**W-2**

**Large works**

June

2015

GOVERNMENT OF…….

PROJECT….....

BID [TENDER] NO……..

**NATIONAL COMPETITIVE BIDDING**

**(*FOR ITEM RATE/ADMEASUREMENT CONTRACTS IN CIVIL WORKS)***

***(Valued equivalent of US$ 20 Million to US$ 40 Million; GCC FIDIC 2005-ITB as per SBD March 2012)***

NAME OF WORK :

PERIOD OF SALE OF : FROM

BIDDING DOCUMENT TO

TIME AND DATE OF : DATE ———— TIME ———— HOURS

PRE-BID CONFERENCE

LAST DATE AND TIME FOR : DATE ———— TIME ———— HOURS

#RECEIPT OF BIDS

**\*** TIME AND DATE OF OPENING : DATE ———— TIME ———— HOURS OF BIDS

PLACE OF OPENING OF BIDS :

:

:

OFFICER INVITING BIDS :

**\* *Should be the same as for the deadline for receipt of bids or promptly thereafter****.*

**#*bidding time should be between*** *6-12 weeks or more*

**March 2015**

INVITATION FOR BID

(IFB)

GOVERNMENT OF ……………..

**………………….………PROJECT**

**INVITATIONS FOR BIDS (IFB)**

NATIONAL COMPETITIVE BIDDING

**Date:………….**

**Bid No.:………….**

1. The Government of India has received/applied for/intends to apply for financing from the World Bank towards the cost of ……………..Project and intends to apply a part of the funds to cover eligible payments under the contracts for construction of works as detailed below. Bidding will be conducted through National Competitive Bidding procedures agreed with the World Bank. Bidding is open to all eligible bidders as defined in the World Bank’s [Guidelines](http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/PROCUREMENT/0,,pagePK:84271~theSitePK:84266,00.html): [Procurement of Goods, Works and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers, January 2011.](http://www.worldbank.org/html/opr/procure/guidelin.html)*[insert correct title and date of applicable Guidelines edition as per legal agreement]* Bidders from India should, however, be registered with the Government of ……………....or other State Governments/Government of India, or State/Central Government Undertakings. Bidders from India, who are not registered as above, on the date of bidding, can also participate provided they get themselves registered by the time of contract signing, if they become successful bidders. **Bidders are advised to note the clauses on eligibility (Section I Clause 4) and minimum qualification criteria (Section III– Evaluation and Qualification Criteria), to qualify for the award of the contract.** In addition, please refer to paragraphs 1.6 and 1.7 of the World Bank’s Guidelines setting forth the World Bank’s policy on conflict of interest.
2. The …………………………(***Implementing Agency***)invites sealed bids for the construction of works detailed below in the table. The bidders may submit bids for any or all of the works indicated therein.
3. Bidding documents (and additional copies) may be purchased from the office of ………………..from……to….., for a non-refundable fee (three sets) as indicated in the table, in the form of cash or Demand Draft on any Scheduled/Nationalized bank payable at…………in favour of………………… Interested bidders may obtain further information at the same address. Bidding documents requested by mail will be dispatched by courier/speed post on payment of an extra amount of Rs…….. The ……..***(Implementing Agency)*** will not be held responsible for the postal delay if any, in the delivery of the documents or non-receipt of the same. ***(In cases where the bidding documents are allowed to be downloaded from the website……………please state clearly whether payment towards the cost of bid documents should accompany the bid submission, or it can be downloaded and used without any payment. In all such cases, the bidder would be responsible for ensuring that any addenda available on the website is also downloaded and incorporated.)***
4. Bids must be accompanied by security of the amount specified for the work in the table below, drawn in favour of …………. Bid security will have to be in any one of the forms as specified in the bidding document and shall have to be valid for 45 days beyond the validity of the bid.
5. Bids must be delivered to……………………………on or before…………..hours on…….. (Date) and will be publically opened on the same day at…… hours, in the presence of the bidders designated representatives who wish to attend. If the office happens to be closed on the date of receipt of the bids as specified, the bids will be received and opened on the next working day at the same time and venue. Late Bids will be rejected ***[Where electronic bidding is permitted state “Electronic bidding will be permitted and the submission procedures are given in BDS for ITB Clause 22.1]”.***
6. A pre-bid meeting will be held on………………….. at ………….hrs. at the office of …………………….to clarify the issues and to answer questions on any matter that may be raised at that stage as stated in ITB Clause 7.4 of ‘Instructions to Bidders’ of the bidding document.
7. Other details can be seen in the bidding documents.
8. The address for communication is as under:
   1. Name & Designation of Officer ……………………………….
   2. Official Address ………………………………………………..
   3. Email ………………………………………………………….
   4. Telephone …………………………………………………….

TABLE

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Package No | Name of Work | Bid Security \*  (Rs.) | Cost of Document  (Rs.) | Period of Completion |
| 1 | 2 | 3 | 4 | 5 |
|  |  |  |  |  |

**Seal of office**

***Note*** *\* - The values should be rounded off to the nearest ten thousands of rupees.*

*The IFB should be identical to that which appeared in the press/web.*

PART 1 – Bidding Procedures

Section I. Instructions to Bidders

*This Section of the Bidding Documents should provide the information necessary for bidders to prepare responsive bids, in accordance with the requirements of the Employer. It should also give information on bid submission, opening and evaluation, and on the award of Contract.*

*Matters governing the performance of the Contractor, payments under the Contract, or matters affecting the risks, rights, and obligations of the parties under the Contract are not normally included in this Section, but rather under Section VIII, General Conditions of Contract(GCC), and/or Section IX, Particular Conditions of Contract (PCC). If duplication of a subject is inevitable in the different sections of the documents, care must be exercised to avoid contradictions between clauses dealing with the same matter.*

*These Instructions to Bidders shall not be part of the Contract Agreement and shall cease to have effect once the Contract is signed.*

Section 1 - Instructions to Bidders

**Section I - Instructions to Bidders**

|  |  |
| --- | --- |
| 1. General | |
| 1. Scope of Bid | 1.1 The Employer, as indicated in the BDS, issues this Bidding Document for the procurement of the Works as specified in Section VII (Work’s Requirements)&Invitation for Bids (IFB). The name, identification, and number of contracts of this bidding are **specified in the BDS.** |
|  | * 1. 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; and  (c) “day” means calendar day. |
| 1. Source of Funds | 2.1 The Government of India or the Recipient (hereinafter called “Borrower”) **specified in the BDS** has received/applied for financing (hereinafter called “funds”) from the International Bank for Reconstruction and Development or the International Development Association (hereinafter called “the Bank”) in an amount **specified in the BDS**, towards the cost of the project **specified in the BDS**. The Borrower intends to apply a portion of the funds to eligible payments under the contract(s) for which this Bidding Document is issued.  2.2 Payment by the Bank will be made only at the request of the Borrower and upon approval by the Bank, and will be subject, in all respects, to the terms and conditions of the Loan (or other financing) Agreement. The Loan (or other financing) Agreement prohibits a withdrawal from the Loan (or other financing) account for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import, to the knowledge of the Bank, is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations. No party other than the Borrower shall derive any rights from the Loan (or other financing) Agreement or have any claim to the proceeds of the Loan (or other financing). |
|  | . |
| 1. Corrupt and Fraudulent Practices | 3.1 The Bank requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Section VI.  3.2 In further pursuance of this policy, Bidders shall permit and shall cause its agents (whether declared or not), sub-contractors, sub-consultants, service providers, or suppliers and any personnel thereof, to permit the Bank to inspect all accounts, records and other documents relating to any prequalification process, bid submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the Bank. |
| 1. Eligible Bidders | * + 1. A Bidder may be a firm that is a private entity, a government-owned entity—subject to ITB 4.5—or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. Unless **specified in the BDS**, there is no limit on the number of members in a JV.     2. Bids submitted by a joint venture of two or more firms as partners when permitted as per ITB Clause 4.1.1 BDS shall comply with the following requirements:   [a] the bid shall include all the information listed in Bidders Qualification Forms for all the Partners.  [b] the bid and, in case of a successful bid, the Agreement, shall be signed so as to be legally binding on all partners;  [c] one of the partners shall be nominated as being in charge, and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners;  [d] the partner in charge shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture and the entire execution of the contract, including payment, shall be done exclusively with the partner in charge;  [e] all partners of the joint venture shall be liable jointly and severally for the execution of the contract in accordance with the contract terms, and a statement to this effect shall be included in the authorization mentioned under (c) above, as well as in the bid and in the Agreement [*in case of a successful bid*];  [f] The joint venture agreement should indicate precisely the role of all members of JV in respect of planning, design, construction equipment, key personnel, work execution, and financing of the project. All members of JV should have active participation in the execution during the currency of the contract. This should not be varied/modified subsequently without prior approval of the employer;  [g] The joint venture agreement should be registered in place **specified in BDS** so as to be legally valid and binding on partners; and  [h] a copy of the Joint Venture Agreement entered into by the partners shall be submitted with the bid. Alternatively, a Letter of Intent to execute a Joint Venture Agreement in the event of a successful bid shall be signed by all partners and submitted with the bid, together with a copy of the proposed Agreement. |
|  | A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest for the purpose of this bidding process, if the Bidder:   * + 1. directly or indirectly controls, is controlled by or is under common control with another Bidder; or     2. receives or has received any direct or indirect subsidy from another Bidder; or     3. has the same legal representative as another Bidder; or     4. has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or     5. participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which such Bidder is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or     6. or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the bid; or     7. or any of its affiliates has been hired (or is proposed to be hired) by the Employer or Borrower as Engineer for the Contract implementation;     8. would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the BDS ITB 2.1 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;     9. has a close business or family relationship with a professional staff of the Borrower (or of the project implementing agency, or of a recipient of a part of the loan) who: (i) are directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Bank throughout the procurement process and execution of the contract. |
|  | 4.3 A Bidder may have the nationality of any country, subject to the restrictions pursuant to ITB 4.7. A Bidder shall be deemed to have the nationality of a country if the Bidder is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed sub-contractors or sub-consultants for any part of the Contract including related Services. |
|  | 4.4 A Bidder that has been sanctioned by the Bank in accordance with the above ITB 3.1, including in accordance with the Bank’s Guidelines on Preventing and Combating Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants (“Anti-Corruption Guidelines”), shall be ineligible to be prequalified for, bid for, or be awarded a Bank-financed contract or benefit from a Bank-financed contract, financially or otherwise, during such period of time as the Bank shall have determined. The list of debarred firms and individuals is available at the electronic address **specified in the BDS**. |
|  | 4.5 Bidders that are Government-owned enterprises or institutions in the Employer’s Country may participate only if they can establish that they (i) are legally and financially autonomous (ii) operate under commercial law, and (iii) are not dependent agencies of the Employer. To be eligible, a government-owned enterprise or institution shall establish to the Bank’s satisfaction, through all relevant documents, including its Charter and other information the Bank may request, that it: (i) is a legal entity separate from the government (ii) does not currently receive substantial subsidies or budget support; (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to the government, can acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt; and (iv) is not bidding for a contract to be awarded by the department or agency of the government which under their applicable laws or regulations is the reporting or supervisory authority of the enterprise or has the ability to exercise influence or control over the enterprise or institution. |
|  | 4.6 Not used. |
|  | 4.7 Firms and individuals may be ineligible if so indicated in Section V and (a) as a matter of law or official regulations, the Borrower’s country prohibits commercial relations with that country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the supply of goods or the contracting of works or services required; or (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower’s country prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person, or entity in that country. |
|  | 4.8 This bidding is open only to prequalified Bidders unless **specified in the BDS**.  4.9 Bidder shall provide such evidence of eligibility satisfactory to the Employer, as the Employer shall reasonably request. |
| 1. Eligible Materials, Equipment and Services | 5.1 The materials, equipment and services to be supplied under the Contract and financed by the Bank may have their origin in any country subject to the restrictions specified in Section V, Eligible Countries, and all expenditures under the Contract will not contravene such restrictions. At the Employer’s request, Bidders may be required to provide evidence of the origin of materials, equipment and services. |
|  | 5.2 For purposes of ITB 5.1 above, “origin” means the place where the materials and equipment are mined, grown, produced or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that differs substantially in its basic characteristics or in purpose orutility from its components. |
| 1. Contents of Bidding Document | |
| 1. Sections of Bidding Document | 6.1 The Bidding Document consist of Parts 1, 2*,* and3*,* which include all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITB 8.  **PART 1 Bidding Procedures**  Section I - Instructions to Bidders (ITB)  Section II - Bid Data Sheet (BDS)  Section III - Evaluation and Qualification Criteria  Section IV - Bidding Forms  Section V - Eligible Countries  Section VI- Bank Policy-Corrupt and Fraudulent Practices  **PART 2 Work’s Requirements**  Section VII - Works Requirements  **PART 3 Conditions of Contract and Contract Forms**  Section VIII - General Conditions (GC)  Section IX - Particular Conditions (PC)  Section X –Contract Forms |
|  | * 1. The invitation for Bids issued by the Employer will not be part of contract. |
|  | 6.3 Unless obtained directly from the Employer, the Employer is not responsible for the completeness of the Bidding Documents, responses to requests for clarification, the minutes of the pre-Bid meeting (if any), or Addenda to the Bidding Documents in accordance with ITB 8. In case of any contradiction, documents obtained directly from the Employer shall prevail. |
|  | 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document and to furnish with its Bid all information or documentation as required by the Bidding Document. |
| 1. Clarification of Bidding Document, Site Visit, Pre-Bid Meeting | 7.1 A prospective Bidder requiring any clarification of the Bidding Document shall contact the Employer in writing at the Employer’s address **indicated in the BDS** or raise his inquiries during the pre-bid meeting if provided for in accordance with ITB 7.4. The Employer will respond in writing to any request for clarification, provided that such request is received prior to the deadline for submission of bids, within a period **specified in the BDS**. The Employer shall forward copies of its response to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. If so **specified in the BDS**, the Employer shall also promptly publish its response at the web page identified in the BDS. ***(where electronic downloading of bid document is permitted, the employer will upload the addenda on the website and it will be the responsibility of the bidders [who downloaded the bid document] to search the website for any addenda).*** Should the clarification result in changes to the essential elements of the Bidding Documents, the Employer shall amend the Bidding Documents following the procedure under ITB 8 and ITB 22.2. |
|  | * 1. The Bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself, on its own risk and responsibility, all information that may be necessary for preparing the bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder’s own expense. |
|  | 7.3 The Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection. |
|  | 7.4 If so **specified in the BDS**, the Bidder’s designated representative is invited to attend a pre-bid meeting. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage. |
|  | 7.5 The Bidder is requested, to submit any questions in writing, to reach the Employer not later than one week before the meeting. |
|  | 7.6 Minutes of the pre-bid meeting, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding 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. |
|  | 7.7 Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder. |
| 1. Amendment of Bidding Document | 8.1 At any time prior to the deadline for submission of bids, the Employer may amend the Bidding Document by issuing addenda. |
|  | * 1. 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. The Employer shall also promptly publish the addendum on the Employer’s web page in accordance with ITB 7.1. |
|  | 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB 22.2 |
| 1. Preparation of Bids | |
| 1. Cost of Bidding | 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process. |
| 1. Language of Bid | 10.1 The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Employer, shall be written in English. |
| 1. Documents Comprising the Bid | 11.1 The Bid shall comprise the following:   1. Letter of Bid and Appendix to Bid; 2. completed Schedules including priced bill of quantities, in accordance with ITB 12 and 14, **as specified in BDS**; 3. Bid Security, in accordance with ITB 19; 4. alternative bids, if permissible, in accordance with ITB 13; 5. written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2; 6. documentary evidence in accordance with ITB 17 establishing the Bidder’s qualifications to perform the contract if its Bid is accepted; 7. Technical Proposal in accordance with ITB 16; 8. Construction methodology proposed as detailed in Para 1.1 of Section III Evaluation Criteria; 9. Any other document **required in the BDS**.   11.2 In addition to the requirements under ITB 11.1, bids submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful bid shall be signed by all members and submitted with the bid, together with a copy of the proposed Agreement.  11.3 The Bidder shall furnish in the Letter of Bid information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid. |
| 1. Letter of Bid and Schedules | 12.1 The Letter of Bid, Schedules, including the Bill of Quantities and all documents listed under Clause 11, shall be prepared using the relevant forms in Section IV(Bidding Forms), if so provided. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITB 20.2. All blank spaces shall be filled in with the information requested. |
| 1. Alternative Bids | 13.1 Unless otherwise specified in the BDS, alternative bids shall not be considered. |
|  | 13.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the BDS, as will the method of evaluating different times for completion. |
|  | 13.3 Except as provided under ITB 13.4 below, Bidders wishing to offer technical alternatives to the requirements of the Bidding Documents must first price the Employer’s design as described in the Bidding Documents and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Employer. |
|  | 13.4 When specified in the BDS, Bidders are permitted to submit alternative technical solutions for specified parts of the Works, and such parts will be identified in the BDS, as will the method for their evaluating, and described in Section VII, Works Requirements. |
| 1. Bid Prices and Discounts | 14.1 The prices and discounts (including any price reduction) quoted by the Bidder in the Letter of Bid and in the Schedules shall conform to the requirements specified below. |
| . | * 1. 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 for other items in the Bill of Quantities and will not be paid for separately by the Employer. An item not listed in the priced Bill of Quantities shall be assumed to be not included in the Bid, and provided that the Bid is determined substantially responsive notwithstanding this omission, the average price of the item quoted by substantially responsive bidders will be added to the bid price and the equivalent total cost of the bid so determined will be used for price comparison. |
|  | 14.3 The price to be quoted in the Letter of Bid in accordance with ITB 12.1, shall be the total price of the Bid, excluding any discounts offered. |
|  | 14.4 Unconditional discounts, if any, and the methodology for their application shall be quoted in the Letter of Bid, in accordance with ITB 12.1. |
|  | 14.5 Unless otherwise specified in the BDS and the Contract, the rates and prices quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract.  14.6 If so indicated in ITB 1.1, bids are invited for individual lots (contracts) or for any combination of lots/contracts (packages). Bidders wishing to offer any price reduction for the award of more than one Contract shall specify in their bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Price reductions or discounts shall be submitted in accordance with ITB 14.4, provided the bids for all lots/contracts are submitted and opened at the same time. |
|  | 14.7 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the rates and prices and the total bid price submitted by the Bidder. |
|  | 14.8 Bidders may like to ascertain availability of excise/custom duty exemption benefits available in India to the contracts financed under World Bank loan/credits. They are solely responsible for obtaining such benefits which they have considered in their bid and in case of failure to receive such benefits for reasons whatsoever, the employer will not compensate the bidder (contractor). Where the bidder has quoted taking into account such benefits, it must give all information required for issue of certificates in terms of relevant notifications as per form given in the Bidding forms in the bid. To the extent the employer determines the quantity indicated therein are reasonable keeping in view the quantities in bill of quantities, construction program and methodology, the certificates will be issued within 60 days of signing of the contract and no subsequent changes will be permitted. No certificate will be issued for items where no quantity/capacity of equipment is indicated in the statement. The bids which do not conform to the above provisions will be treated as non-responsive and rejected. Any delay in procurement of the construction equipment/machinery/goods as a result of the above shall not be a cause for granting any extension of time. |
| 1. Currencies of Bid and Payment | 15.1 The unit rates and prices shall be quoted by the Bidder and paid for entirely in Indian Rupees. |
| 1. Documents Comprising the Technical Proposal | 16.1 The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as per details stipulated in Section **IV** (Bidding Forms), in sufficient detail to demonstrate the adequacy of the Bidders’ proposal to meet the work requirements and the completion time. |
| 1. Documents Establishing the Qualifications of the Bidder | 17.1 To establish its qualifications to perform the Contract in accordance with Section III (Evaluation and Qualification Criteria) the Bidder shall provide the complete information as requested in the corresponding information sheets included in Section **IV** (Bidding Forms). |
|  |  |
| 1. Period of Validity of Bids | 18.1 Bids shall remain valid for the 120 days unless **specified otherwise 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 nonresponsive. |
|  | * 1. In exceptional circumstances, prior to the expiration of the bid validity period, the Employer may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITB 19, it shall also be extended for forty five (45) days beyond the dead line 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. |
|  | 18.3 If the award is delayed beyond the expiry of the initial bid validity, the Contract price shall be determined as follows*:*   * + 1. In the case of fixed price contracts, the Contract price shall be the bid price adjusted by the factor **specified in the BDS**.     2. In the case of adjustable price contracts, no adjustment shall be made     3. In any case, bid evaluation shall be based on the bid Price without taking into consideration the applicable correction from those indicated above. |
| 1. Bid Security | 19.1 The Bidder shall furnish as part of its bid, in original form, a bid security for the amount **shown in BDS**, for this particular work*.* |
|  | 19.2 The bid security shall be a demand guarantee, at the Bidder’s option, in any of the following forms:   1. an unconditional bank guarantee, issued by a Nationalized/ Scheduled bank located in India; 2. an irrevocable letter of credit issued by a Nationalized or Scheduled bank located in India; 3. a cashier’s or certified check; or demand draft from a Nationalized or Scheduled Bank located in India; 4. another security **indicated in the BDS.**   *In case of a bank guarantee, the bid security shall be submitted using the Bid Security form included in the Section IV (Bidding Forms).* The form must include the complete name of the Bidder. The bid security shall be valid for forty five (45) 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 If a bid security is specified pursuant to ITB 19.1, the bid security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder’s signing the contract and furnishing of the performance security pursuant to ITB 42. |
|  | 19.5 If a bid security is specified pursuant to ITB 19.1, the bid security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required performance security. |
|  | 19.6 The bid security may be forfeited:   1. if a Bidder withdraws/modifies/substitutes its bid during the period of bid validity specified by the Bidder on the Letter of Bid, except as provided in ITB 18.2 or 2. if the Bidder does not accept the correction of its Bid Price pursuant to ITB 31 or 3. if the successful Bidder fails to:  sign the Contract in accordance with ITB 41; orfurnish a performance security in accordance with ITB 42. |
|  | * 1. The Bid Security of a JV shall be in the name of the JV that submits the bid. If the JV has not been constituted into a legally-enforceable JV*,* at the time of bidding, the Bid Security shall be in the names of all future partners as named in the letter of intent mentioned in ITB 4.1.2 and ITB 11.2. |
| 1. Format and Signing of Bid | 20.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB 11 and clearly mark it “Original”. Alternative bids, if permitted in accordance with ITB 13, shall be clearly marked “Alternative” In addition, the Bidder shall submit copies of the bid in the number **specified in the BDS,** and clearly mark each of them “Copy.” In the event of any discrepancy between the original and the copies, the original shall prevail. |
|  | 20.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as **specified in the BDS** and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid where entries or amendments have been made shall be signed or initialed by the person signing the bid. |
|  | 20.3 In case the Bidder is a JV, the Bid shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives  20.4 Any amendments such as interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the bid. |
|  | 20.5 The Bidder shall furnish information as described in the Form of Bid on commissions or gratuities, if any, paid or to be paid to agents relating to this Bid, and to contract execution if the Bidder is awarded the contract. |
| 1. Submission and Opening of Bids | |
| 1. Sealing and Marking of Bids | 21.1 Bidders may always submit their bids by mail or by hand. When so **specified in the BDS**, bidders shall have the option of submitting their bids electronically. Procedures for submission, sealing and marking are as follows:  (a) Bidders submitting bids by mail or by hand shall enclose the original and each copy of the Bid including alternatives if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as “Original”, “ALTERNATIVE” and “Copy.” These envelopes containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITB sub-Clauses 21.2 and 21.3.  (b) Bidders submitting bids electronically shall follow the electronic bid submission procedures **specified in the BDS.** |
|  | * 1. The inner and outer envelopes shall:   (a) bear the name and address of the Bidder;  (b) be addressed to the Employer as provided in the BDS pursuant to ITB 22.1;  (c) bear the specific identification of this bidding process indicated in accordance with ITB 1.1; and  (d) bear a warning not to open before the time and date for bid opening. |
|  | 21.3 If all envelopes are not sealed and marked as required, the Employer will assume no responsibility for the misplacement or premature opening of the bid. |
| 1. Deadline for Submission of Bids | 22.1 Bids must be received by the Employer at the address and no later than the date and time **indicated in the BDS**. Bidders submitting bids electronically (when permitted) shall follow the electronic bid submission procedures specified in the BDS. |
|  | * 1. The Employer may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Document in accordance with ITB 8, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended. |
| 1. Late Bids | 23.1 The Employer shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB 22. Any bid received by the Employer after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder. |
| 1. Withdrawal, Substitution, and Modification of Bids | 24.1 A Bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 20.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:  (a) prepared and submitted in accordance with ITB 20 and ITB 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked “Withdrawal,” “Substitution,” “Modification;” and  (b) received by the Employer prior to the deadline prescribed for submission of bids, in accordance with ITB 22. |
|  | * 1. 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. This will result in the forfeiture of the Bid Security pursuant to ITB 19.6. |
| 1. Bid Opening | 25.1 Except in the cases specified in ITB 23 and 24, the Employer shall publicly open and read out in accordance with ITB 25.3 all bids received by the deadline, at the date, time and place **specified in the BDS** in the presence of Bidders` designated representatives and anyone who choose to attend. Any specific electronic bid opening procedures required, if electronic bidding is permitted in accordance with ITB 21.1, shall be as **specified in the BDS**. |
|  | * 1. First, envelopes marked “Withdrawal” shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked “Substitution” shall be opened and read out and exchanged with the corresponding bid being substituted, and the substituted bid shall not be opened, but returned to the Bidder. No bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening. Envelopes marked “Modification” shall be opened and read out with the corresponding bid. No bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at bid opening. Only envelopes that are opened and read out at bid opening shall be considered further. |
|  | 25.3 All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification, the total Bid Price, per lot (contract) if applicable, including any discounts and alternative bids, the presence or absence of a bid security; and any other details as the Employer may consider appropriate. Only discounts and alternatives & modifications read out at bid opening shall be considered for evaluation. The Letter of Bid and the Bill of Quantities are to be initialed by representatives of the Employer attending bid opening in the manner **specified in the BDS.** The Employer shall neither discuss the merits of any bid nor reject any bid at bid opening (except for late bids, in accordance with ITB 23.1). |
|  | 25.4 The Employer shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per contract if applicable, including any discounts and alternative bids; and the presence or absence of a bid security, if one was required. The Bidders’ representatives who are present shall be requested to sign the record. The omission of a Bidder’s signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders. |
| 1. Evaluation and Comparison of Bids | |
| 1. Confidentiality | 26.1 Information relating to the examination, evaluation, comparison, and post-qualification of bids and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on Contract award is communicated to all Bidders in accordance with ITB 40. |
|  | * 1. Any attempt by a Bidder to influence the Employer in the evaluation of the bids or Contract award decisions may result in the rejection of its bid. |
|  | 26.3 Notwithstanding ITB 26.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the bidding process, it may do so in writing. |
| 1. Clarification of Bids | 27.1 To assist in the examination, evaluation, and comparison of the bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its bid including breakdown of unit rates, giving a reasonable time for response. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer’s request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids, in accordance with ITB 31. |
|  | * 1. 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. |
| 1. 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. |
| 1. Determination of Responsiveness | 29.1 The Employer’s determination of a bid’s responsiveness is to be based on the contents of the bid itself, as defined in ITB11. |
|  | * 1. A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,   (a) if accepted, would: (i) affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or(ii) limit in any substantial way, inconsistent with the Bidding Document, the Employer’s rights or the Bidder’s obligations under the proposed Contract; or (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids. |
|  | 29.3 The Employer shall examine the technical aspects of the bid submitted in accordance with ITB 16, Technical Proposal, in particular, to confirm that all requirements of Section VII (Work’s Requirements) have been met without any material deviation, reservations or omissions. |
|  | 29.4 If a bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation or reservations.  29.5 In case where a prequalification process has been undertaken for the contracts for which these Bidding Documents have been issued, the purchaser will ensure that each bid is from a prequalified bidder who continues to meet the specified criteria and has the required bid capacity assessed in the manner specified in BDS. |
| 1. Nonconformities, Errors, and Omissions | 30.1 Provided that a bid is substantially responsive, the Employer may waive any non conformities in the bid which do not constitute a material deviation, reservation or omission. |
|  | 30.2 Provided that a bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price or substance of the bid. Failure of the Bidder to comply with the request may result in the rejection of its bid.  30.3 Provided that a bid is substantially responsive, the Employer shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price may be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component. The adjustment shall be made using the methods specified in Section III (Evaluation and Qualification Criteria). |
| 1. Correction of Arithmetical Errors | 31.1 Provided that the bid is substantially responsive, the Employer shall correct arithmetical errors on the following basis:  (a) only for unit price contracts, if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected., unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;  (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and  (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above. |
|  | 31.2 If the Bidder that submitted the lowest evaluated bid does not accept the correction of errors in accordance with ITB 31.1, its bid shall be declared non-responsive and the Bid Security may be forfeited in accordance with ITB Sub-Clause 19.6. |
| 1. Conversion to Single Currency | 32.1 Deleted. |
| 1. Margin of Preference 2. Sub contractors | 33.1Not used.  34.1 Unless otherwise stated in the BDS, the Employer does not intend to execute any specific elements of the Works by sub-contractors selected in advance by the Employer.  34.2 The Employer may permit subcontracting for certain specialized works as indicated in Section III. When subcontracting is permitted by the Employer, the specialized sub-contractor’s experience shall be considered for evaluation. Section III describes the qualification criteria for sub-contractors.  34.3 Bidders may propose subcontracting up to the percentage of total value of contracts or the volume of works as **specified in the BDS.** |
| 1. Evaluation of Bids | 35.1 The Employer shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted. |
|  | * 1. To evaluate a bid, the Employer shall consider the following:   (a) the bid price, excluding Provisional Sums and the provision, if any, for contingencies in the Summary Bill of Quantities, but including Daywork items, where priced competitively;  (b) price adjustment for correction of arithmetic errors in accordance with ITB 31.1;  (c) price adjustment due to discounts offered in accordance with ITB 14.4;   1. Not Used, 2. price adjustment for nonconformities in accordance with ITB 30.3; 3. The additional evaluation factors as specified in Section III (Evaluation and Qualification Criteria); |
|  | 35.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation. |
|  | 35.4 If this Bidding Document allows Bidders to quote separate prices for different lots (contracts), and to award multiple contracts to a single Bidder, the methodology to determine the lowest evaluated price of the contract combinations, including any discounts offered in the Letter of Bid, is specified in Section III (Evaluation and Qualification Criteria). |
|  | 35.5 If the bid of the successful bidder, which results in the lowest Evaluated Bid Price, is seriously unbalanced, front loaded or substantially below updated estimates in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analyses (with breakdown of unit rates) for any or all items of the Bill of Quantities, to demonstrate the internal consistency and justification 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*.* |
| 1. Comparison of Bids | 36.1 The Employer shall compare all substantially responsive bids in accordance with ITB 35.2 to determine the lowest evaluated bid. |
| 1. Qualification of the Bidder | 37.1 The Employer shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid meets the qualifying criteria specified in Section III (Evaluation and Qualification Criteria).If a prequalification process was undertaken for the Contract(s) for which these Bidding Documents were issued, the Purchaser will determine in the manner described above that no material changes have occurred after the prequalification that negatively affect the ability of the Bidder that has submitted the lowest evaluated bid to perform the Contract.  *(Note- In cases of prequalification Employer shall verify to its satisfaction whether based on the updated qualification details the selected Bidder continues to meet the criteria specified at the time of prequalification)* |
|  | * 1. The determination shall be based upon an examination of the documentary evidence of the Bidder’s qualifications submitted by the Bidder, pursuant to ITB 17.1. |
|  | 37.3 An affirmative determination of qualification shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Employer shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder’s qualifications to perform satisfactorily. |
| 1. Employer’s Right to Accept Any Bid, and to Reject Any or All Bids | 38.1 The Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders. |
| 1. Award of Contract | |
| 1. Award Criteria | 39.1 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. |
| 1. Notification of Award | 40.1 Prior to the expiration of the period of bid validity, the Employer shall notify the successful Bidder, in writing, via the Letter of Acceptance included in the Contract Forms, that its bid has been accepted. The Letter of Acceptance shall specify the sum that the Employer will pay the Contractor in consideration of the execution and completion of the Works (hereinafter and in the Conditions of Contract and Contract Forms called “the Contract Price”). |
|  | * 1. Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract subject to the Bidder furnishing the Performance Security in accordance with ITB Clause 42 and signing of the Agreement in accordance with ITB Clause 41. |
| 1. Signing of Contract, Publication of award and Recourse to unsuccessful Bidders | 41.1 The Agreement shall incorporate all agreements between the Employer and the successful Bidder. It shall be kept ready in the office of the Employer for the signature of the Employer and the successful Bidder, within 21 days following the Letter of acceptance’s date. Within 21 days of receipt of Letter of acceptance, the successful Bidder shall sign the Agreement and furnish the performance security in accordance with ITB Clause 42 and revised construction methodology and JV agreement **[*for JVs only – if only a letter of intent to execute the JV agreement was submitted along with the bid.*]** |
|  | * 1. The Employer within 3 weeks of issue of notification of award shall publish in a national website (<http://tenders.gov.in>) the results identifying the bid a lot numbers and the following information: (i) name of each bidder who submitted the bid; (ii) bid prices as read out at bid opening; (iii) name and evaluated prices of each bid that was evaluated; (iv) name of bidders whose bids were rejected and the reasons for their rejection; and (v) name of the winning bidder, and the price it offered, as well as the duration and summary scope of the contract awarded.   41.3 The Employer shall promptly respond in writing to any unsuccessful Bidder who, after publication of contract award, requests the Employer in writing to explain on which grounds its bid was not selected. |
| 1. Performance Security | 42.1 Within twenty-one (21) days of the receipt of notification of award from the Employer, the successful Bidder shall furnish the performance security in accordance with the conditions of contract, subject to ITB 35.5, using for that purpose the Performance Security Form included in Section X (Contract Forms). The performance security of a Joint Venture shall be in the name of the Joint Venture specifying the names of all partners. |
|  | * 1. Failure of the successful Bidder to submit the above-mentioned Performance Security or to sign the Contract Agreement shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security. In that event the Employer may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily. |
|  | 42.3 Upon the successful Bidder’s signing the Agreement and furnishing of the Performance Security pursuant to ITB Clause 42.1, the Employer shall promptly notify the name of the winning bidder to each unsuccessful bidder and shall discharge the Bid Securities of the bidders pursuant to ITB Clause 19.4 and 19.5. |

Section II - Bid Data Sheet (BDS)

A. Introduction

|  |  |
| --- | --- |
| **ITB 1.1** | The Employer is: ***[insert complete name of Employer]*** |
| **ITB 1.1** | The name of the work is: ***[insert complete name]***  The identification number of the work is: ***[insert identification number of bid]***  The number and identification of lots comprising this bidding process is: ***[insert number of lots and identification number of each lot, if applicable]*** |
| **ITB 2.1** | The Borrower is Government of India. The Sub-Borrower is ………………………….: The Employer is …………..  ***[insert name of the Sub-Borrower and statement of relationship with the Employer, if different from the Borrower/Sub-Borrower. This insertion should correspond to the information provided in the Invitation for Bids.]*** |
| **ITB 2.1** | The name of the Project is: ***[insert name of the Project]***  Loan or Financing Agreement amount: ***[insert amount]*** |
| **ITB 4.1.1** | Maximum number of members in the JV shall be ***:{Insert number)*** |
| **ITB 4.1.2(g)** | Place where the agreement to form JV to be registered is……………  *[* ***Fill in the name of the city where the construction contract agreement is to be signed****]* |
| **ITB 4.4** | A list of debarred firms and individuals is available at the Bank’s external website http:// www.worldbank.org/debarr. |
| **ITB 4.8** | The Bidding Process is/is not. subject to prequalification. *(Choose one appropriate)* |

B. Bidding Documents

|  |  |
| --- | --- |
| **ITB 7.1** | For **clarification purposes** only, the Employer’s address is:  Attention: ***[insert full name of person, if applicable]***  Street Address: ***[insert street address and number]***  Floor/Room number: ***[insert floor and room number, if applicable]***  City: ***[insert name of city or town]***  ZIP Code: ***[insert postal (ZIP) code, if applicable]***  Country: ***INDIA***  Telephone: : ***[insert telephone number, including country and city codes]***  Facsimile number: ***[insert phone number, with country and city codes]***  Electronic mail address: ***[insert email address, if applicable]***  Requests for clarification should be received by the Employer no later than 14 ***days prior to deadline for submission of bids.*** |
| **ITB 7.1** | Web page: ***[insert web page address]*** |
| **ITB 7.4** | A Pre-Bid meeting *[insert “****shall”*** *or “****shall not****”]* take place. If a prebid meeting will take place, it will be at the following date, time and place: ***[insert date, time & place below, if applicable]***  **Date**  Time:  Place:  [***The pre-bid meeting should be held no later than 2 weeks before the deadline for submission].*** |

C. Preparation of Bids

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| **ITB 11.1(b)** | The following schedules shall be submitted with the bid: ***[insert any additional schedules that must be submitted with the Bid, including the priced Bill of Quantities]*** |
| **ITB 11.1 (i)** | The Bidder shall submit with its bid the following additional documents: ***[insert type of any additional documents not already listed in ITB 11.1 that must be submitted with the Bid]*.** |
| **ITB 13.1** | Alternative bids…***shall be/shall not be*** permitted.(*retain one alternative)* |
| **ITB 13.2** | Alternative times for completion shall be/ shall not be permitted.  If alternative times for completion are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria. |
| **ITB 13.4** | Alternative technical solutions shall be permitted for the following parts of the Works: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.(state ‘Not Applicable’ if alternate technical solutions are not permitted for any part of the Works)  If alternative technical solutions are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria |
| **ITB 14.5** | The prices quoted by the Bidder *[insert “shall be” or “shall not be”]* subject to adjustment during the performance of the Contract. The adjustment when provided will be done in accordance with GCC Clause 13.8 read with corresponding provision under PCC and Annexure 3 to PCC. |
| **ITB 18.1** | The bid validity period shall be: 120 days. |
| **ITB 18.3** | The factor ……………….. [*To be fixed based on average inflation in India during the past one year.*] |
| **ITB 19.1** | - The Bidder shall furnish a bid security in the amount of …………….. ***[insert amount in Indian Rupees.*** *It should not exceed 2 (two)% of the estimated value of works.****]***.  *[In case of lots, please insert amount and currency of the Bid Security for each lot].*  *Note: Bid Security is required for each lot as per amounts indicated against each lot. Bidders have the option of submitting one Bid Security for all lots (for the combined total amount of all lots) for which Bids have been submitted, however if the amount of Bid Security is less than the total required amount, the Employer will determine for which lot or lots the Bid Security amount shall be applied.* |
| **ITB 19.2 (d)** | *Fixed Deposit/Time Deposit certificates issued by a Nationalized or Scheduled Bank located in India for equivalent or higher values are acceptable as bid security provided it is pledged in favour of ………………..(implementing agency) and such pledging has been noted and suitably endorsed by the bank issuing the certificate.*  *[Insert other acceptable bid security forms if any.]* |
| **ITB 20.1** | In addition to the original of the bid, the number of copies is: ***[insert number of copies required – normally two]***. |
| **ITB 20.2** | The written confirmation of authorization to sign on behalf of the Bidder shall indicate: ***[insert “***   1. ***Legally valid Power of Attorney is required to demonstrate the authority of the signatory to sign the Bid ; and*** 2. ***In the case of Bids submitted by an existing or intended JV, if permitted as per ITB 4.1, the authorization shall be evidenced by a Power of Attorney signed by legally authorized signatories of all the partners.*** |

D. Submission and Opening of Bids

|  |  |
| --- | --- |
| **ITB 21.1** | Bidders ***[insert “shall” or “shall not]*** have the option of submitting their bids electronically. |
| **ITB 21.1&22.1** | If bidders shall have the option of submitting their bids electronically, the electronic bidding submission procedures shall be: ***[insert a description of the electronic bidding submission procedures]****.* |
| **ITB 22.1** | For **bid submission purposes** only, the Employer’s address is: ***[insert all required and applicable information]***  Attention:  Street Address:  Floor/Room number:  City:  ZIP Code:  Country: INDIA  **The deadline for bid submission is:**  Date:  Time: |
| **ITB 25.1** | The bid opening shall take place at: ***[insert all required and applicable information]***  Street Address:  Floor/Room number:  City:  Country: INDIA  Date:  Time: |
| **ITB 25.1** | If electronic bid submission is permitted in accordance with ITB 22.1, the specific bid opening procedures shall be: ***[insert description of the procedures.]*** |

E. Evaluation and Comparison of Bids

|  |  |
| --- | --- |
| **ITB 25.3** | The Letter of Bid and Priced Bill of Quantities shall be initialed by \_\_\_\_\_\_\_\_\_representatives of the Employer conducting Bid opening:  *[Insert procedure: Example: Each Bid shall be numbered, any modification to the unit or total price shall be initialed by the Representative of the Employer, etc.]* |
| **ITB 34.1** | At this time the Employer intends/does not intend *to* execute certain specific parts of the Works by sub-contractors selected in advance.  [If the above states “intends” list the specific parts of the works and the respective sub-contractors] |
| **ITB 34.3** | Contractor’s proposed subcontracting: Maximum percentage of subcontracting permitted is: *\_\_\_\_\_\_\_% of the total contract amount or \_\_\_\_\_\_\_% of the volume of work\_\_\_\_\_\_\_\_\_\_\_\_\_.*  b) Bidders planning to subcontract more than 10% of total volume of work shall specify, in the Bid Submission Form, the activity (ies) or parts of the works to be subcontracted along with complete details of the sub-contractors and their qualification and experience. The qualification and experience of the sub-contractors must meet the minimum criteria for the relevant work to be sub-contracted failing which such sub-contractors will not be permitted to participate.  c) Sub-contractors’ qualification and experience will not be considered for evaluation of the Bidder. The Bidder on its own (without taking into account the qualification and experience of the sub-contractor) should meet the qualification criteria. *{Note-Work should not be split into small part and sub-contracted].* |

Section III - Evaluation and Qualification Criteria

This section contains all the criteria that the Employer shall use to evaluate bids and qualify Bidders if the bidding was not preceded by a prequalification exercise and post-qualification is applied. In accordance with ITB 35 and ITB 37, no other methods, criteria and factors shall be used. The Bidder shall provide all the information requested in the forms included in Section IV (Bidding Forms).

1. Evaluation

In addition to the criteria listed in ITB 35.2 (a) – (e) the following criteria shall apply:

1.1 Adequacy of Technical Proposal

# Evaluation of the Bidder’s Technical Proposal will include:

# (i) an assessment of the Bidder’s technical capacity to mobilize key equipment and personnel for the contract consistent with its proposal regarding work methods, scheduling, material sourcing and Quality Control/Assurance in sufficient detail and fully in accordance with the requirements stipulated in Section VII (Work’s Requirements).

# For this purpose the Bidder should also submit:

# - a detailed note outlining its proposed methodology and program of construction including Environmental Management Plan, backed with equipment planning and deployment, materials and manpower planning and deployment, duly supported with broad calculations and quality control system/assurance procedures proposed to be adopted, justifying their capability of execution and completion of the work as per technical specifications within the stipulated period of completion as per milestones.

# (ii) an assessment of the details of subcontracting elements of works amounting to more than 10% of the bid price; for each element proposed to be sub contracted furnish details whether the identified Sub-contractor possesses the required qualifications and experiences to execute that element satisfactorily.

# [*Work should not be split into small parts and sub-contracted*].

1.2 Multiple Contracts if permitted under ITB 35.4,will be evaluated as under.

Works are grouped in multiple contracts and pursuant to Sub-Clause 35.4 of the Instructions to Bidders, the Employer will evaluate and compare Bids on the basis of a contract, or a combination of contracts, or as a total of contracts in order to arrive at the least cost combination for the Employer by taking into account discounts offered by Bidders in case of award of multiple contracts. If a bidder submits several successful (lowest evaluated substantially responsive) bids, the evaluation will also include an assessment of the Bidder’s capacity to meet the aggregated requirements regarding:

* Experience
* Financial situation
* Current contract commitments,
* Cash flow capacity,
* Equipment to be allocated, and
* Personnel to be fielded.
* Bid Capacity
  1. **Alternative Completion Times if permitted under ITB 13.2 will be evaluated as follows:**

***[The method for evaluating the differences offered by bidders should be specified as a specific amount for each week of delay from a specified “standard” or minimum completion date related to the loss of benefits to the Employer. The amount should be no more than the sum stated in the Contract Data for delay damages*)**

**………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………**

* 1. **Technical Alternatives, if permitted under ITB 13.4 will be evaluated as follows:**

***[Insert method for evaluation of such alternatives, if appropriate]***

**……………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………….**

* 1. **Specialized Subcontractors**

Only the specific experience of sub-contractors for specialized works permitted by the Employer will be considered. The general experience and financial resources of the specialized sub-contractors shall not be added to those of the Bidder for purposes of qualification of the Bidder.

The specialized sub-contractors proposed shall be fully qualified for their work proposed, and meet the following criteria:

2. Qualification

|  |  |  |  |  |  |  | |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Qualification Criteria** | | | **Compliance Requirements** | | | | **Documentation** | |
| **No.** | **Subject** | **Requirement** | **Single Entity** | **Joint Venture where permitted** | | | **Submission Requirements** | |
| **All Parties Combined** | **Each Member** | **One Member** |
| 2.1 Eligibility | | | | | | | | |
| 2.1.1 | Nationality | Nationality in accordance with ITB Sub-Clause 4.3. | Must meet requirement | Existing or intended JV must meet requirement | Must meet requirement | N / A | Forms ELI –1.1 and ELI-1.2  With attachments | |
| 2.1.2 | Conflict of Interest | No conflicts of interest in ITB Sub-Clause 4.2. | Must meet requirement | Existing or intended JV must meet requirement | Must meet requirement | N / A | Letter of Bid | |
| 2.1.3 | Bank eligibility | Not having been declared ineligible by the Bank, as described in ITB Sub-Clause 4.4. & 4.7. | Must meet requirement | Existing JV must meet requirement | Must meet requirement | N / A | Letter of Bid | |
| 2.1.4 | Government Owned Entity | Applicant required to meet conditions of ITB-A Sub-Clause 4.5. The entity should not be a dependent agency of the borrower or sub-borrower or Employer. | Must meet requirement | Must meet requirement | Must meet requirement | N / A | Forms ELI -1.1 and 1.2 with attachments | |

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |

| **Qualification Criteria** | | | | **Compliance Requirements** | | | | | | | | **Documentation** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **No.** | **Subject** | | **Requirement** | **Single Entity** | | **Joint Venture where permitted** | | | | | | **Submission Requirements** |
|  |  | |  |  | | **All Parties Combined** | | | **Each Member** | | **One Member** |  |
| 2.2.1 | History of Non-Performing Contracts | Non-performance of a contract[[1]](#footnote-1) did not occur as a result of contractor default since 1stJanuary *[Insert year]*. | | | Must meet requirement by itself or as partner to past or existing JV | | Must meet the requirements | Must meet requirement by itself or as partner to past or existing JV | | N / A | | Form CON - 2 |
| 2.2.2 | Suspension due to withdrawal of the Bid within Bid validity | Not under suspension due to withdrawal of the Bid | | | Must meet requirement | | Must meet requirement | Must meet requirement | | N/A | | Letter of Bid |
| 2.2.3 | Pending Litigation | Bidder’s financial position and prospective long term profitability sound according to criteria established in 3.1 below and assuming that all pending litigation will be resolved against the Bidder | | | Must meet requirement by itself or as partner to past or existing JV | | N / A | Must meet requirement by itself or as partner to past or existing JV | | N / A | | Form CON - 2 |
| 2.2.4 | Litigation History | No consistent history of court/arbitral award decisions against the Bidder[[2]](#footnote-2) since 1st January *[insert year]* | | | Must meet requirement by itself or as partner to past or existing JV | | Must meet requirement | Must meet requirement by itself or as partner to past or existing JV | | N/A | | Form CON - 2 |
|  |  |  | | |  | |  |  | |  | |  |

|  |  |  |  | |  | | |  | | |  |  | |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Qualification Criteria** | | | **ComplianceRequirements** | | | | | | | | | | **Documentation** |
| **No.** | **Subject** | **Requirement** | **Single Entity** | | **Joint Venture where permitted** | | | | | | | | **Submission Requirements** |
|  |  |  |  | | **All Parties Combined** | **Each Member** | | | **One Member** | | | |  |
| 2.3 Financial Situation and Performance | | | | | | | | | | | | | |
| 2.3.1 | Financial Capabilities | (a) The Bidder shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as Rs*\_\_\_\_\_\_\_\_\_\_\_\_\_(****about 3 to 6 months cash flow at peak construction period)\_*for** the subject contract(s) net of the Bidders other commitments  (b) The Bidders shall also demonstrate, to the satisfaction of the Employer, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments  (c) The audited balance sheets or, if not required by the laws of the Bidder’s country, other financial statements acceptable to the Employer, for the last *five* years shall be submitted and must demonstrate the current soundness of the Bidder’s financial position and indicate its prospective long-term profitability. | (a) Must meet requirement  (b) Must meet requirement  (c) Must meet requirement | (a) Must meet  the requirement  (b) Must meet requirement  N/A | | | (a) Must meet at least 25% of the requirement  as a minimum  N/A  (c) Must meet requirement | | | (a) Must meet at least 50% of the requirement  as a minimum  N/A  N/A | | | Form FIN - 3.1 with attachments |
| **NOTE:**    *The construction cash flow requirement should be for a number of months determined as the total time needed to pay contractor invoice by the employer. The cash flow should not normally exceed 6 months peak contract requirements and availability should be clearly certified by Bank (Nationalized or Scheduled Bank In India)in form 3.1 A* | | | | | | | | | | | | | |
| 2.3.2 | Annual Construction Turnover | Achieved in at least two financial years (in the last five years) a minimum annual financial turnover in civil engineering construction work of ………..***\_\_[insert amount in Rs. ……in words and figures]\_\_,*** calculated as total certified payments received for contracts in progress or completed, | Must meet requirement | | Must meet requirement | | | Must meet twenty five percent (25%) of the requirement | | | Must meet fifty percent (50%) of the requirement | | Form FIN - 3.2 |

*Note-The amount stated should normally not be less than twice the estimated annual turnover or cash flow in the proposed Works contract (based on a straight-line projection of the Employer's estimated cost, over the contract duration).*

|  |  |  |  |  | |  | |  | |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Qualification Criteria | | | ComplianceRequirements | | | | | | Documentation | |
| **No.** | **Subject** | **Requirement** | **Single Entity** | **Joint Venture where permitted** | | | | | **Submission Requirements** | |
|  |  |  |  | **All Parties Combined** | **Each Member** | | **One Member** | |  | |

|  |
| --- |
| 2.4 Experience |

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 2.4.1 | General Construction Experience | Experience under construction contracts for similar works, such as those pertaining to ………….. *[indicate details of acceptable similar works]* in the role of contractor, subcontractor, or management contractor for at least the last five [5] years prior to the applications submission deadline. | Must meet requirement | N/A | Must meet requirement of having executed works of similar nature | N/A | Form EXP – 4.1 |

|  |  | |  |  |  | |  | | |  | |  | |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Qualification Criteria** | | | | **ComplianceRequirements** | | | | | | | **Documentation** | | |
| **No.** | **Subject** | | **Requirement** | **Single Entity** | **Joint Venture where permitted** | | | | | | **Submission Requirements** | | |
| **All Parties Combined** | **Each Member** | | **One Member** | | |
| 2.4.2 (a) | Specific Construction& contract management Experience | | Participation as contractor, management contractor or subcontractor, in at least one (1) contract within the last five (5) years, with a value of at least \_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_), that have been successfully and substantially completed (*not less than 90% of contract value*) and that are similar to the proposed works. (*Indicate here what works will be considered as similar here*.) The similarity shall be based on the physical size, complexity, methods/technology or other characteristics as described in Section VII, Employer’s requirements | Must meet requirement | Must meet requirement@ | | Must meet requirement for one contract of 25% value | | Must meet requirement for one contract of 50% in value | | Form EXP 4.2(a). The contractor should have borne responsibility for execution of works to the extent he claims experience. A contractor should not claim experience for the works he has never executed. | | |
| *The value of the completed contract for similar works should not be less than 80% of the estimated contract value of the work for which bids are invited. A work where 90% of contract value is paid is considered as completed.*  @*In the case of JV, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single entity. In determining whether the JV meets the requirement of total number of contracts, only the number of contracts completed by all members each of value equal or more than the minimum value required shall be aggregated* | | | | | | | | | | | | | |
| 2.4.2(b) | Specific Experience | | b) For the above or other contracts executed during the period stipulated in 2.4.2(a) above, at least in one year a minimum construction experience in the following key activities: | Must meet requirements | Must meet requirement | | Should meet the criteria in full, at least for one of key activities listed in column 3. | | | Must meet requirement for the key activities listed below (list key activities for this partner and corresponding minimum requirements)  …………..  …………..  …………..  ………….. | | | Form EXP-4.2(b) |
| ***NOTE:*** *List the monthly or annual production rate for the key construction activity (or activities) in the proposed contract or works, e.g., “one million M3 of rock placed in rockfill dams in one year; X tons of asphalt concrete per month placed in road paving; Y M3 of concrete placed in . .. etc.” The rates should be a percentage (say about 80 percent) of the estimated production rate of the key activity (or activities) in the contract or Works as needed to meet the expected construction schedule with due allowance for adverse climatic conditions.*  *\* Borrower should fill this after careful review of the requirements for the work. Where the elements of work are specialized and it is proposed to accept employment of specialist sub-contractors, this could be specified for that activity and bidders may be requested to name them and furnish their qualification and experience.* | | | | | | | | | | | | | |
| **2.4.2(c)** For a bidder (either individually or as a JV partner) to qualify for a group of lots (contracts), he must demonstrate having experience and resources sufficient to meet the aggregate of the qualifying criteria for all the contracts in question. | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | |
| 2.4.2(d) | | Bidders who meet the minimum qualification criteria will be qualified only if their available bid capacity for construction work is equal to or more than the total bid value of the work. The available bid capacity will be calculated as under:  Assessed Available bid capacity = (A\*N\*1.5-B)  Where,  A = Maximum value of civil engineering works executed in any one year during the last five years (updated to the price level of the financial year ….. at the rate of 5% per year), taking into account the completed aswell as works in progress).  N = Number of years prescribed for completion of the works for which bids are invited (period upto 6 months to be taken as half-year and more than 6 months as one year).  B = Value, at the current price level, of existing commitments on on-going works to be completed during the period of completion of the works for which bids are invited.  Note: *the statements in Section IV Bidding forms showing the value of existing commitments of on-going works as well as the stipulated period of completion remaining for each of the works listed should be countersigned by the Engineer in charge, not below the rank of an Executive Engineer or equivalent.* | | | | | | | | | | | |
| 2.4.2 (e) | | Even though the bidders meet the above qualifying criteria, they are subject to be disqualified if they have: -   * + made misleading or false representations in the forms, statements, affidavits, and attachments submitted in proof of the qualification requirement;   + record of poor performance such as abandoning the works, not properly completion or financial failures etc.   + consistent history of litigation or arbitration awards against the bidder or any partner or the joint venture.   + Participated in the previous bidding (if this is a re-bidding) for the same work and had quoted unreasonably high bid price and could not furnish any rational justification for the same to the employer. | | | | | | | | | | | |
|  | |  | | | | | | | | | | | |

2.5 Personnel

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

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| S. No. | Designation of Personnel (Position) | No. | Minimum Qualification | Minimum years of experience | Minimum experience in similar works. |
| 1.  2.  3.  4. |  |  |  |  |  |

*[Indicate designation, qualification, and required experience required for each position. Bidder should furnish their Curriculum Vitae to confirm their meeting the requirements].*

The Bidder must not have in his employment:

[i] the near relations (defined as first blood relations, and their spouses, of the bidder or the bidder’s spouse) of persons of the following Government Departments.

……………………..

……………………..

………………….….

[ii] without Government permission, any person who retired as gazetted officer within the last two years.

The Bidder shall provide details of the proposed personnel and their experience records in the relevant Forms included in Section IV, Bidding Forms.

**Note:**

*The managerial and technical competence of a contractor is largely related to the key personnel on site. The extent to which the Bidder should demonstrate having staff with extensive experience should be limited to those requiring critical operational or technical skills. The criteria should therefore refer to a limited number of such key personnel, for instance, the project or contract manager and those superintendents working under the project manager who will be responsible for major components (e.g., superintendents specialized in dredging, piling, or earthworks, as required for each particular project). Criteria of acceptability should be based on:*

*(a) a minimum number of years of experience in a similar position; and*

*(b) a minimum number of years of experience and/or number of comparable projects carried out in a specified number of preceding years.*

*The requirement of specified education and academic qualifications is normally unnecessary for such positions, as contractors often employ competent staff who has learned their profession “on the job” rather than through academic training. It is appropriate to specify that certain positions are filled by individuals who have held posts of comparable authority for, say, three years with the Bidder, so that key staff in executive site positions have sufficient knowledge of the Bidder's management, policy, procedures, and practices to act with confidence and authority within that framework.*

2.6 Equipment

The Bidder must demonstrate that it will have access to the key Contractor’s equipment listed hereafter:

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

***NOTE:***

#### *Based on the studies, carried out by the Engineer the minimum suggested major equipment to attain the completion of works in accordance with the prescribed construction schedule are shown in the above list. The bidders should, however, undertake their own studies and furnish with their bid, a detailed construction planning and methodology supported with layout and necessary drawings and calculations (detailed) as stated in Section IV to allow the employee to review their proposals. The numbers, types and capacities of each plant/equipment shall be shown in the proposals along with the cycle time for each operation for the given production capacity to match the requirements.*

*ii) In most cases Bidders can readily purchase, lease, or hire equipment; thus, it is usually unnecessary for the assessment of a contractor's qualification to depend on the contractor’s owning readily available items of equipment. The pass–fail criteria adopted should therefore be limited only to those bulky or specialized items that are critical for the type of project to be implemented, and that may be difficult for the contractor to obtain quickly. Examples may include items such as heavy lift cranes and piling barges, dredgers, asphalt mixing plants, etc. Even in such cases, contractors may not own the specialized items of equipment, and may rely on specialist subcontractors or equipment–hire firms. The availability of such subcontractors and of the specified equipment should be subject to verification prior to contract award.*

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

Section IV - Bidding Forms

Letter of Bid

|  |
| --- |
| *The Bidder must prepare the Letter of Bid on stationery with its letterhead clearly showing the Bidder’s complete name and address.*  ***Note: All italicized text is for use in preparing these forms and shall be deleted from the final products.*** |

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

NCB no……………………………..

Invitation for Bid No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

To: ***(Insert name of the Employer)***

We, the undersigned, declare that:

1. We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB8) ;
2. We meet the eligibility requirements and have no conflict of interest in accordance with ITB 4;
3. We have not been suspended nor declared ineligible by the Employer in accordance with 2.4.2 (e) of Section III E& QC
4. We offer to execute in conformity with the Bidding Documents the following Works: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;
5. The total price of our Bid, excluding any discounts offered in item (d) below is: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [***both in words and figures****]*;

-In case of only one lot, total price of the Bid ***[insert the total price of the bid in words and figures],***

-In case of multiple lots, total price of each *lot* ***[insert the total price of each lot in words and figures,]*;**

-In case of multiple lots, total price of all lots (sum of all lots)***[insert the total price of all lots in words and figures,]***;

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

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

(ii) The exact method of calculations to determine the net price after application of discounts is shown below*:*

*[****Specify in detail the method that shall be used to apply the discounts****];*

\_\_\_\_\_\_\_\_\_\_\_\_\_;

1. Our bid shall be valid for a period of \_\_\_\_\_\_\_\_ ***[insert validity period as specified in ITB 18.1****]* days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
2. If our bid is accepted, we commit to obtain a performance security in accordance with the Bidding Document;
3. We are not participating, as a Bidder, in more than one bid in this bidding process in accordance with ITB 4.2,other than alternative bids submitted in accordance with IT 13;
4. Our firm, its affiliates or subsidiaries, including any Subcontractors or Suppliers for any part of the contract, has not been declared ineligible by the Bank, under the Employer’s country laws or official regulations or by an act of compliance with a decision of the United Nations Security Council (ITB 4.7);
5. We are not a government owned entity / We are a government owned entity but meet the requirements of ITB 4.5;[[3]](#footnote-3)
6. We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract:***[[4]](#footnote-4)***

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

1. We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in bribery or any collusive arrangements with competitors or in any type of fraud & corruption.
2. We also undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will strictly observe the laws against fraud and corruption in force in India on date namely “Prevention of Corruption Act 1988.”
3. We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed;
4. We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive; and
5. If awarded the contract, the person named below shall act as Contractor’s Representative: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |
| --- | --- |
|  | Name of the Bidder**\*** ***[insert complete name of person signing the Bid]***  Name of the person duly authorized to sign the Bid on behalf of the Bidder***\*\* [insert complete name of person duly authorized to sign the Bid]***  Title of the person signing the Bid ***[insert complete title of the person signing the Bid]***  Signature of the person named above  *[****insert signature of person whose name and capacity are shown above****]*  Date signed *\_****[insert date of signing]***day of ***[insert month]***, ***[insert year]***  **\***: In the case of the Bid submitted by joint venture specify the name of the Joint Venture as Bidder  \*\*: Person signing the Bid shall have the power of attorney given by the Bidder to be attached with the Bid Schedules. |
|  |  |
|  |  |
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# 

Bill of Quantities

Bill of Quantities

Notes for Preparing a Bill of Quantities

**Objectives**

The objectives of the Bill of Quantities are

* + 1. to provide sufficient information on the quantities of Works to be performed to enable bids to be prepared efficiently and accurately; and

(b) when a contract has been entered into, to provide a priced Bill of Quantities for use in the periodic valuation of Works executed.

In order to attain these objectives, Works should be itemized in the Bill of Quantities in sufficient detail to distinguish between the different classes of Works, or between Works of the same nature carried out in different locations or in other circumstances which may give rise to different considerations of cost. Consistent with these requirements, the layout and content of the Bill of Quantities should be as simple and brief as possible.

**Content**

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

(a) Preamble;

(b) Work Items (grouped into parts);

(c) Daywork Schedule; and

(d) Summary.

**Preamble**

The Preamble should indicate the inclusiveness of the unit prices, and should state the methods of measurement that have been adopted in the preparation of the Bill of Quantities and that are to be used for the measurement of any part of the Works.

**Rock**

Where excavation, boring, or driving is included in the Works, a comprehensive definition of rock (always a contentious topic in contract administration), if not given in the Technical Specification, should be given in the Preamble, and this definition should be used for the purposes of measurement and payment.

**Work Items**

The items in the Bill of Quantities should be grouped into sections 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 in the Bill of Quantities. When a family of Price Adjustment Formulae are used, they should relate to appropriate sections in the Bill of Quantities.

**Quantities**

Quantities should be computed net from the Drawings, unless directed otherwise in the Contract, and no allowance should be made for bulking, shrinkage, or waste. Quantities should be rounded up or down where appropriate, and 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 | Unit | Abbreviation |
| cubic meter  hectare  hour  kilogram  lump sum  meter  metric ton  (1,000 kg) | m3*or* cu m  ha  h  kg  sum  m  t | millimeter  month  number  square meter  square millimeter  week | mm  mon  nr  m2*or*sq m  mm2*or*sq mm  wk |

**Ground and Excavation Levels**

The commencing surface should be identified in the description of each item for work involving excavation, boring, or driving, for which the commencing surface is not also the original surface. The excavated surface should be identified in the description of each item for work involving excavation for which 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 unforeseen work, outside the items included in the Bill of Quantities, is relatively high. To facilitate checking by the Employer of the realism of rates quoted by the bidders, the Daywork Schedule should normally comprise:

(a) a list of the various classes of labor, 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 labor, materials, and Plant representing the Contractor’s profit, overheads, supervision, and other charges.

### Provisional Quantities and Sums

Provision for quantity contingencies in any particular item or class of work with a high expectation of quantity overrun should be made by entering specific “Provisional Quantities” or “Provisional Items” in the Bill of Quantities, and *not* by increasing the quantities for that item or class of work beyond those of the work normally expected to be required. To the extent not covered above, a general provision for physical contingencies (quantity overruns) should be made by including a “Provisional Sum” in the Summary of the Bill of Quantities. Similarly, a contingency allowance for possible price increases should be provided as a “Provisional Sum” in the Summary of the Bill of Quantities. The inclusion of such Provisional Sums often facilitates budgetary approval by avoiding the need to request periodic supplementary approvals as the future need arises.

The estimated cost of specialized work to be carried out, or of special goods to be supplied, by a Nominated Subcontractor (reference G.C.C Clause 5) should be indicated in the relevant part of the Bill of Quantities as a particular Provisional Sum with an appropriate brief description. A separate bidding procedure is normally carried out by the Employer to select the specialists, who are then nominated as subcontractors to the main or prime contractor. To provide an element of competition among the main bidders (or prime contractors) in respect of any facilities, amenities, attendance, etc., to be provided by the successful bidder as prime contractor for the use and convenience of the specialist or nominated subcontractor, each related Provisional Sum should be following by an item in the Bill of Quantities inviting a percentage (to be quoted by the main bidder) payable on the actual expenditure from the Provisional Sum.

**Line Items to Address Social Clauses**

The cost to comply with the requirements of all the “social clauses” (G.C.C Sub-Clauses 6.1 through 6.22), to the level and extent specified in the Specification and General Conditions is to be considered by the bidder as part of its overheads and **no separate payment will be made for these items.**

###### The Summary should contain a tabulation of the separate parts of the Bill of Quantities carried forward, with provisional sums for Daywork, for physical (quantity) contingencies, and for price contingencies (upward price adjustment) where applicable.

###### These Notes for Preparing a Bill of Quantities are intended only as information for the Employer or the person drafting the bidding documents. They should not be included in the final documents.

Sample Bill of Quantities

A. Preamble

1. The Bill of Quantities shall be read in conjunction with the Instructions to Bidders, General and Special Conditions of Contract, Technical Specifications, 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 basis of payment will be the actual quantities of work ordered and carried out, as measured by the Contractor and verified by the Engineer and valued at the rates and prices bid in the priced Bill of Quantities, where applicable, and otherwise at such rates and prices as the Engineer may fix within the terms of the Contract.

3. The rates and prices bid in the priced Bill of Quantities shall, except insofar as it is otherwise provided under the Contract, include all Constructional 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 priced Bill of Quantities, whether quantities are stated or not. The cost of Items against which the Contractor has failed to enter a rate or price shall be deemed to be covered by other rates and prices entered in the Bill of Quantities.

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 distributed among the rates and prices entered for the related Items of Work.

6. General directions and descriptions of work and materials are not necessarily repeated nor summarized in the Bill of Quantities. References to the relevant sections of the Contract documentation shall be made 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 and Clause 13.6 of the General Conditions.

8. The method of measurement of completed work for payment shall be in accordance with ***[insert the name of a standard reference guide, or full details of the methods to be used so that the bidder can take note of that while quoting prices]*.[[5]](#footnote-5)**

9. Any arithmetic errors in computation or summation will be corrected by the Employer as follows:

(a) Where there is a discrepancy between amounts in figures and in words, the amount in words will govern; and

(b) where there is a discrepancy between the unit rate and the total amount derived from the multiplication of the unit price and the quantity, the unit rate as quoted will govern, unless in the opinion of the Employer, there is an obviously gross misplacement of the decimal point in the unit price, in which event the total amount as quoted will govern and the unit rate will be corrected.

10. 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 hp with a single, rear-mounted, heavy-duty ripper.

Bill of Quantities

B. Work Items

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

Bill No. 1—General Items;

Bill No. 2—Earthworks;

Bill No. 3—Culverts and Bridges;

Bill No. 4—etc., as required;

Daywork Schedule; and

Summary Bill of Quantities.

2. Bidders shall price the Bill of Quantities in Indian Rupees only.

**Bill of Quantities**

Bill No. 1: General Items

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| *Item no.* | *Description* | *Unit* | *Quantity* | *Rate* | *Amount* |
| 101 | Performance Bond/Guarantee | sum | item | — |  |
| 102 | Insurance of the Works | sum | item | — |  |
| 103 | Insurance of Contractor’s Equipment | sum | item | — |  |
| 104 | Third-Party Insurance | sum | item | — |  |
| 105 | Allow for maintenance of Works for 12 months after completion | month | 12 |  |  |
| 106 | —etc.— |  |  |  |  |
| 112 | Provide and equip Engineer’s offices | nr | 2 |  |  |
| 113 | Maintain Engineer’s offices for 24 months, including services | month | 24 |  |  |
| 114 | —etc.— |  |  |  |  |
| 121 | Provide diversion road | sum | item | — |  |
| 122 | Provide for traffic control and maintenance of diversion road | month | 24 | — |  |
| 123 | —etc.— |  |  |  |  |
| 132 | Provide for cleaning up the Site on completion  —etc.— | sum | item | — |  |
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|  |  |  |  |  |  |
| Total for Bill No. 1  (carried forward to Summary, p. ) | | | | |  |

**Bill of Quantities**

Bill No. 2: Earthworks

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

**Sample**

**Bill of Quantities**

Bill No. 3: Culverts and Bridges

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| *Item no.* | *Description* | *Unit* | *Quantity* | *Rate* | *Amount* |
| 301 | Excavate in all materials other than rock from ground level to underside of foundations, maximum depth 5 m, and dispose | m3 | 18,500 |  |  |
| 302 | Excavate in all materials other than rock, depth 5 m to 7.5 m | m3 | 2,500 |  |  |
| 303 | Provisional Item  As Item 302, depth 7.5 m to 10 m | m3 | 500 |  |  |
| 304 | —etc.— |  |  |  |  |
| 311 | Concrete class B in abutments | m3 | 18,500 |  |  |
| 312 | —etc.— |  |  |  |  |
| 318 | Mild steel reinforcement in abutments and piers up to 20 mm diameter | t | 370 |  |  |
| 319 | —etc.— |  |  |  |  |
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| Total for Bill No. 3  (carried forward to Summary, p. ) | | | | |  |

C. Daywork Schedule[[6]](#footnote-6)

**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 written order of the Engineer. 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 Summary Total Bid Amount (for items prices competitively). Unless otherwise adjusted, payments for daywork shall be subject to price adjustment in accordance with the provisions in the Conditions of Contract.

**DayworkLabour**

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 job site to execute the particular item of daywork to the time of return to the original place of departure, but excluding meal breaks and rest periods. 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 not the time of foremen or other supervisory personnel.

3. The Contractor shall be entitled to payment in respect of the total time that labour is employed on day work, 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.,[[7]](#footnote-7) as described below:

(a) The basic rates for labour shall 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 laws of Union of India*. The basic rates will be payable in local currency only.

(b) The additional percentage payment to be quoted by the bidder and applied to costs incurred under (a) above 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 to cover overhead charges and profit, as follows:

(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. The basic rates shall be stated and will be paid in Indian Rupees.

(b) the additional percentage payment shall be quoted by the bidder in Indian rupees;

(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 will be paid in accordance with the terms for Labour and Construction in this schedule.

**Daywork Contractor’s Equipment**

5. The Contractor shall be entitled to payments in respect of Contractor’s Equipment already on Site and employed on daywork at the basic rental rates entered by him in the **Schedule of Daywork Rates: 3. Contractor’s Equipment.** Said rates shall be deemed to include due and complete allowance for depreciation, interest, indemnity, and insurance, repairs, maintenance, supplies, fuel, lubricants, and other consumables, and all overhead, profit, and administrative costs related to the use of such equipment.[[8]](#footnote-8) The cost of drivers, operators, and assistants will be paid for separately as described under the section on DayworkLabour.[[9]](#footnote-9)

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.

7. The basic rental rates for Contractor’s Equipment employed on daywork shall be stated & paid in Indian Rupees only.

**Sample**

**Bill of Quantities**

Schedule of Daywork Rates: 1. Labour

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| *Item no.* | *Description* | *Unit* | *Nominal quantity* | *Rate* | *Extended amount* |
| D100 | Ganger | hour | 500 |  |  |
| D101 | Laborer | hour | 5,000 |  |  |
| D102 | Bricklayer | hour | 500 |  |  |
| D103 | Mason | hour | 500 |  |  |
| D104 | Carpenter | hour | 500 |  |  |
| D105 | Steelwork Erector | hour | 500 |  |  |
| D106 | —etc.— | hour |  |  |  |
| D113 | Driver for vehicle up to 10 tons | hour | 1,000 |  |  |
| D114 | Operator for excavator, dragline, shovel, or crane | hour | 500 |  |  |
| D115 | Operator for tractor with dozer blade or ripper | hour | 500 |  |  |
| D116 | —etc.— | hour |  |  |  |
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|  |  |  |  |  |  |
|  | Subtotal | | | |  |
| D122 | Allow percenta of Subtotal for Contractor’s overhead, profit, etc., in accordance with paragraph 3 (b) above. | | |  |  |
|  |  |  |  |  |  |
|  | Total for Daywork: Labor  (carried forward to Daywork Summary, p. ) | | | |  |
| a. To be entered by the bidder. | | | | | |

**Sample Bill of Quantities**

Schedule of Daywork Rates: 2. Materials

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| *Item no.* | *Description* | *Unit* | *Nominal quantity* | *Rate* | *Extended amount* |
| D201 | Cement, ordinary Portland, or equivalent in bags | t | 200 |  |  |
| D202 | Mild steel reinforcing bar up to 16 mm diameter to BS 4449 or equivalent | t | 100 |  |  |
| D203 | Fine aggregate for concrete as specified in Clause | m3 | 1,000 |  |  |
| D204 | —etc.— |  |  |  |  |
| D222 | Gelignite (Nobel Special Gelatine 60%, or equivalent) including caps, fuse, wire, and requisite accessories | t | 10 |  |  |
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|  |  |  |  |  |  |
|  | Subtotal | | | |  |
| D122 | Allow percenta of Subtotal for Contractor’s overhead, profit, etc., in accordance with paragraph 3 (b) above. | | |  |  |
|  |  |  |  |  |  |
|  | Total for Daywork: Materials  (carried forward to Daywork Summary, p. ) | | | |  |
| a. To be entered by the bidder. | | | | | |

**Bill of Quantities**

Schedule of Daywork Rates: 3. Contractor’s Equipment

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| *Item no.* | *Description* | *Nominal quantity (hours)* | *Basic hourly rental rate* | *Extended amount* | |
| D301 | Excavator, face shovel, or dragline: |  |  |  | |
| .1 | Up to and including 1 m3 | 500 |  |  | |
| .2 | Over 1 m3 to 2 m3 | 400 |  |  | |
| .3 | Over 2 m3 | 100 |  |  | |
| D302 | Tractor, including bull or angle dozer: |  |  |  | |
| .1 | Up to and including 150 kW | 500 |  |  | |
| .2 | Over 150 kW to 200 kW | 400 |  |  | |
| .3 | Over 200 kW to 250 kW | 200 |  |  | |
| D303 | Tractor with ripper: |  |  |  | |
| .1 | Up to and including 200 kW | 400 |  |  | |
| .2 | Over 200 kW to 250 kW | 200 |  |  | |
| D304 | —etc.— |  |  |  | |
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|  |  |  |  |  |
| Total for Daywork: Contractor’s Equipment  (carried forward to Daywork Summary, p. ) | | | |  | |

**Bill of Quantities**

**Daywork Summary**

|  |  |
| --- | --- |
|  | *Amount*a  *( )* |
| 1. Total for Daywork: Labor |  |
| 2. Total for Daywork: Materials |  |
| 3. Total for Daywork: Contractor’s Equipment |  |
| Total for Daywork (Provisional Sum)  (carried forward to Bid Summary, p. ) |  |

**Bill of Quantities**

**Summary of Specified Provisional Sums**

|  |  |  |  |
| --- | --- | --- | --- |
| *Bill no.* | *Item no.* | *Description* | *Amount* |
| 1 |  |  |  |
|  |  |  |  |
|  |  |  |  |
| 2 | 2.8 | Supply and install equipment in pumping station | 1,250,000 |
|  |  |  |  |
|  |  |  |  |
| 3 |  |  |  |
|  |  |  |  |
|  |  |  |  |
| 4 | 4.32 | Provide for ventilation system in subway tunnel | 3,500,000 |
|  |  |  |  |
|  |  |  |  |
| etc. |  |  |  |
|  |  |  |  |
|  |  |  |  |
| Total for Specified Provisional Sums  (carried forward to Grand Summary (B), p. ) | | | 4,750,000 |

**Bill of Quantities**

**Grand Summary**

Contract Name:

Contract No.:

|  |  |  |
| --- | --- | --- |
| *General Summary* | *Page* | *Amount* |
| Bill No. 1: Preliminary Items |  |  |
| Bill No. 2: Earthworks |  |  |
| Bill No. 3: Drainage Structures |  |  |
| —etc.— |  |  |
| Subtotal of Bills | (A) |  |
| Total for Daywork (provisional sum)-- Quoted competitively | (B) |  |
| Specified Provisional Suma included in subtotal of bills (fixed) | (C) | 4,750,000b |
| Total of Bills plus Provisional Sums (A+ B+C) | (D) |  |
| Add Provisional Suma for Contingency Allowance | (E) | [sum]b |
| Bid Price (D+E) (Carried forward to Form of Bid) @ | (F) |  |
|  |  |  |
| a. All Provisional Sums are to be expended in whole or in part at the direction and discretion of the Engineer in accordance with Sub-Clause 13.6 & 13.5 of part III of the Conditions of Contract.  b. To be entered by the Employer.  @ Evaluation should be on the basis of (A+B) only. | | |

**Declaration Form**

(Name of the Project)

(Declaration regarding customs/excise duty exemption for materials/

Construction equipment bought for the work)

(Bidder’s Name and Address)

To: ………………………

(Name of the Employer)

Dear Sir:

Re: *[Name of Work]* ………………………… -

Certificate for Import/Procurement of Goods/Construction Equipment

1. We confirm that we are solely responsible for obtaining customs/excise duty waivers which we have considered in our bid and in case of failure to receive such waivers for reasons whatsoever, the Employer will not compensate us.

2. We are furnishing below the information required by the Employer for issue of the necessary certificates in terms of the Government of India Central Excise Notification No. 108/95 and Customs Notification No. 85/99.

3. The goods/construction equipment for which certificates are required are as under:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Items  -modify the list as required | Make/ Brand Name | Capacity [where applicable] | Quantity | Value | State whether it will be procured locally or imported [if so from which country] | Remarks regarding justification for the quantity and their usage in works |
| **Goods** | | | | | | |
| [a] Bitumen |  |  |  |  |  |  |
| [b] Others |  |  |  |  |  |  |
| **Construction Equipment** | | | | | | |
| [a] |  |  |  |  |  |  |
| [b] |  |  |  |  |  |  |
| [c] |  |  |  |  |  |  |
| [d] |  |  |  |  |  |  |

4. We agree that no modification to the above list is permitted after bids are opened.

5. We agree that the certificate will be issued only to the extent considered reasonable by the Employer for the work, based on the Bill of Quantities and the construction programme and methodology as furnished by us alongwith the bid.

6. We confirm that the above goods will be exclusively used for the construction of the above work and construction equipment will not be sold or otherwise disposed of in any manner for a period of five years from the date of acquisition.

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Signature) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Place: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Printed Name) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Designation) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Common Seal) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* *This certificate will be issued within 60 days of signing of contract and no subsequent changes will be permitted.*

|  |
| --- |
| Technical Proposal |

* **Site Organization**
* **Method Statement**
* **Mobilization Schedule**
* **Construction Schedule**
* **Equipment**
* **Personnel**

- Sub contracting elements or works which in aggregate adds to more than 10% of Bid price (for each the qualifications and experiences on the identified subcontractor in the relevant field should be given).

* **Others**

**Technical Proposal -Site Organization**

*[insert Site Organization Information)*

**Technical Proposal -Method Statement**

*[insert Method Statement - A detailed note should be submitted outlining bidders proposed methodology and program of construction including Environmental Management Plan, backed with equipment, materials and manpower planning and deployment, duly supported with broad calculations and quality control procedures proposed to be adopted, justifying their capability of execution and completion of the work as per technical specifications within the stipulated review of completion as per mile stones.]*

**Technical Proposal -Mobilization Schedule**

*[insert Mobilization Schedule)*

**Technical Proposal -Construction Schedule**

*(insert Construction Schedule)*

**Technical Proposal – Sub-Contracting**

*[insert proposal of Sub-Contracting elements of works amounting to more than 10% of the bid price for each element and indicate the name of the sub-contractor, its qualifications and experiences to execute that element satisfactorily]*

**Equipment**

**Form EQU - Equipment**

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

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

Omit the following information for equipment owned by the Bidder.

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

|  |
| --- |
| Personnel |

**Form PER -1**

Proposed Personnel

Bidders should provide the names of suitably qualified personnel to meet the specified requirements stated in Section III (Evaluation and Qualification criteria). The data on their experience should be supplied using the Form below for each candidate.

|  |  |
| --- | --- |
| **1.** | **Title of position\*** |
|  | **Name** |
| **2.** | **Title of position\*** |
|  | **Name** |
| **3.** | **Title of position\*** |
|  | **Name** |
| **4.** | **Title of position\*** |
|  | **Name** |

\*As listed in Section III (Evaluation and Qualification criteria).

**Form PER-2**

**Resume of Proposed Personnel**

|  |
| --- |
| **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** | **E-mail** |
|  | **Job title** | **Years with present employer** |

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

| **From** | **To** | **Company / Project / Position / Relevant technical and management experience** |
| --- | --- | --- |
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**Form SC-Sub Contracting**

**SCHEDULE OF SUBCONTRACTORS**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Item | Element of work | Approximate value | Name and address of subcontractor | Qualification and Experience on similar works executed |
|  |  |  |  |  |

The Bidder shall enter in this schedule a list of the major sections and appropriate value of the work for which he proposes to use subcontractors [for those cases costing more than 10% of the bid price for each element], together with the names, addresses and experiences of the proposed subcontractors.

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

Table of Forms for Bidder’s qualification

Bidder Information Form

Appendix to Bidder Information Form

Historical Contract Non-Performance

Financial Situation

Format for Evidence of Access to or Availability of Cash Flow

Average Annual Construction Turnover

Similar Construction Experience

Construction Experience in Key Activities

Form ELI – 1.1: Bidder’s Information form

|  |  |  |
| --- | --- | --- |
| Bidder’s Information | | |
| **Bidder’s legal name** |  |
| **In case of JV, legal name of each partner** |  |
| **Bidder’s country of constitution** |  |
| **Bidder’s year of constitution** |  |
| **Bidder’s legal address in country of constitution** |  |
| **Bidder’s authorized representative**  (name, address, telephone numbers, fax numbers, e-mail address) |  |
| Attached are copies of the following original documents.   * 1. In case of single entity, articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2. * 2. Authorization to represent the firm or JV named in above, in accordance with ITB 20.2. * 3. In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1 read with BDS. * 4. In case of a government-owned entity, any additional documents not covered under 1 above required to comply with ITB 4.5 read with Sub-clause 2.1.4 of Qualification Criteria * 5.Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. | |
|  | |

Form ELI – 1.2: JV Information Form

*Each member of a JV must fill in this form*

|  |  |
| --- | --- |
| JV / Specialist Subcontractor Information | |
| **Bidder’s legal name** |  |
| **JV Partner’s or Subcontractor’s legal name** |  |
| **JV Partner’s or Subcontractor’s country of constitution** |  |
| **JV Partner’s or Subcontractor’s year of constitution** |  |
| **JV Partner’s or Subcontractor’s legal address in country of constitution** |  |
| **JV Partner’s or Subcontractor’s authorized representative information**  (name, address, telephone numbers, fax numbers, e-mail address) |  |
| **Attached are copies of the following original documents.**   * 1. Articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2. * 2. Authorization to represent the firm named above, in accordance with ITB 20.2. * 3. In the case of government-owned entity, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB 4.5 read with Sub-clause 2.1.4 of Qualification Criteria * 4. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. | |

**DETAILS OF PARTICIPATION IN THE**

**JOINT VENTURE**

|  |  |  |  |
| --- | --- | --- | --- |
| **PARTICIPATION DETAILS** | **FIRM ‘A’**  **(Lead Partner)** | **FIRM ‘B’** | **FIRM ‘C’** |
| Financial |  |  |  |
| Name of the Banker(s) |  |  |  |
| Planning |  |  |  |
| Construction Equipment |  |  |  |
| Key Personnel |  |  |  |
| Execution of Work (Give details on contribution of each) |  |  |  |

The Joint Venture should indicate the details of participation as above.

##### Appendix to Bidder Information Form – Form ELI-1.3

###### Structure and Organization

1. The Bidder is \_\_\_\_\_\_\_\_\_\_\_

[a] an individual

[b] a proprietary firm

[c] a firm in partnership

[d] a Limited Company or Corporation

[e] a group of firms/joint venture

(If yes, give completion information

in respect of each partner)

2. Attach the organization Chart showing the \_\_\_\_\_\_\_\_\_\_\_\_

structure of the Organization, including the

names of the directors and position of officers.

3. Number of years of experience

### [a] as a Prime Contractor (Contractor

shouldering major responsibility)

[i] in own country

[ii] in other countries (specify countries) \_\_\_\_\_\_\_\_\_\_\_\_\_\_

[b] as a Management Contractor

[i] in own country \_\_\_\_\_\_\_\_\_\_\_\_\_\_

[ii] in other countries (specify countries) \_\_\_\_\_\_\_\_\_\_\_\_\_\_

[c] in a Joint Venture

[i] in own country \_\_\_\_\_\_\_\_\_\_\_\_\_\_

[ii] in other countries (specify countries) \_\_\_\_\_\_\_\_\_\_\_\_\_\_

[d] as sub-contractor (specify main contractor)

[i] in own country \_\_\_\_\_\_\_\_\_\_\_\_\_\_

[ii] in other countries (specify countries) \_\_\_\_\_\_\_\_\_\_\_\_\_\_

4. Name and address of any associates the applicant

has in India (in case the applicant happens to be

from foreign country) who are knowledgeable in

the procedure of customs, immigration, taxes and

other information necessary to do the work. \_\_\_\_\_\_\_\_\_\_\_\_\_\_

5. For how many years has your organization been in

business of similar work under its present name?

What were your fields when your organization was

established? Whether any new fields were added in

your organization? And if so, when? \_\_\_\_\_\_\_\_\_

6. Were you ever required to suspend construction

for a period of more than six months continuously

after your started? If so, give the name of project

and give reasons therefore. \_\_\_\_\_\_\_\_\_

7. Have you ever left the work awarded to you

incomplete? (If so, give name of project and

reasons for not completing work.) \_\_\_\_\_\_\_\_\_

8. In which fields of civil engineering construction

do your claim specialization and interest? \_\_\_\_\_\_\_\_\_

9. Give details of your experience in mechanized

cement concrete lining and in modern concrete

technology for manufacture and quality control.@ \_\_\_\_\_\_\_\_\_

10. Give details of your experience in using heavy

earthmoving equipment and quality control in

compaction of soils. @ \_\_\_\_\_\_\_\_\_

11. Give details of your soil and material testing

laboratory, if any. @ \_\_\_\_\_\_\_\_\_

12. Give details of your experience in mechanized

granular pavement construction. @ \_\_\_\_\_\_\_\_\_

13. Give details of your experience in Laying of Prime

coat along with spreading of dry stone chipping. @ \_\_\_\_\_\_\_\_\_

14. Give details of your experience in construction of

asphaltic Overlays@ \_\_\_\_\_\_\_\_\_

15. Give details of your experience in construction

of Bridge Works in Reinforced Cement Concrete @ \_\_\_\_\_\_\_\_\_

16. Give details of your experience in construction

of Bridge Works in plain Cement Concrete @ \_\_\_\_\_\_\_\_\_

17. Give details of your experience in construction

of bridge works in well foundations of a depth

not less than 12 meters @ \_\_\_\_\_\_\_\_\_

18. Give details of your experience in construction

of cement concrete pavement. @ \_\_\_\_\_\_\_\_\_

***@ Employer to modify these as appropriate for the works for which qualification of the Bidders are to be checked. This should be furnished by bidder as well as each member of JV.***

**Form CON – 2**

Historical Contract Non-Performance, Pending Litigation and Litigation History

*[The following table shall be filled in for the Applicant and for each member of a Joint Venture]*

Applicant’s Name: *[insert full name]*Date: *[insert day, month, year]*Joint Venture Party Name:*[insert full name]*NCB No. and title: *[insert NCB number and title]*Page *[insert page number]* of *[insert total number]* pages

|  |  |  |  |
| --- | --- | --- | --- |
| Non-Performed Contracts in accordance with Section III, Qualification Criteria and  Requirements | | | |
| 🞎 Contract non-performance did not occur during the (*number)* years specified in Section III, Qualification Criteria and Requirements, Sub-Factor 2.2.1.  🞎 Contract(s) not performed during the *(number)*of years specified in Section III, Qualification Criteria and Requirements, requirement 2.2.1 | | | |
| **Year** | **Non- performed portion of contract** | **Contract Identification** | **Total Contract Amount (in Indian Rupees millions)** |
| *[insert year]* | *[insert amount and percentage]* | Contract Identification: *[indicate complete contract name/ number, and any other identification]*  Name of Employer: *[insert full name]*  Address of Employer: *[insert street/city/country]*  Reason(s) for non performance: *[indicate main reason(s)]* | *[insert amount]* |
| Pending Litigation, in accordance with Section III, Qualification Criteria and Requirements | | | |
| 🞎 No pending litigation in accordance with Section III, Qualification Criteria and Requirements, Sub-Factor2.2.3. | | | |
| 🞎 Pending litigation in accordance with Section III, Qualification Criteria and Requirements, Sub-Factor2 2.3 as indicated below. | | | |

|  |  |  |  |
| --- | --- | --- | --- |
| **Year of dispute** | **Amount in dispute (Rupees)** | **Contract Identification** | **Total Contract Amount (Rupees millions)** |
| *[insert year]* | *[insert amount]* | Contract Identification: [indicate complete contract name, number, and any other identification]  Name of Employer: *[insert full name]*  Address of Employer: *[insert street/city/country]*  Matter in dispute: *[indicate main issues in dispute]*  Party who initiated the dispute: *[indicate “Employer” or “Contractor”]*  Status of dispute: *[Indicate if it is being treated by the Adjudicator, under Arbitration or being dealt with by the Judiciary]* | *[insert amount]* |
| 🞎 No pending litigation in accordance with Section III, Qualification Criteria and Requirements, Sub-Factor 2.2.3.  🞎 Pending litigation in accordance with Section III, Qualification Criteria and Requirements, Sub-Factor2.2.3 as indicated below. | | | |
| **Year of award** | **Outcome as percentage of Net Worth** | **Contract Identification** | **Total Contract Amount (Rupees millions)** |
| *[insert year]* | *[insert percentage]* | Contract Identification: [indicate complete contract name, number, and any other identification]  Name of Employer: *[insert full name]*  Address of Employer: *[insert street/city/country]*  Matter in dispute: *[indicate main issues in dispute]*  Party who initiated the dispute: *[indicate “Employer” or “Contractor”]*  Status of dispute: *[Indicate if it is being treated by the Adjudicator, under Arbitration or being dealt with by the Judiciary]* | *[insert amount]* |

Form LIT: Pending Litigation

Each Bidder or member of a JV must fill in the form

|  |  |  |  |
| --- | --- | --- | --- |
| Pending Litigation | | | |
| * No pending litigation * Pending litigation | | | |
| Year | Matter in Dispute | Value of Pending Claim in Rs millions Equivalent | Value of Pending Claim as a Percentage of Net Worth |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**Form FIN – 3.1**

Financial Situation

*[The following table shall be filled in for the Applicant and for each partner of a Joint Venture]*

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

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

NCB No. and title: *[insert NCB number and title]*

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

**1. Financial data**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Financial information in**  **(Rupees millions)** | **Historic information for previous** *\_[insert number] years,*  *[insert in words]*  **In rupees equivalent in millions)** | | | | |
|  | Year 1 | Year 2 | Year 3 | Year … | Year n |
| Information from Balance Sheet | | | | | |
| Total Assets (TA) |  |  |  |  |  |
| Total Liabilities (TL) |  |  |  |  |  |
| Net Worth (NW) |  |  |  |  |  |
| Current Assets (CA) |  |  |  |  |  |
| Current Liabilities (CL) |  |  |  |  |  |
| Information from Income Statement | | | | | |
| Total Revenue (TR) |  |  |  |  |  |
| Profits Before Taxes (PBT) |  |  |  |  |  |

**2. Financial documents**

The Applicant and its parties shall provide copies of the balance sheets and/or financial statements for *[number]* years pursuant Section III, Qualifications Criteria and Requirements, Sub-factor 3.1. The financial statements shall:

(a) reflect the financial situation of the Applicant or partner to a JV, and not sister or parent companies.

1. (b) be audited by a certified accountant.
2. (c) be complete, including all notes to the financial statements.

(d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

* Attached are copies of financial statements (balance sheets, including all related notes, and income statements) for the *[number]* years required above; and complying with the requirements
* Attached is a copy of certificate given from the commercial bank assuring cash flow (working capital for contraction)

**FORM FIN – 3.1(A)**

**FORMAT FOR EVIDENCE OF ACCESS TO OR AVAILABILITY OF CASH FLOW**

**Clause 3.1(b) of Section II – Qualification Criteria**

1. **AVAILABILITY OF CASH FLOW (WORKING CAPITAL)**

***(This should be given in this form only by a nationalized or scheduled bank in India.No other substitute will be acceptable)***

This is to certify that M/s. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is a reputed company with a good financial standing.

If the contract for the works, namely \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [funded by the World Bank] is awarded to the above firm, we shall be able to provide overdraft/credit facilities to the extent of USD equivalent \_\_\_\_\_\_\_ to meet their capital requirements for executing the above contract.

-- Sd. --

Name of Bank Manager

Senior Bank Manager

Address of the Bank

|  |
| --- |
| **\* Change the text as follows for Joint venture:**  *This is to certify that M/s. ………………………………. who has formed a JV with M/s. ………………………….. and M/s. …………………………….. for participating in this bid, is a reputed company with a good financial standing.*  *If the contract for the work, namely …………………………………………………………. [funded by the World Bank] is awarded to the above Joint Venture, we shall be able to provide overdraft/credit facilities to the extent of Rs. …………… to meet the working capital requirements for executing the above contract.*  *[This should be given by the JV members in proportion to their financial participation.]* |

**Form FIN - 3.2**

Average Annual Construction Turnover

*[The following table shall be filled in for the Applicant and for each partner of a Joint Venture]*

Applicant's/Joint Venture Partner's Legal Name: *[insert full name]*Date: *[insert day, month, year]*Applicant's Party Legal Name: *[insert full name]*NCB No. and title: *[insert NCB number and title]*Page *[insert page number]* of *[insert total number]* pages

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

\* Average annual construction turnover calculated as total certified payments received for work in progress or completed, divided by the number of years specified in Section III, Qualification Criteria and Requirements, Sub-Factor 2.3.2.

Page …of…..Pages

**JOINT VENTURE**

|  |
| --- |
| **Names of all partners of a joint venture** |
| **1. Partner in charge** |
| **2. Partner** |
| **3. Partner** |

**Total value of annual construction turnover, in terms of work billed to clients, in US$ equivalent, converted at the rate of exchange at the end of the period reported:**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Annual Turnover Data (construction only; Rs millions equivalent)** | | | | | | | |
| **Partner** | **Form 2 page no.** | **Year 1** | **Year 2** | **Year 3** | **Year 4** | **Year 5** | **Average** |
| **1. Partner in charge** |  |  |  |  |  |  |  |
| **2. Partner** |  |  |  |  |  |  |  |
| **3. Partner** |  |  |  |  |  |  |  |
| **TOTALS** |  |  |  |  |  |  |  |

#### Name and address of Bankers to the Joint Venture

Details regarding financial responsibility and participation (percentage share in the total) of each firm in the Joint Venture. Attach a Memorandum of Understanding for the Proposed Agreement of joint Venture which should lay down responsibility regarding work and financial arrangements in respect of each of the firm in the Joint Venture (Refer also ITA Clause 4.1).

**Form EXP - 4.1**

General Construction Experience

*[The following table shall be filled in for the Applicant and for each partner of a Joint Venture]*

Applicant's/Joint Venture Partner's Legal Name: *[insert full name]*Date: *[insert day, month, year]*Applicant JV Party Legal Name: *[insert full name]*NCB No. and title: *[insert NCB number]*Page *[insert page number]* of *[insert total number]* pages

*[Identify contracts that demonstrate continuous construction work over the past [number] years pursuant to Section III, Qualification Criteria and Requirements, Sub-Factor 4.1.List contracts chronologically, according to their commencement (starting) dates.]*

|  |  |  |  |
| --- | --- | --- | --- |
| **Starting**  **Month /**  **Year** | **Ending**  **Month /**  **Year** | **Contract Identification** | **Role of**  **Applicant** |
| *[indicate month/ year]* | *[indicate month/ year]* | Contract name: *[insert full name]*  Brief Description of the Works performed by the  Applicant: *[describe works performed briefly]*  Amount of contract: *[insert amount in US$ equivalent]*  Name of Employer: *[indicate full name]*  Address: *[indicate street/number/town or city/country]* | *[insert "Contractor” or "Subcontractor” or "Contract Manager”]* |
|  |  | Contract name: *[insert full name]*  Brief Description of the Works performed by the  Applicant: *[describe works performed briefly]*  Amount of contract: *[insert amount in US$ equivalent]*  Name of Employer: *[indicate full name]*  Address: *[indicate street/number/town or city/country]* | *[insert "Contractor” or "Subcontractor” or "Contract Manager”]* |
|  |  | Contract name: *[insert full name]*  Brief Description of the Works performed by the  Applicant: *[describe works performed briefly]*  Amount of contract: *[insert amount in US$ equivalent]*  Name of Employer: *[indicate full name]*  Address: *[indicate street/number/town or city/country]* | *[insert "Contractor” or "Subcontractor” or "Contract Manager”]* |

**Form EXP - 4.2(a)**

Similar Construction Experience

*[The following table shall be filled in for contracts performed by the Applicant, each partner of a Joint Venture, and specialist sub-contractors]*

Applicant's/Joint Venture Partner's Legal Name: *[insert full name]*Date: *[insert day, month, year]*JV Party Name: *[insert full name]*NCB No. and title: *[insert NCB number and title]*Page *[insert page number]* of *[insert total number]* pages

|  |  |  |  |
| --- | --- | --- | --- |
| **Similar Contract No.**  *[insert number]* of *[insert number of similar contracts required]* | **Information** | | |
| Contract Identification | *[insert contract name and number, if applicable]* | | |
| Award date | *[insert day, month, year, i. e., 15 June, 2015]* | | |
| Completion date | *[insert day, month, year, i.e., 03 October, 2017]* | | |
|  |  | | |
| Role in Contract  *[check the appropriate box]* | Contractor  🞎 | Management Contractor  🞎 | Subcontractor  🞎 |
| Total Contract Amount | *[insert total contract amount in local currency]* | | Rs*[insert*  *total contract amount in Rs millions*  *equivalent]* |
| If partner in a JV, or subcontractor, specify participation in total contract amount | *[insert a percentage amount]* | *[insert total contract amount in local currency]* | *[insert total contract amount in Rs millions equivalent]* |
| Employer's Name: | *[insert full name]* | | |
| Address:  Telephone/fax number  E-mail: | *[indicate street / number / town or city / country]*  *[insert telephone/fax numbers, including country and*  *city area codes]*  *[insert e-mail address, if available]* | | |

**Form EXP - 4.2(a) (cont.)**

**Similar Construction Experience (cont.)**

|  |  |
| --- | --- |
| **Similar Contract No.**  *[insert number]* of *[insert number of similar contracts required]* | **Information** |
| Description of the similarity in accordance with Sub-Factor 4.2(a) of Section III: |  |
| 1. Amount | *[insert amount in Rs millions in words and in*  *Figures]* |
| 2. Physical size | *[insert physical size of activities]* |
| 3. Complexity | *[insert description of complexity]* |
| 4. Methods/Technology | *[insert specific aspects of the methods/technology involved in the contract]* |
| 5. Other Characteristics | *[insert other characteristics as described in Section V, Scope of Works]* |

**Form EXP - 4.2(b)**

Construction Experience in Key Activities

Applicant's Legal Name: *[insert full name]*Date: *[insert day, month, year]*Applicant's Party Legal Name: *[insert full name]*Nominated Subcontractor's Legal Name (as per ITA 24.2): *[insert full name]*NCB No. and title: *[insert NCB number and title]*

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

1. All Subcontractors for key activities must complete the information in this form as per ITA 24.2 and Section III, Qualification Criteria and Requirements, Sub-Factor 4.2.
2. 1. Key Activity No One: *[insert brief description of the Activity, emphasizing its specificity]*

|  |  |  |  |
| --- | --- | --- | --- |
|  | Information | | |
| Contract Identification | *[insert contract name and number, if applicable]* | | |
| Award date | *[insert day, month, year, i. e., 15 June, 2015]* | | |
| Completion date | *[insert day, month, year, i.e., 03 October, 2017]* | | |
| Role in Contract  *[check the appropriate box]* | Contractor  🞎 | Management  Contractor  🞎 | Subcontractor  🞎 |
| Total Contract Amount | *[insert total contract amount in Rs]* | | *]* |
| If party in a JV, specify participation of total contract amount | *[insert a percentage amount* | *[insert total contract amount in Rs millions* |  |

|  |  |
| --- | --- |
|  | **Information** |
| Employer’s Name: | *[insert full name]* |
| Address:  Telephone/fax number  E-mail: | *[indicate street / number / town or city / country]*  *[insert telephone/fax numbers, including country and*  *city area codes]*  *[insert e-mail address, if available]* |

2. Activity No Two

3. …………………

|  |  |
| --- | --- |
|  | **Information** |
| Description of the key activities in accordance with Sub-Factor 4.2(b) of Section III: |  |
|  | *[insert response to inquiry indicated in left*  *column]* |
|  |  |
|  |  |
|  |  |
|  |  |

**DETAILS OF PRODUCTION LEVELS IN KEY CONSTRUCTION ACTIVITIES**

(Sub-factor of 4.2(b) of Section III)

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | Name of the Contract | Employer Contact address, Agreement No. and Date | Value | Year | Quantities Executed | | | |
| 1. |  |  |  | 2008-09  2009-10  2010-11  2011-12  2012-13 |  |  |  |  |
| 2. |  |  |  |  |  |  |  |  |
| 3. |  |  |  |  |  |  |  |  |

Form for Current Contract Commitments/Works in Progress

*For calculation of Bid Capacity*

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

(A) Existing commitments and on-going works:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Description Place Contract No. Name Value of Stipulated Value of works\* Anticipated

of & & Date and Contract period of remaining to be date of

Work State Address (Rs million) completion completed completion

of Employer (Rs million)

(1) (2) (3) (4) (5) (6) (7) (8)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(B) Works for which bids already submitted:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Description Place Name and Estimated Stipulated Date when Remarks

of & Address of value of works period of decision is if any

Work State Employer (Rs million) completion expected

(1) (2) (3) (4) (5) (6) (7)

**\*** *Attach certificate(s) from the Engineer(s)-in-Charge*.

Form of Bid Security (Bank Guarantee)

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:**

*[Insert name and address of the* Employer*]*

**Invitation for Bids No:** *[Insert reference number for the Invitation for Bids]*

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

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

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

We have been informed that *[insert name of the Bidder, which in the case of a joint venture shall be the name of the joint venture (whether legally constituted or prospective) or the names of all members thereof]* (hereinafter called "the Applicant") has submitted or will submit to the Beneficiary its bid (hereinafter called "the Bid") for the execution of *[insert description of contract]* under Invitation for Bids No. [*insert number*] (“the IFB”).

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

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

(a) has withdrawn its Bid during the period of bid validity specified by the Applicant in the Letter of Bid, or any extension thereto provided by the Applicant; or

(b) having been notified of the acceptance of its Bid by the Beneficiary during the period of bid validity, (i) fails to execute the Contract Agreement or (ii) fails to furnish the performance security, in accordance with the Instructions to Bidders (“ITB”) of the Beneficiary’s bidding document.

(c) does not accept the correction of the Bid Price pursuant to Clause 31.

This guarantee will expire: (a) if the Applicant is the successful Bidder, upon our receipt of copies of the contract agreement signed by the Applicant and the performance security issued to the Beneficiary upon the instruction of the Applicant; and (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 Validity Period, which date shall be established by presentation to us of copies of the Letter of Bid and any extension(s) thereto, accompanied by the bidding document; or (c) three years after the date of issue of this guarantee.

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

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

*[signature(s)]*

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

**Section V - Eligible Countries**

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

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

Under ITB 4.7 (a) and 5.1 *None*

Under ITB 4.7 (b) and 5.1 *None*

Section VI. Bank Policy - Corrupt and Fraudulent Practices

(Section VI shall not be modified)

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

“**Fraud and Corruption:**

1.16 It is the Bank’s policy to require that Borrowers (including beneficiaries of Bank loans), bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standard of ethics during the procurement and execution of Bank-financed contracts.[[10]](#footnote-10) 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;[[11]](#footnote-11);

(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;[[12]](#footnote-12)

(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;[[13]](#footnote-13)

(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;[[14]](#footnote-14)

(v) “obstructive practice” is

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

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

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

(c) will declare misprocurement and cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the loan engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement or the implementation of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;

(d) will sanction a firm or individual, at any time, in accordance with the prevailing Bank’s sanctions procedures,[[15]](#footnote-15) including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Bank-financed contract; and (ii) to be a nominated[[16]](#footnote-16);

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

PART 2 – Works Requirements

Section VII - Work’s Requirements

Section VII-Works Requirements-Scope of Works

Section VII. Works Requirements - Specification

Specifications

Notes for Preparing Technical Specifications

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

Precise and clear Specifications are a prerequisite for bidders to respond realistically and competitively to the requirements of the Employer without qualifying or conditioning their bids. In the context of international competitive bidding, the Specifications must be drafted to permit the widest possible competition and, at the same time, present a clear statement of the required standards of materials, Plant, other supplies, and workmanship to be provided. Only if this is done will the objectives of economy, efficiency, and equality in procurement be realized, responsiveness of bids be ensured, and the subsequent task of bid evaluation facilitated. The Specifications should require that all 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 Specifications, and it is customary to give a list of the Drawings. Where the Contractor is responsible for the design of any part of the Permanent Works, the extent of his obligations must be stated. (See GCC Sub-Clause 4.1 Contractor’s General Obligations.)

Samples of Specifications from previous similar projects in India are useful in this respect. The metric units should be used. Most Specifications are normally written specially by the Employer or Engineer 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.

Notwithstanding that these SBDW and the corresponding Conditions of Contract are recommended only for Civil Works, under which the usual arrangements is that the Contractor constructs the works in accordance with the design provided by the Employer, the works may include a few elements of Contractor-designed civil, mechanical, electrical and/or construction works. However, these SBDW are not recommended for “Design and Build” contracts when appropriate clauses are required.

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

Care must be taken in drafting Specifications to ensure that they are not restrictive. In the specification of standards for 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 India or other standards, the Specifications 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.

Specific minimum requirements for “social clauses” (common collective name for provisions under Sub-Clauses 6.1 through 6.22 of the General Conditions), are to be detailed as part of the Specifications 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.

**Alternative Technical Proposals**

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

• pile foundations (proprietary methods and different material)

• bridge foundations (open well, caissons, piles, etc.)

• columns, beams, decking (reinforced concrete, prestressed concrete, steel, etc.)

• proprietary methods for post-tensioning concrete

• lining of canals

• pipeline materials, coating, jointing

• road surfacing (asphalt, concrete, etc.)

• transmission tower design and erection

• street lighting

• offshore foundations

• offshore trestle spans

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

Such alternative solutions shall be accompanied by all information necessary for a complete evaluation by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, proposed construction methodology, and other relevant details. Technical alternatives permitted in this manner shall be considered by the Employer each on its own merits and independently of whether the bidder has priced the item as described in the Employer’s design included with the bidding documents.

In more complex cases, a “turnkey” or “design-and-construct” approach may be more appropriate, in which cases a two-stage bidding process is recommended in conformity with other Bank Standard Bidding Documents.

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

Drawings

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

***-- Note --***

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, posts, airports, and railroads, is helpful.

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

Supplementary Information

PART 3 – Conditions of Contract and Contract Forms

*Notes for Part 3 – Conditions of Contract and Contract Forms*

*The Conditions of Contract comprise two parts:*

1. ***General Conditions*** *– GC (Section VIII of this document), and*
2. ***Particular Conditions*** *– PC (Section IX of this document).*

*The General Conditions used in these Standard Bidding Documents are the Bank Harmonized Edition of the General Conditions of Contract prepared by the International Federation of Consulting Engineers (FédérationInternationale des Ingénieurs-Conseils, or FIDIC). The Bank Harmonized Edition of FIDIC’s General Conditions of Contract were agreed among various Multilateral Development Banks and FIDIC.*

*By virtue of a license agreement subscribed between IBRD and FIDIC, IBRD’s Borrowers and their implementing agencies are authorized the reproduction and translation of the Bank Harmonized Edition of FIDIC’s General Conditions of Contract for the exclusive purpose of preparing bidding documents in accordance with these Standard Bidding Documents. Therefore, Borrowers and their implementing agencies shall abstain from making any use of the Harmonized Edition of FIDIC’s General Conditions of Contract, distinct from the use specified herein.*

*The Conditions of Contract have been prepared for an ad measurement (unit price or unit rate) type of contract and cannot be used without major modifications for other types of contract.*

*The standard text of the General Conditions chosen must be retained intact to facilitate its reading and interpretation by Bidders and its review by the Bank. Any amendments and additions to the General Conditions, specific to the contract in hand, should be introduced in the Particular Conditions. A number of such Particular Conditions, applicable to the above Conditions of Contract, are included in Section IX.*

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

*The Particular Conditions take precedence over the General Conditions—see Sub-Clause 2.3, Priority of Documents, in the General Conditions.*

*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 non-binding general information, attached to the Bidding Documents.*

*Part A, the Contract Data of the PC, includes data to complement GC in a manner similar to the way in which the Bid Data Sheet complements the Instructions to Bidders.*

*Part B, the Specific Provisions of the PC, consists of a set of sample provisions for use by the Employer in preparing the PC.* ***They are not a complete standard set of PC provisions****; country- or Project-specific provisions for PC must also be prepared in each case. However, standard, country-specific PC should be developed.*

*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.*

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

[*Name of* Employer*]*

[*Name of Contract]*

The General Conditions that follow are the Bank Harmonized Edition of the Conditions of Contract for Construction prepared and copyrighted by the International Federation of Consulting Engineers (*FédérationInternationale des Ingénieurs-Conseils*, or FIDIC), FIDIC 2010-All rights reserved. This publication is exclusive for the use of Bank Borrowers and their project implementing agencies as provided under the License Agreement dated March 11th, 2005, between the IBRD 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 Employer identified above and only for the exclusive purpose of preparing these Standard Bidding Documents for the Contract also identified above.

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| Section VIII. General Conditions (GC) |

General Conditions

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| 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. “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] “FIDIC” means the FédérationInternationale 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]. “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]. “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 other equipment 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. “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. “Variation” means any change to the Works, which is instructed or approved as a variation under Clause 13 [Variations and Adjustments].“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:   1. words indicating one gender include all genders; 2. words indicating the singular also include the plural and words indicating the plural also include the singular; 3. provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing; 4. “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record; and 5. 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:   1. 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 2. delivered, sent or transmitted to the address for the recipient’s communications as **stated in the Contract Data**. However:    1. if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and    2. 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:   1. the Contract Agreement (if any), 2. the Letter of Acceptance, 3. the Letter of Tender, 4. the Particular Conditions – Part A, 5. the Particular Conditions – Part B 6. these General Conditions 7. the Specification, 8. the Drawings, and 9. 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:   1. may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party, and 2. 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:   1. 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 2. 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:   1. apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works, 2. 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 3. 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:   1. 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 2. 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:   1. these persons shall be deemed to be jointly and severally liable to the Employer for the performance of the Contract; 2. these persons shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these persons; and 3. 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. |
| 2. The 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:   1. 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 2. 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:   1. copies of the Laws of the Country which are relevant to the Contract but are not readily available, and 2. any permits, licences or approvals required by the Laws of the Country:    1. which the Contractor is required to obtain under Sub-Clause 1.13 [Compliance with Laws],    2. for the delivery of Goods, including clearance through customs, and    3. 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:   1. co-operate with the Contractor’s efforts under Sub-Clause 4.6 [Co-operation], and 2. take actions similar to those which the Contractor is required to take under sub-paragraphs (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;   1. 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 2. 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**.  (c) 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].  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:   1. 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; 2. 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:   1. gives an oral instruction, 2. receives a written confirmation of the instruction, from (or on behalf of) the Contractor, within two working days after giving the instruction, and 3. 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:   1. 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   1. 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:   1. 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; 2. the prior consent of the Engineer shall be obtained to other proposed Subcontractors; 3. 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 4. 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:   1. the Employer’s Personnel, 2. any other contractors employed by the Employer, and 3. 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:   1. 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 2. 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 e. | |
| 4.8 Safety Procedures | | The Contractor shall:   1. comply with all applicable safety regulations, 2. take care for the safety of all persons entitled to be on the Site, 3. use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons, 4. provide fencing, lighting, guarding and watching of the Works until completion and taking over under Clause 10 [Employer’s Taking Over], and 5. 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):   1. the form and nature of the Site, including sub-surface conditions, 2. the hydrological and climatic conditions, 3. the extent and nature of the work and Goods necessary for the execution and completion of the Works and the remedying of any defects, 4. the Laws, procedures and labour practices of the Country, and 5. 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:   1. have satisfied himself as to the correctness and sufficiency of the Accepted Contract Amount, and 2. 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:   1. 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 2. 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:   1. the convenience of the public, or 2. 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:   1. the Contractor shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes; 2. 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; 3. the Employer shall not be responsible for any claims which may arise from the use or otherwise of any access route; 4. the Employer does not guarantee the suitability or availability of particular access routes; and 5. 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:   1. 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; 2. the Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works; and 3. 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:   1. the Employer shall be responsible for the Employer’s Equipment, except that 2. 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:   1. 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]), 2. photographs showing the status of manufacture and of progress on the Site; 3. 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: 4. commencement of manufacture, 5. Contractor’s inspections, 6. tests, and 7. shipment and arrival at the Site; 8. the details described in Sub-Clause 6.10 [Records of Contractor’s Personnel and Equipment]; 9. copies of quality assurance documents, test results and certificates of Materials; 10. list of notices given under Sub-Clause 2.5 [Employer’s Claims] and notices given under Sub-Clause 20.1 [Contractor’s Claims]; 11. safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and 12. 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:   1. the Contractor shall be responsible for keeping unauthorised persons off the Site, and 2. 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:   1. 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 2. 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:   1. who is stated in the Contract as being a nominated Subcontractor, or 2. 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:   1. there are reasons to believe that the Subcontractor does not have sufficient competence, resources or financial strength; 2. 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 3. 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: 4. undertake to the Contractor such obligations and liabilities as will enable the Contractor to discharge his obligations and liabilities under the Contract; 5. 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 6. 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:   1. submits this reasonable evidence to the Engineer, or   (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:   1. otherwise stated in the Contract, 2. the Engineer gives consent, or 3. 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 employees, and all truck drivers and crew making deliveries to Site for construction activities) and to the immediate local communities, concerning the risks, dangers and impact, and appropriate avoidance 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:   1. persists in any misconduct or lack of care, 2. carries out duties incompetently or negligently, 3. fails to conform with any provisions of the Contract, or 4. 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 thereof 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 Prohibition of Forced or Compulsory 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 Prohibition of Harmful 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 summarized 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 andmanufacture of Materials, and all other execution of the Works:   1. in the manner (if any) specified in the Contract, 2. in a proper workmanlike and careful manner, in accordance with recognised good practice, and 3. 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:   1. manufacturer’s standard samples of Materials and samples specified in the Contract, all at the Contractor’s cost, and 2. 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:   1. have full access to all parts of the Site and to all places from which natural Materials are being obtained, and 2. 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:   1. 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 2. 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:   1. remove from the Site and replace any Plant or Materials which is not in accordance with the Contract, 2. remove and re-execute any other work which is not in accordance with the Contract, and 3. 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:   1. when it is incorporated in the Works; 2. 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:   1. natural Materials obtained from outside the Site, and 2. 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:signature of the Contract Agreement by both Parties, and if required, approval of the Contract by relevant authorities of the Country;  1. delivery to the Contractor of reasonable evidence of the Employer’s financial arrangements (under Sub-Clause 2.4 [Employer’s Financial Arrangements]); 2. 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 3. 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:   1. achieving the passing of the Tests on Completion, and 2. 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:   1. 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, 2. each of these stages for work by each nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]), 3. the sequence and timing of inspections and tests specified in the Contract, and 4. a supporting report which includes: 5. a general description of the methods which the Contractor intends to adopt, and of the major stages, in the execution of the Works, and 6. 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:   1. 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, 2. a cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions, 3. exceptionally adverse climatic conditions, 4. Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions, or 5. 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:   1. the Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in the Country, 2. these authorities delay or disrupt the Contractor’s work, and 3. the delay or disruption was Unforeseeable,   then this delay or disruption will be considered as a cause of delay under sub-paragraph (b) of Sub-Clause 8.4 [Extension of Time for Completion]. | | |
| 8.6 Rate of Progress | If, at any time:   1. actual progress is too slow to complete within the Time for Completion, and/or 2. 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:   1. 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 2. 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:   1. the work on Plant or delivery of Plant and/or Materials has been suspended for more than 28 days, and 2. 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 sub-paragraph (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:   1. order further repetition of Tests on Completion under Sub-Clause 9.3; 2. 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 3. 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:   1. 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 2. 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:   1. the part which is used shall be deemed to have been taken over as from the date on which it is used, 2. 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 3. 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:   1. 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 2. 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:   1. 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 2. 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:   1. any design for which the Contractor is responsible, 2. Plant, Materials or workmanship not being in accordance with the Contract, or 3. 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):   1. 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; 2. require the Engineer to agree or determine a reasonable reduction in the Contract Price in accordance with Sub-Clause 3.5 [Determinations]; or 3. 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:   1. promptly either attend or send another qualified representative to assist the Engineer in making the measurement, and 2. 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:   1. measurement shall be made of the net actual quantity of each item of the Permanent Works, and 2. 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:  (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:   1. 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; 2. the omission of the work will result (or has resulted) in this sum not forming part of the Contract Price; and 3. 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),   1. changes to the quality and other characteristics of any item of work, 2. changes to the levels, positions and/or dimensions of any part of the Works, 3. omission of any work unless it is to be carried out by others, 4. 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 5. 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:   1. the Contractor shall design this part, 2. sub-paragraphs (a) to (d) of Sub-Clause 4.1 [Contractor’s General Obligations] shall apply, and 3. 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: 4. 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 5. 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:   1. a description of the proposed work to be performed and a programme for its execution, 2. 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 3. 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:   1. 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 2. 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: 3. the actual amounts paid (or due to be paid) by the Contractor, and 4. 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:   1. the names, occupations and time of Contractor’s Personnel, 2. the identification, type and time of Contractor’s Equipment and Temporary Works, and 3. 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:   1. 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 2. 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:  Pn = a + b Ln/ Lo + c En/Eo + d Mn/Mo + ...... where:  “Pn” 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 (quoted in the fourth and fifth columns respectively of the table) 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:   1. the Contract Price shall be agreed or determined under Sub-Clause 12.3 [Evaluation] and be subject to adjustments in accordance with the Contract; 2. 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]; 3. 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: 4. of the Works which the Contractor is required to execute, or 5. for the purposes of Clause 12 [Measurement and Evaluation]; and 6. 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:   1. 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 2. 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 [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:   1. 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); 2. 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]; 3. 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**; 4. any amounts to be added for the advance payment and (if more than one instalment) and to be deducted for its repayments in accordance with Sub-Clause 14.2 [Advance Payment]; 5. 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]; 6. 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 7. 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:   1. 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];; 2. Sub-Clause 14.5 [Plant and Materials intended for the Works] shall not apply; and 3. 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:   1. the Contractor has: 2. kept satisfactory records (including the orders, receipts, Costs and use of Plant and Materials) which are available for inspection, and 3. 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:   1. are those listed in the Schedules for payment when shipped, 2. have been shipped to the Country, en route to the Site, in accordance with the Contract; and 3. 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:   1. are those listed in the Schedules for payment when delivered to the Site, and 2. 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:   1. if anything 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 2. 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:   1. the first installment 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; 2. 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 3. 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:   1. the value of all work done in accordance with the Contract up to the date stated in the Taking-Over Certificate for the Works, 2. any further sums which the Contractor considers to be due, and 3. 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:   1. the value of all work done in accordance with the Contract, and 2. 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:   1. the amount which he fairly determines is finally due, and 2. 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:   1. in the Final Statement and also 2. (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:   1. if the Accepted Contract Amount was expressed in Local Currency only: 2. 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; 3. 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 4. 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; 5. payment of the damages **specified in the Contract Data**, shall be made in the currencies and proportions specified in the Schedule of Payment Currencies; 6. 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; 7. 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 8. 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:   1. fails to comply with Sub-Clause 4.2 [Performance Security] or with a notice under Sub-Clause 15.1 [Notice to Correct], 2. abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract, 3. 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,   1. subcontracts the whole of the Works or assigns the Contract without the required agreement, 2. 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 3. 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: 4. for doing or forbearing to do any action in relation to the Contract, or 5. 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:   1. proceed in accordance with Sub-Clause 2.5 [Employer’s Claims], 2. 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 3. 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 the purposes of this Sub-Clause:  (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;[[17]](#footnote-17)  (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;[[18]](#footnote-18)  (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;[[19]](#footnote-19)  (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;[[20]](#footnote-20)  (v) “obstructive practice”is  (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or  (bb) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under Sub-Clause 1.15 [Inspections and Audits by the Bank]. | | |
| 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:   1. 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 2. 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:   1. 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], 2. the Engineer fails, within 56 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate, 3. 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]), 4. 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, 5. the Employer fails to comply with Sub-Clause 1.6 [Contract Agreement] or Sub-Clause 1.7 [Assignment], 6. a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [Prolonged Suspension], or 7. 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. 8. 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 sub-paragraph (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. | | |
| 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:   1. 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, 2. hand over Contractor’s Documents, Plant, Materials and other work, for which the Contractor has received payment, and 3. 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:   1. return the Performance Security to the Contractor, 2. pay the Contractor in accordance with Sub-Clause 19.6 [Optional Termination, Payment and Release], and 3. 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:   1. 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 2. 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:   1. 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 2. 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:   1. an unavoidable result of the Contractor’s compliance with the Contract, or 2. a result of any Works being used by the Employer:    1. for a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or    2. in conjunction with anything 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:   1. evidence that the insurances described in this Clause have been effected, and 2. 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 insurance 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:   1. shall be effected and maintained by the Contractor as insuring Party, 2. 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, 3. shall cover all loss and damage from any cause not listed in Sub-Clause 17.3 [Employer’s Risks], 4. 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 5. may however exclude loss of, damage to, and reinstatement of:    1. 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),    2. 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,    3. 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    4. 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:   1. 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, 2. damage which is an unavoidable result of the Contractor’s obligations to execute the Works and remedy any defects, and 3. 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:   1. which is beyond a Party’s control, 2. which such Party could not reasonably have provided against before entering into the Contract, 3. which, having arisen, such Party could not reasonably have avoided or overcome, and 4. 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:   1. war, hostilities (whether war be declared or not), invasion, act of foreign enemies, 2. rebellion, terrorism, sabotage by persons other than the Contractor’s Personnel, revolution, insurrection, military or usurped power, or civil war, 3. riot, commotion, disorder, strike or lockout by persons other than the Contractor’s Personnel, 4. 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 5. 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 his 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:   1. 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 2. 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 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:   1. the amounts payable for any work carried out for which a price is stated in the Contract; 2. 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; 3. other Cost or liabilities which in the circumstances were reasonably and necessarily incurred by the Contractor in the expectation of completing the Works; 4. 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 5. 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:   1. 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 2. 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:   1. this fully detailed claim shall be considered as interim; 2. 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 3. 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:   1. 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], 2. 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, 3. the Parties fail to agree upon the appointment of the third member (to act as chairman) of the DB by such date, or 4. 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 | 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 proceedings shall be conducted in accordance with the laws of the Employer’s country.  The place of arbitration shall be the 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**

**A General Conditions of Dispute Board Agreement**

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| **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 Board Agreement shall terminate upon the expiry of this period. |
| **3. Warranties** | The Member warrants and agrees that he/she is and shall be impartial and independent of the Employer, the Contractor and the 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 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. |

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| **PROCEDURAL RULES** | | | | |
| 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. | | | | |
| 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. | | | | |
| 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. | | | | |
| 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. | | | | |
| 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. | | |
| 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. | | | | |
| 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. | | | | |
| 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. | | | |
| 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. |

**Section IX. Particular Conditions**

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

Part A, Contract Data of the PC, includes data to complement the GC in a manner similar to the way in which the Bid Data Sheet complements the Instructions to Bidders.

Part B, Specific Provisions of the PC are sample provisions for use by the Employer in preparing the PC. They are not a complete standard set of PC provisions; country-or project-specific provisions may need to be prepared in each case.

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

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

**As Part A- Contact Data**

[***The Employer should insert relevant data prior to the issue of the bidding document. Where a number of days are to be inserted it is desirable for the number to be a multiple of seven for consistency with the Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the GC.***]

**Input of Information to be completed by Bidder (bold) or Employer (***italic***)**

| **Conditions** | **Sub-Clause** | **Data** |
| --- | --- | --- |
| **Employer’s name and address** | 1.1.2.2 & 1.3 | [*….insert Employer’s name and address…]* |
| **Engineer’s name and address** | 1.1.2.4 & 1.3 | [*…insert Engineer’s name and address…]* |
| **Bank’s name** | 1.1.2.11 | World Bank (the Bank) |
| **Borrower’s name** | 1.1.2.12 | […*insert Borrower’s name*…] |
| **Time for Completion** | 1.1.3.3 | ……. Days [ *or insert date*]  For Section 1 ---- days  For Section 2 ---- days  For Section 3 ---- days  [*….insert the time of completion of the whole of the Works and also the time for completion of sections, if applicable. If times (or dates) are to be specified for various sections of the Works, they should be listed here…]* |
| **Defects Notification Period** | 1.1.3.7 | 365 days. |
| **Foreign Currency** | 1.1.4.6 | Delete all reference to foreign currency. All payments under the contract will be in Indian Rupees only. |
| **Local Currency** | 1.1.4.8 | Local Currency is Indian Rupees. |
| **Sections** | 1.1.5.6 | *If Sections are to be used, refer to Table: Summary of Sections below* |
| **Electronic transmission systems** | 1.3 | *[…insert Electronic transmission system- insert fax number, e-mail address etc*…] |
| **Governing Law** | 1.4 | The Law of Union of India |
| **Ruling language** | 1.4 | English |
| **Language for communications** | 1.4 | English/…………(*indicate local language for oral communication with workers)* |
| **Inspections and Audit by the Bank** | 1.15 | **The following paragraph substitute the Clause 1.15**:  The Contractor shall permit, and shall cause its suppliers, contractors, and their sub-contractors, agents, personnel, consultants, service providers, or suppliers, to permit, the Bank and/or persons appointed by the Bank to inspect the Site and all accounts and records relating to the performance of the Contract and the submission of the bid, and to have such accounts and records audited by auditors appointed by the Bank if requested by the Bank. The Contractor’s and its Subcontractors’ and sub-consultants’ attention is drawn to Sub-Clause 15.6 [Corrupt or Fraudulent Practices] which provides, inter alia, that acts intended to materially impede the exercise of the Bank’s 1.15 constitute a prohibited practice subject to contract termination (as well as to a determination inspection and audit rights provided for under Sub-Clause of ineligibility pursuant to the Bank’s prevailing sanctions procedures |
| **Time for access to the Site** | 2.1 | \_15\_days after Commencement Date ***(\* amend as appropriate if the site cannot be handed over in 15 days)*** |
| **Engineer’s Duties and Authority** | 3.1(b)(ii) | Variations resulting in an increase of the Accepted Contract Amount in excess of one percent of the contract price in each case at a time and all variations in excess of gross total value of 10 (Ten) percent of the contract Price in aggregate shall require prior approval of the Employer. |
| **As Built Drawings/Operation maintenance manuals** | 4.1(d) | The contractor should furnish these to the Engineer in addition to hard copies, soft copies duly digitized in a Compact Disk as detailed below…………………………..(*State the requirement)* |
| **Performance Security** | 4.2 | The performance security will be in the form of [insert “unconditional Bank guarantee”] in the amount(s) of \_\_\_\_\_\_\_ [*insert related figure(s)5 to 10%*] percent of the Contract Price, plus additional security for unbalanced bids determined in accordance with Cl. 35.5 of ITB *(from a Nationalized or Scheduled bank in India only).* |
| **Contractor’s Representative** | 4.3-last sub paragraph | The representatives should be conversant in …………..language, being the spoken language of the region. |
| **Sub Contractors** | 4.4 | Sub contracting should not exceed 25% of the accepted contract value |
| **Protection of Environment** | 4.18 | See Part B Specific Provisions for the laws in force in India for protection of Environment |
| **Employer’s Equipment and free issue Materials** | 4.20 | Employer will not issue/make available any equipment or materials free and the contractor is fully responsible for arranging all the required equipment and inputs. |
| **Progress Reports** | 4.21(i) | Add sub paragraph (i) as “Action taken/current status of implementation on the decisions taken in the periodical review meetings held earlier” |
| **Staff and Labour** | 6 | The cost to comply with the requirements of all the “social clauses” (G.C.C Sub-Clauses 6.1 through 6.22), to the level and extent specified in the Specification and General Conditions of contract is to be considered by the bidder as part of its general Overheads included in the unit rates of items and **no separate payment will be made for these items.** |
| **Normal working hours** | 6.5 | [*….insert the normal working hours*] |
| **Royalties** | 7.8 | These shall be paid by the contractor and should be included in the unit rates of various items |
| **Commencement of Works** | 8.1 | Insert the following as sub clause 8.1 (d) and change the existing sub clause 8.1 (d) as 8.1 (e)  8.1(d) receipt by the Engineer Policies/ Certificates for Insurance taken in accordance with GCC 18 |
| **Programme** | 8.3 | In partial modification of line 1 of Sub paragraph 1 the detailed time program along with construction methodology/environmental management plan (using MS Project or another equivalent/appropriate soft ware) should be submitted to the Engineer for his review within 28 days of receipt of Notification of Award before issue of notice for commencement of Works |
| **Delay damages for the Works** | 8.7 & 14.15(b) | *[insert percentage per day such that the maximum amount of delay damages is attained as a result of a delay of about one third of the Time of completion- not less than 0.05% (to be fixed between 0.05 to 0.2% per day), of the final contract price per day*] ……….% of the final Contract Price per day.  For sectional completion please specify as below:  For Section 1 ---- per day  For Section 2 ---- per day  For Section 3 ---- per day |
| **Maximum amount of delay damages** | 8.7 | 10 % of the final Contract Price. |
| **Works to be Measured** | 12.1 | See Clause ……. of Technical Specifications for details(*Insert the clause no of TS)* |
| **Provisional Sums** | 13.5.(b)(ii) | *\_\_\_\_\_% [If there are Provisional Sums, insert a percentage or a fixed amount for adjustment of Provisional Sums]* |
| **Adjustments for Changes in Cost** | 13.8 | In partial modification “Table of Adjustment Data” means the Table 1 & Table 2 of Annexure 3attached to the PCC. Period “n” applicable to the adjustment multiplier “Pn”: \_\_\_\_\_\_\_\_\_\_  *[Insert the period if different from one (1) month; if period “n” is one (1) month, leave blank]* |
| **Total advance payment** | 14.2 | 10 % Percentage of the Accepted Contract Amount payable on submission of unconditional Bank Guarantee in the format given in section IX from a nationalized or Scheduled Bank in India-*[If it is proposed to be given in installments insert percentage, number and timing of installments.]* |
|  |  |  |
| **Repayment amortization rate of advance payment** | 14.2(b) | 20 %  [*Insert percentage of amortization rate, stating that repayment will begin when amount of work certified by the Engineer attains 30% of the Contract Price*] |
| **Percentage of Retention** | 14.3 | 6 % [*Insert percentage of retention, not exceeding10*] |
| **Limit of Retention Money** | 14.3 | 5 % of the Accepted Contract Amount |
| **Plant and Materials** | 14.5(c)(i) | Plant and Materials (to be incorporated in works) for payment when delivered to the Site 75% *[list. Advance is payable only for non perishable materials. No advance for sand, cement etc].* |
| **Minimum Amount of Interim Payment Certificates** | 14.6 | \_\_\_\_\_\_\_\_\_\_\_\_\_ % of the Accepted Contract Amount.  *[Insert percentage, which may depend on the contract amount and time for completion; a minimum of about one fifth the average expected value of Interim Payment Certificate (not less than 1% of the accepted contract price) would be reasonable]* |
| **Interest rate for Delayed payment** | 14.8 | 8% per annum or State Bank of India prime lending rate whichever is smaller. |
| **Retention money** | 14.9-sub paragraph 6 | Substitution of retention money should be in installments not less than 1% of the accepted contract price |
| **Employer’s Entitlement to Termination for Convenience** | 15.5 | Delete the third sentence reading “The Employer…………………sub-Clause 16.2 (Termination by Contractor)” |
| **Maximum total liability of the Contractor to the Employer** | 17.6 | *[Select one of the two options below as appropriate]*  The product of\_\_\_\_\_\_\_\_\_\_\_\_\_*[insert a multiplier less or greater than one]* times the Accepted Contract Amount,  *or*  the Accepted Contract Amount |
| **Periods for submission of insurance:** | 18.1 |  |
| a. evidence of insurance. |  | 28 days of receipt of Notification of award, before issue of notice for commencement of works |
| b. relevant policies |  | 28 days of receipt of Notification of award before issue of notice for commencement of works |
| **Maximum amount of deductibles for**  **insurance of the Employer's risks** | 18.2(d) | *[Insert maximum amount of deductible, which would be reasonable-after due consultation with Insurance Companies]* |
| **Minimum amount of third party**  **insurance** | 18.3 | *[Insert amount of third party insurance; this minimum amount per occurrence should be commensurate with the risk of damage specific to the Contract]* |
| **Date by which the DB shall be appointed** | 20.2 | 28 days after the Commencement date |
| **The DB shall be comprised of** | 20.2 | “Three Members” |
| **List of potential DB sole members** | 20.2 | None |
| **Appointment (if not agreed) to be made by** | 20.3 | *[Insert name of the appointing entity or official]* |
| **Rules of arbitration** | 20.6(a) | The Arbitration and Conciliation Act 1996. The procedure will be as given in Part B Specific Provisions |

Summary of Sections of the Works

|  |  |  |
| --- | --- | --- |
| **Section Name/Description**  **(Sub-Clause 1.1.5.6)** | **Time for Completion**  **(Sub-Clause 1.1.3.3)** | **Damages for Delay**  **(Sub-Clause 8.7)** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

**Part B- Specific Provisions**

***[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 Provision of the GC and with any specific requirements of the contract. Legal advice is recommended when amending provisions or drafting new ones A few important clauses are given below. Borrower may review and add or modify the suggested clauses as required for the specific Work.]***

**Sub Clause 1.5(i) of This may be substituted as under**

**Priority of Documents (i) the Priced Bill of Quantities**

**(j) the Construction Methodology/Environmental Management Plan**

**(k) any other documents/Schedules forming part of the contract**

|  |  |
| --- | --- |
| **Sub Clause 4.2 Performance Security** | Please insert the following at the end of the third sub paragraph  “If the performance security is a bank guarantee, it shall be issued by a bank located in the country of the Employer (*Nationalized or Scheduled Bank in India*) and shall be valid until a date 28 days from the date of issue of the Taking-Over Certificate.” |
| **Sub Clause 4.4Sub-Contracting** | Please add the following at the end of Sub-clause 4.4  “The Engineer should satisfy whether (a) the circumstances brought out warrant such sub-contracting; and (b) the sub-contractors so proposed for the Work possess the necessary experience, qualifications and equipment for the job proposed to be entrusted to them in proportion to the quantum of work to be sub-contracted.  If the contractor proposed payments to be made directly to the sub-contractor, this should be subject to specific authorization by the contractor so that such consent does not relieve him from any liability or obligations under the contract.”  *Note: 1. Sub-contracting for certain specialized elements of works is acceptable for carrying out the works more effectively; but vertical splitting of the works for sub-contracting is not acceptable.*  *2. In any case, proposal for sub-contracting in addition to what was specified in bid and stated in contract agreement will not be acceptable if the value of such additional sub-contracting exceeds 25% of value of work which was to be executed by Contractor without sub-contracting.”* |
| **Sub Clause 4.18 Protection of the Environment** | Please add the following at the end of the Sub-clause 4.18  “During continuance of the contract, the Contractor and his sub contractors shall abide at all times by all existing enactments on environmental protection and rules made thereunder, regulations, notifications and bye-laws of the State or Central Government, or local authorities and any other law, bye-law, regulations that may be passed or notification that may be issued in this respect in future by the State or Central Government or the local authority.  Salient features of some of the major laws that are applicable are given below:  The Water (Prevention and Control of Pollution) Act, 1974, This provides for the prevention and control of water pollution and the maintaining and restoring of wholesomeness of water. 'Pollution' means such contamination of water or such alteration of the  physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms.  The Air (Prevention and Control of Pollution) Act, 1981, This provides for prevention, control and abatement of air pollution. 'Air Pollution' means the presence in the atmosphere of any 'air pollutant', which means any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment.  The Environment (Protection) Act, 1986, This provides for the protection and improvement of environment and for matters connected therewith, and the prevention of hazards to human beings, other living creatures, plants and property. 'Environment' includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.  The Public Liability Insurance Act, 1991, This provides for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling hazardous substances and for matters connected herewith or incidental thereto. Hazardous substance means any substance or preparation which is defined as hazardous substance under the Environment (Protection) Act 1986, and exceeding such quantity as may be specified by notification by the Central Government.”  [*Employers should note that the Loan Agreement between IBRD and the borrowing country may establish specific measures to be taken during construction of the Works for the protection of the environment. This Sub-clause 4.18 should be modified/expanded to take into account such specific measures*.] |
| **Sub Clause 6.4 Labour Laws** | Please add the following at the end of the Sub-clause 6.4  "During continuance of the contract, the Contractor and his sub-Contractors shall abide at all times by all existing labour enactments and rules made thereunder, regulations, notifications and bye laws of State or Central Government or local authority and any other labour law (including rules), regulations, bye laws that may be passed or notification that may be issued under any labour law in future either by the State or the Central Government or the local authority. Salient features of some of the major labour laws that are applicable to construction industry are given below. The Contractor shall keep the Employer indemnified in case any action is taken against the Employer by the competent authority on account of contravention of any of the provisions of any Act or rules made thereunder, regulations or notifications including amendments. If the Employer is caused to pay or reimburse, such amounts as may be necessary to cause or observe, or for non-observance of the provisions stipulated in the notifications/bye laws/acts/rules/regulations including amendments, if any, on the part of the Contractor, the Engineer/Employer shall also have right to recover from the contractor any sum required or estimated to be required for making good the loss or damage suffered by the Employer.  The employees of the contractor and the sub-contractor in no case shall be treated as the employees of the Employer at any point of time.  SALIENT FEATURES OF SOME MAJOR LABOUR LAWS APPLICABLE TO ESTABLISHMENTS ENGAGED IN BUILDING AND OTHER CONSTRUCTION WORK  (i) Workmen Compensation Act 1923  The Act provides for compensation in case of injury by accident arising out of and during the course of employment.  (ii) Payment of Gratuity Act 1972  Gratuity is payable to an employee under the Act on satisfaction of certain conditions on separation if an employee has completed 5 years service or more or on death at the rate of 15 days wages for every completed year of service. The Act is applicable to all establishments employing 10 or more employees.  (iii) Employees PF and Miscellaneous Provision Act 1952  The Act provides for monthly contributions by the employer plus workers @10 % or 8.33 %. The benefits payable under the Act are:  (a) Pension or family pension on retirement or death as the case may be.  (b) Deposit linked insurance on the death in harness of the worker.  (c) Payment of PF accumulation on retirement/death etc.  (iv) Maternity Benefit Act 1951  The Act provides for leave and some other benefits to women employees in case of confinement or miscarriage etc.  (v) Contract Labour (Regulation and Abolition) Act 1970  The Act provides for certain welfare measures to be provided by the contractor to contract labour and in case the contractor fails to provide, the same are required to be provided by the Principal Employer by Law. The principal employer is required to take Certificate of Registration and the Contractor is required to take a License from the designated Officer. The Act is applicable to the establishments or contractor of principle employer if they employ 20 or more contract labour.  (vi) Minimum Wagers Act 1948  The employer is supposed to pay not less than the Minimum Wages fixed by appropriate Government as per provisions of the act if the employment is a scheduled employment. Construction of Buildings, Roads, Runways are scheduled employments.  (vii) Payment of Wages Act 1936  It lays down as to by what date the wages are to be paid, when it will be paid and what deductions can be made from the wages of the workers.  viii) Equal Remuneration Act 1979  The Act provides for payment of equal wages for work of equal nature to Male and Female workers and not for making discrimination against Female employees in the matters of transfers, training and promotions etc.  (ix) Payment of Bonus Act 1965  The Act is applicable to all establishments employing 20 or more workmen. The Act provides for payments of annual bonus subject to a minimum of 8.33 % of wages and maximum of 20 % of wages to employees drawing Rs.3,500/- P.M. or less. The bonus to be paid to employees getting Rs.2,500/- PM or above upto Rs.3,500/- PM shall be worked out by taking wages as Rs.2,500/- p.m. only. The Act does not apply to certain establishments. The newly set up establishments are exempted for five years in certain circumstances. Some of the State Governments have reduced the employment size from 20 to 10 for the purpose of applicability of the Act.  (x) Industrial Disputes Act 1947  The Act lays down the machinery and procedure for resolution of industrial disputes, in what situations a strike or lock-out becomes illegal and what are the requirements for laying off or retrenching the employees or closing down the establishment.  (xi) Industrial Employment (Standing Orders) Act 1946  It is applicable to all establishments employing 100 or more workmen (employment size reduced by some of the States and Central Government to 50). The Act provides for laying down rules governing the conditions of employment by the employer on matters provided in the Act and get the same certified by the designated Authority.  (xii) Trade Unions Act 1926  The Act lays down the procedure for registration of trade unions of workmen and employers. The trade unions registered under the Act have been given certain immunities from civil and criminal liabilities.  (xiii) Child Labour (Prohibition and Regulation) Act 1986  The Act prohibits employment of children below 14 years of age in certain occupations and processes and provides for regulation of employment of children in all other occupations and processes. Employment of child labour is prohibited in Building and Construction Industry.  (xiv) Inter-State Migrant Workmen's (Regulation of Employment and Conditions of Service) Act 1979  The Act is applicable to an establishment which employees 5 or more inter-state migrant workmen through an intermediary (who has recruited workmen in one state for employment in the establishment situated in another state). The inter-state migrant workmen, in an establishment to which this Act becomes applicable, are required to be provided certain facilities such as housing, medical aid, travelling expenses from home upto the establishment and back, etc.  (xv) The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996 and the Cess Act of 1996  All the establishments who carry on any building or other construction work and employs 10 or more workers are covered under this Act. All such establishments are required to pay cess at rate not exceeding 2 % of the cost of construction as may be notified by the Government. The employer of the establishment is required to provide safety measures at the Building or Construction work and other welfare measures, such as Canteens, First-aid facilities, Ambulance, Housing accommodation for Workers near the workplace etc. The employer to whom the Act applies has to obtain a registration certificate from the Registering Officer appointed by the Government.  (xvi) The Factories Act 1948  The Act lays down the procedure for approval of plans before setting up a factory, health and safety provisions, welfare provisions, working hours, annual earned leave and rendering information regarding accidents or dangerous occurrences to designated authorities. It is applicable to premises employing 10 persons or more with aid of power or 20 or more persons without the aid of power engaged in manufacturing process.  (xvii) Weekly Holidays Act -1942  Contractor will comply with all the relevant laws and the costs of compliance should be included in the over heads and hence not be eligible for any payment separately.” |
| **Sub Clause 6.1 to 6.22** | The Social Clauses are to be complied with by the Contractor as per laws of the Union of India and costs of compliance should be part of his overheads included in the rates for various items. Government of India has a public program for control of HIV/AIDS, Public Distribution System etc and contractor will only need to create a support basis, cost of which should be included in his overheads. **No separate payment will be made to the Contractor in this regard under this contract.** |
| **Sub Clause 10.5**  **(see Clause 4.1(d))** | Please add the following sub clause:  On the completion of works, the Contractor shall arrange to furnish the Employer two (2) bound sets of all “As constructed” drawings (in scale…) for every component of the Work at his own cost, all such copies being on Polyester film of Quality to be approved by the engineer to his Representative. The Taking-Over Certificate of the works, whole or by parts, as per the provisions of Clause 10.1 and 10.2 hereof, shall not be issued by the Engineer in the event of the Contractor’s failure to furnish the aforesaid “As constructed” drawings for the entire Works as specified in Contract Data Clause 4.1 (d).  [*If “as constructed” drawings are required in compact disc, please modify and state here clearly*] |
| **Sub Clause 14.1 (e)**  **The Contract Price** | Please add the following at the end of Sub-Clause 14.1 (e)  “Note: Contractor’s attention is invited to Government of India, Central Excise notification 108/95 and customs notification 85/99. They will be solely responsible for obtaining such benefits and Employer will not compensate the contractor in case of failure to receive such benefits. Employer will give only necessary certificates in terms of such notifications as per information given in Declaration Form.” |
| **Sub Clause 14.3 (h) Tax Deducted at Source (TDS)**  **Sub Clause 20.2**  **Dispute Board** | Add the following as Sub-clause 14.3 (h) :  The amount to be deducted towards the advance income tax shall be at the rate of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\* [*Blank to be filled*) percent and the advance works contract tax at the rate of \_\_\_\_\_\_\_\_\_\_\* percent.  *\* The percentages as indicated above will be subject to change applicable according to law from time to time.*  **Add at the end of the clause:**  The Fee & other expenses payable to the Dispute Board Members shall be as per Annexure-I.  The Proceedings to be issued to the Dispute Board Members is as shown in the Annexure- I (A).  The Recommendation of the Dispute Board shall be in the format shown in the Annexure – I (B). |
| **Sub Clause 20.6 Arbitrator** | “ 1. Arbitration will be held as under:  Any dispute in respect of which the Recommendation(s), if any, of the Board has not become final and binding shall be finally settled by arbitration as set forth below. The arbitral tribunal shall have full power to open-up, review and revise any decision, opinion, instruction, determination, certificate or valuation of the Engineer and any Recommendation(s) of the Board related to the dispute.  (i) A dispute with the Contractor shall be finally settled by arbitration in accordance with the Arbitration & Conciliation Act, 1996, or any statutory amendment thereof. The arbitral tribunal shall consist of 3 arbitrators, one each to be appointed by the Employer and the Contractor. The third Arbitrator shall be chosen by the two Arbitrators so appointed by the Parties and shall act as Presiding arbitrator. In case of failure of the two arbitrators, appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the arbitrator appointed subsequently, the Presiding arbitrator shall be appointed by the \*President of the Institution of Engineers (India). |
|  | (ii) Neither party shall be limited in the proceedings before such tribunal to the evidence or arguments before the Board for the purpose of obtaining its Recommendation(s). No Recommendation shall disqualify any Board Member from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute.  (iii) Arbitration may be commenced prior to or after completion of the Works, provided that the obligations of the Employer, the Engineer, the Contractor and the Board shall not be altered by reason of the arbitration being conducted during the progress of the Works.  (iv) If one of the parties fail to appoint its arbitrator in pursuance of sub-clause (i) and (ii) above, within 30 days after receipt of the notice of the appointment of its arbitrator by the other party, then the President of the Institution of Engineers (India) both in cases of foreign contractors as well as Indian Contractors, shall appoint the arbitrator. A certified copy of the order of the President of the Institution of Engineers (India) making such an appointment shall be furnished to each of the parties.  (vi) Arbitration proceedings shall be held at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ India, and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English.   1. The decision of the majority of arbitrators shall be final and binding upon both parties. The cost and expenses of Arbitration proceedings will be paid as determined by the arbitral tribunal. However, the expenses incurred by each party in connection with the preparation, presentation, etc., of its proceedings as also the fees and expenses paid to the arbitrator appointed by such party or on its behalf shall be borne by each party itself. 2. The Arbitrator should give final award within……… days of starting of the proceedings [*indicate the days (Between 120-180) by which arbitrator should give award].*   2. The Fee & other expenses payable to the Arbitrators shall be as per Annexure-II.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *\* Insert Chairman of the Executive Committee of the Indian Roads Congress (for highway project) or any other appropriate institution (for other types of works).* |
| **Sub Clause 7 Termination [General conditions of Dispute Board Agreement in page 223]** | Please add the following:  The Dispute Board shall terminate its activities on completion of the construction contract after final payment has been made in accordance with G.C. clause 14.13 and discharge referred in GC clause 14.12 shall become effective. |

|  |  |  |
| --- | --- | --- |
| **ANNEXURE-1** | | |
|  |  |  |
| **Fee & other expenses payable to the Dispute Board Members including Chairman*(the figures are indicative-Amend as appropriate for each case)*** | | |
|  |  |  |
| **S. No.** | **Particulars of fee & other charges** | **Amount Payable** |
| **1** | Retainership fee, Secretarial assistance and incidental charges (Telephone, Fax, Postage etc.)**during construction period** | Rs. 10,000/- per month for one package and maximum of Rs. 20,000/- per month for 2 or more packages. |
| **2** | Daily fee during site visit | Rs. 5,000/- |
| **3** | Travelling Expenses | Economy Class by Air, A.C. First Class by train and A.C. Taxi by road |
| **4** | Lodging | (i) Upto Rs. 10,000/- per day (Metro cities) (ii) Upto Rs. 5,000/- per day (Other cities) (iii) Rs. 2000/- per day (Own arrangement) |
| **5** | Extra charges for days other than hearing/ meeting days (travel upto a maximum of 2 days on each occasion) | Rs. 2,000/- per day |
| **6** | Escalation | The retainership fee shall remain fixed for the term of each Board Member. |
| **7** | Retainership fee, Secretarial assistance and incidental charges (Telephone, Fax, Postage etc.) **during Defects Notification Period (DNP)** | With effect from the first day of the calendar month following in which the Taking Over Certificate, referred to in Cl. 10 of GCC and Specific Provisions of the contract, is issued for the whole of the works, the Board Members shall receive only one-third (1/3rd) of the monthly retainership fee mentioned at S.No.1 above. |
|  |  |  |
| **Note:** | **1.** Lodging, boarding and travelling expenses shall be allowed only for those members who are residing 100 kms away from place of meeting. | |
|  | Delhi, Mumbai, Chennai, Kolkata, Bangalore and Hyderabad shall be considered as Metro cities. | |

**ANNEXURE – 1 (A)**

**Draft Letter of Appointment of Dispute Board Members**

**GOVERNMENT OF ………………..**

**…………………………….Department**

**Date :…………………...**

**To**

1. **Sri ………………………. Chairman of the Dispute Board.**
2. **Sri ………………………. Member of the Dispute Board.**
3. **Sri ………………………. Member of the Dispute Board.**

**Sir,**

**Sub: -** Widening and Strengthening of…………………………………… for contract package ………………………….

1. We, hereby confirm your appointment for the Dispute Board for the above contract to carry out the assignment specified in this Letter of Appointment.
2. For Administrative purposes Project Director, …………, has been assigned to administer the assignment, to carry out the assignment on behalf of both the Employer and the Contractor. The services will be required during the period of contract for the work of …………………………………
3. The conditions of services for functioning of the Board Members and the rules and procedures to be followed by Dispute Board in resolution of Disputes are given in detail in the contract agreement vide Clause 20 of General Conditions of Contract read along with Appendix (A General Conditions of DB agreement and Procedural Rules).
4. The appointment will become effective, upon confirmation of this letter by you. The appointment shall be liable for termination under a 30 (Thirty) days written notice from the date of issue of the notice, if both Employer and the Contractor so desire. 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 GC clause 14.12 (Discharge) shall have become effective.
5. The payments for your services shall be made as per Annexure-I enclosed along with this letter :
   1. **Escalation**. The retainership fees shall remain fixed for the period of each Board Member’s term.
   2. With effect from the first day of the calendar month following in which the Taking Over Certificate referred to in Clause 10 of GCC and Specific Provisions is issued for the whole of the works, the Board Members shall receive only one-third of the monthly retainer fee. Beginning with the next month after the Defects Notification Period expires; the Board Members shall no longer receive any monthly retainer fee.
   3. The members shall submit invoices for payment of the monthly retainer fee 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 the activities performed during the relevant period and shall be addressed to the Contractor. The Contractor(or the Employer as may be mutually agreed between contractor and Employer) shall pay each of the Members’ 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.
   4. Failure of either the Employer or the Contractor to make payment in accordance with this Agreement shall constitute an event of default under the contract, entitling the non-defaulting party to take the measures set forth, respectively, in Clause 6 of the Appendix.
   5. Notwithstanding such event of default, and without waiver of rights there from, in the event that either the Employer or the Contractor fails to make payment in accordance with these Rules and Procedures, the other party may pay whatever amount may be required to finance the operation of the Board. The party making such payments, in addition to all other rights arising from such default shall be entitled to reimbursement of all sums paid in excess of one-half of the amount required to maintain operation of the Board, plus all costs of obtaining such sums.
6. In accepting this assignment, you should understand and agree that you are responsible for any liabilities and costs arising out of risks associated with travel to and from the place of assignment. This includes (but is not limited to) risks such as accident (death and injury), illness, emergency repatriation, loss or damage to personal/ professional effects and property. You are advised to effect personal, insurance cover in respect of such risks, if you do not already have such cover in place. In this regard, you shall maintain appropriate medical, travel, accident and third-party liability insurance. The obligation under this paragraph will survive till termination of this appointment.
7. You will carry out the assignment in accordance with the highest standard of professional and ethical competence and integrity, having due regard to the nature and purpose of the assignment, and will conduct yourself in a manner consistent herewith. The format for submission of recommendations is given in Annexure- ….
8. You agree that all knowledge and information not within the public domain, which may be acquired while carrying out this service shall be, for all time and for all purpose, regarded as strictly confidential and held in confidence, and shall not be directly or indirectly disclosed to any party whatsoever, except with the permission of the employer and the Contractor.
9. You agree that any manufacturing or construction firm, with which you are associated with, will not be eligible to participate in bidding for any goods or works resulting from or associated with the project of which this consulting assignment forms a part.
10. Kindly sign two copies of this letter and return one copy each of the both to Employer and to the Contractor.

**Read and Agreed Name of the Member of Dispute Board**

**Place: Signature**

**Date:**

**Name of Employer Name of the Contractor**

**Signature of authorized**

**Representative of Employer. Signature of authorized**

**Representative of Contractor**

**ANNEXURE – 1 (B)**

**[Project Name]**

**Recommendation of Dispute Board**

Dispute No. ………………………. (NAME OF DISPUTE).

Hearing Date……………….., 20……….

**Dispute**

Description of dispute. A one or two sentence summation of the dispute.

**Contractor’s Position**

A Short summation of the Contractor’s position as understood by the board.

**Owner’s Position**

A Short summation of the Contractor’s position as understood by the board.

**Recommendation**

The board’s specific recommendation for settlement of the dispute. (The recommended course is consistent with the explanation).

**Explanation**

This section could also be called Considerations, Rationale, Findings, Discussion, and so on

The Board’s description of how each recommendation was reached.

Respectfully submitted,

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

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

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

|  |  |  |
| --- | --- | --- |
| **ANNEXURE-2** | | |
|  |  |  |
| **Fee & other expenses payable to the Arbitrators*(Figures are indicative- To be changed as appropriate for each case)*** | | |
|  |  |  |
| **S.No.** | **Particulars of fee and other charges** | **Amount payable per arbitrator/per case** |
| **1** | Arbitrator fee | Rs 10,000/- per day subject to a maximum of Rs 2 lakhs per case; or Rs 1.5 lakhs (lump sum) subject to publishing the award within 12 months. 12 months will be reckoned from the date of first meeting. |
| **2** | Reading charges | Rs 10,000/- |
| **3** | Secretarial Assistance and Incidental charges (telephone, fax, postage etc.) | Rs 15,000/- |
| **4** | Charges for publishing / declaration of the award. | Maximum of Rs 15,000/- |
| **5** | Other Expenses (As per actuals against bills subject to maximum of the prescribed ceiling given below) | |
|  | Traveling expenses | Economy class by air, first class AC by train, AC car by road. |
|  | Lodging and Boarding | (i) Upto Rs. 10,000/- per day (Metro cities) (ii) Upto Rs. 5,000/- per day (Other cities) (iii) Rs. 2000/- per day (Own arrangement) |
| **6** | Local travel | Rs 1000/- per day |
| **7** | Extra charges for days other than hearing/ meeting days (maximum for 2 days) | Rs. 2,500/- per day |
|  |  |  |
| **Note:** | **1.** Lodging, boarding and travelling expenses shall be allowed only for those members who are residing 100 kms away from place of meeting. | |
|  | 1. Delhi, Mumbai, Chennai, Kolkata, Bangalore and Hyderabad shall be considered as Metro cities. | |

|  |
| --- |
| Annexure 3 |

## Tables of Adjustment Data proposed by Employer

(Cl. 13.8 of GCC)

**Table 1: Coefficients governing the adjustment for changes in cost schedule wise.**

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **S. No.** | **Coefficients Name** | **Symbol** | **Schedules (Reference Number)**  **[*Description of each schedule is given below*]** | | | | | | | | |
|  |  |  | S1 | S2 | S3 | S4 | S5 | S6 | S7 | S8 | S9 |
| 1. | Fixed | a | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 |
| 2. | Labour [L] | b |  |  |  |  |  |  |  |  |  |
| 3. | Steel [S] | c |  |  |  |  |  |  |  |  |  |
| 4. | Cement [C] | d |  |  |  |  |  |  |  |  |  |
| 5. | Plant & Equipment spares [E] | e |  |  |  |  |  |  |  |  |  |
| 6. | Diesel and Petroleum products [D] | f |  |  |  |  |  |  |  |  |  |
| 7. | Bitumen [B] | g |  |  |  |  |  |  |  |  |  |
| 8. | Others[O] | 0 |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |
|  | **Total** |  | **100%** | **100%** | **100%** | **100%** | **100%** | **100%** | **100%** | **100%** | **100%** |

[*Fixed element is normally 15%*]

|  |
| --- |
| ***BOQ SCHEDULES***  ***[The following Schedules are for example only and may be modified and specified as appropriate for each work, keeping in view how Employer desires to regulate the adjustment. If only one common adjustment is proposed specify appropriately)***  Schedule/Bill no1: General items  Schedule/Bill no 2 Earth Works  Schedule/Bill no 3: Culverts and Bridges,  Schedule/Bill no 4: Steel Fabrication Works  Schedule /Bill no5: Road Works –WBM  Schedule/Bill no6: Road BTM  Schedule/ Bill no 7: …….. |

Table 2: Cost Indices and Reference Prices (applicable for specific items) for adjustment in contract prices (as per formula provided in GCC 13.8)

WPI with base 2004-2005 = 100 on the Base date

Base Date means the date determined as per definition provided in GCC 1.1.3.1.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| S. No. | Cost Element | Symbol | Indices or Cost on the Base Date | Index for adjustment | Sources of Index |
|
| [1] | [2] | [3] | [4] | [5] | [6] |
| 1. | Fixed | a |  |  |  |
| 2. | Labour | b | Lo- all India average Consumer Price Index (CPI) Number for Industrial Workers for ….. centre[[21]](#footnote-21) (Base 2001 = 100) on the base date. | Ln-CPI for the month for which the IPC is related | Labour Bureau, Ministry of Labour and Employment, Government of India. |
| 3. | Steel | c | So – Whole-sale Price Index (WPI) for Steel [*Steel Long]* | Sn-WPI for the month which is two months prior to the month to which IPC is related | Economic Advisor, Ministry of Commerce and Industry, Government of India. |
| 4. | Cement | d | Co-WPI for Grey Cement | Cn-WPI for the month which the cement is brought to site or one month prior to the month to which IPC is related, whichever is less | Economic Advisor, Ministry of Commerce and Industry, Government of India |
| 5. | Plant & Equipment spares | e | Eo-WPI for “Construction machinery ” | En – WPI for the month to which IPC is related | Economic Advisor, Ministry of Commerce and Industry, Government of India |
| 6. | Diesel**[[22]](#footnote-22)** | f | Do-Unit Cost from the identified depot on the base date | Dn-Unit Cost for on the first day of the month to which the IPC relates | From the ………. Depot |
| 7. | Bitumen**[[23]](#footnote-23)** | g | Bo-Unit Cost from the identified refinery on the base date | Bn- Cost per unit quantity on the first day of the month in which the material is brought to site or two months prior to the date to which IPC is related | From …. Refinery |
| 8. | Others | h | Oo-All India Wholesale Price Index(WPI) for all commodities | On- All India WPI for all commodities for the month to which IPC is related | Economic Advisor, Ministry of Industry, Government of India |

IPC – Interim Payment Certificate

*Note - Where these percentages could substantially vary due to different construction methodology adopted, a range may be indicated by the Employer and Bidders may be requested to comment on the percentages in the pre bid meeting and based on the comments/ discussions this could be readjusted and fixed and advised as amendment to bidding document to enable bidders to quote to a common base*

**Section X. Contract Forms**

The Notification of Award/Letter of acceptance will be the basis for formation of the Contract as described in ITB-39. This Standard Form should be filled in and sent to the successful Bidder only after evaluation of bids has been completed, subject to any review by the Bank required under the Loan Agreement.

Section IX of the BD also contains forms for the Contract Agreement, the Performance Security, and the Advance Payment Security. Bidders shall not submit these forms with their bids. After issue of letter of acceptance, the successful bidder shall submit to the Employer the Performance Security and, if applicable, the Advance Payment Security, using the respective forms provided in Section X along with the construction program. Employer shall keep the Contract Agreement ready using the Contract Agreement form and the successful Bidder shall sign the Contract Agreement in the office of Employer.

#### Letter of Acceptance

#### Contract Agreement

Iii) Issue of notice for commencement of works

iv) Performance Security

v) Advance Payment Security

vi) Retention money Security

**Letter of Acceptance**

(letterhead paper of the Employer)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[date]

To: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[name and address of the Contractor]

Dear Sirs,

1. This is to notify you that your Bid dated \_\_\_\_\_\_\_\_\_\_\_\_ for execution of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [name of the contract and identification number, as given in the Instructions to Bidders] for the Contract Price of Rupees ——————————— \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_\_\_\_\_\_\_\_\_\_\_) [amount in words and figures], as corrected and modified in accordance with the Instructions to Bidders1 is hereby accepted by our Agency.

2. You are hereby requested to furnish Performance Security, plus additional security for unbalanced bids in terms of ITB clause 42 in the form detailed Section IX, for an amount of Rs.————— within 28 days of the receipt of this letter of acceptance, valid upto 28 days from the date of issue of taking over certificate as stated in Clause 4.2 of GC i.e. upto ........... and sign the contract, failing which action as stated in Para 42.2 of ITB will be taken.

3. Employer proposes the name of Mr…………………………………….. as one member of the Dispute Review Board in terms of GCC Clause 20.2. Please indicate the name of second Dispute Review Board Member within 28 days of issue of this letter.

4. We note that as per bid, you do not intend to subcontract any component of work.

[OR]

We note that as per bid, you propose to employ M/s. .......................................... as sub-contractor for executing ….........................................

*[Delete whichever is not applicable]*

5. We have reviewed the work methods including environmental management plan submitted by you in the technical proposal alongwith the bid and our comments are given in the attachment. You are requested to submit a revised Program including environmental management plan as per clause 8.3 of General Conditions of Contract within 28 days of receipt of this letter.

Yours faithfully,

Authorized Signature

Name and Title of Signatory

Name of Agency

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*1 Delete "corrected and" or "and modified" if only one of these actions applies. Delete "as corrected and modified in accordance with the Instructions to Bidders" if corrections or modifications have not been effected.*

**Contract Agreement**

THIS AGREEMENT made the \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***name of the Employer*** \_\_\_\_\_\_\_\_\_\_\_ (hereinafter “the Employer”), of the one part, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_ ***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.*

1. *the Letter Of Acceptance*
2. *the Letter of Bid*
3. *the addenda Nos \_\_\_****insert addenda numbers if any****\_\_\_\_\_*
4. *the Particular Conditions*
5. *the General Conditions;*
6. *the Specification*
7. *the Drawings; and*
8. *the completed price and other Schedules,*
9. *Construction Program*
10. *Joint Venture agreement (wherever applicable)*

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

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

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

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

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

for and on behalf of the Employer for and on behalf of the Contractor

in the presence of in the presence of

Witness, Name, Signature, Address, Date Witness, Name, Signature, Address

**Issue of Notice for commencement of work**

(Letter head of the Employer)

\_\_\_\_\_\_\_\_\_ (*date*)

To

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(*name and address of the Contractor)*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dear Sirs:

Pursuant to your furnishing the requisite Performance security as stipulated in ITB clause 42.1, insurance policy as per GCC 18, construction methodology/ program/ environmental management plan as stated in letter of acceptance, other documents as per GCC Clause 8 and signing of the contract agreement for the construction of\_\_\_\_\_\_\_\_\_\_\_\_\_\_@ a Bid Price of Rs.\_\_\_\_\_\_\_\_\_\_\_, you are hereby instructed to commence with the construction/ execution of the said works in accordance with the contract Agreement

Yours faithfully,

(Signature, name and title of signatory authorized to sign on behalf of Employer)

**Performance Security Format**

**[Including Additional Performance Security for unbalanced bids]**

*[Guarantor letterhead or SWIFT identifier code]*

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

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

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

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

We have been informed that \_ *[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, 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]*,[[24]](#footnote-24)1 such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary’s complying demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the …. Day of ……, 2… [[25]](#footnote-25)2, and any demand for payment under it must be received by us at this office indicated above on or before that date.

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

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

Advance Payment Security

*[Guarantor letterhead or SWIFT identifier code]*

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

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

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

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

We have been informed that *[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, 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][[26]](#footnote-26)* upon receipt by us of the Beneficiary’s complying demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

* + 1. has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or
    2. has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

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

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of 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]*, 2 *[insert year]*,[[27]](#footnote-27)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.

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

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

Retention Money Security

Demand Guarantee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *Bank’s name and address of issuing branch or office]*

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

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

**RETENTION MONEY GUARANTEE NO.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

We have been informed that \_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[name of contractor]* (hereinafter called “the Contractor”) has entered into Contract No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[reference number of the contract]* dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with you, for the execution of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*[nane of contract and brief description of Works]* (hereinafter called “the Contract”).

Furthermore, we understand that, according to the conditions of the Contract, when the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment, payment of \_\_\_\_\_\_\_\_\_\_\_*[insert* the second half of the Retention Money*]* is to be made against a Retention Money guarantee.

At the request of the contractor, we \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*[name of Bank]* hereby irrevocably undertake to pay you the sum or sums not exceeding in total an amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[amount in Rupees]* (\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) *[amount in words]1*upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract without cavil or argument.

It is a condition for any claim and payment under this guarantee to be made that the payment of the second half of the Retention Money referred to above must have been received by the Contractor on its account number \_\_\_\_\_\_\_\_\_ at \_\_\_\_\_\_\_\_\_\_\_ *[name and address of Bank].*

This guarantee shall expire, at the latest, 21 days after the date when the Employer has received a copy of the Defects Liability Certificate issued by the Project Manager. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

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

*[Signature(s)]*

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

*1. The Guarantor shall insert an amount representing the amount of the second half of the Retention Money.*

1. Non performance, as decided by the Employer, shall include all contracts where (a) nonperformance was not challenged by the contractor, including through referral to the dispute resolution mechanism under the respective contract, and (b) contracts that were so challenged but fully settled against the contractor. Non performance shall not include contracts where Employers decision was overruled by the dispute resolution mechanism. Non performance must be based on all information on fully settled disputes or litigation, i.e. dispute or litigation that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the Bidder have been exhausted. [↑](#footnote-ref-1)
2. The Bidder shall provide accurate information on the letter of Bid about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the last five years. A consistent history of court/arbitral awards against the Bidder or any member of a joint venture may result in disqualifying the Bidder. [↑](#footnote-ref-2)
3. ***Use one of the two options as appropriate.*** [↑](#footnote-ref-3)
4. ***If none has been paid or is to be paid, indicate “none”.*** [↑](#footnote-ref-4)
5. The method of measurement should be spelled out precisely in the Preamble to the Bill of Quantities, describing for example the allowances (if any) for timbering in excavation, etc. Many national standard reference guides have been prepared on the subject, and one such guide is the *Standard Method of Measurement* of the U.K. Institution of Civil Engineers. [↑](#footnote-ref-5)
6. (i) A “Daywork Schedule” is commonly found in contracts where the likely incidence of unforeseen 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 G.C.C. Sub-Clause 13.6. A Daywork Schedule normally has the disadvantage of not being competitive among 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 documents, 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.

   (ii) The total amount assigned to such competitive daywork is normally 3–5 percent of the estimated base Contract Price and is regarded as a Provisional Sum for contingencies 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 invariable whatever quantities of work are ordered. [↑](#footnote-ref-6)
7. This method of indicating profit and overheads separately facilitates the addition of further items of daywork, if needed, the basic costs of which 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 this paragraph and the relevant Daywork Schedule should be modified accordingly. [↑](#footnote-ref-7)
8. This is an example of wording to include overhead and profit, etc., in the daywork rates. A separate percentage addition could be used as for labour and materials. [↑](#footnote-ref-8)
9. An alternative, sometimes adopted for administrative convenience, is to include the cost of drivers, operators, and assistants in the basic rates for Contractor’s Equipment. The last sentence of paragraph 5 should then be modified accordingly. [↑](#footnote-ref-9)
10. In this context, any action to influence the procurement process or contract execution for undue advantage is improper. [↑](#footnote-ref-10)
11. For the purpose of this sub-paragraph, “*another party*” refers to a public official acting in relation to the procurement process or contract execution. In this context, “*public official*” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions. [↑](#footnote-ref-11)
12. For the purpose of this sub-paragraph, “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution. [↑](#footnote-ref-12)
13. For the purpose of this sub-paragraph, “parties” refers to participants in the procurement process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish bid prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions. [↑](#footnote-ref-13)
14. For the purpose of this sub-paragraph, “party” refers to a participant in the procurement process or contract execution. [↑](#footnote-ref-14)
15. A firm or individual may be declared ineligible to be awarded a Bank financed contract upon: (i) completion of the Bank’s sanctions proceedings as per its sanctions procedures, including, inter alia, cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks, and through the application the World Bank Group corporate administrative procurement sanctions procedures for fraud and corruption; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanctions proceeding. See footnote 14 and paragraph 8 of Appendix 1 of these Guidelines. [↑](#footnote-ref-15)
16. A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding document) is one which has either been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower. [↑](#footnote-ref-16)
17. “Another party” refers to a public official acting in relation to the procurement process or contract execution]. In this context, “public official” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions. [↑](#footnote-ref-17)
18. “Party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution. [↑](#footnote-ref-18)
19. “Parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels. [↑](#footnote-ref-19)
20. “Party” refers to a participant in the procurement process or contract execution. [↑](#footnote-ref-20)
21. The Centre to be specified should be the relevant one for which CPI is published by the Labour Bureau. [↑](#footnote-ref-21)
22. The PCC specifies the identified depot for the rate of diesel for the base date and the applicable date for price adjustment. [↑](#footnote-ref-22)
23. The PCC specifies the identified refinery for the rate of Bitumen for the base date and the applicable date price adjustment. [↑](#footnote-ref-23)
24. *1 The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Beneficiary.* [↑](#footnote-ref-24)
25. *2 Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”* [↑](#footnote-ref-25)
26. *The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.* [↑](#footnote-ref-26)
27. 2 *Insert the expected expiration date of the Time for Completion. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”* [↑](#footnote-ref-27)