country:



- (i) which the Contractor is required to obtain under Sub-Clause 1.13 [*Compliance with Laws*],
- (ii) for the delivery of Goods, including clearance through customs, and
- (iii) for the export of Contractor's Equipment when it is removed from the Site.

2.3

Employer's Personnel

The Employer shall be responsible for ensuring that the Employer's Personnel and the Employer's other contractors on the Site:

- (a) co-operate with the Contractor's efforts under Sub-Clause 4.6 [*Co-operation*], and
- (b) take actions similar to those which the Contractor is required to take under subparagraphs (a), (b) and (c) of Sub-Clause 4.8 [*Safety Procedures*] and under Sub-Clause 4.18 [*Protection of the Environment*].

2.4

Employer's Financial Arrangements

The Employer shall submit, before the Commencement Date and thereafter within 28 days after receiving any request from the Contractor, reasonable evidence that financial arrangements have been made and are being maintained which will enable the Employer to pay the Contract Price punctually (as estimated at that time) in accordance with Clause 14 [*Contract Price and Payment*]. Before the Employer makes any material change to his financial arrangements, the Employer shall give notice to the Contractor with detailed particulars.

In addition, if the Bank has notified to the Borrower that the Bank has suspended disbursements under its loan, which finances in whole or in part the execution of the Works, the Employer shall give notice of such suspension to the Contractor with detailed particulars, including the date of such notification, with a copy to the Engineer, within 7 days of the Borrower having received the suspension notification from the Bank. If alternative funds will be available in appropriate currencies to the Employer to continue making payments to the Contractor beyond a date 60 days after the date of Bank notification of the suspension, the Employer shall provide reasonable evidence in his notice of the extent to which such funds will be available.

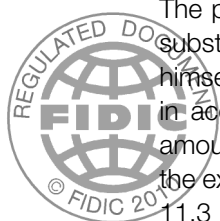
2.5

Employer's Claims

If the Employer considers himself to be entitled to any payment under any Clause of these Conditions or otherwise in connection with the Contract, and/or to any extension of the Defects Notification Period, the Employer or the Engineer shall give notice and particulars to the Contractor. However, notice is not required for payments due under Sub-Clause 4.19 [*Electricity, Water and Gas*], under Sub-Clause 4.20 [*Employer's Equipment and Free-Issue Materials*], or for other services requested by the Contractor.

The notice shall be given as soon as practicable and no longer than 28 days after the Employer became aware, or should have become aware, of the event or circumstances giving rise to the claim. A notice relating to any extension of the Defects Notification Period shall be given before the expiry of such period.

The particulars shall specify the Clause or other basis of the claim, and shall include substantiation of the amount and/or extension to which the Employer considers himself to be entitled in connection with the Contract. The Engineer shall then proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine (i) the amount (if any) which the Employer is entitled to be paid by the Contractor, and/or (ii) the extension (if any) of the Defects Notification Period in accordance with Sub-Clause 11.3 [*Extension of Defects Notification Period*].



This amount may be included as a deduction in the Contract Price and Payment Certificates. The Employer shall only be entitled to set off against or make any deduction from an amount certified in a Payment Certificate, or to otherwise claim against the Contractor, in accordance with this Sub-Clause.

3 The Engineer

3.1

Engineer's Duties and Authority

The Employer shall appoint the Engineer who shall carry out the duties assigned to him in the Contract. The Engineer's staff shall include suitably qualified engineers and other professionals who are competent to carry out these duties.

The Engineer shall have no authority to amend the Contract.

The Engineer may exercise the authority attributable to the Engineer as specified in or necessarily to be implied from the Contract. If the Engineer is required to obtain the approval of the Employer before exercising a specified authority, the requirements shall be as stated in the Particular Conditions. The Employer shall promptly inform the Contractor of any change to the authority attributed to the Engineer.

However, whenever the Engineer exercises a specified authority for which the Employer's approval is required, then (for the purposes of the Contract) the Employer shall be deemed to have given approval.

Except as otherwise stated in these Conditions:

- (a) whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Engineer shall be deemed to act for the Employer;
- (b) the Engineer has no authority to relieve either Party of any duties, obligations or responsibilities under the Contract;
- (c) any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Engineer (including absence of disapproval) shall not relieve the Contractor from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances; and
- (d) any act by the Engineer in response to a Contractor's request except as otherwise expressly specified shall be notified in writing to the Contractor within 28 days of receipt.

The following provisions shall apply:

The Engineer shall obtain the specific approval of the Employer before taking action under the following Sub-Clauses of these Conditions:

- (A) Sub-Clause 4.12: agreeing or determining an extension of time and/or additional cost.
- (B) Sub-Clause 13.1: instructing a Variation, except;
 - (i) in an emergency situation as determined by the Engineer, or
 - (ii) if such a Variation would increase the Accepted Contract Amount by less than the percentage specified in the Contract Data.



Sub-Clause 13.3: approving a proposal for Variation submitted by the Contractor in accordance with Sub-Clause 13.1 or 13.2.

- (D) Sub-Clause 13.4: specifying the amount payable in each of the applicable currencies.

Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties and responsibility under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of the Employer, with any such instruction of the Engineer. The Engineer shall determine an addition to the Contract Price, in respect of such instruction, in accordance with Clause 13 and shall notify the Contractor accordingly, with a copy to the Employer.

3.2

Delegation by the Engineer

The Engineer may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. These assistants may include a resident engineer, and/or independent inspectors appointed to inspect and/or test items of Plant and/or Materials. The assignment, delegation or revocation shall be in writing and shall not take effect until copies have been received by both Parties. However, unless otherwise agreed by both Parties, the Engineer shall not delegate the authority to determine any matter in accordance with Sub-Clause 3.5 [*Determinations*].

Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority, and who are fluent in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].

Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the Contractor to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by an assistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the Engineer. However:

- (a) any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Engineer to reject the work, Plant or Materials;
- (b) if the Contractor questions any determination or instruction of an assistant, the Contractor may refer the matter to the Engineer, who shall promptly confirm, reverse or vary the determination or instruction.

3.3

Instructions of the Engineer

The Engineer may issue to the Contractor (at any time) instructions and additional or modified Drawings which may be necessary for the execution of the Works and the remedying of any defects, all in accordance with the Contract. The Contractor shall only take instructions from the Engineer, or from an assistant to whom the appropriate authority has been delegated under this Clause. If an instruction constitutes a Variation, Clause 13 [*Variations and Adjustments*] shall apply.

The Contractor shall comply with the instructions given by the Engineer or delegated assistant, on any matter related to the Contract. Whenever practicable, their instructions shall be given in writing. If the Engineer or a delegated assistant:



- (a) gives an oral instruction,
- (b) receives a written confirmation of the instruction, from (or on behalf of) the Contractor, within two working days after giving the instruction, and

- (c) does not reply by issuing a written rejection and/or instruction within two working days after receiving the confirmation,

then the confirmation shall constitute the written instruction of the Engineer or delegated assistant (as the case may be).

3.4

Replacement of the Engineer

If the Employer intends to replace the Engineer, the Employer shall, not less than 21 days before the intended date of replacement, give notice to the Contractor of the name, address and relevant experience of the intended replacement Engineer. If the Contractor considers the intended replacement Engineer to be unsuitable, he has the right to raise objection against him by notice to the Employer, with supporting particulars, and the Employer shall give full and fair consideration to this objection.

3.5

Determinations

Whenever these Conditions provide that the Engineer shall proceed in accordance with this Sub-Clause 3.5 to agree or determine any matter, the Engineer shall consult with each Party in an endeavour to reach agreement. If agreement is not achieved, the Engineer shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.

The Engineer shall give notice to both Parties of each agreement or determination, with supporting particulars, within 28 days from the receipt of the corresponding claim or request except when otherwise specified. Each Party shall give effect to each agreement or determination unless and until revised under Clause 20 [*Claims, Disputes and Arbitration*].

4 The Contractor

4.1

Contractor's General Obligations

The Contractor shall design (to the extent specified in the Contract), execute and complete the Works in accordance with the Contract and with the Engineer's instructions, and shall remedy any defects in the Works.

The Contractor shall provide the Plant and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects.

All equipment, material, and services to be incorporated in or required for the Works shall have their origin in any eligible source country as defined by the Bank.

The Contractor shall be responsible for the adequacy, stability and safety of all Site operations and of all methods of construction. Except to the extent specified in the Contract, the Contractor (i) shall be responsible for all Contractor's Documents, Temporary Works, and such design of each item of Plant and Materials as is required for the item to be in accordance with the Contract, and (ii) shall not otherwise be responsible for the design or specification of the Permanent Works.

The Contractor shall, whenever required by the Engineer, submit details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Engineer.



If the Contract specifies that the Contractor shall design any part of the Permanent Works, then unless otherwise stated in the Particular Conditions:

- (a) the Contractor shall submit to the Engineer the Contractor's Documents for this part in accordance with the procedures specified in the Contract;
- (b) these Contractor's Documents shall be in accordance with the Specification and Drawings, shall be written in the language for communications defined in Sub-Clause 1.4 [*Law and Language*], and shall include additional information required by the Engineer to add to the Drawings for co-ordination of each Party's designs;
- (c) the Contractor shall be responsible for this part and it shall, when the Works are completed, be fit for such purposes for which the part is intended as are specified in the Contract; and
- (d) prior to the commencement of the Tests on Completion, the Contractor shall submit to the Engineer the "as-built" documents and, if applicable, operation and maintenance manuals in accordance with the Specification and in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair this part of the Works. Such part shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [*Taking Over of the Works and Sections*] until these documents and manuals have been submitted to the Engineer.

4.2

Performance Security

The Contractor shall obtain (at his cost) a Performance Security for proper performance, in the amount stated in the Contract Data and denominated in the currency(ies) of the Contract or in a freely convertible currency acceptable to the Employer. If an amount is not stated in the Contract Data, this Sub-Clause shall not apply.

The Contractor shall deliver the Performance Security to the Employer within 28 days after receiving the Letter of Acceptance, and shall send a copy to the Engineer. The Performance Security shall be issued by a reputable bank or financial institution selected by the Contractor, and shall be in the form annexed to the Particular Conditions, as stipulated by the Employer in the Contract Data, or in another form approved by the Employer.

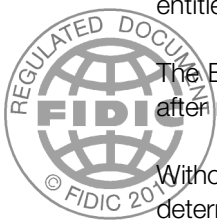
The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Performance Certificate by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Works have been completed and any defects have been remedied.

The Employer shall not make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract.

The Employer shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent to which the Employer was not entitled to make the claim.

The Employer shall return the Performance Security to the Contractor within 21 days after receiving a copy of the Performance Certificate.

Without limitation to the provisions of the rest of this Sub-Clause, whenever the Engineer determines an addition or a reduction to the Contract Price as a result of a change in



cost and/or legislation, or as a result of a Variation amounting to more than 25 percent of the portion of the Contract Price payable in a specific currency, the Contractor shall at the Engineer's request promptly increase, or may decrease, as the case may be, the value of the Performance Security in that currency by an equal percentage.

4.3

Contractor's Representative

The Contractor shall appoint the Contractor's Representative and shall give him all authority necessary to act on the Contractor's behalf under the Contract.

Unless the Contractor's Representative is named in the Contract, the Contractor shall, prior to the Commencement Date, submit to the Engineer for consent the name and particulars of the person the Contractor proposes to appoint as Contractor's Representative. If consent is withheld or subsequently revoked in terms of Sub-Clause 6.9 [*Contractor's Personnel*], or if the appointed person fails to act as Contractor's Representative, the Contractor shall similarly submit the name and particulars of another suitable person for such appointment.

The Contractor shall not, without the prior consent of the Engineer, revoke the appointment of the Contractor's Representative or appoint a replacement.

The whole time of the Contractor's Representative shall be given to directing the Contractor's performance of the Contract. If the Contractor's Representative is to be temporarily absent from the Site during the execution of the Works, a suitable replacement person shall be appointed, subject to the Engineer's prior consent, and the Engineer shall be notified accordingly.

The Contractor's Representative shall, on behalf of the Contractor, receive instructions under Sub-Clause 3.3 [*Instructions of the Engineer*].

The Contractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Engineer has received prior notice signed by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

The Contractor's Representative shall be fluent in the language for communications defined in Sub-Clause 1.4 [*Law and Language*]. If the Contractor's Representative's delegates are not fluent in the said language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Engineer.

4.4

Subcontractors

The Contractor shall not subcontract the whole of the Works.

The Contractor shall be responsible for the acts or defaults of any Subcontractor, his agents or employees, as if they were the acts or defaults of the Contractor. Unless otherwise stated in the Particular Conditions:

- (a) the Contractor shall not be required to obtain consent to suppliers solely of Materials, or to a subcontract for which the Subcontractor is named in the Contract;
- (b) the prior consent of the Engineer shall be obtained to other proposed Subcontractors;
- (c) the Contractor shall give the Engineer not less than 28 days' notice of the intended date of the commencement of each Subcontractor's work, and of the commencement of such work on the Site; and



- (d) each subcontract shall include provisions which would entitle the Employer to require the subcontract to be assigned to the Employer under Sub-Clause 4.5 [*Assignment of Benefit of Subcontract*] (if or when applicable) or in the event of termination under Sub-Clause 15.2 [*Termination by Employer*].

The Contractor shall ensure that the requirements imposed on the Contractor by Sub-Clause 1.12 [*Confidential Details*] apply equally to each Subcontractor.

Where practicable, the Contractor shall give fair and reasonable opportunity for contractors from the Country to be appointed as Subcontractors.

4.5

Assignment of Benefit of Subcontract

If a Subcontractor's obligations extend beyond the expiry date of the relevant Defects Notification Period and the Engineer, prior to this date, instructs the Contractor to assign the benefit of such obligations to the Employer, then the Contractor shall do so. Unless otherwise stated in the assignment, the Contractor shall have no liability to the Employer for the work carried out by the Subcontractor after the assignment takes effect.

4.6

Co-operation

The Contractor shall, as specified in the Contract or as instructed by the Engineer, allow appropriate opportunities for carrying out work to:

- (a) the Employer's Personnel,
- (b) any other contractors employed by the Employer, and
- (c) the personnel of any legally constituted public authorities,

who may be employed in the execution on or near the Site of any work not included in the Contract.

Any such instruction shall constitute a Variation if and to the extent that it causes the Contractor to suffer delays and/or to incur Unforeseeable Cost. Services for these personnel and other contractors may include the use of Contractor's Equipment, Temporary Works or access arrangements which are the responsibility of the Contractor.

If, under the Contract, the Employer is required to give to the Contractor possession of any foundation, structure, plant or means of access in accordance with Contractor's Documents, the Contractor shall submit such documents to the Engineer in the time and manner stated in the Specification.

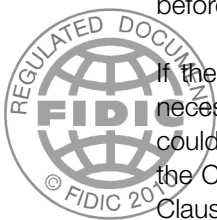
4.7

Setting Out

The Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Contract or notified by the Engineer. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.

The Employer shall be responsible for any errors in these specified or notified items of reference, but the Contractor shall use reasonable efforts to verify their accuracy before they are used.

If the Contractor suffers delay and/or incurs Cost from executing work which was necessitated by an error in these items of reference, and an experienced contractor could not reasonably have discovered such error and avoided this delay and/or Cost, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:



- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost plus profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine (i) whether and (if so) to what extent the error could not reasonably have been discovered, and (ii) the matters described in sub-paragraphs (a) and (b) above related to this extent.

4.8

Safety Procedures

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 10 [*Employer's Taking Over*], 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.

4.9

Quality Assurance

The Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract. The Engineer shall be entitled to audit any aspect of the system.

Details of all procedures and compliance documents shall be submitted to the Engineer for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Engineer, evidence of the prior approval by the Contractor himself shall be apparent on the document itself.

Compliance with the quality assurance system shall not relieve the Contractor of any of his duties, obligations or responsibilities under the Contract.

4.10

Site Data

The Employer shall have made available to the Contractor for his information, prior to the Base Date, all relevant data in the Employer's possession on sub-surface and hydrological conditions at the Site, including environmental aspects. The Employer shall similarly make available to the Contractor all such data which come into the Employer's possession after the Base Date. The Contractor shall be responsible for interpreting all such data.

To the extent which was practicable (taking account of cost and time), the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Tender or Works. To the same extent, the Contractor shall be deemed to have inspected and examined the Site, its surroundings, the above data and other available information, and to have been satisfied before submitting the Tender as to all relevant matters, including (without limitation):

- (a) the form and nature of the Site, including sub-surface conditions,
- (b) the hydrological and climatic conditions,
- (c) the extent and nature of the work and Goods necessary for the execution and completion of the Works and the remedying of any defects,



- (d) the Laws, procedures and labour practices of the Country, and
- (e) the Contractor's requirements for access, accommodation, facilities, personnel, power, transport, water and other services.

4.11

Sufficiency of the Accepted Contract Amount

The Contractor shall be deemed to:

- (a) have satisfied himself as to the correctness and sufficiency of the Accepted Contract Amount, and
- (b) have based the Accepted Contract Amount on the data, interpretations, necessary information, inspections, examinations and satisfaction as to all relevant matters referred to in Sub-Clause 4.10 [*Site Data*].

Unless otherwise stated in the Contract, the Accepted Contract Amount covers all the Contractor's obligations under the Contract (including those under Provisional Sums, if any) and all things necessary for the proper execution and completion of the Works and the remedying of any defects.

4.12

Unforeseeable Physical Conditions

In this Sub-Clause, "physical conditions" means natural physical conditions and man-made and other physical obstructions and pollutants, which the Contractor encounters at the Site when executing the Works, including sub-surface and hydrological conditions but excluding climatic conditions.

If the Contractor encounters adverse physical conditions which he considers to have been Unforeseeable, the Contractor shall give notice to the Engineer as soon as practicable.

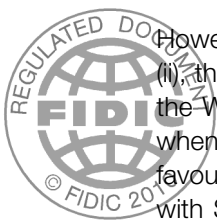
This notice shall describe the physical conditions, so that they can be inspected by the Engineer, and shall set out the reasons why the Contractor considers them to be Unforeseeable. The Contractor shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions which the Engineer may give. If an instruction constitutes a Variation, Clause 13 [*Variations and Adjustments*] shall apply.

If and to the extent that the Contractor encounters physical conditions which are Unforeseeable, gives such a notice, and suffers delay and/or incurs Cost due to these conditions, the Contractor shall be entitled subject to notice under Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost, which shall be included in the Contract Price.

Upon receiving such notice and inspecting and/or investigating these physical conditions, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine (i) whether and (if so) to what extent these physical conditions were Unforeseeable, and (ii) the matters described in sub-paragraphs (a) and (b) above related to this extent.

However, before additional Cost is finally agreed or determined under sub-paragraph (ii), the Engineer may also review whether other physical conditions in similar parts of the Works (if any) were more favourable than could reasonably have been foreseen when the Contractor submitted the Tender. If and to the extent that these more favourable conditions were encountered, the Engineer may proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine the reductions in Cost



which were due to these conditions, which may be included (as deductions) in the Contract Price and Payment Certificates. However, the net effect of all adjustments under sub-paragraph (b) and all these reductions, for all the physical conditions encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price.

The Engineer shall take account of any evidence of the physical conditions foreseen by the Contractor when submitting the Tender, which shall be made available by the Contractor, but shall not be bound by the Contractor's interpretation of any such evidence.

4.13

Rights of Way and Facilities

Unless otherwise specified in the Contract the Employer shall provide effective access to and possession of the Site including special and/or temporary rights-of-way which are necessary for the Works. The Contractor shall obtain, at his risk and cost, any additional rights of way or facilities outside the Site which he may require for the purposes of the Works.

4.14

Avoidance of Interference

The Contractor shall not interfere unnecessarily or improperly with:

- (a) the convenience of the public, or
- (b) the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Employer or of others.

The Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference.

4.15

Access Route

The Contractor shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site at Base Date. The Contractor shall use reasonable efforts to prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel. These efforts shall include the proper use of appropriate vehicles and routes.

Except as otherwise stated in these Conditions:

- (a) the Contractor shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes;
- (b) the Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant authorities for his use of routes, signs and directions;
- (c) the Employer shall not be responsible for any claims which may arise from the use or otherwise of any access route;
- (d) the Employer does not guarantee the suitability or availability of particular access routes; and
- (e) Costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor.

4.16

Transport of Goods

Unless otherwise stated in the Particular Conditions:

- (a) the Contractor shall give the Engineer not less than 21 days' notice of the date on which any Plant or a major item of other Goods will be delivered to the Site;
- (b) the Contractor shall be responsible for packing, loading, transporting, receiving,



- unloading, storing and protecting all Goods and other things required for the Works; and
- (c) the Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of Goods, and shall negotiate and pay all claims arising from their transport.

4.17

Contractor's Equipment

The Contractor shall be responsible for all Contractor's Equipment. When brought on to the Site, Contractor's Equipment shall be deemed to be exclusively intended for the execution of the Works. The Contractor shall not remove from the Site any major items of Contractor's Equipment without the consent of the Engineer. However, consent shall not be required for vehicles transporting Goods or Contractor's Personnel off Site.

4.18

Protection of the Environment

The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.

The Contractor shall ensure that emissions, surface discharges and effluent from the Contractor's activities shall not exceed the values stated in the Specification or prescribed by applicable Laws.

4.19

Electricity, Water and Gas

The Contractor shall, except as stated below, be responsible for the provision of all power, water and other services he may require for his construction activities and to the extent defined in the Specifications, for the tests.

The Contractor shall be entitled to use for the purposes of the Works such supplies of electricity, water, gas and other services as may be available on the Site and of which details and prices are given in the Specification. The Contractor shall, at his risk and cost, provide any apparatus necessary for his use of these services and for measuring the quantities consumed.

The quantities consumed and the amounts due (at these prices) for such services shall be agreed or determined by the Engineer in accordance with Sub-Clause 2.5 [*Employer's Claims*] and Sub-Clause 3.5 [*Determinations*]. The Contractor shall pay these amounts to the Employer.

4.20

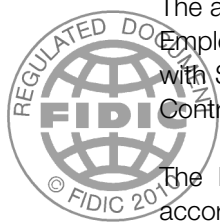
Employer's Equipment and Free-Issue Materials

The Employer shall make the Employer's Equipment (if any) available for the use of the Contractor in the execution of the Works in accordance with the details, arrangements and prices stated in the Specification. Unless otherwise stated in the Specification:

- (a) the Employer shall be responsible for the Employer's Equipment, except that
- (b) the Contractor shall be responsible for each item of Employer's Equipment whilst any of the Contractor's Personnel is operating it, driving it, directing it or in possession or control of it.

The appropriate quantities and the amounts due (at such stated prices) for the use of Employer's Equipment shall be agreed or determined by the Engineer in accordance with Sub-Clause 2.5 [*Employer's Claims*] and Sub-Clause 3.5 [*Determinations*]. The Contractor shall pay these amounts to the Employer.

The Employer shall supply, free of charge, the "free-issue materials" (if any) in accordance with the details stated in the Specification. The Employer shall, at his risk



and cost, provide these materials at the time and place specified in the Contract. The Contractor shall then visually inspect them, and shall promptly give notice to the Engineer of any shortage, defect or default in these materials. Unless otherwise agreed by both Parties, the Employer shall immediately rectify the notified shortage, defect or default.

After this visual inspection, the free-issue materials shall come under the care, custody and control of the Contractor. The Contractor's obligations of inspection, care, custody and control shall not relieve the Employer of liability for any shortage, defect or default not apparent from a visual inspection.

4.21 Progress Reports

Unless otherwise stated in the Particular Conditions, monthly progress reports shall be prepared by the Contractor and submitted to the Engineer in six copies. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates.

Reporting shall continue until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

Each report shall include:

- (a) charts and detailed descriptions of progress, including each stage of design (if any), Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection and testing; and including these stages for work by each nominated Subcontractor (as defined in Clause 5 [*Nominated Subcontractors*]),
- (b) photographs showing the status of manufacture and of progress on the Site;
- (c) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
 - (i) commencement of manufacture,
 - (ii) Contractor's inspections,
 - (iii) tests, and
 - (iv) shipment and arrival at the Site;
- (d) the details described in Sub-Clause 6.10 [*Records of Contractor's Personnel and Equipment*];
- (e) copies of quality assurance documents, test results and certificates of Materials;
- (f) list of notices given under Sub-Clause 2.5 [*Employer's Claims*] and notices given under Sub-Clause 20.1 [*Contractor's Claims*];
- (g) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and
- (h) comparisons of actual and planned progress, with details of any events or circumstances which may jeopardise the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.

4.22 Security of the Site

Unless otherwise stated in the Particular Conditions:

- (a) the Contractor shall be responsible for keeping unauthorised persons off the Site, and



- (b) authorised persons shall be limited to the Contractor's Personnel and the Employer's Personnel; and to any other personnel notified to the Contractor, by the Employer or the Engineer, as authorised personnel of the Employer's other contractors on the Site.

4.23

Contractor's Operations on Site

The Contractor shall confine his operations to the Site, and to any additional areas which may be obtained by the Contractor and agreed by the Engineer as additional working areas. The Contractor shall take all necessary precautions to keep Contractor's Equipment and Contractor's Personnel within the Site and these additional areas, and to keep them off adjacent land.

During the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction, and shall store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall clear away and remove from the Site any wreckage, rubbish and Temporary Works which are no longer required.

Upon the issue of a Taking-Over Certificate, the Contractor shall clear away and remove, from that part of the Site and Works to which the Taking-Over Certificate refers, all Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works. The Contractor shall leave that part of the Site and the Works in a clean and safe condition. However, the Contractor may retain on Site, during the Defects Notification Period, such Goods as are required for the Contractor to fulfil obligations under the Contract.

4.24

Fossils

All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Employer. The Contractor shall take reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.

The Contractor shall, upon discovery of any such finding, promptly give notice to the Engineer, who shall issue instructions for dealing with it. If the Contractor suffers delay and/or incurs Cost from complying with the instructions, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this further notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

5 Nominated Subcontractors

5.1

Definition of "nominated Subcontractor"

In the Contract, "nominated Subcontractor" means a Subcontractor:

- (a) who is stated in the Contract as being a nominated Subcontractor, or
- (b) whom the Engineer, under Clause 13 [*Variations and Adjustments*], instructs the Contractor to employ as a Subcontractor subject to Sub-Clause 5.2 [*Objection to Notification*].



**5.2
Objection to Nomination**

The Contractor shall not be under any obligation to employ a nominated Subcontractor against whom the Contractor raises reasonable objection by notice to the Engineer as soon as practicable, with supporting particulars. An objection shall be deemed reasonable if it arises from (among other things) any of the following matters, unless the Employer agrees in writing to indemnify the Contractor against and from the consequences of the matter:

- (a) there are reasons to believe that the Subcontractor does not have sufficient competence, resources or financial strength;
- (b) the nominated Subcontractor does not accept to indemnify the Contractor against and from any negligence or misuse of Goods by the nominated Subcontractor, his agents and employees; or
- (c) the nominated Subcontractor does not accept to enter into a subcontract which specifies that, for the subcontracted work (including design, if any), the nominated Subcontractor shall:
 - (i) undertake to the Contractor such obligations and liabilities as will enable the Contractor to discharge his obligations and liabilities under the Contract,
 - (ii) indemnify the Contractor against and from all obligations and liabilities arising under or in connection with the Contract and from the consequences of any failure by the Subcontractor to perform these obligations or to fulfil these liabilities, and
 - (iii) be paid only if and when the Contractor has received from the Employer payments for sums due under the Subcontract referred to under Sub-Clause 5.3 [*Payment to nominated Subcontractors*].

**5.3
Payments to nominated Subcontractors**

The Contractor shall pay to the nominated Subcontractor the amounts shown on the nominated Subcontractor's invoices approved by the Contractor which the Engineer certifies to be due in accordance with the subcontract. These amounts plus other charges shall be included in the Contract Price in accordance with sub-paragraph (b) of Sub-clause 13.5 [*Provisional Sums*], except as stated in Sub-Clause 5.4 [*Evidence of Payments*].

**5.4
Evidence of Payments**

Before issuing a Payment Certificate which includes an amount payable to a nominated Subcontractor, the Engineer may request the Contractor to supply reasonable evidence that the nominated Subcontractor has received all amounts due in accordance with previous Payment Certificates, less applicable deductions for retention or otherwise. Unless the Contractor:

- (a) submits this reasonable evidence to the Engineer, or
- (b)
 - (i) satisfies the Engineer in writing that the Contractor is reasonably entitled to withhold or refuse to pay these amounts, and
 - (ii) submits to the Engineer reasonable evidence that the nominated Subcontractor has been notified of the Contractor's entitlement,

then the Employer may (at his sole discretion) pay, direct to the nominated Subcontractor, part or all of such amounts previously certified (less applicable deductions) as are due to the nominated Subcontractor and for which the Contractor has failed to submit the evidence described in sub-paragraphs (a) or (b) above. The Contractor shall then repay, to the Employer, the amount which the nominated Subcontractor was directly paid by the Employer.



6 Staff and Labour

6.1

Engagement of Staff and Labour

Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, feeding, transport and, when appropriate, housing.

The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labour with appropriate qualifications and experience from sources within the Country.

6.2

Rates of Wages and Conditions of Labour

The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.

The Contractor shall inform the Contractor's Personnel about their liability to pay personal income taxes in the Country in respect of such of their salaries, wages, allowances and any benefits as are subject to tax under the Laws of the Country for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.

6.3

Persons in the Service of Employer

The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Employer's Personnel.

6.4

Labour Laws

The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

The Contractor shall require his employees to obey all applicable Laws, including those concerning safety at work.

6.5

Working Hours

No work shall be carried out on the Site on locally recognised days of rest, or outside the normal working hours stated in the Contract Data, unless:

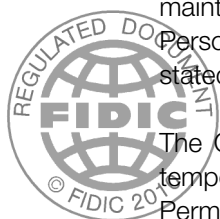
- (a) otherwise stated in the Contract,
- (b) the Engineer gives consent, or
- (c) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer.

6.6

Facilities for Staff and Labour

Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Specification.

The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.



6.7 Health and Safety

The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Employer's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

The Contractor shall send, to the Engineer, 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 Engineer may reasonably require.

HIV-AIDS Prevention. The Contractor shall conduct an HIV-AIDS awareness programme via an approved service provider, and shall undertake such other measures as are specified in this Contract to reduce the risk of the transfer of the HIV virus between and among the Contractor's Personnel and the local community, to promote early diagnosis and to assist affected individuals.

The Contractor shall throughout the contract (including the Defects Notification Period): (i) conduct Information, Education and Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and labour (including all the Contractor's employees, all Subcontractors and any other Contractor's or Employer's personnel, 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 behaviour with respect to, of Sexually Transmitted Diseases (STD) - or Sexually Transmitted Infections (STI) in general and HIV/AIDS in particular; (ii) provide male or female condoms for all Site staff and labour as appropriate; and (iii) provide for STI and HIV/AIDS screening, diagnosis, counselling and referral to a dedicated national STI and HIV/AIDS programme, (unless otherwise agreed) of all Site staff and labour.

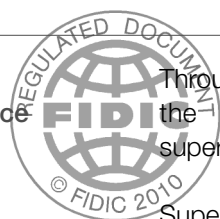
The Contractor shall include in the programme to be submitted for the execution of the Works under Sub-Clause 8.3 an alleviation programme for Site staff and labour and their families in respect of Sexually Transmitted Infections (STI) and Sexually Transmitted Diseases (STD) including HIV/AIDS. The STI, STD and HIV/AIDS alleviation programme shall indicate when, how and at what cost the Contractor plans to satisfy the requirements of this Sub-Clause and the related specification. For each component, the programme shall detail the resources to be provided or utilised and any related sub-contracting proposed. The programme shall also include provision of a detailed cost estimate with supporting documentation. Payment to the Contractor for preparation and implementation this programme shall not exceed the Provisional Sum dedicated for this purpose.

6.8

Contractor's Superintendence

Throughout the execution of the Works, and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the work.

Superintendence shall be given by a sufficient number of persons having adequate



knowledge of the language for communications (defined in Sub-Clause 1.4 [*Law and Language*]) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.

6.9

Contractor's Personnel

The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Engineer may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor's Representative if applicable, who:

- (a) persists in any misconduct or lack of care,
- (b) carries out duties incompetently or negligently,
- (c) fails to conform with any provisions of the Contract, or
- (d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment.

If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person.

6.10

Records of Contractor's Personnel and Equipment

The Contractor shall submit, to the Engineer, details showing the number of each class of Contractor's Personnel and of each type of Contractor's Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Engineer, until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

6.11

Disorderly Conduct

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor's Personnel, and to preserve peace and protection of persons and property on and near the Site.

6.12

Foreign Personnel

The Contractor may bring in to the Country any foreign personnel who are necessary for the execution of the Works to the extent allowed by the applicable Laws. The Contractor shall ensure that these personnel are provided with the required residence visas and work permits. The Employer will, if requested by the Contractor, use his best endeavours in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national, or government permission required for bringing in the Contractor's personnel.

The Contractor shall be responsible for the return of these personnel to the place where they were recruited or to their domicile. In the event of the death in the Country of any of these personnel or members of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for their return or burial.

6.13

Supply of Foodstuffs

The Contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Specification at reasonable prices for the Contractor's Personnel for the purposes of or in connection with the Contract.

6.14

Supply of Water

The Contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor's Personnel.



- 6.15 Measures against Insect and Pest Nuisance** The Contractor shall at all times take the necessary precautions to protect the Contractor's Personnel employed on the Site from insect and pest nuisance, and to reduce the danger to their health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.
-
- 6.16 Alcoholic Liquor or Drugs** The Contractor shall not, otherwise than in accordance with the Laws of the Country, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift, barter or disposal thereto by Contractor's Personnel.
-
- 6.17 Arms and Ammunition** The Contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so.
-
- 6.18 Festivals and Religious Customs** The Contractor shall respect the Country's recognized festivals, days of rest and religious or other customs.
-
- 6.19 Funeral Arrangements** The Contractor shall be responsible, to the extent required by local regulations, for making any funeral arrangements for any of his local employees who may die while engaged upon the Works.
-
- 6.20 Forced Labour** The Contractor shall not employ forced labour, which consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty, and includes any kind of involuntary or compulsory labour, such as indentured labour, bonded labour or similar labour-contracting arrangements.
-
- 6.21 Child Labour** The Contractor shall not employ children in a manner that is economically exploitative, or is likely to be hazardous, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. Where the relevant labour laws of the Country have provisions for employment of minors, the Contractor shall follow those laws applicable to the Contractor. Children below the age of 18 years shall not be employed in dangerous work.
-
- 6.22 Employment Records of Workers** The Contractor shall keep complete and accurate records of the employment of labour at the Site. The records shall include the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarised on a monthly basis and submitted to the Engineer. These records shall be included in the details to be submitted by the Contractor under Sub-Clause 6.10 [*Records of Contractor's Personnel and Equipment*].
-
- 6.23 Workers' Organisations** In countries where the relevant labour laws recognise workers' rights to form and to join workers' organisations of their choosing without interference and to bargain collectively, the Contractor shall comply with such laws. Where the relevant labour laws substantially restrict workers' organisations, the Contractor shall enable alternative means for the Contractor's Personnel to express their grievances and protect their rights regarding working conditions and terms of employment. In either case described above, and where the relevant labour laws are silent, the Contractor shall not discourage the Contractor's Personnel from forming or joining workers' organisations of their choosing or from bargaining collectively, and shall not discriminate or retaliate against the Contractor's Personnel who participate, or seek to



participate, in such organisations and bargain collectively. The Contractor shall engage with such workers' representatives. Workers' organisations are expected to fairly represent the workers in the workforce.

6.24

Non-Discrimination and Equal Opportunity

The Contractor shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment relationship on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline. In countries where the relevant labour laws provide for non-discrimination in employment, the Contractor shall comply with such laws. When the relevant labour laws are silent on non-discrimination in employment, the Contractor shall meet this Sub-Clause's requirements. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination.

7 Plant, Materials and Workmanship

7.1

Manner of Execution

The Contractor shall carry out the manufacture of Plant, the production and manufacture of Materials, and all other execution of the Works:

- (a) in the manner (if any) specified in the Contract,
- (b) in a proper workmanlike and careful manner, in accordance with recognised good practice, and
- (c) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.

7.2

Samples

The Contractor shall submit the following samples of Materials, and relevant information, to the Engineer for consent prior to using the Materials in or for the Works:

- (a) manufacturer's standard samples of Materials and samples specified in the Contract, all at the Contractor's cost, and
- (b) additional samples instructed by the Engineer as a Variation.

Each sample shall be labelled as to origin and intended use in the Works.

7.3

Inspection

The Employer's Personnel shall at all reasonable times:

- (a) have full access to all parts of the Site and to all places from which natural Materials are being obtained, and
- (b) during production, manufacture and construction (at the Site and elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials.

The Contractor shall give the Employer's Personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any obligation or responsibility.



The Contractor shall give notice to the Engineer whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Engineer shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that the Engineer does not require to do so. If the Contractor fails to give the notice, he shall, if and when required by the Engineer, uncover the work and thereafter reinstate and make good, all at the Contractor's cost.

7.4

Testing

This Sub-Clause shall apply to all tests specified in the Contract, other than the Tests after Completion (if any).

Except as otherwise specified in the Contract, the Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with the Engineer, the time and place for the specified testing of any Plant, Materials and other parts of the Works.

The Engineer may, under Clause 13 [*Variations and Adjustments*], vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Variation shall be borne by the Contractor, notwithstanding other provisions of the Contract.

The Engineer shall give the Contractor not less than 24 hours' notice of the Engineer's intention to attend the tests. If the Engineer does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Engineer, and the tests shall then be deemed to have been made in the Engineer's presence.

If the Contractor suffers delay and/or incurs Cost from complying with these instructions or as a result of a delay for which the Employer is responsible, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost plus profit, which shall be included in the Contract Price.

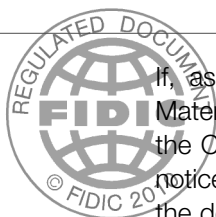
After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

The Contractor shall promptly forward to the Engineer duly certified reports of the tests. When the specified tests have been passed, the Engineer shall endorse the Contractor's test certificate, or issue a certificate to him, to that effect. If the Engineer has not attended the tests, he shall be deemed to have accepted the readings as accurate.

7.5

Rejection

If, as a result of an examination, inspection, measurement or testing, any Plant, Materials or workmanship is found to be defective or otherwise not in accordance with the Contract, the Engineer may reject the Plant, Materials or workmanship by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the defect and ensure that the rejected item complies with the Contract.



If the Engineer requires this Plant, Materials or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Employer to incur additional costs, the Contractor shall subject to Sub-Clause 2.5 [*Employer's Claims*] pay these costs to the Employer.

7.6

Remedial Work

Notwithstanding any previous test or certification, the Engineer may instruct the Contractor to:

- (a) remove from the Site and replace any Plant or Materials which is not in accordance with the Contract,
- (b) remove and re-execute any other work which is not in accordance with the Contract, and
- (c) execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

The Contractor shall comply with the instruction within a reasonable time, which shall be the time (if any) specified in the instruction, or immediately if urgency is specified under sub-paragraph (c).

If the Contractor fails to comply with the instruction, the Employer shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall subject to Sub-Clause 2.5 [*Employer's Claims*] pay to the Employer all costs arising from this failure.

7.7

Ownership of Plant and Materials

Except as otherwise provided in the Contract, each item of Plant and Materials shall, to the extent consistent with the Laws of the Country, become the property of the Employer at whichever is the earlier of the following times, free from liens and other encumbrances:

- (a) when it is incorporated in the Works;
- (b) when the Contractor is paid the corresponding value of the Plant and Materials under Sub-Clause 8.10 [*Payment for Plant and Materials in Event of Suspension*].

7.8

Royalties

Unless otherwise stated in the Specification, the Contractor shall pay all royalties, rents and other payments for:

- (a) natural Materials obtained from outside the Site, and
 - (b) the disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal areas within the Site are specified in the Contract.
-

8 Commencement, Delays and Suspension

8.1

Commencement of Works Except as otherwise specified in the Particular Conditions of Contract, the Commencement Date shall be the date at which the following precedent conditions have all been fulfilled and the Engineer's notification recording the agreement of both Parties on such fulfilment and instructing to commence the Work is received by the Contractor:



- (a) signature of the Contract Agreement by both Parties, and if required, approval of the Contract by relevant authorities of the Country;
- (b) delivery to the Contractor of reasonable evidence of the Employer's Financial arrangements (under Sub-Clause 2.4 [*Employer's Financial Arrangements*]);
- (c) except if otherwise specified in the Contract Data, effective access to and possession of the Site given to the Contractor together with such permission(s) under (a) of Sub-Clause 1.13 [*Compliance with Laws*] as required for the commencement of the Works;
- (d) receipt by the Contractor of the Advance Payment under Sub-Clause 14.2 [*Advance Payment*] provided that the corresponding bank guarantee has been delivered by the Contractor.

If the said Engineer's instruction is not received by the Contractor within 180 days from his receipt of the Letter of Acceptance, the Contractor shall be entitled to terminate the Contract under Sub-Clause 16.2 [*Termination by Contractor*].

The Contractor shall commence the execution of the Works as soon as is reasonably practicable after the Commencement Date, and shall then proceed with the Works with due expedition and without delay.

8.2

Time for Completion

The Contractor shall complete the whole of the Works, and each Section (if any), within the Time for Completion for the Works or Section (as the case may be), including:

- (a) achieving the passing of the Tests on Completion, and
- (b) completing all work which is stated in the Contract as being required for the Works or Section to be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [*Taking Over of the Works and Sections*].

8.3

Programme

The Contractor shall submit a detailed time programme to the Engineer within 28 days after receiving the notice under Sub-Clause 8.1 [*Commencement of Works*]. The Contractor shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Contractor's obligations. Each programme shall include:

- (a) the order in which the Contractor intends to carry out the Works, including the anticipated timing of each stage of design (if any), Contractor's Documents, procurement, manufacture of Plant, delivery to Site, construction, erection and testing,
- (b) each of these stages for work by each nominated Subcontractor (as defined in Clause 5 [*Nominated Subcontractors*]),
- (c) the sequence and timing of inspections and tests specified in the Contract, and
- (d) a supporting report which includes:
 - (i) a general description of the methods which the Contractor intends to adopt, and of the major stages, in the execution of the Works, and
 - (ii) details showing the Contractor's reasonable estimate of the number of each class of Contractor's Personnel and of each type of Contractor's Equipment, required on the Site for each major stage.

Unless the Engineer, within 21 days after receiving a programme, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the programme, subject to his other obligations under the Contract. The Employer's Personnel shall be entitled to rely upon the programme when planning their activities.



The Contractor shall promptly give notice to the Engineer of specific probable future events or circumstances which may adversely affect the work, increase the Contract Price or delay the execution of the Works. The Engineer may require the Contractor to submit an estimate of the anticipated effect of the future event or circumstances, and/or a proposal under Sub-Clause 13.3 [*Variation Procedure*].

If, at any time, the Engineer gives notice to the Contractor that a programme fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall submit a revised programme to the Engineer in accordance with this Sub-Clause.

8.4

Extension of Time for Completion

The Contractor shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 [*Taking-Over of the Works and Sections*] is or will be delayed by any of the following causes:

- (a) a Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [*Variation Procedure*]) or other substantial change in the quantity of an item of work included in the Contract,
- (b) a cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions,
- (c) exceptionally adverse climatic conditions,
- (d) Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions, or
- (e) any delay, impediment or prevention caused by or attributable to the Employer, the Employer's Personnel, or the Employer's other contractors.

If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Engineer in accordance with Sub-Clause 20.1 [*Contractor's Claims*]. When determining each extension of time under Sub-Clause 20.1, the Engineer shall review previous determinations and may increase, but shall not decrease, the total extension of time.

8.5

Delays Caused by Authorities

If the following conditions apply, namely:

- (a) the Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in the Country,
- (b) these authorities delay or disrupt the Contractor's work, and
- (c) the delay or disruption was Unforeseeable,

then this delay or disruption will be considered as a cause of delay under subparagraph (b) of Sub-Clause 8.4 [*Extension of Time for Completion*].

8.6

Rate of Progress

If, at any time:

- (a) actual progress is too slow to complete within the Time for Completion, and/or
- (b) progress has fallen (or will fall) behind the current programme under Sub-Clause 8.3 [*Programme*],

other than as a result of a cause listed in Sub-Clause 8.4 [*Extension of Time for Completion*], then the Engineer may instruct the Contractor to submit, under Sub-Clause 8.3 [*Programme*], a revised programme and supporting report describing the



revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time for Completion.

Unless the Engineer notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Contractor's Personnel and/or Goods, at the risk and cost of the Contractor. If these revised methods cause the Employer to incur additional costs, the Contractor shall subject to notice under Sub-Clause 2.5 [*Employer's Claims*] pay these costs to the Employer, in addition to delay damages (if any) under Sub-Clause 8.7 below.

Additional costs of revised methods including acceleration measures, instructed by the Engineer to reduce delays resulting from causes listed under Sub-Clause 8.4 [*Extension of Time for Completion*] shall be paid by the Employer, without generating, however, any other additional payment benefit to the Contractor.

8.7

Delay Damages

If the Contractor fails to comply with Sub-Clause 8.2 [*Time for Completion*], the Contractor shall subject to notice under Sub-Clause 2.5 [*Employer's Claims*] pay delay damages to the Employer for this default. These delay damages shall be the sum stated in the Contract Data, which shall be paid for every day which shall elapse between the relevant Time for Completion and the date stated in the Taking-Over Certificate. However, the total amount due under this Sub-Clause shall not exceed the maximum amount of delay damages (if any) stated in the Contract Data.

These delay damages shall be the only damages due from the Contractor for such default, other than in the event of termination under Sub-Clause 15.2 [*Termination by Employer*] prior to completion of the Works. These damages shall not relieve the Contractor from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the Contract.

8.8

Suspension of Work

The Engineer may at any time instruct the Contractor to suspend progress of part or all of the Works. During such suspension, the Contractor shall protect, store and secure such part or the Works against any deterioration, loss or damage.

The Engineer may also notify the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of the Contractor, the following Sub-Clauses 8.9, 8.10 and 8.11 shall not apply.

8.9

Consequences of Suspension

If the Contractor suffers delay and/or incurs Cost from complying with the Engineer's instructions under Sub-Clause 8.8 [*Suspension of Work*] and/or from resuming the work, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

The Contractor shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's failure to protect, store or secure in accordance with Sub-Clause 8.8 [*Suspension of Work*].



8.10 Payment for Plant and Materials in Event of Suspension The Contractor shall be entitled to payment of the value (as at the date of suspension) of Plant and/or Materials which have not been delivered to Site, if:

- (a) the work on Plant or delivery of Plant and/or Materials has been suspended for more than 28 days, and
- (b) the Contractor has marked the Plant and/or Materials as the Employer's property in accordance with the Engineer's instructions.

8.11 Prolonged Suspension If the suspension under Sub-Clause 8.8 [*Suspension of Work*] has continued for more than 84 days, the Contractor may request the Engineer's permission to proceed. If the Engineer does not give permission within 28 days after being requested to do so, the Contractor may, by giving notice to the Engineer, treat the suspension as an omission under Clause 13 [*Variations and Adjustments*] of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give notice of termination under Sub-Clause 16.2 [*Termination by Contractor*].

8.12 Resumption of Work After the permission or instruction to proceed is given, the Contractor and the Engineer shall jointly examine the Works and the Plant and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension after receiving from the Engineer an instruction to this effect under Clause 13 [*Variations and Adjustments*].

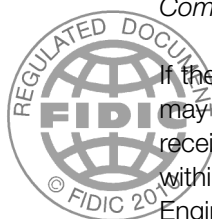
9 Tests on Completion

9.1 Contractor's Obligations The Contractor shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 7.4 [*Testing*], after providing the documents in accordance with subparagraph (d) of Sub-Clause 4.1 [*Contractor's General Obligations*].

The Contractor shall give to the Engineer not less than 21 days' notice of the date after which the Contractor will be ready to carry out each of the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out within 14 days after this date, on such day or days as the Engineer shall instruct.

In considering the results of the Tests on Completion, the Engineer shall make allowances for the effect of any use of the Works by the Employer on the performance or other characteristics of the Works. As soon as the Works, or a Section, have passed any Tests on Completion, the Contractor shall submit a certified report of the results of these Tests to the Engineer.

9.2 Delayed Tests If the Tests on Completion are being unduly delayed by the Employer, Sub-Clause 7.4 [*Testing*] (fifth paragraph) and/or Sub-Clause 10.3 [*Interference with Tests on Completion*] shall be applicable.



If the Tests on Completion are being unduly delayed by the Contractor, the Engineer may by notice require the Contractor to carry out the Tests within 21 days after receiving the notice. The Contractor shall carry out the Tests on such day or days within that period as the Contractor may fix and of which he shall give notice to the Engineer.

If the Contractor fails to carry out the Tests on Completion within the period of 21 days, the Employer's Personnel may proceed with the Tests at the risk and cost of the Contractor. The Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate.

9.3

Retesting

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [*Rejection*] shall apply, and the Engineer or the Contractor may require the failed Tests, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

9.4

Failure to Pass Tests on Completion

If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [*Retesting*], the Engineer shall be entitled to:

- (a) order further repetition of Tests on Completion under Sub-Clause 9.3;
- (b) if the failure deprives the Employer of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Employer shall have the same remedies as are provided in sub-paragraph (c) of Sub-Clause 11.4 [*Failure to Remedy Defects*]; or
- (c) issue a Taking-Over Certificate, if the Employer so requests.

In the event of sub-paragraph (c), the Contractor shall proceed in accordance with all other obligations under the Contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Employer as a result of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract, the Employer may require the reduction to be (i) agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking-Over Certificate is issued, or (ii) determined and paid under Sub-Clause 2.5 [*Employer's Claims*] and Sub-Clause 3.5 [*Determinations*].

10 Employer's Taking Over

10.1

Taking Over of the Works and Sections

Except as stated in Sub-Clause 9.4 [*Failure to Pass Tests on Completion*], the Works shall be taken over by the Employer when (i) the Works have been completed in accordance with the Contract, including the matters described in Sub-Clause 8.2 [*Time for Completion*] and except as allowed in sub-paragraph (a) below, and (ii) a Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.

The Contractor may apply by notice to the Engineer for a Taking-Over Certificate not earlier than 14 days before the Works will, in the Contractor's opinion, be complete and ready for taking over. If the Works are divided into Sections, the Contractor may similarly apply for a Taking-Over Certificate for each Section.

The Engineer shall, within 28 days after receiving the Contractor's application:



- (a) issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use of the Works or Section for their intended purpose (either until or whilst this work is completed and these defects are remedied); or

- (b) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this Sub-Clause.

If the Engineer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days, and if the Works or Section (as the case may be) are substantially in accordance with the Contract, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.

10.2

Taking Over of Parts of the Works

The Engineer may, at the sole discretion of the Employer, issue a Taking-Over Certificate for any part of the Permanent Works.

The Employer shall not use any part of the Works (other than as a temporary measure which is either specified in the Contract or agreed by both Parties) unless and until the Engineer has issued a Taking-Over Certificate for this part. However, if the Employer does use any part of the Works before the Taking-Over Certificate is issued:

- (a) the part which is used shall be deemed to have been taken over as from the date on which it is used,
- (b) the Contractor shall cease to be liable for the care of such part as from this date, when responsibility shall pass to the Employer, and
- (c) if requested by the Contractor, the Engineer shall issue a Taking-Over Certificate for this part.

After the Engineer has issued a Taking-Over Certificate for a part of the Works, the Contractor shall be given the earliest opportunity to take such steps as may be necessary to carry out any outstanding Tests on Completion. The Contractor shall carry out these Tests on Completion as soon as practicable before the expiry date of the relevant Defects Notification Period.

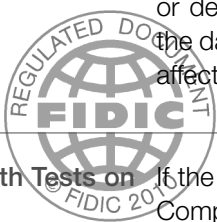
If the Contractor incurs Cost as a result of the Employer taking over and/or using a part of the Works, other than such use as is specified in the Contract or agreed by the Contractor, the Contractor shall (i) give notice to the Engineer and (ii) be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to payment of any such Cost plus profit, which shall be included in the Contract Price. After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine this Cost and profit.

If a Taking-Over Certificate has been issued for a part of the Works (other than a Section), the delay damages thereafter for completion of the remainder of the Works shall be reduced. Similarly, the delay damages for the remainder of the Section (if any) in which this part is included shall also be reduced. For any period of delay after the date stated in this Taking-Over Certificate, the proportional reduction in these delay damages shall be calculated as the proportion which the value of the part so certified bears to the value of the Works or Section (as the case may be) as a whole. The Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these proportions. The provisions of this paragraph shall only apply to the daily rate of delay damages under Sub-Clause 8.7 [*Delay Damages*], and shall not affect the maximum amount of these damages.

10.3

Interference with Tests on Completion

If the Contractor is prevented, for more than 14 days, from carrying out the Tests on Completion by a cause for which the Employer is responsible, the Employer shall be



deemed to have taken over the Works or Section (as the case may be) on the date when the Tests on Completion would otherwise have been completed.

The Engineer shall then issue a Taking-Over Certificate accordingly, and the Contractor shall carry out the Tests on Completion as soon as practicable, before the expiry date of the Defects Notification Period. The Engineer shall require the Tests on Completion to be carried out by giving 14 days' notice and in accordance with the relevant provisions of the Contract.

If the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost plus profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

10.4

Surfaces Requiring Reinstatement

Except as otherwise stated in a Taking-Over Certificate, a certificate for a Section or part of the Works shall not be deemed to certify completion of any ground or other surfaces requiring reinstatement.

11 Defects Liability

11.1

Completion of Outstanding Work and Remedying Defects

In order that the Works and Contractor's Documents, and each Section, shall be in the condition required by the Contract (fair wear and tear excepted) by the expiry date of the relevant Defects Notification Period or as soon as practicable thereafter, the Contractor shall:

- (a) complete any work which is outstanding on the date stated in a Taking-Over Certificate, within such reasonable time as is instructed by the Engineer, and
- (b) execute all work required to remedy defects or damage, as may be notified by (or on behalf of) the Employer on or before the expiry date of the Defects Notification Period for the Works or Section (as the case may be).

If a defect appears or damage occurs, the Contractor shall be notified accordingly, by (or on behalf of) the Employer.

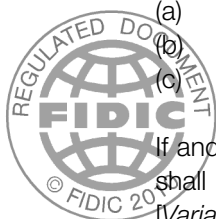
11.2

Cost of Remedying Defects

All work referred to in sub-paragraph (b) of Sub-Clause 11.1 [*Completion of Outstanding Work and Remedying Defects*] shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:

- (a) any design for which the Contractor is responsible,
- (b) Plant, Materials or workmanship not being in accordance with the Contract, or
- (c) failure by the Contractor to comply with any other obligation.

If and to the extent that such work is attributable to any other cause, the Contractor shall be notified promptly by (or on behalf of) the Employer, and Sub-Clause 13.3 [*Variation Procedure*] shall apply.



11.3
Extension of Defects
Notification Period

The Employer shall be entitled subject to Sub-Clause 2.5 [*Employer's Claims*] to an extension of the Defects Notification Period for the Works or a Section if and to the extent that the Works, Section or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or by reason of damage attributable to the Contractor. However, a Defects Notification Period shall not be extended by more than two years.

If delivery and/or erection of Plant and/or Materials was suspended under Sub-Clause 8.8 [*Suspension of Work*] or Sub-Clause 16.1 [*Contractor's Entitlement to Suspend Work*], the Contractor's obligations under this Clause shall not apply to any defects or damage occurring more than two years after the Defects Notification Period for the Plant and/or Materials would otherwise have expired.

11.4
Failure to Remedy
Defects

If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixed by (or on behalf of) the Employer, on or by which the defect or damage is to be remedied. The Contractor shall be given reasonable notice of this date.

If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Contractor under Sub-Clause 11.2 [*Cost of Remedying Defects*], the Employer may (at his option):

- (a) carry out the work himself or by others, in a reasonable manner and at the Contractor's cost, but the Contractor shall have no responsibility for this work; and the Contractor shall subject to Sub-Clause 2.5 [*Employer's Claims*] pay to the Employer the costs reasonably incurred by the Employer in remedying the defect or damage;
- (b) require the Engineer to agree or determine a reasonable reduction in the Contract Price in accordance with Sub-Clause 3.5 [*Determinations*]; or
- (c) if the defect or damage deprives the Employer of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, the Employer shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

11.5
Removal of Defective
Work

If the defect or damage cannot be remedied expeditiously on the Site and the Employer gives consent, the Contractor may remove from the Site for the purposes of repair such items of Plant as are defective or damaged. This consent may require the Contractor to increase the amount of the Performance Security by the full replacement cost of these items, or to provide other appropriate security.

11.6
Further Tests

If the work of remedying of any defect or damage may affect the performance of the Works, the Engineer may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within 28 days after the defect or damage is remedied.

These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under Sub-Clause 11.2 [*Cost of Remedying Defects*], for the cost of the remedial work.



11.7
Right of Access Until the Performance Certificate has been issued, the Contractor shall have such right of access to the Works as is reasonably required in order to comply with this Clause, except as may be inconsistent with the Employer's reasonable security restrictions.

11.8
Contractor to Search The Contractor shall, if required by the Engineer, search for the cause of any defect, under the direction of the Engineer. Unless the defect is to be remedied at the cost of the Contractor under Sub-Clause 11.2 [*Cost of Remedying Defects*], the Cost of the search plus profit shall be agreed or determined by the Engineer in accordance with Sub-Clause 3.5 [*Determinations*] and shall be included in the Contract Price.

11.9
Performance Certificate Performance of the Contractor's obligations shall not be considered to have been completed until the Engineer has issued the Performance Certificate to the Contractor, stating the date on which the Contractor completed his obligations under the Contract.

The Engineer shall issue the Performance Certificate within 28 days after the latest of the expiry dates of the Defects Notification Periods, or as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all the Works, including remedying any defects. A copy of the Performance Certificate shall be issued to the Employer.

Only the Performance Certificate shall be deemed to constitute acceptance of the Works.

11.10
Unfulfilled Obligations After the Performance Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force.

11.11
Clearance of Site Upon receiving the Performance Certificate, the Contractor shall remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.

If all these items have not been removed within 28 days after receipt by the Contractor of the Performance Certificate, the Employer may sell or otherwise dispose of any remaining items. The Employer shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.

Any balance of the moneys from the sale shall be paid to the Contractor. If these moneys are less than the Employer's costs, the Contractor shall pay the outstanding balance to the Employer.

12 Measurement and Evaluation

12.1
Works to be Measured The Works shall be measured, and valued for payment, in accordance with this Clause. The Contractor shall show in each application under Sub-Clauses 14.3 [*Application for Interim Payment Certificates*], 14.10 [*Statement on Completion*] and 14.11 [*Application for Final Payment Certificate*] the quantities and other particulars detailing the amounts which he considers to be entitled under the Contract.

Whenever the Engineer requires any part of the Works to be measured, reasonable notice shall be given to the Contractor's Representative, who shall:

- (a) promptly either attend or send another qualified representative to assist the Engineer in making the measurement, and
- (b) supply any particulars requested by the Engineer.

If the Contractor fails to attend or send a representative, the measurement made by (or on behalf of) the Engineer shall be accepted as accurate.

Except as otherwise stated in the Contract, wherever any Permanent Works are to be measured from records, these shall be prepared by the Engineer. The Contractor shall, as and when requested, attend to examine and agree the records with the Engineer, and shall sign the same when agreed. If the Contractor does not attend, the records shall be accepted as accurate.

If the Contractor examines and disagrees the records, and/or does not sign them as agreed, then the Contractor shall give notice to the Engineer of the respects in which the records are asserted to be inaccurate. After receiving this notice, the Engineer shall review the records and either confirm or vary them and certify the payment of the undisputed part. If the Contractor does not so give notice to the Engineer within 14 days after being requested to examine the records, they shall be accepted as accurate.

12.2

Method of Measurement Except as otherwise stated in the Contract and notwithstanding local practice:

- (a) measurement shall be made of the net actual quantity of each item of the Permanent Works, and
- (b) the method of measurement shall be in accordance with the Bill of Quantities or other applicable Schedules.

12.3

Evaluation

Except as otherwise stated in the Contract, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine the Contract Price by evaluating each item of work, applying the measurement agreed or determined in accordance with the above Sub-Clauses 12.1 and 12.2 and the appropriate rate or price for the item.

For each item of work, the appropriate rate or price for the item shall be the rate or price specified for such item in the Contract or, if there is no such item, specified for similar work.

Any item of work included in the Bill of Quantities for which no rate or price was specified shall be considered as included in other rates and prices in the Bill of Quantities and will not be paid for separately.

However, a new rate or price shall be appropriate for an item of work if:

- (a) (i) the measured quantity of the item is changed by more than 25% from the quantity of this item in the Bill of Quantities or other Schedule,
- (ii) this change in quantity multiplied by such specified rate for this item exceeds 0.25% of the Accepted Contract Amount,
- (iii) this change in quantity directly changes the Cost per unit quantity of this item by more than 1%, and
- (iv) this item is not specified in the Contract as a "fixed rate item";



or

- (b)
 - (i) the work is instructed under Clause 13 [*Variations and Adjustments*],
 - (ii) no rate or price is specified in the Contract for this item, and
 - (iii) no specified rate or price is appropriate because the item of work is not of similar character, or is not executed under similar conditions, as any item in the Contract.

Each new rate or price shall be derived from any relevant rates or prices in the Contract, with reasonable adjustments to take account of the matters described in sub-paragraph (a) and/or (b), as applicable. If no rates or prices are relevant for the derivation of a new rate or price, it shall be derived from the reasonable Cost of executing the work, together with profit, taking account of any other relevant matters.

Until such time as an appropriate rate or price is agreed or determined, the Engineer shall determine a provisional rate or price for the purposes of Interim Payment Certificates as soon as the concerned work commences.

12.4

Omissions

Whenever the omission of any work forms part (or all) of a Variation, the value of which has not been agreed, if:

- (a) the Contractor will incur (or has incurred) cost which, if the work had not been omitted, would have been deemed to be covered by a sum forming part of the Accepted Contract Amount;
- (b) the omission of the work will result (or has resulted) in this sum not forming part of the Contract Price; and
- (c) this cost is not deemed to be included in the evaluation of any substituted work;

then the Contractor shall give notice to the Engineer accordingly, with supporting particulars. Upon receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine this cost, which shall be included in the Contract Price.

13 Variations and Adjustments

13.1

Right to Vary

Variations may be initiated by the Engineer at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal.

The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Engineer stating (with supporting particulars) that (i) the Contractor cannot readily obtain the Goods required for the Variation, or (ii) such Variation triggers a substantial change in the sequence or progress of the Works. Upon receiving this notice, the Engineer shall cancel, confirm or vary the instruction.

Each Variation may include:



- (a) changes to the quantities of any item of work included in the Contract (however, such changes do not necessarily constitute a Variation),
- (b) changes to the quality and other characteristics of any item of work,
- (c) changes to the levels, positions and/or dimensions of any part of the Works,
- (d) omission of any work unless it is to be carried out by others,

- (e) any additional work, Plant, Materials or services necessary for the Permanent Works, including any associated Tests on Completion, boreholes and other testing and exploratory work, or
- (f) changes to the sequence or timing of the execution of the Works.

The Contractor shall not make any alteration and/or modification of the Permanent Works, unless and until the Engineer instructs or approves a Variation.

13.2

Value Engineering

The Contractor may, at any time, submit to the Engineer a written proposal which (in the Contractor's opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Employer of executing, maintaining or operating the Works, (iii) improve the efficiency or value to the Employer of the completed Works, or (iv) otherwise be of benefit to the Employer.

The proposal shall be prepared at the cost of the Contractor and shall include the items listed in Sub-Clause 13.3 [*Variation Procedure*].

If a proposal, which is approved by the Engineer, includes a change in the design of part of the Permanent Works, then unless otherwise agreed by both Parties:

- (a) the Contractor shall design this part,
- (b) sub-paragraphs (a) to (d) of Sub-Clause 4.1 [*Contractor's General Obligations*] shall apply, and
- (c) if this change results in a reduction in the contract value of this part, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine a fee, which shall be included in the Contract Price. This fee shall be half (50%) of the difference between the following amounts:
 - (i) such reduction in contract value, resulting from the change, excluding adjustments under Sub-Clause 13.7 [*Adjustments for Changes in Legislation*] and Sub-Clause 13.8 [*Adjustments for Changes in Cost*], and
 - (ii) the reduction (if any) in the value to the Employer of the varied works, taking account of any reductions in quality, anticipated life or operational efficiencies.

However, if amount (i) is less than amount (ii), there shall not be a fee.

13.3

Variation Procedure

If the Engineer requests a proposal, prior to instructing a Variation, the Contractor shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting:

- (a) a description of the proposed work to be performed and a programme for its execution,
- (b) the Contractor's proposal for any necessary modifications to the programme according to Sub-Clause 8.3 [*Programme*] and to the Time for Completion, and
- (c) the Contractor's proposal for evaluation of the Variation.

The Engineer shall, as soon as practicable after receiving such proposal (under Sub-Clause 13.2 [*Value Engineering*] or otherwise), respond with approval, disapproval or comments. The Contractor shall not delay any work whilst awaiting a response.

Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Engineer to the Contractor, who shall acknowledge receipt.



Each Variation shall be evaluated in accordance with Clause 12 [*Measurement and Evaluation*], unless the Engineer instructs or approves otherwise in accordance with this Clause.

13.4

Payment in Applicable Currencies

If the Contract provides for payment of the Contract Price in more than one currency, then whenever an adjustment is agreed, approved or determined as stated above, the amount payable in each of the applicable currencies shall be specified. For this purpose, reference shall be made to the actual or expected currency proportions of the Cost of the varied work, and to the proportions of various currencies specified for payment of the Contract Price.

13.5

Provisional Sums

Each Provisional Sum shall only be used, in whole or in part, in accordance with the Engineer's instructions, and the Contract Price shall be adjusted accordingly. The total sum paid to the Contractor shall include only such amounts, for the work, supplies or services to which the Provisional Sum relates, as the Engineer shall have instructed. For each Provisional Sum, the Engineer may instruct:

- (a) work to be executed (including Plant, Materials or services to be supplied) by the Contractor and valued under Sub-Clause 13.3 [*Variation Procedure*]; and/or
- (b) Plant, Materials or services to be purchased by the Contractor, from a nominated Subcontractor (as defined in Clause 5 [*Nominated Subcontractors*] or otherwise; and for which there shall be included in the Contract Price:
 - (i) the actual amounts paid (or due to be paid) by the Contractor, and
 - (ii) a sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate (if any) stated in the appropriate Schedule. If there is no such rate, the percentage rate stated in the Contract Data shall be applied.

The Contractor shall, when required by the Engineer, produce quotations, invoices, vouchers and accounts or receipts in substantiation.

13.6

Daywork

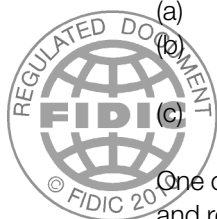
For work of a minor or incidental nature, the Engineer may instruct that a Variation shall be executed on a daywork basis. The work shall then be valued in accordance with the Daywork Schedule included in the Contract, and the following procedure shall apply. If a Daywork Schedule is not included in the Contract, this Sub-Clause shall not apply.

Before ordering Goods for the work, the Contractor shall submit quotations to the Engineer. When applying for payment, the Contractor shall submit invoices, vouchers and accounts or receipts for any Goods.

Except for any items for which the Daywork Schedule specifies that payment is not due, the Contractor shall deliver each day to the Engineer accurate statements in duplicate which shall include the following details of the resources used in executing the previous day's work:

- (a) the names, occupations and time of Contractor's Personnel,
- (b) the identification, type and time of Contractor's Equipment and Temporary Works, and
- (c) the quantities and types of Plant and Materials used.

One copy of each statement will, if correct, or when agreed, be signed by the Engineer and returned to the Contractor. The Contractor shall then submit priced statements of



these resources to the Engineer, prior to their inclusion in the next Statement under Sub-Clause 14.3 [*Application for Interim Payment Certificates*].

13.7

Adjustments for Changes in Legislation

The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in the Laws of the Country (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the Base Date, which affect the Contractor in the performance of obligations under the Contract.

If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these changes in the Laws or in such interpretations, made after the Base Date, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

Notwithstanding the foregoing, the Contractor shall not be entitled to an extension of time if the relevant delay has already been taken into account in the determination of a previous extension of time and such Cost shall not be separately paid if the same shall already have been taken into account in the indexing of any inputs to the table of adjustment data in accordance with the provisions of Sub-Clause 13.8 [*Adjustments for Changes in Cost*].

13.8

Adjustments for Changes in Cost

In this Sub-Clause, "table of adjustment data" means the completed table of adjustment data for local and foreign currencies included in the Schedules. If there is no such table of adjustment data, this Sub-Clause shall not apply.

If this Sub-Clause applies, the amounts payable to the Contractor shall be adjusted for rises or falls in the cost of labour, Goods and other inputs to the Works, by the addition or deduction of the amounts determined by the formulae prescribed in this Sub-Clause. To the extent that full compensation for any rise or fall in Costs is not covered by the provisions of this or other Clauses, the Accepted Contract Amount shall be deemed to have included amounts to cover the contingency of other rises and falls in costs.

The adjustment to be applied to the amount otherwise payable to the Contractor, as valued in accordance with the appropriate Schedule and certified in Payment Certificates, shall be determined from formulae for each of the currencies in which the Contract Price is payable. No adjustment is to be applied to work valued on the basis of Cost or current prices. The formulae shall be of the following general type:

$$P_n = a + b \frac{L_n}{L_o} + c \frac{E_n}{E_o} + d \frac{M_n}{M_o} + \dots$$



"P_n" is the adjustment multiplier to be applied to the estimated contract value in the relevant currency of the work carried out in period "n", this period being a month unless otherwise stated in the Contract Data;

“a” is a fixed coefficient, stated in the relevant table of adjustment data, representing the non-adjustable portion in contractual payments;

“b”, “c”, “d”, ... are coefficients representing the estimated proportion of each cost element related to the execution of the Works, as stated in the relevant table of adjustment data; such tabulated cost elements may be indicative of resources such as labour, equipment and materials;

“Ln”, “En”, “Mn”, ... are the current cost indices or reference prices for period “n”, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the date 49 days prior to the last day of the period (to which the particular Payment Certificate relates); and

“Lo”, “Eo”, “Mo”, ... are the base cost indices or reference prices, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the Base Date.

The cost indices or reference prices stated in the table of adjustment data shall be used. If their source is in doubt, it shall be determined by the Engineer. For this purpose, reference shall be made to the values of the indices at stated dates for the purposes of clarification of the source; although these dates (and thus these values) may not correspond to the base cost indices.

In cases where the “currency of index” is not the relevant currency of payment, each index shall be converted into the relevant currency of payment at the selling rate, established by the central bank of the Country, of this relevant currency on the above date for which the index is required to be applicable.

Until such time as each current cost index is available, the Engineer shall determine a provisional index for the issue of Interim Payment Certificates. When a current cost index is available, the adjustment shall be recalculated accordingly.

If the Contractor fails to complete the Works within the Time for Completion, adjustment of prices thereafter shall be made using either (i) each index or price applicable on the date 49 days prior to the expiry of the Time for Completion of the Works, or (ii) the current index or price, whichever is more favourable to the Employer.

The weightings (coefficients) for each of the factors of cost stated in the table(s) of adjustment data shall only be adjusted if they have been rendered unreasonable, unbalanced or inapplicable, as a result of Variations.

14 Contract Price and Payment

14.1

The Contract Price

Unless otherwise stated in the Particular Conditions:

- (a) the Contract Price shall be agreed or determined under Sub-Clause 12.3 [Evaluation] and be subject to adjustments in accordance with the Contract; the Contractor shall pay all taxes, duties and fees required to be paid by him under the Contract, and the Contract Price shall not be adjusted for any of these costs except as stated in Sub-Clause 13.7 [Adjustments for Changes in Legislation];
- (b) any quantities which may be set out in the Bill of Quantities or other Schedule are estimated quantities and are not to be taken as the actual and correct quantities;



- (i) of the Works which the Contractor is required to execute, or
 - (ii) for the purposes of Clause 12 [*Measurement and Evaluation*]; and
- (d) the Contractor shall submit to the Engineer, within 28 days after the Commencement Date, a proposed breakdown of each lump sum price in the Schedules. The Engineer may take account of the breakdown when preparing Payment Certificates, but shall not be bound by it.

Notwithstanding the provisions of subparagraph (b), Contractor's Equipment, including essential spare parts therefor, imported by the Contractor for the sole purpose of executing the Contract shall be exempt from the payment of import duties and taxes upon importation.

14.2

Advance Payment

The Employer shall make an advance payment, as an interest-free loan for mobilisation and cash flow support, when the Contractor submits a guarantee in accordance with this Sub-Clause. The total advance payment, the number and timing of instalments (if more than one), and the applicable currencies and proportions, shall be as stated in the Contract Data.

Unless and until the Employer receives this guarantee, or if the total advance payment is not stated in the Contract Data, this Sub-Clause shall not apply.

The Engineer shall deliver to the Employer and to the Contractor an Interim Payment Certificate for the advance payment or its first instalment after receiving a Statement (under Sub-Clause 14.3 [*Application for Interim Payment Certificates*]) and after the Employer receives (i) the Performance Security in accordance with Sub-Clause 4.2 [*Performance Security*] and (ii) a guarantee in amounts and currencies equal to the advance payment. This guarantee shall be issued by a reputable bank or financial institution selected by the Contractor, and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer.

The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid, but its amount shall be progressively reduced by the amount repaid by the Contractor as indicated in the Payment Certificates. If the terms of the guarantee specify its expiry date, and the advance payment has not been repaid by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid.

Unless stated otherwise in the Contract Data, the advance payment shall be repaid through percentage deductions from the interim payments determined by the Engineer in accordance with Sub-Clause 14.6 [*Issue of Interim Payment Certificates*], as follows:

- (a) deductions shall commence in the next interim Payment Certificate following that in which the total of all certified interim payments (excluding the advance payment and deductions and repayments of retention) exceeds 30 percent (30%) of the Accepted Contract Amount less Provisional Sums; and
- (b) deductions shall be made at the amortisation rate stated in the Contract Data of the amount of each Interim Payment Certificate (excluding the advance payment and deductions for its repayments as well as deductions for retention money) in the currencies and proportions of the advance payment until such time as the advance payment has been repaid; provided that the advance payment shall be completely repaid prior to the time when 90 percent (90%) of the Accepted Contract Amount less Provisional Sums has been certified for payment.



If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the Works or prior to termination under Clause 15 [*Termination by Employer*], Clause 16 [*Suspension and Termination by Contractor*] or Clause 19.6 [*Force Majeure*] (as the case may be), the whole of the balance then outstanding shall immediately become due and in case of termination under Clause 15 [*Termination by Employer*], except for Sub-Clause 15.5 [*Employer's Entitlement to Termination for Convenience*], payable by the Contractor to the Employer.

14.3

Application for Interim Payment Certificates

The Contractor shall submit a Statement in six copies to the Engineer after the end of each month, in a form approved by the Engineer, showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the report on the progress during this month in accordance with Sub-Clause 4.21 [*Progress Reports*].

The Statement shall include the following items, as applicable, which shall be expressed in the various currencies in which the Contract Price is payable, in the sequence listed:

- (a) the estimated contract value of the Works executed and the Contractor's Documents produced up to the end of the month (including Variations but excluding items described in sub-paragraphs (b) to (g) below);
- (b) any amounts to be added and deducted for changes in legislation and changes in cost, in accordance with Sub-Clause 13.7 [*Adjustments for Changes in Legislation*] and Sub-Clause 13.8 [*Adjustments for Changes in Cost*];
- (c) any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Contract Data to the total of the above amounts, until the amount so retained by the Employer reaches the limit of Retention Money (if any) stated in the Contract Data;
- (d) any amounts to be added for the advance payment (if more than one instalment) and to be deducted for its repayments in accordance with Sub-Clause 14.2 [*Advance Payment*];
- (e) any amounts to be added and deducted for Plant and Materials in accordance with Sub-Clause 14.5 [*Plant and Materials intended for the Works*];
- (f) any other additions or deductions which may have become due under the Contract or otherwise, including those under Clause 20 [*Claims, Disputes and Arbitration*]; and
- (g) the deduction of amounts certified in all previous Payment Certificates.

14.4

Schedule of Payments

If the Contract includes a schedule of payments specifying the instalments in which the Contract Price will be paid, then unless otherwise stated in this schedule:

- (a) the instalments quoted in this schedule of payments shall be the estimated contract values for the purposes of sub-paragraph (a) of Sub-Clause 14.3 [*Application for Interim Payment Certificates*];
- (b) Sub-Clause 14.5 [*Plant and Materials intended for the Works*] shall not apply; and
- (c) if these instalments are not defined by reference to the actual progress achieved in executing the Works, and if actual progress is found to be less or more than that on which this schedule of payments was based, then the Engineer may proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine revised instalments, which shall take account of the extent to which progress is less or more than that on which the instalments were previously based.



If the Contract does not include a schedule of payments, the Contractor shall submit non-binding estimates of the payments which he expects to become due during each

quarterly period. The first estimate shall be submitted within 42 days after the Commencement Date. Revised estimates shall be submitted at quarterly intervals, until the Taking-Over Certificate has been issued for the Works.

14.5

Plant and Materials intended for the Works

If this Sub-Clause applies, Interim Payment Certificates shall include, under sub-paragraph (e) of Sub-Clause 14.3, (i) an amount for Plant and Materials which have been sent to the Site for incorporation in the Permanent Works, and (ii) a reduction when the contract value of such Plant and Materials is included as part of the Permanent Works under sub-paragraph (a) of Sub-Clause 14.3 [*Application for Interim Payment Certificates*].

If the lists referred to in sub-paragraphs (b)(i) or (c)(i) below are not included in the Schedules this Sub-Clause shall not apply.

The Engineer shall determine and certify each addition if the following conditions are satisfied:

- (a) the Contractor has:
 - (i) kept satisfactory records (including the orders, receipts, Costs and use of Plant and Materials) which are available for inspection, and
 - (ii) submitted a statement of the Cost of acquiring and delivering the Plant and Materials to the Site, supported by satisfactory evidence;

and either:

- (b) the relevant Plant and Materials:
 - (i) are those listed in the Schedules for payment when shipped,
 - (ii) have been shipped to the Country, en route to the Site, in accordance with the Contract; and
 - (iii) are described in a clean shipped bill of lading or other evidence of shipment, which has been submitted to the Engineer together with evidence of payment of freight and insurance, any other documents reasonably required, and a bank guarantee in a form and issued by an entity approved by the Employer in amounts and currencies equal to the amount due under this Sub-Clause: this guarantee may be in a similar form to the form referred to in Sub-Clause 14.2 [*Advance Payment*] and shall be valid until the Plant and Materials are properly stored on Site and protected against loss, damage or deterioration;

or

- (c) the relevant Plant and Materials:
 - (i) are those listed in the Schedules for payment when delivered to the Site, and
 - (ii) have been delivered to and are properly stored on the Site, are protected against loss, damage or deterioration, and appear to be in accordance with the Contract.

The additional amount to be certified shall be the equivalent of eighty percent (80%) of the Engineer's determination of the cost of the Plant and Materials (including delivery to Site), taking account of the documents mentioned in this Sub-Clause and of the contract value of the Plant and Materials.



The currencies for this additional amount shall be the same as those in which payment will become due when the contract value is included under sub-paragraph (a) of Sub-Clause 14.3 [*Application for Interim Payment Certificates*]. At that time, the Payment Certificate shall include the applicable reduction which shall be equivalent to, and in the same currencies and proportions as, this additional amount for the relevant Plant and Materials.

14.6

Issue of Interim Payment Certificates

No amount will be certified or paid until the Employer has received and approved the Performance Security. Thereafter, the Engineer shall, within 28 days after receiving a Statement and supporting documents, deliver to the Employer and to the Contractor an Interim Payment Certificate which shall state the amount which the Engineer fairly determines to be due, with all supporting particulars for any reduction or withholding made by the Engineer on the Statement if any.

However, prior to issuing the Taking-Over Certificate for the Works, the Engineer shall not be bound to issue an Interim Payment Certificate in an amount which would (after retention and other deductions) be less than the minimum amount of Interim Payment Certificates (if any) stated in the Contract Data. In this event, the Engineer shall give notice to the Contractor accordingly.

An Interim Payment Certificate shall not be withheld for any other reason, although:

- (a) if any thing supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or
- (b) if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Engineer, the value of this work or obligation may be withheld until the work or obligation has been performed.

The Engineer may in any Payment Certificate make any correction or modification that should properly be made to any previous Payment Certificate. A Payment Certificate shall not be deemed to indicate the Engineer's acceptance, approval, consent or satisfaction.

14.7

Payment

The Employer shall pay to the Contractor:

- (a) the first instalment of the advance payment within 42 days after issuing the Letter of Acceptance or within 21 days after receiving the documents in accordance with Sub-Clause 4.2 [*Performance Security*] and Sub-Clause 14.2 [*Advance Payment*], whichever is later;
- (b) the amount certified in each Interim Payment Certificate within 56 days after the Engineer receives the Statement and supporting documents; or, at a time when the Bank's loan or credit (from which part of the payments to the Contractor is being made) is suspended, the amount shown on any statement submitted by the Contractor within 14 days after such statement is submitted, any discrepancy being rectified in the next payment to the Contractor; and
the amount certified in the Final Payment Certificate within 56 days after the Employer receives this Payment Certificate; or, at a time when the Bank's loan or credit (from which part of the payments to the Contractor is being made) is suspended, the undisputed amount shown in the Final Statement within 56 days after the date of notification of the suspension in accordance with Sub-Clause 16.2 [*Termination by Contractor*].



Payment of the amount due in each currency shall be made into the bank account, nominated by the Contractor, in the payment country (for this currency) specified in the Contract.

14.8

Delayed Payment

If the Contractor does not receive payment in accordance with Sub-Clause 14.7 [Payment], the Contractor shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period of delay. This period shall be deemed to commence on the date for payment specified in Sub-Clause 14.7 [Payment], irrespective (in the case of its sub-paragraph (b)) of the date on which any Interim Payment Certificate is issued.

Unless otherwise stated in the Particular Conditions, these financing charges shall be calculated at the annual rate of three percentage points above the discount rate of the central bank in the country of the currency of payment, or if not available, the interbank offered rate, and shall be paid in such currency.

The Contractor shall be entitled to this payment without formal notice or certification, and without prejudice to any other right or remedy.

14.9

Payment of Retention Money

When the Taking-Over Certificate has been issued for the Works, the first half of the Retention Money shall be certified by the Engineer for payment to the Contractor. If a Taking-Over Certificate is issued for a Section or part of the Works, a proportion of the Retention Money shall be certified and paid. This proportion shall be half (50%) of the proportion calculated by dividing the estimated contract value of the Section or part, by the estimated final Contract Price.

Promptly after the latest of the expiry dates of the Defects Notification Periods, the outstanding balance of the Retention Money shall be certified by the Engineer for payment to the Contractor. If a Taking-Over Certificate was issued for a Section, a proportion of the second half of the Retention Money shall be certified and paid promptly after the expiry date of the Defects Notification Period for the Section. This proportion shall be half (50%) of the proportion calculated by dividing the estimated contract value of the Section by the estimated final Contract Price.

However, if any work remains to be executed under Clause 11 [Defects Liability], the Engineer shall be entitled to withhold certification of the estimated cost of this work until it has been executed.

When calculating these proportions, no account shall be taken of any adjustments under Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost].

Unless otherwise stated in the Particular Conditions, when the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment by the Engineer, the Contractor shall be entitled to substitute a guarantee, in the form annexed to the Particular Conditions or in another form approved by the Employer and issued by a reputable bank or financial institution selected by the Contractor, for the second half of the Retention Money. The Contractor shall ensure that the guarantee is in the amounts and currencies of the second half of the Retention Money and is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects, as specified for the Performance Security in Sub-Clause 4.2. On receipt by the Employer of the required guarantee, the Engineer shall certify and the Employer shall pay the second half of the Retention Money. The release of the second half of the Retention Money



against a guarantee shall then be in lieu of the release under the second paragraph of this Sub-Clause. The Employer shall return the guarantee to the Contractor within 21 days after receiving a copy of the Performance Certificate.

If the Performance Security required under Sub-Clause 4.2 is in the form of a demand guarantee, and the amount guaranteed under it when the Taking-Over Certificate is issued is more than half of the Retention Money, then the Retention Money guarantee will not be required. If the amount guaranteed under the Performance Security when the Taking-Over Certificate is issued is less than half of the Retention Money, the Retention Money guarantee will only be required for the difference between half of the Retention Money and the amount guaranteed under the Performance Security.

14.10

Statement at Completion Within 84 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Engineer six copies of a Statement at completion with supporting documents, in accordance with Sub-Clause 14.3 [*Application for Interim Payment Certificates*], showing:

- (a) the value of all work done in accordance with the Contract up to the date stated in the Taking-Over Certificate for the Works,
- (b) any further sums which the Contractor considers to be due, and
- (c) an estimate of any other amounts which the Contractor considers will become due to him under the Contract. Estimated amounts shall be shown separately in this Statement at completion.

The Engineer shall then certify in accordance with Sub-Clause 14.6 [*Issue of Interim Payment Certificates*].

14.11

Application for Final Payment Certificate Within 56 days after receiving the Performance Certificate, the Contractor shall submit, to the Engineer, six copies of a draft final statement with supporting documents showing in detail in a form approved by the Engineer:

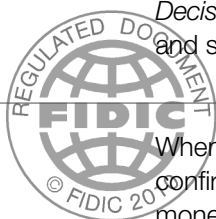
- (a) the value of all work done in accordance with the Contract, and
- (b) any further sums which the Contractor considers to be due to him under the Contract or otherwise.

If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonably require within 28 days from receipt of said draft and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Engineer the final statement as agreed. This agreed statement is referred to in these Conditions as the "Final Statement".

However if, following discussions between the Engineer and the Contractor and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Engineer shall deliver to the Employer (with a copy to the Contractor) an Interim Payment Certificate for the agreed parts of the draft final statement. Thereafter, if the dispute is finally resolved under Sub-Clause 20.4 [*Obtaining Dispute Board's Decision*] or Sub-Clause 20.5 [*Amicable Settlement*], the Contractor shall then prepare and submit to the Employer (with a copy to the Engineer) a Final Statement.

14.12

Discharge When submitting the Final Statement, the Contractor shall submit a discharge which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract. This



discharge may state that it becomes effective when the Contractor has received the Performance Security and the outstanding balance of this total, in which event the discharge shall be effective on such date.

14.13

Issue of Final Payment Certificate

Within 28 days after receiving the Final Statement and discharge in accordance with Sub-Clause 14.11 [*Application for Final Payment Certificate*] and Sub-Clause 14.12 [*Discharge*], the Engineer shall deliver, to the Employer and to the Contractor, the Final Payment Certificate which shall state:

- (a) the amount which he fairly determines is finally due, and
- (b) after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled, the balance (if any) due from the Employer to the Contractor or from the Contractor to the Employer, as the case may be.

If the Contractor has not applied for a Final Payment Certificate in accordance with Sub-Clause 14.11 [*Application for Final Payment Certificate*] and Sub-Clause 14.12 [*Discharge*], the Engineer shall request the Contractor to do so. If the Contractor fails to submit an application within a period of 28 days, the Engineer shall issue the Final Payment Certificate for such amount as he fairly determines to be due.

14.14

Cessation of Employer's Liability

The Employer shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the Works, except to the extent that the Contractor shall have included an amount expressly for it:

- (a) in the Final Statement and also
- (b) (except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in the Statement at completion described in Sub-Clause 14.10 [*Statement at Completion*].

However, this Sub-Clause shall not limit the Employer's liability under his indemnification obligations, or the Employer's liability in any case of fraud, deliberate default or reckless misconduct by the Employer.

14.15

Currencies of Payment

The Contract Price shall be paid in the currency or currencies named in the Schedule of Payment Currencies. If more than one currency is so named, payments shall be made as follows:

- (a) if the Accepted Contract Amount was expressed in Local Currency only:
 - (i) the proportions or amounts of the Local and Foreign Currencies, and the fixed rates of exchange to be used for calculating the payments, shall be as stated in the Schedule of Payment Currencies, except as otherwise agreed by both Parties;
 - (ii) payments and deductions under Sub-Clause 13.5 [*Provisional Sums*] and Sub-Clause 13.7 [*Adjustments for Changes in Legislation*] shall be made in the applicable currencies and proportions; and
 - (iii) other payments and deductions under sub-paragraphs (a) to (d) of Sub-Clause 14.3 [*Application for Interim Payment Certificates*] shall be made in the currencies and proportions specified in sub-paragraph (a)(i) above;



payment of the damages specified in the Contract Data shall be made in the currencies and proportions specified in the Schedule of Payment currencies;

- (c) other payments to the Employer by the Contractor shall be made in the currency in which the sum was expended by the Employer, or in such currency as may be agreed by both Parties;
- (d) if any amount payable by the Contractor to the Employer in a particular currency exceeds the sum payable by the Employer to the Contractor in that currency, the Employer may recover the balance of this amount from the sums otherwise payable to the Contractor in other currencies; and
- (e) if no rates of exchange are stated in the Schedule of Payment Currencies, they shall be those prevailing on the Base Date and determined by the central bank of the Country.

15 Termination by Employer

15.1

Notice to Correct

If the Contractor fails to carry out any obligation under the Contract, the Engineer may by notice require the Contractor to make good the failure and to remedy it within a specified reasonable time.

15.2

Termination by Employer

The Employer shall be entitled to terminate the Contract if the Contractor:

- (a) fails to comply with Sub-Clause 4.2 [*Performance Security*] or with a notice under Sub-Clause 15.1 [*Notice to Correct*],
- (b) abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,
- (c) without reasonable excuse fails:
 - (i) to proceed with the Works in accordance with Clause 8 [*Commencement, Delays and Suspension*], or
 - (ii) to comply with a notice issued under Sub-Clause 7.5 [*Rejection*] or Sub-Clause 7.6 [*Remedial Work*], within 28 days after receiving it,
- (d) subcontracts the whole of the Works or assigns the Contract without the required agreement,
- (e) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events, or
- (f) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
 - (i) for doing or forbearing to do any action in relation to the Contract, or
 - (ii) for showing or forbearing to show favour or disfavour to any person in relation to the Contract,

or if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (f). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination.

In any of these events or circumstances, the Employer may, upon giving 14 days' notice to the Contractor, terminate the Contract and expel the Contractor from the



Site. However, in the case of sub-paragraph (e) or (f), the Employer may by notice terminate the Contract immediately.

The Employer's election to terminate the Contract shall not prejudice any other rights of the Employer, under the Contract or otherwise.

The Contractor shall then leave the Site and deliver any required Goods, all Contractor's Documents, and other design documents made by or for him, to the Engineer. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any subcontract, and (ii) for the protection of life or property or for the safety of the Works.

After termination, 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 Goods, Contractor's Documents and other design documents 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.

15.3

Valuation at Date of Termination

As soon as practicable after a notice of termination under Sub-Clause 15.2 [*Termination by Employer*] has taken effect, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine the value of the Works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract.

15.4

Payment after Termination

After a notice of termination under Sub-Clause 15.2 [*Termination by Employer*] has taken effect, the Employer may:

- (a) proceed in accordance with Sub-Clause 2.5 [*Employer's Claims*],
- (b) withhold further payments to the Contractor until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Employer, have been established, and/or
- (c) recover from the Contractor any losses and damages incurred by the Employer and any extra costs of completing the Works, after allowing for any sum due to the Contractor under Sub-Clause 15.3 [*Valuation at Date of Termination*]. After recovering any such losses, damages and extra costs, the Employer shall pay any balance to the Contractor.

15.5

Employer's Entitlement to Termination for Convenience

The Employer shall be entitled to terminate the Contract, at any time for the Employer's convenience, by giving notice of such termination to the Contractor. The termination shall take effect 28 days after the later of the dates on which the Contractor receives this notice or the Employer returns the Performance Security. The Employer shall not terminate the Contract under this Sub-Clause in order to execute the Works himself or to arrange for the Works to be executed by another contractor or to avoid a termination of the Contract by the Contractor under Clause 16.2 [*Termination by Contractor*].

After this termination, the Contractor shall proceed in accordance with Sub-Clause 16.3 [*Cessation of Work and Removal of Contractor's Equipment*] and shall be paid in accordance with Sub-Clause 16.4 [*Payment on Termination*].



15.6 Corrupt or Fraudulent Practices

If the Employer determines, based on reasonable evidence, that the Contractor has engaged in corrupt, fraudulent, collusive or coercive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days notice to the Contractor, terminate the Contract and expel him from the Site, and the provisions of Clause 15 shall apply as if such termination had been made under Sub-Clause 15.2 [*Termination by Employer*].

Should any employee of the Contractor be determined, based on reasonable evidence, to have engaged in corrupt, fraudulent or coercive practice during the execution of the work then that employee shall be removed in accordance with Sub-Clause 6.9 [*Contractor's Personnel*].

[*For contracts financed by the African Development Bank:*]

For the purposes of this Sub-Clause:

- (a) "corrupt practice" means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in the contract execution; and
- (b) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of the Contract to the detriment of the borrower, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the borrower of the benefits of free and open competition.

16

Suspension and Termination by Contractor

16.1 Contractor's Entitlement to Suspend Work

If the Engineer fails to certify in accordance with Sub-Clause 14.6 [*Issue of Interim Payment Certificates*] or the Employer fails to comply with Sub-Clause 2.4 [*Employer's Financial Arrangements*] or Sub-Clause 14.7 [*Payment*], the Contractor may, after giving not less than 21 days' notice to the Employer, suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, reasonable evidence or payment, as the case may be and as described in the notice.

Notwithstanding the above, if the Bank has suspended disbursements under the loan or credit from which payments to the Contractor are being made, in whole or in part, for the execution of the Works, and no alternative funds are available as provided for in Sub-Clause 2.4 [*Employer's Financial Arrangements*], the Contractor may by notice suspend work or reduce the rate of work at any time, but not less than 7 days after the Borrower having received the suspension notification from the Bank.

The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 14.8 [*Delayed Payment*] and to termination under Sub-Clause 16.2 [*Termination by Contractor*].

If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.

If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall



give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost plus profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

16.2

Termination by Contractor

The Contractor shall be entitled to terminate the Contract if:

- (a) the Contractor does not receive the reasonable evidence within 42 days after giving notice under Sub-Clause 16.1 [*Contractor's Entitlement to Suspend Work*] in respect of a failure to comply with Sub-Clause 2.4 [*Employer's Financial Arrangements*],
- (b) the Engineer fails, within 56 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate,
- (c) the Contractor does not receive the amount due under an Interim Payment Certificate within 42 days after the expiry of the time stated in Sub-Clause 14.7 [*Payment*] within which payment is to be made (except for deductions in accordance with Sub-Clause 2.5 [*Employer's Claims*]),
- (d) the Employer substantially fails to perform his obligations under the Contract in such manner as to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract,
- (e) the Employer fails to comply with Sub-Clause 1.6 [*Contract Agreement*] or Sub-Clause 1.7 [*Assignment*],
- (f) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [*Prolonged Suspension*],
- (g) the Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events,
- (h) the Contractor does not receive the Engineer's instruction recording the agreement of both Parties on the fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1 [*Commencement of Works*].

In any of these events or circumstances, the Contractor may, upon giving 14 days' notice to the Employer, terminate the Contract. However, in the case of subparagraph (f) or (g), the Contractor may by notice terminate the Contract immediately.

In the event the Bank suspends the loan or credit from which part or whole of the payments to the Contractor are being made, if the Contractor has not received the sums due to him upon expiration of the 14 days referred to in Sub-Clause 14.7 [*Payment*] for payments under Interim Payment Certificates, the Contractor may, without prejudice to the Contractor's entitlement to financing charges under Sub-Clause 14.8 [*Delayed Payment*], take one of the following actions, namely (i) suspend work or reduce the rate of work under Sub-Clause 16.1 above, or (ii) terminate the Contract by giving notice to the Employer, with a copy to the Engineer, such termination to take effect 14 days after the giving of the notice.

The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.



15.6 Corrupt or Fraudulent Practices

If the Employer determines, based on reasonable evidence, that the Contractor has engaged in corrupt, fraudulent, collusive or coercive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days notice to the Contractor, terminate the Contract and expel him from the Site, and the provisions of Clause 15 shall apply as if such termination had been made under Sub-Clause 15.2 [*Termination by Employer*].

Should any employee of the Contractor be determined, based on reasonable evidence, to have engaged in corrupt, fraudulent or coercive practice during the execution of the work then that employee shall be removed in accordance with Sub-Clause 6.9 [*Contractor's Personnel*].

[*For contracts financed by the Asian Development Bank:*]

For the purposes of this Sub-Clause:

- (a) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
- (b) "fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (c) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (d) "collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.

16

Suspension and Termination by Contractor

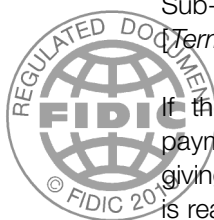
16.1 Contractor's Entitlement to Suspend Work

If the Engineer fails to certify in accordance with Sub-Clause 14.6 [*Issue of Interim Payment Certificates*] or the Employer fails to comply with Sub-Clause 2.4 [*Employer's Financial Arrangements*] or Sub-Clause 14.7 [*Payment*], the Contractor may, after giving not less than 21 days' notice to the Employer, suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, reasonable evidence or payment, as the case may be and as described in the notice.

Notwithstanding the above, if the Bank has suspended disbursements under the loan or credit from which payments to the Contractor are being made, in whole or in part, for the execution of the Works, and no alternative funds are available as provided for in Sub-Clause 2.4 [*Employer's Financial Arrangements*], the Contractor may by notice suspend work or reduce the rate of work at any time, but not less than 7 days after the Borrower having received the suspension notification from the Bank.

The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 14.8 [*Delayed Payment*] and to termination under Sub-Clause 16.2 [*Termination by Contractor*].

If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.



If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost plus profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

16.2

Termination by Contractor

The Contractor shall be entitled to terminate the Contract if:

- (a) the Contractor does not receive the reasonable evidence within 42 days after giving notice under Sub-Clause 16.1 [*Contractor's Entitlement to Suspend Work*] in respect of a failure to comply with Sub-Clause 2.4 [*Employer's Financial Arrangements*],
- (b) the Engineer fails, within 56 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate,
- (c) the Contractor does not receive the amount due under an Interim Payment Certificate within 42 days after the expiry of the time stated in Sub-Clause 14.7 [*Payment*] within which payment is to be made (except for deductions in accordance with Sub-Clause 2.5 [*Employer's Claims*]),
- (d) the Employer substantially fails to perform his obligations under the Contract in such manner as to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract,
- (e) the Employer fails to comply with Sub-Clause 1.6 [*Contract Agreement*] or Sub-Clause 1.7 [*Assignment*],
- (f) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [*Prolonged Suspension*],
- (g) the Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events,
- (h) the Contractor does not receive the Engineer's instruction recording the agreement of both Parties on the fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1 [*Commencement of Works*].

In any of these events or circumstances, the Contractor may, upon giving 14 days' notice to the Employer, terminate the Contract. However, in the case of subparagraph (f) or (g), the Contractor may by notice terminate the Contract immediately.

In the event the Bank suspends the loan or credit from which part or whole of the payments to the Contractor are being made, if the Contractor has not received the sums due to him upon expiration of the 14 days referred to in Sub-Clause 14.7 [*Payment*] for payments under Interim Payment Certificates, the Contractor may, without prejudice to the Contractor's entitlement to financing charges under Sub-Clause 14.8 [*Delayed Payment*], take one of the following actions, namely (i) suspend work or reduce the rate of work under Sub-Clause 16.1 above, or (ii) terminate the Contract by giving notice to the Employer, with a copy to the Engineer, such termination to take effect 14 days after the giving of the notice.

The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.



15.6 Corrupt or Fraudulent Practices

If the Employer determines, based on reasonable evidence, that the Contractor has engaged in corrupt, fraudulent, collusive or coercive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days notice to the Contractor, terminate the Contract and expel him from the Site, and the provisions of Clause 15 shall apply as if such termination had been made under Sub-Clause 15.2 [*Termination by Employer*].

Should any employee of the Contractor be determined, based on reasonable evidence, to have engaged in corrupt, fraudulent or coercive practice during the execution of the work then that employee shall be removed in accordance with Sub-Clause 6.9 [*Contractor's Personnel*].

[*For contracts financed by the Black Sea Trade and Development Bank or by the European Bank for Reconstruction and Development:*]

For the purposes of this Sub-Clause:

- (a) "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official, or the threatening of injury to person, property or reputation, in connection with the procurement process or in contract execution in order to obtain or retain business or other improper advantage in the conduct of international business; and
- (b) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the client, and includes collusive practices among tenderers (prior to or after tender submission) designed to establish tender prices at artificial, non-competitive levels and to deprive the client of the benefits of free and open competition.

16

Suspension and Termination by Contractor

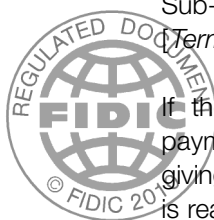
16.1 Contractor's Entitlement to Suspend Work

If the Engineer fails to certify in accordance with Sub-Clause 14.6 [*Issue of Interim Payment Certificates*] or the Employer fails to comply with Sub-Clause 2.4 [*Employer's Financial Arrangements*] or Sub-Clause 14.7 [*Payment*], the Contractor may, after giving not less than 21 days' notice to the Employer, suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, reasonable evidence or payment, as the case may be and as described in the notice.

Notwithstanding the above, if the Bank has suspended disbursements under the loan or credit from which payments to the Contractor are being made, in whole or in part, for the execution of the Works, and no alternative funds are available as provided for in Sub-Clause 2.4 [*Employer's Financial Arrangements*], the Contractor may by notice suspend work or reduce the rate of work at any time, but not less than 7 days after the Borrower having received the suspension notification from the Bank.

The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 14.8 [*Delayed Payment*] and to termination under Sub-Clause 16.2 [*Termination by Contractor*].

If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.



If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost plus profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

16.2

Termination by Contractor

The Contractor shall be entitled to terminate the Contract if:

- (a) the Contractor does not receive the reasonable evidence within 42 days after giving notice under Sub-Clause 16.1 [*Contractor's Entitlement to Suspend Work*] in respect of a failure to comply with Sub-Clause 2.4 [*Employer's Financial Arrangements*],
- (b) the Engineer fails, within 56 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate,
- (c) the Contractor does not receive the amount due under an Interim Payment Certificate within 42 days after the expiry of the time stated in Sub-Clause 14.7 [*Payment*] within which payment is to be made (except for deductions in accordance with Sub-Clause 2.5 [*Employer's Claims*]),
- (d) the Employer substantially fails to perform his obligations under the Contract in such manner as to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract,
- (e) the Employer fails to comply with Sub-Clause 1.6 [*Contract Agreement*] or Sub-Clause 1.7 [*Assignment*],
- (f) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [*Prolonged Suspension*],
- (g) the Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events,
- (h) the Contractor does not receive the Engineer's instruction recording the agreement of both Parties on the fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1 [*Commencement of Works*].

In any of these events or circumstances, the Contractor may, upon giving 14 days' notice to the Employer, terminate the Contract. However, in the case of subparagraph (f) or (g), the Contractor may by notice terminate the Contract immediately.

In the event the Bank suspends the loan or credit from which part or whole of the payments to the Contractor are being made, if the Contractor has not received the sums due to him upon expiration of the 14 days referred to in Sub-Clause 14.7 [*Payment*] for payments under Interim Payment Certificates, the Contractor may, without prejudice to the Contractor's entitlement to financing charges under Sub-Clause 14.8 [*Delayed Payment*], take one of the following actions, namely (i) suspend work or reduce the rate of work under Sub-Clause 16.1 above, or (ii) terminate the Contract by giving notice to the Employer, with a copy to the Engineer, such termination to take effect 14 days after the giving of the notice.

The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.



15.6
Corrupt or Fraudulent Practices

If the Employer determines, based on reasonable evidence, that the Contractor has engaged in corrupt, fraudulent, collusive or coercive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days notice to the Contractor, terminate the Contract and expel him from the Site, and the provisions of Clause 15 shall apply as if such termination had been made under Sub-Clause 15.2 [*Termination by Employer*].

Should any employee of the Contractor be determined, based on reasonable evidence, to have engaged in corrupt, fraudulent or coercive practice during the execution of the work then that employee shall be removed in accordance with Sub-Clause 6.9 [*Contractor's Personnel*].

[*For contracts financed by the Caribbean Development Bank:*]

For the purposes of this Sub-Clause:

- (a) "corrupt practice" means the offering, giving, receiving or soliciting, directly or indirectly, of any thing of value to influence the action of a public official in the procurement process or in the Contract execution;
- (b) "fraudulent practice" means a misrepresentation or omission of facts in order to influence a procurement process or the execution of the Contract;
- (c) "collusive practice" means a scheme or arrangement between two or more bidders, with or without the knowledge of the Borrower, designed to establish bid prices at artificial, non-competitive levels;
- (d) "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of a contract.

16

Suspension and Termination by Contractor

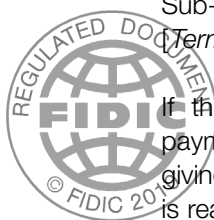
16.1
Contractor's Entitlement to Suspend Work

If the Engineer fails to certify in accordance with Sub-Clause 14.6 [*Issue of Interim Payment Certificates*] or the Employer fails to comply with Sub-Clause 2.4 [*Employer's Financial Arrangements*] or Sub-Clause 14.7 [*Payment*], the Contractor may, after giving not less than 21 days' notice to the Employer, suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, reasonable evidence or payment, as the case may be and as described in the notice.

Notwithstanding the above, if the Bank has suspended disbursements under the loan or credit from which payments to the Contractor are being made, in whole or in part, for the execution of the Works, and no alternative funds are available as provided for in Sub-Clause 2.4 [*Employer's Financial Arrangements*], the Contractor may by notice suspend work or reduce the rate of work at any time, but not less than 7 days after the Borrower having received the suspension notification from the Bank.

The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 14.8 [*Delayed Payment*] and to termination under Sub-Clause 16.2 [*Termination by Contractor*].

If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.



If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost plus profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

16.2

Termination by Contractor

The Contractor shall be entitled to terminate the Contract if:

- (a) the Contractor does not receive the reasonable evidence within 42 days after giving notice under Sub-Clause 16.1 [*Contractor's Entitlement to Suspend Work*] in respect of a failure to comply with Sub-Clause 2.4 [*Employer's Financial Arrangements*],
- (b) the Engineer fails, within 56 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate,
- (c) the Contractor does not receive the amount due under an Interim Payment Certificate within 42 days after the expiry of the time stated in Sub-Clause 14.7 [*Payment*] within which payment is to be made (except for deductions in accordance with Sub-Clause 2.5 [*Employer's Claims*]),
- (d) the Employer substantially fails to perform his obligations under the Contract in such manner as to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract,
- (e) the Employer fails to comply with Sub-Clause 1.6 [*Contract Agreement*] or Sub-Clause 1.7 [*Assignment*],
- (f) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [*Prolonged Suspension*],
- (g) the Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events,
- (h) the Contractor does not receive the Engineer's instruction recording the agreement of both Parties on the fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1 [*Commencement of Works*].

In any of these events or circumstances, the Contractor may, upon giving 14 days' notice to the Employer, terminate the Contract. However, in the case of subparagraph (f) or (g), the Contractor may by notice terminate the Contract immediately.

In the event the Bank suspends the loan or credit from which part or whole of the payments to the Contractor are being made, if the Contractor has not received the sums due to him upon expiration of the 14 days referred to in Sub-Clause 14.7 [*Payment*] for payments under Interim Payment Certificates, the Contractor may, without prejudice to the Contractor's entitlement to financing charges under Sub-Clause 14.8 [*Delayed Payment*], take one of the following actions, namely (i) suspend work or reduce the rate of work under Sub-Clause 16.1 above, or (ii) terminate the Contract by giving notice to the Employer, with a copy to the Engineer, such termination to take effect 14 days after the giving of the notice.

The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.



15.6
Corrupt or Fraudulent
Practices

If the Employer determines, based on reasonable evidence, that the Contractor has engaged in corrupt, fraudulent, collusive or coercive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days notice to the Contractor, terminate the Contract and expel him from the Site, and the provisions of Clause 15 shall apply as if such termination had been made under Sub-Clause 15.2 [*Termination by Employer*].

Should any employee of the Contractor be determined, based on reasonable evidence, to have engaged in corrupt, fraudulent or coercive practice during the execution of the work then that employee shall be removed in accordance with Sub-Clause 6.9 [*Contractor's Personnel*].

[*For contracts financed by the Inter-American Development Bank:*]

For the purposes of this Sub-Clause:

The Bank requires that all Contractors adhere to the Bank's Policies for the Procurement of Works and Goods financed by the Bank. In particular, the Bank requires that all Borrowers (including grant beneficiaries), the executing agencies and contracting agencies, as well as all firms, entities and individuals bidding for or participating in a Bank-financed project, including, inter alia, applicants, bidders, contractors, consulting firms and individual consultants (including their respective officers, employees and agents) adhere to the highest ethical standards, and report to the Bank all suspected acts of fraud or corruption of which it has knowledge or becomes aware, during the Bidding Process and throughout the negotiation or execution of a Contract. Fraud and corruption are prohibited.

Fraud and corruption include acts of:

- (a) bribery,
- (b) extortion or coercion,
- (c) fraud, and
- (d) collusion.

The definitions of actions set forth below cover the most common types of corrupt practices, but are not exhaustive. For this reason, the Bank shall also take action in the event of any similar deed or complaint involving alleged acts of corruption, even when these are not specified in the following list. The Bank shall in all cases proceed in accordance with Sub-Clause 15.6.

In pursuance of this policy:

- (a) *the Bank defines the terms set forth below as follows:*
 - (i) *"bribery" meaning the offering or giving of anything of value to influence the actions or decisions of third parties or the receiving or soliciting of any benefit in exchange for actions or omissions related to the performance of duties;*
 - (ii) *"extortion" or "coercion" meaning the act of obtaining something, compelling an action or influencing a decision through intimidation, threat or the use of force, where potential or actual injury may befall upon a person, his/her reputation or property;*
 - (iii) *"fraud" meaning any action or omission intended to misrepresent the truth so as to induce others to act in reliance thereof, with the purpose of obtaining some unjust advantage or causing damage to others; and*
 - (iv) *"collusion" meaning a secret agreement between two or more parties to defraud or cause damage to a person or entity or to obtain an unlawful purpose;*



- (b) *if the Bank, in accordance with its administrative procedures, demonstrates that any firm, entity or individual bidding for or participating in a Bank-financed project including, inter alia, applicants, bidders, contractors, consulting firms, individual consultants, borrowers (including grant beneficiaries), purchasers, executing agencies and contracting agency (including their respective officers, employees and agents) engaged in an act of fraud or corruption in connection with Bank-financed projects, the Bank may:*
- (i) *decide not to finance any proposal to award a contract or a contract awarded financed by the Bank;*
 - (ii) *suspend disbursement of the operation if it is determined at any stage that evidence is sufficient to support a finding that an employee, agent or representative of the Borrower, Executing Agency or Contracting Agency has engaged in an act of fraud or corruption;*
 - (iii) *cancel and/or accelerate the payment of, the portion of a loan or grant earmarked for a contract, when there is evidence that the representative of the Borrower, or Beneficiary of a grant, has not taken the adequate remedial measures within a time period which the Bank considers reasonable, and in accordance with the due process guarantees of the Borrowing country's legislation;*
 - (iv) *issue a reprimand in the form of a formal letter of censure of the firm, entity or individual's behaviour;*
 - (v) *issue a declaration that an individual, entity or firm is ineligible, either permanently or for a stated period of time, to be awarded contracts under Bank-financed projects except under such conditions as the Bank deems to be appropriate;*
 - (vi) *refer the matter to appropriate law enforcement authorities; and/or;*
 - (vii) *may impose other sanctions that it deems to be appropriate under the circumstances, including the imposition of fines representing reimbursement of the Bank for costs associated with investigations and proceedings. Such other sanctions may be imposed in addition to or in lieu of other sanctions;*
- (c) *the Bank has established administrative procedures for cases of allegations of fraud and corruption within the procurement process or the execution of a contract financed by the Bank which are available at the Bank's website (www.iadb.org), as updated from time to time. To that effect any complaint shall be submitted to the Bank's Office of Institutional Integrity (OII) for the appropriate investigation. Allegations may be presented confidentially or anonymously;*
- (d) *payments are expressly conditional upon the claimant's participation in the procurement process conformed with all applicable Bank policies on Fraud and Corruption described in this Sub-Clause 15.5; and*
- (e) *the imposition of any sanction referred to paragraph (b) of this Sub-Clause will be public;*

The Bank will have the right to require that a Contractor permit the Bank to inspect their accounts and records and other documents relating to the submission of bids and contract performance and to have them audited by auditors appointed by the Bank. The Bank will have the right to require that Contractors to:



- (a) *maintain all documents and records related to the Bank-financed project for five (5) years after completion of the work; and*
- (b) *require the delivery of any document necessary for the investigation of allegations of fraud or corruption and the availability of employees or agents of the contractor with knowledge of the Bank-financed project to respond to questions from the Bank.*

If the Contractor refuses to comply with the Bank's request, the Bank, in its sole discretion, may take appropriate action against the Contractor.

The Contractor represents and warrants:

- (a) that they have read and understood the Bank's prohibition against fraud and corruption and agrees to abide by the applicable rules;
- (b) that they have not engaged in any violation of policies on fraud and corruption described herein;
- (c) that they have not misrepresented or concealed any material facts during the procurement or contract negotiation processes or performance of the contract;
- (d) that neither they nor any of their directors, officers or principal shareholders have been declared ineligible to be awarded Bank-financed contracts or have been convicted of a crime involving fraud or corruption;
- (e) that none of their directors, officers or principal shareholders has been a director, officer or principal shareholder of any other company or entity that has been declared ineligible to be awarded a Bank-financed contract or has been convicted of a crime involving fraud or corruption;
- (f) that all commissions, agents' fees, facilitating payments or revenue-sharing agreements related to the Bank-financed contract or consulting agreement have been disclosed;
- (g) that they acknowledge that the breach of any of these warranties constitute a basis for the imposition of any or a combination of the measures described in this Sub-Clause.

16 Suspension and Termination by Contractor

16.1

Contractor's Entitlement to Suspend Work

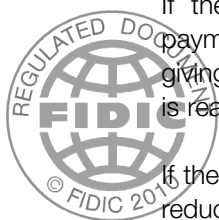
If the Engineer fails to certify in accordance with Sub-Clause 14.6 [*Issue of Interim Payment Certificates*] or the Employer fails to comply with Sub-Clause 2.4 [*Employer's Financial Arrangements*] or Sub-Clause 14.7 [*Payment*], the Contractor may, after giving not less than 21 days' notice to the Employer, suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, reasonable evidence or payment, as the case may be and as described in the notice.

Notwithstanding the above, if the Bank has suspended disbursements under the loan or credit from which payments to the Contractor are being made, in whole or in part, for the execution of the Works, and no alternative funds are available as provided for in Sub-Clause 2.4 [*Employer's Financial Arrangements*], the Contractor may by notice suspend work or reduce the rate of work at any time, but not less than 7 days after the Borrower having received the suspension notification from the Bank.

The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 14.8 [*Delayed Payment*] and to termination under Sub-Clause 16.2 [*Termination by Contractor*].

If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.

If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall



give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost plus profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

16.2

Termination by Contractor

The Contractor shall be entitled to terminate the Contract if:

- (a) the Contractor does not receive the reasonable evidence within 42 days after giving notice under Sub-Clause 16.1 [*Contractor's Entitlement to Suspend Work*] in respect of a failure to comply with Sub-Clause 2.4 [*Employer's Financial Arrangements*],
- (b) the Engineer fails, within 56 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate,
- (c) the Contractor does not receive the amount due under an Interim Payment Certificate within 42 days after the expiry of the time stated in Sub-Clause 14.7 [*Payment*] within which payment is to be made (except for deductions in accordance with Sub-Clause 2.5 [*Employer's Claims*]),
- (d) the Employer substantially fails to perform his obligations under the Contract in such manner as to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract,
- (e) the Employer fails to comply with Sub-Clause 1.6 [*Contract Agreement*] or Sub-Clause 1.7 [*Assignment*],
- (f) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [*Prolonged Suspension*],
- (g) the Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events,
- (h) the Contractor does not receive the Engineer's instruction recording the agreement of both Parties on the fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1 [*Commencement of Works*].

In any of these events or circumstances, the Contractor may, upon giving 14 days' notice to the Employer, terminate the Contract. However, in the case of subparagraph (f) or (g), the Contractor may by notice terminate the Contract immediately.

In the event the Bank suspends the loan or credit from which part or whole of the payments to the Contractor are being made, if the Contractor has not received the sums due to him upon expiration of the 14 days referred to in Sub-Clause 14.7 [*Payment*] for payments under Interim Payment Certificates, the Contractor may, without prejudice to the Contractor's entitlement to financing charges under Sub-Clause 14.8 [*Delayed Payment*], take one of the following actions, namely (i) suspend work or reduce the rate of work under Sub-Clause 16.1 above, or (ii) terminate the Contract by giving notice to the Employer, with a copy to the Engineer, such termination to take effect 14 days after the giving of the notice.

The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.



15.6
Corrupt or Fraudulent
Practices

If the Employer determines, based on reasonable evidence, that the Contractor has engaged in corrupt, fraudulent, collusive or coercive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days notice to the Contractor, terminate the Contract and expel him from the Site, and the provisions of Clause 15 shall apply as if such termination had been made under Sub-Clause 15.2 [*Termination by Employer*].

Should any employee of the Contractor be determined, based on reasonable evidence, to have engaged in corrupt, fraudulent or coercive practice during the execution of the work then that employee shall be removed in accordance with Sub-Clause 6.9 [*Contractor's Personnel*].

[*For contracts financed by The World Bank:*]

In pursuance of this policy, the Bank:

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

(i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

In this context, "another party" refers to a public official acting in relation to the procurement process or contract execution]. In this context, "public official" includes World Bank staff and employees of other organisations taking or reviewing procurement decisions.

(ii) "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

In this context, "party" refers to a public official; the terms "benefit" and "obligation" relate to the procurement process or contract execution; and the "act or omission" is intended to influence the procurement process or contract execution.

(iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

In this context, "parties" refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

(iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

In this context, "parties" refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.



- (v) “obstructive practice” is:
 - (A) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
 - (B) acts intended to materially impede the exercise of the Bank’s inspection and audit rights.

In this context, “party” refers to a participant in the procurement process or contract execution.

16

Suspension and Termination by Contractor

16.1

Contractor’s Entitlement to Suspend

If the Engineer fails to certify in accordance with Sub-Clause 14.6 [*Issue of Interim Payment Certificates*] or the Employer fails to comply with Sub-Clause 2.4 [*Employer’s Financial Arrangements*] or Sub-Clause 14.7 [*Payment*], the Contractor may, after giving not less than 21 days’ notice to the Employer, suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, reasonable evidence or payment, as the case may be and as described in the notice.

Notwithstanding the above, if the Bank has suspended disbursements under the loan or credit from which payments to the Contractor are being made, in whole or in part, for the execution of the Works, and no alternative funds are available as provided for in Sub-Clause 2.4 [*Employer’s Financial Arrangements*], the Contractor may by notice suspend work or reduce the rate of work at any time, but not less than 7 days after the Borrower having received the suspension notification from the Bank.

The Contractor’s action shall not prejudice his entitlements to financing charges under Sub-Clause 14.8 [*Delayed Payment*] and to termination under Sub-Clause 16.2 [*Termination by Contractor*].

If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.

If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [*Contractor’s Claims*] to:



- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost plus profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

16.2

Termination by Contractor

The Contractor shall be entitled to terminate the Contract if:

- (a) the Contractor does not receive the reasonable evidence within 42 days after giving notice under Sub-Clause 16.1 [*Contractor's Entitlement to Suspend Work*] in respect of a failure to comply with Sub-Clause 2.4 [*Employer's Financial Arrangements*],
- (b) the Engineer fails, within 56 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate,
- (c) the Contractor does not receive the amount due under an Interim Payment Certificate within 42 days after the expiry of the time stated in Sub-Clause 14.7 [*Payment*] within which payment is to be made (except for deductions in accordance with Sub-Clause 2.5 [*Employer's Claims*]),
- (d) the Employer substantially fails to perform his obligations under the Contract in such manner as to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract,
- (e) the Employer fails to comply with Sub-Clause 1.6 [*Contract Agreement*] or Sub-Clause 1.7 [*Assignment*],
- (f) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [*Prolonged Suspension*],
- (g) the Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events,
- (h) the Contractor does not receive the Engineer's instruction recording the agreement of both Parties on the fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1 [*Commencement of Works*].

In any of these events or circumstances, the Contractor may, upon giving 14 days' notice to the Employer, terminate the Contract. However, in the case of subparagraph (f) or (g), the Contractor may by notice terminate the Contract immediately.

In the event the Bank suspends the loan or credit from which part or whole of the payments to the Contractor are being made, if the Contractor has not received the sums due to him upon expiration of the 14 days referred to in Sub-Clause 14.7 [*Payment*] for payments under Interim Payment Certificates, the Contractor may, without prejudice to the Contractor's entitlement to financing charges under Sub-Clause 14.8 [*Delayed Payment*], take one of the following actions, namely (i) suspend work or reduce the rate of work under Sub-Clause 16.1 above, or (ii) terminate the Contract by giving notice to the Employer, with a copy to the Engineer, such termination to take effect 14 days after the giving of the notice.

The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.



[For contracts financed by The World Bank:]

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16.3
Cessation of Work and
Removal of Contractor's
Equipment

After a notice of termination under Sub-Clause 15.5 [*Employer's Entitlement to Termination for Convenience*], Sub-Clause 16.2 [*Termination by Contractor*] or Sub-Clause 19.6 [*Optional Termination, Payment and Release*] has taken effect, the Contractor shall promptly:

- (a) cease all further work, except for such work as may have been instructed by the Engineer for the protection of life or property or for the safety of the Works,
- (b) hand over Contractor's Documents, Plant, Materials and other work, for which the Contractor has received payment, and
- (c) remove all other Goods from the Site, except as necessary for safety, and leave the Site.

16.4

Payment on Termination

After a notice of termination under Sub-Clause 16.2 [*Termination by Contractor*] has taken effect, the Employer shall promptly:

- (a) return the Performance Security to the Contractor,
- (b) pay the Contractor in accordance with Sub-Clause 19.6 [*Optional Termination, Payment and Release*], and
- (c) pay to the Contractor the amount of any loss or damage sustained by the Contractor as a result of this termination.

17 Risk and Responsibility

17.1

Indemnities

The Contractor shall indemnify and hold harmless the Employer, the Employer's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

- (a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents, and
- (b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss arises out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless and to the extent that any such damage or loss is attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

The Employer shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents, and (2) the matters for which liability may be excluded from insurance cover, as described in sub-paragraphs (d)(i), (ii) and (iii) of Sub-Clause 18.3 [*Insurance Against Injury to Persons and Damage to Property*].

17.2

Contractor's Care
of the Works

The Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be



issued under Sub-Clause 10.1 [*Taking Over of the Works and Sections*]) for the Works, when responsibility for the care of the Works shall pass to the Employer. If a Taking-Over Certificate is issued (or is so deemed to be issued) for any Section or part of the Works, responsibility for the care of the Section or part shall then pass to the Employer.

After responsibility has accordingly passed to the Employer, the Contractor shall take responsibility for the care of any work which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed.

If any loss or damage happens to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause not listed in Sub-Clause 17.3 [*Employer's Risks*], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform with the Contract.

The Contractor shall be liable for any loss or damage caused by any actions performed by the Contractor after a Taking-Over Certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after a Taking-Over Certificate has been issued and which arose from a previous event for which the Contractor was liable.

17.3

Employer's Risks

The risks referred to in Sub-Clause 17.4 [*Consequences of Employer's Risks*] below, insofar as they directly affect the execution of the Works in the Country, are:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (b) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war, within the Country,
- (c) riot, commotion or disorder within the Country by persons other than the Contractor's Personnel,
- (d) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, within the Country, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity,
- (e) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
- (f) use or occupation by the Employer of any part of the Permanent Works, except as may be specified in the Contract,
- (g) design of any part of the Works by the Employer's Personnel or by others for whom the Employer is responsible, and
- (h) any operation of the forces of nature which is Unforeseeable or against which an experienced contractor could not reasonably have been expected to have taken adequate preventive precautions.

17.4

Consequences of Employer's Risks

If and to the extent that any of the risks listed in Sub-Clause 17.3 above results in loss or damage to the Works, Goods or Contractor's Documents, the Contractor shall promptly give notice to the Engineer and shall rectify this loss or damage to the extent required by the Engineer.

If the Contractor suffers delay and/or incurs Cost from rectifying this loss or damage, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and



- (b) payment of any such Cost, which shall be included in the Contract Price. In the case of sub-paragraphs (f) and (g) of Sub-Clause 17.3 [*Employer's Risks*], Cost plus profit shall be payable.

After receiving this further notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

17.5

Intellectual and Industrial Property Rights

In this Sub-Clause, "infringement" means an infringement (or alleged infringement) of any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and "claim" means a claim (or proceedings pursuing a claim) alleging an infringement.

Whenever a Party does not give notice to the other Party of any claim within 28 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.

The Employer shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:

- (a) an unavoidable result of the Contractor's compliance with the Contract, or
- (b) a result of any Works being used by the Employer:
 - (i) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or
 - (ii) in conjunction with any thing not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.

The Contractor shall indemnify and hold the Employer harmless against and from any other claim which arises out of or in relation to (i) the manufacture, use, sale or import of any Goods, or (ii) any design for which the Contractor is responsible.

If a Party is entitled to be indemnified under this Sub-Clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party.

17.6

Limitation of Liability

Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than as specifically provided in Sub-Clause 8.7 [*Delay Damages*]; Sub-Clause 11.2 [*Cost of Remedying Defects*]; Sub-Clause 15.4 [*Payment after Termination*]; Sub-Clause 16.4 [*Payment on Termination*]; Sub-Clause 17.1 [*Indemnities*]; Sub-Clause 17.4(b) [*Consequences of Employer's Risks*] and Sub-Clause 17.5 [*Intellectual and Industrial Property Rights*].

The total liability of the Contractor to the Employer, under or in connection with the Contract other than under Sub-Clause 4.19 [*Electricity, Water and Gas*], Sub-Clause 4.20 [*Employer's Equipment and Free-Issue Materials*], Sub-Clause 17.1 [*Indemnities*] and Sub-Clause 17.5 [*Intellectual and Industrial Property Rights*], shall not exceed the sum resulting from the application of a multiplier (less or greater than



one) to the Accepted Contract Amount, as stated in the Contract Data, or (if such multiplier or other sum is not so stated), the Accepted Contract Amount.

This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

17.7

Use of Employer's Accommodation/Facilities

The Contractor shall take full responsibility for the care of the Employer-provided accommodation and facilities, if any, as detailed in the Specification, from the respective dates of hand-over to the Contractor until cessation of occupation (where hand-over or cessation of occupation may take place after the date stated in the Taking-Over Certificate for the Works).

If any loss or damage happens to any of the above items while the Contractor is responsible for their care arising from any cause whatsoever other than those for which the Employer is liable, the Contractor shall, at his own cost, rectify the loss or damage to the satisfaction of the Engineer.

18 Insurance

18.1 General Requirements for Insurances

In this Clause, "insuring Party" means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant Sub-Clause.

Wherever the Contractor is the insuring Party, each insurance shall be effected with insurers and in terms approved by the Employer. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.

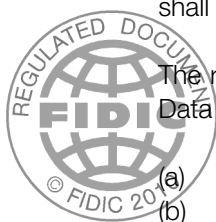
Wherever the Employer is the insuring Party, each insurance shall be effected with insurers and in terms acceptable to the Contractor. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.

If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Clause, (i) the Contractor shall act under the policy on behalf of these additional joint insured except that the Employer shall act for Employer's Personnel, (ii) additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer, and (iii) the insuring Party shall require all additional joint insured to comply with the conditions stipulated in the policy.

Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.

The relevant insuring Party shall, within the respective periods stated in the Contract Data (calculated from the Commencement Date), submit to the other Party:

- (a) evidence that the insurances described in this Clause have been effected, and
- (b) copies of the policies for the insurances described in Sub-Clause 18.2



[*Insurance for Works and Contractor's Equipment*] and Sub-Clause 18.3 [*Insurance against Injury to Persons and Damage to Property*].

When each premium is paid, the insuring Party shall submit evidence of payment to the other Party. Whenever evidence or policies are submitted, the insuring Party shall also give notice to the Engineer.

Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.

Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give notice to the other Party.

If the insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintain under the Contract, or fails to provide satisfactory evidence and copies of policies in accordance with this Sub-Clause, the other Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these premiums to the other Party, and the Contract Price shall be adjusted accordingly.

Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the Employer, under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or the Employer in accordance with these obligations, liabilities or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Contract, and the other Party neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party.

Payments by one Party to the other Party shall be subject to Sub-Clause 2.5 [*Employer's Claims*] or Sub-Clause 20.1 [*Contractor's Claims*], as applicable.

The Contractor shall be entitled to place all insurances relating to the Contract (including, but not limited to the insurance referred to Clause 18) with insurers from any eligible source country.

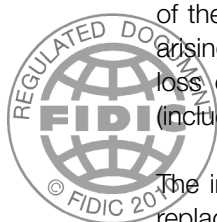
18.2

Insurance for Works and Contractor's Equipment

The insuring Party shall insure the Works, Plant, Materials and Contractor's Documents for not less than the full reinstatement cost including the costs of demolition, removal of debris and professional fees and profit. This insurance shall be effective from the date by which the evidence is to be submitted under sub-paragraph (a) of Sub-Clause 18.1 [*General Requirements for Insurances*], until the date of issue of the Taking-Over Certificate for the Works.

The insuring Party shall maintain this insurance to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Contractor is liable arising from a cause occurring prior to the issue of the Taking-Over Certificate, and for loss or damage caused by the Contractor in the course of any other operations (including those under Clause 11 [*Defects Liability*]).

The insuring Party shall insure the Contractor's Equipment for not less than the full replacement value, including delivery to Site. For each item of Contractor's Equipment,



the insurance shall be effective while it is being transported to the Site and until it is no longer required as Contractor's Equipment.

Unless otherwise stated in the Particular Conditions, insurances under this Sub-Clause:

- (a) shall be effected and maintained by the Contractor as insuring Party,
- (b) shall be in the joint names of the Parties, who shall be jointly entitled to receive payments from the insurers, payments being held or allocated to the Party actually bearing the costs of rectifying the loss or damage,
- (c) shall cover all loss and damage from any cause not listed in Sub-Clause 17.3 [*Employer's Risks*],
- (d) shall also cover, to the extent specifically required in the bidding documents of the Contract, loss or damage to a part of the Works which is attributable to the use or occupation by the Employer of another part of the Works, and loss or damage from the risks listed in sub-paragraphs (c), (g) and (h) of Sub-Clause 17.3 [*Employer's Risks*], excluding (in each case) risks which are not insurable at commercially reasonable terms, with deductibles per occurrence of not more than the amount stated in the Contract Data (if an amount is not so stated, this sub-paragraph (d) shall not apply), and
- (e) may however exclude loss of, damage to, and reinstatement of:
 - (i) a part of the Works which is in a defective condition due to a defect in its design, materials or workmanship (but cover shall include any other parts which are lost or damaged as a direct result of this defective condition and not as described in sub-paragraph (ii) below),
 - (ii) a part of the Works which is lost or damaged in order to reinstate any other part of the Works if this other part is in a defective condition due to a defect in its design, materials or workmanship,
 - (iii) a part of the Works which has been taken over by the Employer, except to the extent that the Contractor is liable for the loss or damage, and
 - (iv) Goods while they are not in the Country, subject to Sub-Clause 14.5 [*Plant and Materials intended for the Works*].

If, more than one year after the Base Date, the cover described in sub-paragraph (d) above ceases to be available at commercially reasonable terms, the Contractor shall (as insuring Party) give notice to the Employer, with supporting particulars. The Employer shall then (i) be entitled subject to Sub-Clause 2.5 [*Employer's Claims*] to payment of an amount equivalent to such commercially reasonable terms as the Contractor should have expected to have paid for such cover, and (ii) be deemed, unless he obtains the cover at commercially reasonable terms, to have approved the omission under Sub-Clause 18.1 [*General Requirements for Insurances*].

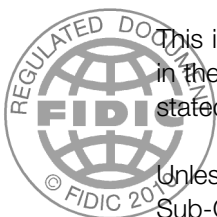
18.3

Insurance against Injury to Persons and Damage to Property

The insuring Party shall insure against each Party's liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under Sub-Clause 18.2 [*Insurance for Works and Contractor's Equipment*]) or to any person (except persons insured under Sub-Clause 18.4 [*Insurance for Contractor's Personnel*]), which may arise out of the Contractor's performance of the Contract and occurring before the issue of the Performance Certificate.

This insurance shall be for a limit per occurrence of not less than the amount stated in the Contract Data, with no limit on the number of occurrences. If an amount is not stated in the Contract Data, this Sub-Clause shall not apply.

Unless otherwise stated in the Particular Conditions, the insurances specified in this Sub-Clause:



- (a) shall be effected and maintained by the Contractor as insuring Party,
- (b) shall be in the joint names of the Parties,
- (c) shall be extended to cover liability for all loss and damage to the Employer's property (except things insured under Sub-Clause 18.2) arising out of the Contractor's performance of the Contract, and
- (d) may however exclude liability to the extent that it arises from:
 - (i) the Employer's right to have the Permanent Works executed on, over, under, in or through any land, and to occupy this land for the Permanent Works,
 - (ii) damage which is an unavoidable result of the Contractor's obligations to execute the Works and remedy any defects, and
 - (iii) a cause listed in Sub-Clause 17.3 [*Employer's Risks*], except to the extent that cover is available at commercially reasonable terms.

18.4

Insurance for Contractor's Personnel

The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel.

The insurance shall cover the Employer and the Engineer against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel, except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect of the Employer or of the Employer's Personnel.

The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Works. For a Subcontractor's employees, the insurance may be effected by the Subcontractor, but the Contractor shall be responsible for compliance with this Clause.

19

Force Majeure

19.1

Definition of Force Majeure

In this Clause, "Force Majeure" means an exceptional event or circumstance:

- (a) which is beyond a Party's control,
- (b) which such Party could not reasonably have provided against before entering into the Contract,
- (c) which, having arisen, such Party could not reasonably have avoided or overcome, and
- (d) which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:



- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (ii) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war,
- (iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel,

- (iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
- (v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

19.2

Notice of Force Majeure

If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

19.3

Duty to Minimise Delay

Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure.

A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

19.4

Consequences of Force Majeure

If the Contractor is prevented from performing its substantial obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 19.2 [*Notice of Force Majeure*], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 19.1 [*Definition of Force Majeure*] and, in the case of sub-paragraphs (ii) to (iv), occurs in the Country, payment of any such Cost, including the costs of rectifying or replacing the Works and/or Goods damaged or destroyed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in Sub-Clause 18.2 [*Insurance for Works and Contractor's Equipment*].

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

19.5

Force Majeure Affecting Subcontractor

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

19.6

Optional Termination, Payment and Release

If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under



Sub-Clause 19.2 [*Notice of Force Majeure*], or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 16.3 [*Cessation of Work and Removal of Contractor's Equipment*].

Upon such termination, the Engineer shall determine the value of the work done and issue a Payment Certificate which shall include:

- (a) the amounts payable for any work carried out for which a price is stated in the Contract;
- (b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;
- (c) other Costs or liabilities which in the circumstances were reasonably and necessarily incurred by the Contractor in the expectation of completing the Works;
- (d) the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and
- (e) the Cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of termination.

19.7

Release from Performance

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

- (a) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and
- (b) the sum payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause 19.6 [*Optional Termination, Payment and Release*] if the Contract had been terminated under Sub-Clause 19.6.

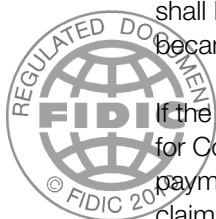
20 Claims, Disputes and Arbitration

20.1

Contractor's Claims

If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.



The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting the Employer's liability, the Engineer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Engineer to inspect all these records, and shall (if instructed) submit copies to the Engineer.

Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Engineer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- (a) this fully detailed claim shall be considered as interim;
- (b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Engineer may reasonably require; and
- (c) the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.

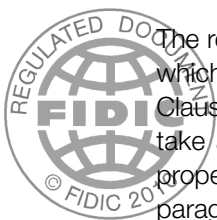
Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Engineer and approved by the Contractor, the Engineer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within the above defined time period.

Within the above defined period of 42 days, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [*Extension of Time for Completion*], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

If the Engineer does not respond within the timeframe defined in this Clause, either Party may consider that the claim is rejected by the Engineer and any of the Parties may refer to the Dispute Board in accordance with Sub-Clause 20.4 [*Obtaining Dispute Board's Decision*].

The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.



20.2 Appointment of the Dispute Board

Disputes shall be referred to a DB for decision in accordance with Sub-Clause 20.4 [*Obtaining Dispute Board's Decision*]. The Parties shall appoint a DB by the date stated in the Contract Data.

The DB shall comprise, as stated in the Contract Data, either one or three suitably qualified persons ("the members"), each of whom shall be fluent in the language for communication defined in the Contract and shall be a professional experienced in the type of construction involved in the Works and with the interpretation of contractual documents. If the number is not so stated and the Parties do not agree otherwise, the DB shall comprise three persons.

If the Parties have not jointly appointed the DB 21 days before the date stated in the Contract Data and the DB is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman.

However, if a list of potential members has been agreed by the Parties and is included in the Contract, the members shall be selected from those on the list, other than anyone who is unable or unwilling to accept appointment to the DB.

The agreement between the Parties and either the sole member or each of the three members shall incorporate by reference the General Conditions of Dispute Board Agreement contained in the Appendix to these General Conditions, with such amendments as are agreed between them.

The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the DB consults, shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

If at any time the Parties so agree, they may jointly refer a matter to the DB for it to give its opinion. Neither Party shall consult the DB on any matter without the agreement of the other Party.

If a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Sub-Clause.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DB (including each member) shall expire when the discharge referred to in Sub-Clause 14.12 [*Discharge*] shall have become effective.

20.3

Failure to Agree on the Composition of the Dispute Board

If any of the following conditions apply, namely:

- (a) the Parties fail to agree upon the appointment of the sole member of the DB by the date stated in the first paragraph of Sub-Clause 20.2 [*Appointment of the Dispute Board*],
- (b) either Party fails to nominate a member (for approval by the other Party), or fails to approve a member nominated by the other Party, of a DB of three persons by such date,
- (c) the Parties fail to agree upon the appointment of the third member (to act as chairman) of the DB by such date, or



- (d) the Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

then the appointing entity or official named in the Contract Data shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.

20.4

Obtaining Dispute Board's Decision

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, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Engineer, either Party may refer the dispute in writing to the DB for its decision, with copies to the other Party and the Engineer. Such reference shall state that it is given under this Sub-Clause.

For a DB of three persons, the DB shall be deemed to have received such reference on the date when it is received by the chairman of the DB.

Both Parties shall promptly make available to the DB all such additional information, further access to the Site, and appropriate facilities, as the DB may require for the purposes of making a decision on such dispute. The DB shall be deemed to be not acting as arbitrator(s).

Within 84 days after receiving such reference, or within such other period as may be proposed by the DB and approved by both Parties, the DB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract.

If either Party is dissatisfied with the DB's decision, then either Party may, within 28 days after receiving the decision, give a Notice of Dissatisfaction to the other Party indicating its dissatisfaction and intention to commence arbitration. If the DB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give 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. Except as stated in Sub-Clause 20.7 [*Failure to Comply with Dispute Board's Decision*] and Sub-Clause 20.8 [*Expiry of Dispute Board's Appointment*], neither Party shall be entitled to commence arbitration of a dispute unless a Notice of Dissatisfaction has been given in accordance with this Sub-Clause.

If the DB has given its decision as to a matter in dispute to both Parties, and no Notice of Dissatisfaction has been given by either Party within 28 days after it received the DB's decision, then the decision shall become final and binding upon both Parties.

20.5

Amicable Settlement

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Where a Notice of Dissatisfaction has been given under Sub-Clause 20.4 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 20.4 above should move to commence arbitration after the fifty-sixth day from the day on which a Notice of Dissatisfaction was given, even if no attempt at an amicable settlement has been made.

20.6 Arbitration

Any dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 20.5 above and in respect of which the DB's decision (if any) has not become final and binding shall be finally settled by arbitration. Arbitration shall be conducted as follows:

- (a) if the Contract is with foreign contractors,
- (i) for contracts financed by all participating Banks except under subparagraph (a)(ii) below:

international arbitration (1) with proceedings administered by the arbitration institution designated in the Contract Data, and conducted under the rules of arbitration of such institution; or, if so specified in the Contract Data, (2) international arbitration in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or (3) if neither an arbitration institution nor UNCITRAL arbitration rules are specified in the Contract Data, with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by one or more arbitrators appointed in accordance with said arbitration rules.

- (ii) for contracts financed by the Asian Development Bank:

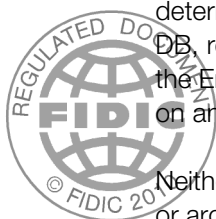
international arbitration (1) with proceedings administered by the arbitration institution specified in the Contract Data and conducted under the rules of arbitration of such institution unless it is specified in the Contract Data that the arbitration shall be conducted under the rules of the United Nations Commission on International Trade Law (UNCITRAL) and if UNCITRAL Rules are so specified then the named arbitration institution shall be the appointing authority and shall administer the arbitration); or (2) if an arbitration institution is not specified in the Contract Data, with proceedings administered by the Singapore International Arbitration Centre (SIAC) and conducted under the SIAC Rules, by one or more arbitrators appointed in accordance with the 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 the neutral location specified in the Contract Data; and the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].

The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, and any decision of the DB, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Engineer from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrators to the evidence or arguments previously put before the DB to obtain its decision, or to the reasons for



dissatisfaction given in its Notice of Dissatisfaction. Any decision of the DB shall be admissible in evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Engineer and the DB shall not be altered by reason of any arbitration being conducted during the progress of the Works.

20.7

Failure to Comply with Dispute Board's Decision

In the event that a Party fails to comply with a final and binding DB decision, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under Sub-Clause 20.6 [*Arbitration*]. Sub-Clause 20.4 [*Obtaining Dispute Board's Decision*] and Sub-Clause 20.5 [*Amicable Settlement*] shall not apply to this reference.

20.8

Expiry of Dispute Board's Appointment

If a dispute arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works and there is no DB in place, whether by reason of the expiry of the DB's appointment or otherwise:

- (a) Sub-Clause 20.4 [*Obtaining Dispute Board's Decision*] and Sub-Clause 20.5 [*Amicable Settlement*] shall not apply, and
 - (b) the dispute may be referred directly to arbitration under Sub-Clause 20.6 [*Arbitration*].
-



APPENDIX

General Conditions of Dispute Board Agreement

1 Definitions

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

- (a) the "Employer";
- (b) the "Contractor"; and
- (c) the "Member" who is defined in the Dispute Board Agreement as being:
 - (i) the sole member of the "DB" and, where this is the case, all references to the "Other Members" do not apply, or
 - (ii) one of the three persons who are jointly called the "DB" (or "Dispute Board") and, where this is the case, the other two persons are called the "Other Members".

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

2 General Provisions

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

- (a) the Commencement Date defined in the Contract,
- (b) when the Employer, the Contractor and the Member have each signed the Dispute Board Agreement, or
- (c) when the Employer, the Contractor and each of the Other Members (if any) have respectively each signed a dispute board agreement.

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

3 Warranties

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

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

- (a) experienced in the work which the Contractor is to carry out under the Contract,
- (b) experienced in the interpretation of contract documentation, and
- (c) fluent in the language for communications defined in the Contract.

4 General Obligations of the Member

The Member shall:



- (a) have no interest financial or otherwise in the Employer, the Contractor or Engineer, nor any financial interest in the Contract except for payment under the Dispute Board Agreement;
- (b) not previously have been employed as a consultant or otherwise by the Employer, the Contractor or the Engineer, except in such circumstances as were disclosed in writing to the Employer and the Contractor before they signed the Dispute Board Agreement;
- (c) have disclosed in writing to the Employer, the Contractor and the Other Members (if any), before entering into the Dispute Board Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Employer, the Contractor or the Engineer, and any previous involvement in the overall project of which the Contract forms part;
- (d) not, for the duration of the Dispute Board Agreement, be employed as a consultant or otherwise by the Employer, the Contractor or the Engineer, except as may be agreed in writing by the Employer, the Contractor and the Other Members (if any);
- (e) comply with the annexed procedural rules and with Sub-Clause 20.4 of the Conditions of Contract;
- (f) not give advice to the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel concerning the conduct of the Contract, other than in accordance with the annexed procedural rules;
- (g) not while a Member enter into discussions or make any agreement with the Employer, the Contractor or the Engineer regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Board Agreement;
- (h) ensure his/her availability for all site visits and hearings as are necessary;
- (i) become conversant with the Contract and with the progress of the Works (and of any other parts of the project of which the Contract forms part) by studying all documents received which shall be maintained in a current working file;
- (j) treat the details of the Contract and all the DB's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer, the Contractor and the Other Members (if any); and
- (k) be available to give advice and opinions, on any matter relevant to the Contract when requested by both the Employer and the Contractor, subject to the agreement of the Other Members (if any).

5

General Obligations of the Employer and the Contractor

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

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



- (a) be appointed as an arbitrator in any arbitration under the Contract;
- (b) be called as a witness to give evidence concerning any dispute before arbitrator(s) appointed for any arbitration under the Contract; or
- (c) be liable for any claims for anything done or omitted in the discharge or purported discharge of the Member's functions, unless the act or omission is shown to have been in bad faith.

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

Whenever the Employer or the Contractor refers a dispute to the DB under Sub-Clause 20.4 of the Conditions of Contract, which will require the Member to make a site visit and attend a hearing, the Employer or the Contractor shall provide appropriate security for a sum equivalent to the reasonable expenses to be incurred by the Member. No account shall be taken of any other payments due or paid to the Member.

6

Payment

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

- (a) a retainer fee per calendar month, which shall be considered as payment in full for:
 - (i) being available on 28 days' notice for all site visits and hearings;
 - (ii) becoming and remaining conversant with all project developments and maintaining relevant files;
 - (iii) all office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties; and
 - (iv) all services performed hereunder except those referred to in sub-paragraphs (b) and (c) of this Clause.

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

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

- (b) a daily fee which shall be considered as payment in full for:
 - (i) each day or part of a day up to a maximum of two days' travel time in each direction for the journey between the Member's home and the site, or another location of a meeting with the Other Members (if any);
 - (ii) each working day on Site visits, hearings or preparing decisions; and
 - (iii) each day spent reading submissions in preparation for a hearing.
- (c) all reasonable expenses including necessary travel expenses (air fare in less than first class, hotel and subsistence and other direct travel expenses) incurred in connection with the Member's duties, as well as the cost of telephone calls, courier charges, faxes and telexes: a receipt shall be required for each item in excess of five percent of the daily fee referred to in sub-paragraph (b) of this Clause;
- (d) any taxes properly levied in the Country on payments made to the Member (unless a national or permanent resident of the Country) under this Clause 6.



The retainer and daily fees shall be as specified in the Dispute Board Agreement. Unless it specifies otherwise, these fees shall remain fixed for the first 24 calendar

months, and shall thereafter be adjusted by agreement between the Employer, the Contractor and the Member, at each anniversary of the date on which the Dispute Board Agreement became effective.

If the parties fail to agree on the retainer fee or the daily fee, the appointing entity or official named in the Contract Data shall determine the amount of the fees to be used.

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

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

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the Dispute Board Agreement, the Employer shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the DB; and without prejudice to the Employer's rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in Sub-Clause 14.8 of the Conditions of Contract.

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

7

Termination

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

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

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

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

8

Default of the Member

If the Member fails to comply with any of his obligations under Clause 4 (a) - (d) above, he shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses received by the Member and the Other Members (if any), for



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proceedings or decisions (if any) of the DB which are rendered void or ineffective by the said failure to comply.

If the Member fails to comply with any of his obligations under Clause 4 (e) - (k) above, he shall not be entitled to any fees or expenses hereunder from the date and to the extent of the non-compliance and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses already received by the Member, for proceedings or decisions (if any) of the DB which are rendered void or ineffective by the said failure to comply.

9

Disputes

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



Annex PROCEDURAL RULES

- 1 Unless otherwise agreed by the Employer and the Contractor, the DB shall visit the Site at intervals of not more than 140 days, including times of critical construction events, at the request of either the Employer or the Contractor. Unless otherwise agreed by the Employer, the Contractor and the DB, the period between consecutive visits shall not be less than 70 days, except as required to convene a hearing as described below.
- 2 The timing of and agenda for each Site visit shall be as agreed jointly by the DB, the Employer and the Contractor, or in the absence of agreement, shall be decided by the DB. The purpose of Site visits is to enable the DB to become and remain acquainted with the progress of the Works and of any actual or potential problems or claims, and, as far as reasonable, to endeavour to prevent potential problems or claims from becoming disputes.
- 3 Site visits shall be attended by the Employer, the Contractor and the Engineer and shall be co-ordinated by the Employer in co-operation with the Contractor. The Employer shall ensure the provision of appropriate conference facilities and secretarial and copying services. At the conclusion of each Site visit and before leaving the site, the DB shall prepare a report on its activities during the visit and shall send copies to the Employer and the Contractor.
- 4 The Employer and the Contractor shall furnish to the DB one copy of all documents which the DB may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the performance of the Contract. All communications between the DB and the Employer or the Contractor shall be copied to the other Party. If the DB comprises three persons, the Employer and the Contractor shall send copies of these requested documents and these communications to each of these persons.
- 5 If any dispute is referred to the DB in accordance with Sub-Clause 20.4 of the Conditions of Contract, the DB shall proceed in accordance with Sub-Clause 20.4 and these Rules. Subject to the time allowed to give notice of a decision and other relevant factors, the DB shall:
 - (a) act fairly and impartially as between the Employer and the Contractor, giving each of them a reasonable opportunity of putting his case and responding to the other's case, and
 - (b) adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.
- 6 The DB may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing.
- 7 Except as otherwise agreed in writing by the Employer and the Contractor, the DB shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the Employer, the Contractor and the Engineer, and to proceed in the absence of any party who the DB is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.



- 8 The Employer and the Contractor empower the DB, among other things, to:
- (a) establish the procedure to be applied in deciding a dispute,
 - (b) decide upon the DB's own jurisdiction, and as to the scope of any dispute referred to it,
 - (c) conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Rules,
 - (d) take the initiative in ascertaining the facts and matters required for a decision,
 - (e) make use of its own specialist knowledge, if any,
 - (f) decide upon the payment of financing charges in accordance with the Contract,
 - (g) decide upon any provisional relief such as interim or conservatory measures, and
 - (h) open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Engineer, relevant to the dispute.
- 9 The DB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DB shall make and give its decision in accordance with Sub-Clause 20.4, or as otherwise agreed by the Employer and the Contractor in writing. If the DB comprises three persons:
- (a) it shall convene in private after a hearing, in order to have discussions and prepare its decision;
 - (b) it shall endeavour to reach a unanimous decision: if this proves impossible the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the Employer and the Contractor; and
 - (c) if a Member fails to attend a meeting or hearing, or to fulfil any required function, the other two Members may nevertheless proceed to make a decision, unless:
 - (i) either the Employer or the Contractor does not agree that they do so, or
 - (ii) the absent Member is the chairman and he/she instructs the other Members not to make a decision.
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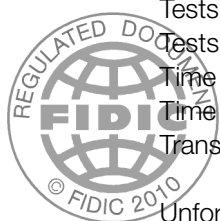
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Section VIII. Particular Conditions (PC)

Notes for the Employer

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

The standard Specific Provisions in Part B shall be used without modification.

Whereas the choice for a Dispute Board (DB) is appointment of a Standing DB, an Ad-hoc DB, or no use of DB, JICA strongly recommends the use of Standing DBs in all projects financed by JICA due to the dispute avoidance function. Therefore, JICA standard Specific Provisions in Part B are prepared for a Standing DB. However, when appointment of an Ad-hoc DB or no use of DB is agreed upon JICA, the Employer shall proceed with the incorporation of it into the Contract by revising the relevant DB related Specific Provision. The instructions for preparing the specific provisions for Ad-hoc DB or no use of DB are provided in Guidance for preparing Project Specific Provisions.

The “*Notes for the Employer*”, “boxed” notes and italicized notes are not part of the PC, but contain guidelines and instructions for the Employer. They shall be deleted from the actual Bidding Document to be issued to the Bidders except for CD 1.3 (Contractor’s name and address) and CD 4.3, which require the relevant data to be filled in prior to signing of the Contract.

Particular Conditions (PC)

The following Particular Conditions shall supplement the GC. Whenever there is a conflict, the provisions herein shall prevail over those in the GC.

Part A - Contract Data (CD)

[The Employer shall insert relevant data prior to the issuance of the Bidding Document except for the Data required for CD 1.3 (Contractor's name and address) and CD 4.3, which may be filled in prior to signing of the Contract once such data is available. Where a number of days is to be inserted it is desirable for the number to be a multiple of seven for consistency with the Conditions of Contract.]

Conditions	Sub-Clause	Data
Employer's name and address	1.1.2.2 & 1.3	<i>[insert Employer's name and address]</i>
Engineer's name and address	1.1.2.4 & 1.3	<i>[insert Engineer's name and address]</i>
Bank's name	1.1.2.11	The Japan International Cooperation Agency (JICA)
Borrower's name	1.1.2.12	<i>[insert Borrower's name]</i>
Time for Completion	1.1.3.3	<i>[insert the time for completion of the whole of the Works]</i>
Defects Notification Period	1.1.3.7 days <i>[Indicate the duration of the Defect Notification Period if it is different from 365 days. Otherwise, delete this entire CD 1.1.3.7.]</i>
Sections	1.1.5.6	<i>[If Sections are used, state "Refer to Table 1: Summary of Sections below". Otherwise, delete this entire CD 1.1.5.6.]</i>
Profit	1.2	<i>[Insert the percentage of profit if it is higher than 5%. Otherwise, delete this entire CD 1.2.]</i> ____ % of Cost
Electronic transmission systems	1.3	<i>[insert Electronic transmission systems]</i>
Contractor's name and address	1.3	<i>[insert Contractor's name and address]</i>

Conditions	Sub-Clause	Data								
Governing Law	1.4	<i>[insert name of governing law]</i>								
Ruling language	1.4	<i>[insert name of ruling language]</i>								
Language for communications	1.4	<i>[insert name of language for communications]</i>								
Time for the Parties entering into a Contract Agreement	1.6	<p>..... days</p> <p><i>[Indicate a number of days for Parties entering into a Contract Agreement. If it is 28 days, delete this entire CD 1.6.]</i></p>								
The Contractor’s Liabilities as to the payment taxes and duties:	1.16 (A)	<p><i>[This Sub-Clause shall be consistent with ITB 14.7. The Employer shall specify (A) and/or (B) in this CD as applicable and complete, indicating clearly which taxes, duties and levies are exempted and the relevant exemption categories in accordance with the Exchange Notes between the Employer’s Country and the Government of Japan, and under the law of the Employer’s Country. If none is applicable, delete this entire CD 1.16.]</i></p> <table border="1" data-bbox="824 1083 1360 1562"> <thead> <tr> <th data-bbox="824 1083 1036 1178">Duty/ Tax/ Levy</th> <th data-bbox="1036 1083 1360 1178">Exemption Category</th> </tr> </thead> <tbody> <tr> <td data-bbox="824 1178 1036 1304"><i>[insert duty/ tax/ levy]</i></td> <td data-bbox="1036 1178 1360 1304"><i>[indicate whether “No Pay” or “Pay & Reimburse”]</i></td> </tr> <tr> <td data-bbox="824 1304 1036 1430"><i>[insert duty/ tax/ levy]</i></td> <td data-bbox="1036 1304 1360 1430"><i>[indicate whether “No Pay” or “Pay & Reimburse”]</i></td> </tr> <tr> <td data-bbox="824 1430 1036 1556"><i>[insert duty/ tax/ levy]</i></td> <td data-bbox="1036 1430 1360 1556"><i>[indicate whether “No Pay” or “Pay & Reimburse”]</i></td> </tr> </tbody> </table>	Duty/ Tax/ Levy	Exemption Category	<i>[insert duty/ tax/ levy]</i>	<i>[indicate whether “No Pay” or “Pay & Reimburse”]</i>	<i>[insert duty/ tax/ levy]</i>	<i>[indicate whether “No Pay” or “Pay & Reimburse”]</i>	<i>[insert duty/ tax/ levy]</i>	<i>[indicate whether “No Pay” or “Pay & Reimburse”]</i>
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<i>[insert duty/ tax/ levy]</i>	<i>[indicate whether “No Pay” or “Pay & Reimburse”]</i>									
1.16 (B)	<p><i>[insert duties, taxes and levies which shall be paid by the Employer on behalf of the Contractor]</i></p>									

Conditions	Sub-Clause	Data
Time for access to, and possession of all parts of, the Site	2.1	<p><i>[When access to and possession of the whole of the Site can be given by the Commencement Date, insert the following.</i></p> <p><i>“By the Commencement Date”</i></p> <p><i>When access to and possession of any part(s) of the Site cannot be given by the Commencement Date, insert the following.</i></p> <p><i>“[insert the number] days after the Commencement Date” or “refer to Table 2: Partial Site Access and Possession below”.</i>]</p>
Engineer’s Duties and Authority	3.1(b)(ii)	Variations resulting in an increase of the Accepted Contract Amount in excess of <i>[insert percentage, normally 1 – 3%]</i> % shall require approval of the Employer.
Performance Security	4.2	The Performance Security shall be in the form of a <i>[insert either one of “demand guarantee” or “surety bond”]</i> in the amount(s) of <i>[insert percentage]</i> percent of the Accepted Contract Amount and in the same currency(ies) of the Accepted Contract Amount.
Contractor’s Representative’s Name	4.3	<i>[Insert the name of the Contractor’s Representative agreed by the Employer prior to Contract signature.]</i>
Normal working hours	6.5	<i>[insert the normal working hours]</i>
Commencement of Works	8.1(c)	<p><i>[When access to and possession of the whole of the Site can be given by the Commencement Date, delete this entire CD 8.1(c).</i></p> <p><i>When access to and possession of any part(s) of the Site cannot be given before the Commencement Date, insert the following which should be consistent</i></p>

Conditions	Sub-Clause	Data
		<i>with CD 2.1. “[insert the number] days after the Commencement Date” or “refer to Table 2: Partial Site Access and Possession below”.</i>
Delay damages for the Works	8.7	<i>[insert percentage] % of the Accepted Contract Amount per day</i>
Maximum amount of delay damages	8.7	<i>[insert percentage not exceeding 10] % of the Accepted Contract Amount</i>
Provisional Sums	13.5(b)(ii)	<i>[insert percentage] % [If there are Provisional Sums, insert a percentage, which shall, in any case, not be less than 15%, for adjustment of Provisional Sums. Otherwise, delete this entire CD 13.5(b)(ii).]</i>
Adjustments for Changes in Cost	13.8	Period “n” applicable to the adjustment multiplier “Pn”: <i>[Insert the period if different from one (1) month. Otherwise delete this entire CD 13.8].</i>
Total advance payment	14.2	<i>[insert percentage] % of the Accepted Contract Amount payable in the currencies and proportions in which the Accepted Contract Amount is payable [Insert number and timing of instalments, if applicable.]</i>
Repayment amortization rate of advance payment	14.2(b)	<i>[insert percentage of amortization rate] %</i>
Percentage of Retention	14.3(c)	<i>[insert percentage of retention, not exceeding 10] %</i>
Limit of Retention Money	14.3(c)	<i>[insert percentage of limit of retention, not exceeding 10; usually 5] % of the Accepted Contract Amount</i>
Plant and Materials	14.5(b)(i)	Plant and Materials for payment Free on Board: <i>[If Sub-Clause 14.5 applies, insert list of Plant and Material. Otherwise, delete entire this CD 14.5(b)(i).]</i>

Conditions	Sub-Clause	Data
	14.5(c)(i)	Plant and Materials for payment when delivered to the Site: <i>[If Sub-Clause 14.5 applies, insert list of Plant and Material. Otherwise, delete entire this CD 14.5(b)(i).]</i>
Minimum Amount of Interim Payment Certificates	14.6	<i>[insert percentage]</i> % of the Accepted Contract Amount <i>[Percentage may depend on the contract amount and time for completion; a minimum of about one fifth the average expected value of Interim Payment Certificate would be reasonable.]</i>
The Disbursement Procedure	14.7	(A) local currency: <i>[insert the relevant disbursement procedure as set forth in the Loan Agreement]</i> (B) foreign currency: <i>[insert the relevant disbursement procedure as set forth in the Loan Agreement]</i> The brochures describing JICA's Disbursement Procedures are available at : <i>[https://www.jica.go.jp/english/our_work/types_of_assistance/oda_loans/oda_op_info/procedure]</i>
Maximum total liability of the Contractor to the Employer	17.6	<i>[If the maximum total liability of the Contractor is equivalent to the Accepted Contract Amount, delete this entire CD 17.6. Otherwise select one of the two options below as appropriate.]</i> The product of <i>[insert a multiplier less or greater than one]</i> times the Accepted Contract Amount <i>[or]</i> <i>[insert amount of the maximum total liability]</i>
Periods for submission of insurance: a. evidence of insurance b. relevant policies	18.1	<i>[Insert period for submission of evidence of insurance and policy. Period may be from 14 days to 28 days.]</i> ____ days ____ days

Conditions	Sub-Clause	Data
Maximum amount of deductibles for insurance of the Employer's risks	18.2(d)	<i>[insert maximum amount of deductibles]</i>
Minimum amount of third party insurance	18.3	<i>[Insert amount of third party insurance; this minimum amount per occurrence should be commensurate with the risk of damage specific to the Contract.]</i>
Date by which the DB shall be appointed	20.2	<i>[insert: "28 day after the Commencement Date"]</i>
The DB shall be comprised of	20.2	<i>[insert either: "One sole Member" or "Three Members", as appropriate]</i>
Appointment (if not agreed) to be made by	20.3	<i>[insert either: "The President of FIDIC or a person appointed by FIDIC" or "The International Chamber of Commerce", as appropriate]</i>
Arbitration:	20.6(a)	(i) administrated by <i>[insert name of the arbitration institution. Otherwise, delete this CD 20.6 (a) (i).]</i> (ii) conducted under <i>[insert name of the arbitration rules. Otherwise, delete this entire CD 20.6 (a) (ii).]</i>

Table 1: Summary of Sections

Section Name/Description (Sub-Clause 1.1.5.6)	Time for Completion (Sub-Clause 1.1.3.3)	Delay Damages (Sub-Clause 8.7)

Table 2: Partial Site Access and Possession

Part	Detailed Description	Number of Days for Site Access and Possession (calculated from Commencement Date)

Part B - Specific Provisions (SP)

[Specific Provisions of the PC are intended to address country, project, and contract specific requirements not covered by the GC. Whoever drafts the Specific Provisions should be thoroughly familiar with the provisions of the GC and with any specific requirements of the contract. Legal advice is recommended when amending provisions or drafting new ones.]

The Standard Specific Provisions prepared by JICA and inserted in this Part B of the PC shall be used without modification.]

**Sub-Clause 1.1.1
The Contract**

Delete the entire Sub-Clause 1.1.1.4 and substitute:

“1.1.1.4 “Letter of Tender” means the document(s) entitled letter of bid, or letters of technical bid and price bid, as appropriate, which was/were completed by the Contractor and include(s) the signed offer to the Employer for the Works.”

**Sub-Clause 1.15
Inspections and Audit
by the Bank**

Delete the entire Sub-Clause 1.15.

**Sub-Clause 1.16
The Contractor’s
Liabilities as to the
payment taxes and
duties**

Add the following as a new Sub-Clause:

“1.16 The Contractor’s Liabilities as to the payment taxes and duties

The Contractor shall be liable to the payment of taxes and duties, unless otherwise stated in the Contract Data.

In this context;

(A) duties, taxes and levies listed in the Contract Data shall be exempted. Such exemptions are fallen into two categories, namely:

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

the procedure prescribed by such authority;

or

(B) duties, taxes and levies shall be paid by the Employer on behalf of the Contractor:

If the lists referred to in sub-paragraph (A) or (B) are not included in the Contract Data, this Sub-Clause shall not apply.”

**Sub-Clause 4.1
Contractor’s General
Obligations**

In the third paragraph, delete “have their origin in any eligible source country as defined by the Bank” and substitute:

“meet the requirements specified in the Annex to Part B: JICA Specific Provisions – Eligible Source Countries of Japanese ODA Loans hereto.”.

**Sub-Clause 5.1
Definition of
“Nominated
Subcontractor”**

In sub-paragraph (b), delete “[*Objection to Notification*]” and substitute “[*Objection to Nomination*]”.

**Sub-Clause 6.7
Health and Safety**

Delete the following last sentence of the last paragraph:

“Payment to the Contractor for preparation and implementation this programme shall not exceed the Provisional Sum dedicated for this purpose.”.

**Sub-Clause 13.5
Provisional Sums**

Add the following at the end of Sub-Clause 13.5:

“As an exception to the above, the Provisional Sum for the cost of the DB shall be used, in accordance with Sub-Clause 20.2 [*Appointment of the Dispute Board*], for payments to the Contractor of the invoices of the DB for its Regular Cost and one-half of its Non-Regular Cost.

No prior instruction of the Engineer shall be required with respect to the work of the DB.

The following shall apply to payments under the Provisional Sum of the cost of the DB:

(A) Requests for any payment under the Provisional Sum shall be included in those Statements submitted under Sub-Clause 14.3 [*Application for Interim Payment Certificates*] together with all necessary substantiations including:

- (i) invoices prepared by the DB members and provided to the Contractor for payment/ reimbursement of their fees and/or expenses; and

(ii) evidence of payment of such invoiced amounts in full.

(B) The Contractor's overhead, profit, etc., shall not be included in the Provisional Sums for the cost of the DB.

(C) The Engineer's certification of such Statements under Sub-Clause 14.6 [*Issue of Interim Payment Certificates*] shall be based upon the invoices of the DB and evidence of payment of such invoiced amounts in full by the Contractor.

**Sub-Clause 14.5
Issue of Interim
Payment Certificates**

Delete "Schedules" in the second paragraph, in the sub-paragraph (b) (i) and in the sub-paragraph (c) and substitute "Contract Data" respectively.

**Sub-Clause 14.6
Issue of Interim
Payment Certificates**

Add the following at the end of the first paragraph:

"and shall include any amounts due to or from the Contractor in accordance with a decision by the DB made under Sub-Clause 20.4 [*Obtaining Dispute Board's Decision*]."

**Sub-Clause 14.7
Payment**

Delete sub-paragraphs (b) and substitute:

"(b) the amount certified in each Interim Payment Certificate within 56 days after the Engineer receives the Statement and supporting documents including any amounts due in accordance with a decision by the DB which have been included in the Interim Payment Certificate ; or, at a time when the Bank's loan (from which part of the payments to the Contractor is being made) is suspended, the amount shown on any statement submitted by the Contractor within 14 days after such statement is submitted, any discrepancy being rectified in the next payment to the Contractor; and"

Delete the last paragraph of this Sub-Clause and substitute:

"Payment of the amount due in:

(A) local currency, payable from the proceeds of the Loan, shall be made through as stated in the Contract Data; and

(B) foreign currency, payable from the proceeds of the Loan, shall be made through as stated in the Contract Data.

Payment of the amount due in each currency, payable from any source of finance other than the Loan Agreement such as the

Employer's own funds, shall be made directly into the bank account, nominated by the Contractor, in the payment country (for this currency) specified in the Contract.

Any charges or fees associated with or incidental to remittance of funds from JICA/ Employer to the Contractor's account including but not limited to those for opening and amendment commissions of the Letter of Credit shall solely be borne by the Employer."

**Sub-Clause 14.15
Currencies of Payment**

Delete the entire Sub-Clause 14.15 and substitute:

"The Contract Price shall be paid in the currency or currencies in which the bid price was expressed in the Letter of Price Bid or Letter of Bid, as appropriate. If more than one currency is so named, payments shall be made as follows:

- (a) payment of the damages specified in the Contract Data, shall be made in the currencies and proportions specified in the Letter of Bid or Letter of Price Bid as applicable;
- (b) other payments to the Employer by the Contractor shall be made in the currency in which the sum was expended by the Employer, or in such currency as may be agreed by both Parties;
- (c) if any amount payable by the Contractor to the Employer in a particular currency exceeds the sum payable by the Employer to the Contractor in that currency, the Employer may recover the balance of this amount from the sums otherwise payable to the Contractor in other currencies; and
- (d) the applicable rates of exchange shall be those prevailing on the Base Date and determined by the central bank of the Country."

**Sub-Clause 15.6
Corrupt or Fraudulent
Practices**

Delete the entire Sub-Clause 15.6 and substitute:

"If the Employer determines, based on reasonable evidence, that the Contractor has engaged in corrupt or fraudulent practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days' notice to the Contractor, terminate the Contract and expel him from the Site, and the provisions of Clause 15 shall apply as if such termination had been made under Sub-Clause 15.2 [*Termination by Employer*].

Should any employee of the Contractor be determined, based on reasonable evidence, to have engaged in corrupt or fraudulent

practice during the execution of the work then that employee shall be removed in accordance with Sub-Clause 6.9 [*Contractor's Personnel*].

The Contractor is required to comply with JICA's policy in regard to corrupt and fraudulent practices as declared in the Acknowledgement of Compliance with Guidelines for Procurement under Japanese ODA Loans.”

**Sub-Clause 20.2
Appointment of the
Dispute Board**

Delete the six paragraph and substitute:

“The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the DB consults, shall be mutually agreed upon by the Parties when agreeing the terms of appointment. The Employer shall be responsible for paying the Regular Cost and one-half of the Non-Regular Cost and the Contractor shall be responsible for paying one-half of the Non-Regular Cost.

For the purposes of this Sub-Clause:

(a) “Regular Cost” means retainer fees of DB members, daily fees of the DB members for regular Site visits and all expenses of regular Site visits of the DB members.

(b) “Non-Regular Cost” means all fees and expenses of the DB other than the Regular Cost.”

**Sub-Clause 20.6
Arbitration**

Delete the entire Sub-Clause 20.6 and substitute:

“Any dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 20.5 above and in respect of which the DB’s decision (if any) has not become final and binding shall be finally settled by arbitration. Arbitration shall be conducted as follows:

(a) if the Contract is with a foreign contractor (or if the lead partner is a foreign contractor, in case of JV), international arbitration (1) with proceedings administered by the arbitration institution designated in the Contract Data, and conducted under the rules of arbitration of such institution; or, if so specified in the Contract Data, (2) with proceedings administered by Japan Commercial Arbitration Association (JCAA) and conducted under the arbitration rules of JCAA; or (3) if neither an arbitration institution nor arbitration rules are specified in the Contract Data, with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by one or more

arbitrators appointed in accordance with said arbitration rules.

(b) if the Contract is with a domestic contractor (or if the lead partner is a domestic contractor, in case of JV), arbitration with proceedings conducted in accordance with the laws of the 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 1.4 [*Law and Language*].

The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, and any decision of the DB, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Engineer from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrators to the evidence or arguments previously put before the DB to obtain its decision, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction. Any decision of the DB shall be admissible in evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Engineer and the DB shall not be altered by reason of any arbitration being conducted during the progress of the Works.”

**Sub-Clause 20.7
Failure to Comply with
Dispute Board’s
Decision**

Delete the entire Sub-Clause 20.7 and substitute:

“In the event that a Party fails to comply with any decision of the DB, whether binding or final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself directly to arbitration under Sub-Clause 20.6 [*Arbitration*] in which case Sub-Clause 20.4 [*Obtaining Dispute Board's Decision*] and Sub-Clause 20.5 [*Amicable Settlement*] shall not apply to this reference. The arbitral tribunal (constituted under Sub-Clause 20.6 [*Arbitration*]) shall have the power, by way of summary or other expedited procedure, to order, whether by partial award, an interim or provisional measure or award (as may be appropriate under applicable law or otherwise), the enforcement of that decision.”

Sub-Clause 20.8

Change the title of the Sub-Clause from “20.8 Expiry of Dispute

No Dispute Board in Place

Board's Appointment" to "20.8 No Dispute Board in Place"

Delete the entire Sub-Clause 20.8 and substitute:

"If a dispute arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works and there is no DB in place (or no DB is being constituted), whether by reason of the expiry of the DB's appointment or otherwise:

(a) Sub-Clause 20.4 [*Obtaining Dispute Board's Decision*] and Sub-Clause 20.5 [*Amicable Settlement*] shall not apply, and

(b) the dispute may be referred by either Party directly to arbitration under Sub-Clause 20.6 [*Arbitration*] without prejudice to any other rights the Party may have."

**Appendix
General Conditions of
Dispute Board
Agreement****Clause 6
Payment**

Delete the third and fourth paragraphs from the end and substitute:

"The Contractor shall pay each of the Member's invoices in full within 56 calendar days after receiving each invoice and shall apply to the Employer (in the Statements under the Contract) for reimbursement of the amount which the Employer is responsible for these invoices (the Regular Cost and one-half of the Non-Regular Cost). The Employer shall then pay the Contractor in accordance with the Contract.

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the Dispute Board Agreement, the Employer shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the DB; and without prejudice to the Employer's rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of the amount which the Contractor is responsible for, including any additional excess of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in Sub-Clause 14.8 of the Conditions of Contract."

Guidance for preparing Project Specific Provisions

Notes for the Employer

The Dispute Board (DB) provided for in GC Clause 20 is a Standing DB which is appointed soon after the Contractor commences the Works and which remains in place for the duration of the Contract. A Standing DB typically visits the Site on a regular basis. During the Site visit or in any other timing, the Standing DB would also be available to assist the Parties by giving advice to avoid any disputes. Due to this dispute avoidance function, JICA strongly recommends the use of Standing DBs in all projects financed by JICA.

If only there are specific justifiable reasons, however, Dispute Boards can also be appointed when there is an actual dispute. This type of DB is called an Ad-hoc DB. Unlike a Standing DB, an Ad-hoc DB is by its very nature not available to exercise any dispute avoidance function as it is only appointed after a specific dispute referred to it has arisen.

The Employer, in consultation with JICA, shall decide which type of a dispute board is appropriate taking into account all relevant circumstances of the project. The choice for a particular project could be one of the following:

- (a) Appointment of a Standing DB (strongly recommended by JICA)
- (b) Appointment of an Ad-hoc DB
- (c) No use of DB

Upon JICA's agreement to the DB mechanism chosen, the Employer shall proceed with the incorporation of it into the Contract by revising the relevant DB related Specific Provision provided below. Necessary guidance is given for (b) appointment of an Ad-hoc DB and (c) No use of DB hereinunder.

“Guidance for preparing Project Specific Provisions” shall be deleted from the actual Bidding Document to be issued to the Bidders.

DB Related Specific Provisions

Appointment of an Ad-hoc DB

When “(b) *Appointment of an Ad-hoc DB*” is selected, the relevant CD should be provided as below.

Conditions	Sub-Clause	Data
Date by which the DB shall be appointed	20.2	[insert “This CD 20.2 is not applicable.”]

Also, the relevant SP shall be revised as below.

**Sub-Clause 13.5
Provisional Sums**

[Delete Sub-Clause 13.5 in Part B (SP) and insert the following in Part B (SP).]

Add the following at the end of Sub-Clause 13.5:

“As an exception to the above, the Provisional Sum for the cost of the DB shall be used, in accordance with Sub-Clause 20.2 [Appointment of the Dispute Board], for payments to the Contractor of the Employer’s share (one-half) of the invoices of the DB for its fees and expenses.

No prior instruction of the Engineer shall be required with respect to the work of the DB.

The following shall apply to payments under the Provisional Sum of the cost of the DB:

- (A) Requests for any payment under the Provisional Sum shall be included in those Statements submitted under Sub-Clause 14.3 [Application for Interim Payment Certificates] together with all necessary substantiations including:
 - (i) invoices prepared by the DB members and provided to the Contractor for payment/ reimbursement of their fees and/or expenses; and
 - (ii) evidence of payment of such invoiced amounts in full.
- (B) The Contractor’s overhead, profit, etc., shall not be included in the Provisional Sums for the cost of the DB.
- (C) The Engineer’s certification of such Statements under Sub-Clause 14.6 [Issue of Interim Payment Certificates] shall be based upon the invoices of the DB and evidence of payment of such invoiced amounts in full by the Contractor.”

**Sub-Clause 20.2
Appointment of the
Dispute Board**

[Delete Sub-Clause 20.2 in Part B (SP) and insert the following in Part B (SP).]

Delete Sub-Clause 20.2 entirely and substitute:

“Disputes shall be adjudicated by a DB in accordance with Sub-Clause 20.4 [*Obtaining Dispute Board's Decision*]. The Parties shall jointly appoint a DB by the date 28 days after a Party gives notice to the other Party of its intention to refer a dispute to a DB in accordance with Sub-Clause 20.4.

The DB shall comprise, as stated in the Contract Data, either one or three suitably qualified persons (“the members”). If the number is not so stated and the Parties do not agree otherwise, the DB shall comprise three persons.

If the DB is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The Parties shall consult both these members and shall agree upon the third member, who shall be appointed to act as chairman.

However, if a list of potential members is included in the Contract, the members shall be selected from those on the list, other than anyone who is unable or unwilling to accept appointment to the DB.

The agreement between the Parties and either the sole member (“adjudicator”) or each of the three members shall incorporate by reference the General Conditions of Dispute Board Agreement contained in the Appendix to these General Conditions, with such amendments as are agreed between them.

The terms of the remuneration of either the sole member or each of the three members shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

If at any time the Parties so agree, they may appoint a suitably qualified person or persons to replace any one or more members of the DB. Unless the Parties agree otherwise, the appointment will come into effect if a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment. The replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Sub-Clause.

The appointment of any member may be terminated by mutual

agreement of both Parties, but not by the Employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DB (including each member) shall expire when the DB has given its decision on the dispute referred to it under Sub-Clause 20.4 [*Obtaining Dispute Board's Decision*], unless other disputes have been referred to the DB by that time under Sub-Clause 20.4, in which event the relevant date shall be when the DB has also given decisions on those disputes.”

**Sub-Clause 20.4
Obtaining Dispute
Board's Decision**

[*Insert the following in Part B (SP).*]

Delete Sub-Clause 20.4 entirely and substitute:

“If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Engineer, then after a DB has been appointed pursuant to Sub-Clauses 20.2 [*Appointment of the DB*] and 20.3 [*Failure to Agree on the Composition of the Dispute Board*] either Party may refer the dispute in writing to the DB for its decision, with copies to the other Party and the Engineer. Such reference shall state that it is given under this Sub-Clause.

For a DB of three persons, the DB shall be deemed to have received such reference on the date when it is received by the chairman of the DB.

Both Parties shall promptly make available to the DB all information, access to the Site, and appropriate facilities, as the DB may require for the purposes of making a decision on such dispute. The DB shall be deemed to be not acting as arbitrator(s).

Within 84 days after receiving such reference, or the advance payment referred to in Clause 6 of the Appendix - General Conditions of Dispute Board Agreement, whichever date is later, or within such other period as may be proposed by the DB and approved by both Parties, the DB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. However, if neither of the Parties has paid in full the invoices submitted by each member pursuant to Clause 6 of the Appendix, the DB shall not be obliged to give its decision until such invoices have been paid in full. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or

an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract.

If either Party is dissatisfied with the DB's decision, then either Party may, within 28 days after receiving the decision, give notice to the other Party of its dissatisfaction. If the DB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference or such payment, then either Party may, within 28 days after this period has expired, give notice to the other Party of its dissatisfaction.

In either event, this notice of dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in Sub-Clause 20.7 [*Failure to Comply with Dispute Board's Decision*] and Sub-Clause 20.8 [*Expiry of Dispute Board's Appointment*], neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Sub-Clause.

If the DB has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after it received the DB's decision, then the decision shall become final and binding upon both Parties.”

Appendix

General Conditions of Dispute Board Agreement

Clause 2 [*Insert the following in Part B (SP).*]

General Provisions Delete the entire Clause and substitute:

“The Dispute Board Agreement shall take effect when the Employer, the Contractor and each of the Members (or Member) have respectively each signed a dispute adjudication agreement.

When the Dispute Board Agreement has taken effect, the Employer and the Contractor shall each give notice to the Member accordingly. If the Member does not receive either notice within six months after entering into the Dispute Board Agreement, it shall be void and ineffective.

This employment of the Member is a personal appointment. No assignment or subcontracting of the Dispute Board Agreement is permitted without the prior written agreement of all the parties to it and of the Other Members (if any).”

- Clause 4** *[Insert the following in Part B (SP).]*
- General Obligation of the Member** Delete sub-paragraph 4 (i) and (k) and renumber sub-paragraph 4 (j) as sub-paragraph 4(i).
- Clause 5** *[Insert the following in Part B (SP).]*
- General Obligation of Employer and the Contractor** Delete the last paragraph entirely.
- Clause 6** *[Delete Clause 6 in Part B (SP) and insert the following in Part B (SP).]*
- Payment**
- Delete the entire Clause and substitute:
- “The Member shall be paid as follows, in the currency named in the Dispute Board Agreement:
- (a) a daily fee shall be considered as payment in full for:
- (i) each working day spent reading submissions, attending hearings (if any), preparing decisions, or making site visits (if any); and
- (ii) each day or part of a day up to maximum of two days travel time in each direction for the journey (if any) between the Member’s home and site or another location of a meeting with Other Members (if any) and/or the Employer and the Contractor;
- (b) all reasonable expenses incurred in connection with the Member’s duties, including the cost of secretarial services, telephone calls, courier charges, faxes and telexes, travel expenses, hotel and subsistence costs; a receipt shall be required for each item in excess of five percent of the daily fee referred to in sub-paragraph (a)

of this Clause; and

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

The daily fee shall be as specified in the Dispute Board Agreement.

Immediately after the Dispute Board Agreement takes effect, the Member shall, before engaging in any activities under the Dispute Board Agreement, submit to the Contractor, with a copy to the Employer, an invoice for (a) an advance of twenty-five (25) percent of the estimated total amount of daily fees to which he/she will be entitled and (b) an advance equal to the estimated total expenses that he/she shall incur in connection with his/her duties. Payment of such invoice shall be made by the Contractor upon his receipt of the invoice. The Member shall not be obliged to engage in activities under the Dispute Board Agreement until each of the Members has been paid in full for invoices submitted under this paragraph.

Thereafter the Member shall submit to the Contractor, with a copy to the Employer, invoices for the balance of his/her daily fees and expenses, less the amounts advanced. The DB shall not be obliged to render its decision until invoices for all daily fees and expenses of each Member for making a decision shall have been paid in full.

Unless paid earlier in accordance with the above, the Contractor shall pay each of the Member's invoices in full within 28 calendar days after receiving each invoice and shall apply to the Employer (in the Statements under the Contract) for reimbursement of one-half of the amounts of these invoices. The Employer shall then pay the Contractor in accordance with the Contract.

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the Dispute Board Agreement, the Employer shall pay the amount due to the Member and any other

amount which may be required to maintain the operation of the DB; and without prejudice to the Employer's rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in Sub-Clause 14.8 of the Conditions of Contract.

If the Member does not receive payment of the amount due within 28 days after submitting a valid invoice, the Member may (i) suspend his/her services (without notice) until the payment is received, and/or (ii) resign his/her appointment by giving notice to the Employer and the Contractor. The notice shall take effect when received by them both. Any such notice shall be final and binding on the Employer, the Contractor and the Member.”

Clause 7

[Insert the following in Part B (SP).]

Default of the Member

The title of the Sub-Clause is replaced by “*Default of the Member*”.

Delete the entire Clause and substitute:

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

Clause 8

[Insert the following in Part B (SP).]

Disputes

The title of the Sub-Clause is replaced by “*Disputes*”.

Delete the entire Clause and substitute:

“Any dispute or claim arising out of or in connection with this Dispute Board Agreement, or the breach, termination or invalidity thereof, shall be finally settled under the Rules of Arbitration of

the International Chamber of Commerce by one arbitrator appointed in accordance with these Rules of Arbitration.”

Clause 9 [Insert the following in Part B (SP).]

Delete the entire Clause.

**Annex
PROCEDURAL
RULES**

[Insert the following in Part B (SP).]

Delete the entire Rules and substitute:

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

2. The DB shall proceed in accordance with Sub-Clause 20.4 and these Rules. Subject to the time allowed to give notice of a decision and other relevant factors, the DB shall:

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

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

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

4. Except as otherwise agreed in writing by the Employer and the Contractor, the DB shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the Employer, the Contractor and the Engineer, and to proceed in the absence of any party who the DB is satisfied

received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.

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

- (a) establish the procedure to be applied in deciding a dispute,
- (b) decide upon the DB's own jurisdiction, and as to the scope of any dispute referred to it,
- (c) conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Rules,
- (d) take the initiative in ascertaining the facts and matters required for a decision,
- (e) make use of its own specialist knowledge, if any,
- (f) decide upon the payment of financing charges in accordance with the Contract,
- (g) decide upon any provisional relief such as interim or conservatory measures, and
- (h) open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Engineer, relevant to the dispute.

6. The DB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DB shall make and give its decision in accordance with Sub-Clause 20.4, or as otherwise agreed by the Employer and the Contractor in writing. If the DB comprises three persons:

- (a) it shall convene in private after a hearing, if any, in order to have discussions and prepare its decision;
- (b) it shall endeavour to reach a unanimous decision: if this proves impossible, the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the Employer and the Contractor; and
- (c) if a Member fails to attend a meeting or hearing, or to fulfil any required function, the other two Members may nevertheless proceed to make a decision, unless:

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

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

No use of DB

[When “(c) No use of DB” is selected, the relevant CD should be stated as follows:]

Conditions	Sub-Clause	Data
Date by which the DB shall be appointed	20.2	<i>[insert “This CD 20.2 is not applicable.”]</i>
The DB shall be comprised of	20.2	<i>[insert “This CD 20.2 is not applicable.”]</i>
Appointment (if not agreed) to be made by	20.3	<i>[insert “This CD 20.3 is not applicable”]</i>

Annex to Part B: Specific Provisions - Eligible Source Countries of Japanese ODA Loans.

[Notes for the Employer: The Employer shall insert here the same information and provisions as to the Eligible Source Countries applicable for the Contractor, and for the goods and services to be supplied under the Contract, as included in Section V, which should be drafted citing all relevant information and provisions from the Loan Agreement.]

Section IX. Contract Forms

Table of Forms

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Letter of Acceptance

[insert letterhead paper of the Employer]

[insert date]

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

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

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

Authorized Signature : _____

Name and Title of Signatory : _____

Name of Agency : _____

Attachment: Memoranda (*Insert list of memoranda (if any) as referred in Sub-Clause 1.1.1.3*)

[Option A: Two-Envelope Bidding]

Contract Agreement

THIS AGREEMENT made the [insert day] 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 Technical Bid;
 - (c) the Letter of Price Bid;
 - (d) the addenda, if any;
 - (e) the Particular Conditions;
 - (f) the General Conditions;
 - (g) the Specification;
 - (h) the Drawings;
 - (i) the completed Schedules; and
 - (j) the Acknowledgement of Compliance with Guidelines for Procurement under Japanese ODA Loans.
3. In consideration of the payments to be made by the Employer to the Contractor as specified 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 on the day and year first above written.

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 :

Witness;

Name :

Signature :

Address :

Date :

Date :

[Option B: One-Envelope Bidding]

Contract Agreement

THIS AGREEMENT made the [insert day] 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 [insert 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, if any;
 - (d) the Particular Conditions;
 - (e) the General Conditions;
 - (f) the Specification;
 - (g) the Drawings;
 - (h) the completed Schedules; and
 - (i) the Acknowledgement of Compliance with Guidelines for Procurement under Japanese ODA Loans.
3. In consideration of the payments to be made by the Employer to the Contractor as specified 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 on the day and year first above written.

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 :

Witness;

Name :

Signature :

Address :

Date :

Date :

Performance Security

Option 1: Demand Guarantee

Notes for the Employer

The Employer should note that in the event of an extension of the Time for Completion, 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.

[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

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

Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for its demand or the sum specified therein.

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

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

[*signature(s)*]

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

² *Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9.*

Option 2: Surety Bond

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

WHEREAS the Contractor has entered into a written Agreement with the Employer dated the [*insert date*] day of [*insert month*], [*insert year*], for [*insert name of contract and brief description of Works*] in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

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

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

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

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

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

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

SIGNED ON _____ on behalf of _____

By _____ in the capacity of _____

In the presence of _____

SIGNED ON _____ on behalf of _____

By _____ in the capacity of _____

In the presence of _____

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

Advance Payment Security

Demand Guarantee

Notes for the Employer

The Employer should note that in the event of an extension of the Time for Completion, 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.

[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]*)¹ upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

¹ *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.*

- (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 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 and be returned to us, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the *[insert day]* day of *[insert month]*, *[insert year]*,² whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

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

[signature(s)]

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

² *Insert the expected expiration date of the Time for Completion.*

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 [insert the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security] 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])¹ upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed

¹ The Guarantor shall insert an amount representing the amount of the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security and 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.

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*].

This guarantee shall expire and be returned to us no later than the [*insert day*] day of [*insert month*], [*insert year*]², 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. 758, except that the supporting statement under Article 15(a) is hereby excluded.

[*signature(s)*]

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

² *Insert the same expiry date as set forth in the Performance Security, representing the date twenty-eight days after the completion date described in GC Clause 11.9.*

Japan International Cooperation Agency

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