



European Bank
for Reconstruction and Development

Standard Tender Documents

Procurement of Simple Goods

(Trial Edition)

May 2018

Preface

This trial edition of the **Standard Tender Documents for Simple Goods (STD-SG)** has been prepared by the European Bank for Reconstruction and Development (hereafter referred to as 'the Bank') for use by its borrowers.

It is intended to serve as a model for the procurement of goods of a simple nature and complexity and/or with low value (typically not more than EUR 250,000). More complex or high value contracts for goods be contracted under should be procured using the Bank's "Standard Tender Document for the Procurement of Goods and Related Services".

Purchasers or their procurement consultants should complete these documents by entering data specific to the procurement in question in the relevant sections; in some cases, this necessitates a selection from different alternatives presented in the documents. These alternatives are illustrative and not necessarily comprehensive. Other customised provisions may be required in certain cases.

The use of tender and performance securities is optional in this STD-SG. A decision to require such securities should be part of the overall approach to risk management and should take into account available measures to reduce the risk of the Supplier's default.

This STD-SG has been identified as a "Trial Edition". Any feedback and comments should be directed to the Procurement Policy Advisory Department (PPAD) of the Bank email: procurement@ebrd.com

When completing the documents, the Purchaser or their procurement consultants should further consider that as part of its commitment to sustainable development, the Bank promotes the application of good international practice regarding environmental and social matters as stipulated in the Bank's Environmental and Social Policy¹ and its Performance Requirements².

The following guidelines should be observed:

- (a) Specific details such as the "name of the Purchaser" or "address for tender submission" should be entered where indicated.
- (b) Guidance Notes on using these documents are provided in boxed text e.g. , provisions in italic font or in square brackets e.g. [] that contain instructions and guidance which the drafter should follow. They are not part of the text and should not be included in the final document to be issued to potential Tenderers.
- (c) When submitting tender documents to the Bank for review, clients should state whether these Standard Tender Documents & User's Guide have been used. If so, the client should:
 - i confirm that the Instructions to Tenderers and the General Conditions of Contract have been used without change;
 - ii highlight any proposed changes to the following:
 - Letter of Tender
 - Tender Forms
 - Form of Tender Security
 - Manufacturer's Authorisation
 - Letter of Acceptance
 - Contract Agreement and Contract Forms
 - Performance Security (if applicable)
 - Bank Guarantee for Advance Payment (if applicable);

These documents reflect the structure and provisions of the Master Document, except where specific considerations within the Bank have required a change and are comprised of the following Sections:

¹ <http://www.ebrd.com/documents/comms-and-bis/pdf-environmental-and-social-policy.pdf>

² <http://www.ebrd.com/who-we-are/our-values/environmental-and-social-policy/performance-requirements.html>

Section I: Instructions to Tenderers (ITT)

This Section provides information to help Tenderers prepare their tenders. Information is also provided on the submission, opening and evaluation of tenders as well on the award of Contracts. The text found in the clauses of this Section can only be modified, adjusted or supplemented through Section II: Tender Data Sheet.

Section II. Tender Data Sheet (TDS)

This Section includes provisions which are specific to each individual procurement and which modify, adjust or supplement Section I: Instructions to Tenderers.

Section III. Evaluation and Qualification Criteria

This Section specifies the criteria to be used to determine the lowest evaluated tender and the requirements for the Tenderer's qualification to perform the Contract. The criteria for tender evaluation and the methods for applying such criteria in evaluation should be reviewed carefully. It may be appropriate to delete or to modify some of the criteria given in this document or to use additional criteria. In any event, criteria must be quantified in monetary terms except in rare occasions where that is not practical.

Section IV: Tender Forms

This Section includes the forms which are to be completed by the Tenderer and to be submitted as part of its tender.

Section V. Supply Requirements

This Section contains the List of Goods and Related Services, the Delivery and Completion Schedules, the Technical Specifications and the Drawings that describe the Goods and Related Services to be procured.

Section VI. General Conditions of Contract (GCC)

This Section contains the general clauses to be applied to all contracts. The text of the clauses in this Section can only be modified or adjusted through Section VII: Particular Conditions of Contract. (PCC)

Section VII. Particular Conditions of Contract (PCC)

The contents of this Section contain clauses specific to each Contract that modify or supplement Section VI: General Conditions of Contract. The sections included in these documents should only be regarded as representative of the most common provisions. All particular conditions should be selected and/or drafted by the Purchaser specifically for each procurement.

Section VIII: Annex to the PCC - Contract Forms

This section contains forms which once completed will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful Tenderer after Contract award.

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The Invitation for Tenders provides information that enables potential Tenderers to decide whether to participate.

The Invitation for Tenders must be published on the Bank's website www.ebrd.com (but not before the publication of the General Procurement Notice) as well as the Purchaser's own procurement website and official government procurement portal in the Purchaser's country. When practical the Invitation for Tenders shall also be published in a newspaper with wide circulation in the Purchaser's country and official gazettes or international trade publications as appropriate. The notice should also be sent to potential suppliers that have responded to the General Procurement Notice and to local representatives of potential foreign supplier's e.g. commercial attachés of the embassies accredited in the Purchaser's country. Purchasers should maintain a register of all potential Tenderers, who have purchased the tender documents, and make it available to interested parties. The Bank shall also arrange for publication in the United Nations Development Business and in the Official Journal of the European Union.

Although the Invitation for Tenders does not form part of the tender documents, it shall be submitted to the Bank as part thereof for review and no objection. The information in the Invitation for Tenders must be consistent with and reflect the information provided by the tender documents. Apart from the essential items listed in the Standard Tender Documents the Invitation for Tenders should also indicate any important tender evaluation criteria and/or qualification requirements.

INVITATION FOR TENDERS

... [insert the name of the Country]

... [insert name of the Project]

... [insert the goods and related services to be procured]

1. This Invitation for Tenders follows the General Procurement Notice for this project which was published on the European Bank for Reconstruction and Development (the Bank) website, Procurement Notices (www.ebrd.com) on ... [state the date of publication].
2. [insert Name of Purchaser] hereinafter referred to as "the Purchaser", intends using part of the proceeds of a loan from the Bank towards the cost of [insert name of the Project].
3. The Purchaser now invites sealed tenders from Suppliers for the following Contract[s] to be funded from part of the proceeds of the loan:

_____ [insert brief description of Contract(s)] _____

Tenders are invited for one or more lots. Each lot must be priced separately. Tenders for more than one lot may offer discounts and such discounts will be considered in the comparison of tenders.

Delete the above if tendering process does not involve more than one Contract/lot.

4. Tendering for contracts to be financed with the proceeds of a loan from the Bank is open to firms from any country.
5. To be qualified for the award of a Contract, Tenderers must substantially satisfy the following minimum criteria: [Replicate the information contained in Section III: Evaluation and Qualification Criteria – B: Qualification Criteria]
6. The tender documents are available electronically, on a free of charge basis.
7. All tenders must be accompanied by a tender security of.... [state currency and amount deemed appropriate by the Purchaser. This should be consistent with paragraph 19.1 of the Instructions to Tenderers(ITT)] _____, or its equivalent in a convertible currency.

Delete the above paragraph if a tender security is not required.

8. Tenders must be delivered to the office at the address below on or before**[specify time and date of deadline for submission]**, at which time they will be opened in the presence of those Tenderers' representatives who choose to attend.

The date for submission of tenders shall be not less than 28 calendar days after the date of publication of the Invitation for Tenders or the availability of the tender documents, whichever is the latest. A longer tender period would be appropriate for complex or large contracts and for tenders requiring a pre-tender meeting or site visit.

9. The applicable procurement rules are the Bank's Procurement Policies and Rules (PP&R) which can be located at: <http://www.ebrd.com/news/publications/policies/procurement-policies-and-rules.html>
10. Prospective tenderers may obtain the tender documents and further information through the following contact details:

..... **[Insert name of Contact]**
..... **[Insert name of Purchaser]**
..... **[Insert Address of Purchaser]**
..... **[Insert Tel:]**
..... **[Insert Fax:]**
..... **[Insert email address]**

[Insert date of letter] Date: _____

TENDER DOCUMENT FOR PROCUREMENT OF SIMPLE GOODS

PROCUREMENT OF:

Issued on:	
Tender No:	
Purchaser:	
Country:	

Tender Document

TABLE OF CONTENTS

Section I: Instructions to Tenderers.....	1
Section II: Tender Data Sheet	18
Section III: Evaluation and Qualification Criteria	23
Section IV: Tender Forms	26
Section V: Supply Requirements.....	36
Section VI: General Conditions of Contract	38
Section VII: Particular Conditions of Contract	50
Section VIII: Annex to the PCC - Contract Forms	53

Section I: Instructions to Tenderers

TABLE OF CONTENTS

A. GENERAL	3
1. Scope of Tender.....	3
2. Source of Funds and Applicable Procurement Rules	3
3. Prohibited Practices	3
4. Eligible Tenderers	4
5. Eligible Goods and Related Services	6
B. CONTENTS OF TENDER DOCUMENT	7
6. Sections of Tender Document	7
7. Clarification of Tender Document, Site Visit, Pre-Tender Meeting.....	7
8. Amendment of Tender Document	8
C. PREPARATION OF TENDERS	8
9. Cost of Tendering.....	8
10. Language of Tender.....	8
11. Documents Comprising the Tender	8
12. Letter of Tender and Price Schedules	8
13. Alternative Tenders.....	9
14. Tender Prices and Discounts	9
15. Currencies of Tender	9
16. Documents Establishing the Qualifications of the Tenderer.....	9
17. Documents Establishing the Eligibility of Goods and Related Services	9
18. Period of Validity of Tenders	9
19. Tender Security.....	9
20. Format and Signing of Tender	10
D. SUBMISSION AND OPENING OF TENDERS	11
21. Submission, Sealing and Marking of Tenders	11
22. Deadline for Submission of Tenders	11
23. Late Tenders	11
24. Withdrawal, Substitution, and Modification of Tenders	12
25. Tender Opening	12

E. EXAMINATION OF TENDERS	13
26. Confidentiality	13
27. Clarification of Tenders	13
28. Determination of Responsiveness.....	13
29. Nonmaterial Nonconformities.....	14
F. TENDER EVALUATION AND COMPARISON	14
30. Evaluation of Tenders and Correction of Arithmetical Errors.....	14
31. Conversion to Single Currency	15
32. Tender Adjustments	15
33. Qualification of the Tenderer	15
34. Purchaser or Employer’s Right to Accept Any Tender, and to Reject Any or All Tenders.....	15
G. AWARD OF CONTRACT	15
35. Award Criteria.....	16
36. Notification of Award	16
37. Signing of Contract Agreement	16
38. Performance Security	16
H. COMPLAINTS	17
39. Complaint Procedure.....	17

Section I: Instructions to Tenderers

A. GENERAL

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|--|---|
| 1. Scope of Tender | <p>1.1 The Purchaser or the Employer indicated in Section II: Tender Data Sheet (herein after referred to as “TDS”) issues this Tender Document for the procurement of Goods and Related Services or Works, as specified in Section V: Supply Requirements. The name, identification, and number of lots are provided in the TDS.</p> <p>1.2 Unless otherwise stated, throughout this Tender Document definitions and interpretations shall be as prescribed in Section VI, General Conditions of Contract (herein after referred to as “GCC”).</p> |
| 2. Source of Funds and Applicable Procurement Rules | <p>2.1 The Borrower or Recipient (hereinafter called “Borrower”) indicated in the TDS has applied for or received financing (hereinafter called “funds”) from the European Bank for Reconstruction and Development (hereinafter called the “Bank”) toward the cost of the project named in the TDS. The Borrower intends to apply a portion of the funds to eligible payments under the Contract(s) for which this Tender Document is issued.</p> <p>2.2 Payments by the Bank will be made only at the request of the Borrower and upon approval by the Bank in accordance with the terms and conditions of the financing agreement between the Borrower and the Bank (hereinafter called the “Loan Agreement”), and will be subject in all respects to the terms and conditions of that Loan Agreement. No party other than the Borrower shall derive any rights from the Loan Agreement or have any claim to the funds.</p> <p>2.3 The applicable procurement rules are the Bank’s Procurement Policies and Rules (PP&Rs) which can be located at: www.ebrd.com/news/publications/policies/procurement-policies-and-rules.html</p> |
| 3. Prohibited Practices | <p>3.1 The Bank requires that Borrowers (including beneficiaries of Bank loans), as well as tenderers, suppliers, sub-suppliers, contractors, sub-contractors, concessionaires, consultants and sub-consultants under Bank financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Bank:</p> <p style="margin-left: 20px;">(a) defines, for the purposes of this provision, Prohibited Practices as one or more of the following:</p> <ul style="list-style-type: none"> (i) a “Coercive Practice” which means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party to influence improperly the actions of a party; (ii) a “Collusive Practice” which means an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party; (iii) a “Corrupt Practice” which means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party; (iv) a “Fraudulent Practice” which means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation; |

- (v) a **“Misuse of Bank’s Resources or Bank Assets”** which means improper use of the Bank’s Resources or Bank Assets, committed either knowingly or recklessly; and,
 - (vi) an **“Obstructive Practice”** which means any of (1) destroying, falsifying, altering or concealing of evidence material to a Bank investigation, which impedes the Bank’s investigation; (2) making false statements to investigators in order to materially impede a Bank investigation into allegations of a Prohibited Practice; (3) failing to comply with requests to provide information, documents or records in connection with a Bank investigation; (4) threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to a Bank investigation or from pursuing the investigation; or (5) materially impeding the exercise of the Bank’s contractual rights of audit or inspection or access to information; and
 - (vii) a **“theft”** which means the misappropriation of property belonging to another party.
- (b) will reject a proposal for award if it determines that the Tenderer, supplier, sub-supplier, contractor, sub-contractor, concessionaire or consultant or sub-consultant recommended for award has engaged in Prohibited Practices in competing for the Contract in question;
 - (c) will cancel the portion of the Bank financing allocated to a Contract for goods, works, services or concessions if it at any time determines that Prohibited Practices were engaged in by representatives of the Borrower or of a beneficiary of the Bank financing during the procurement or the execution of that Contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to remedy the situation;
 - (d) may declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed Contract if it at any time determines that the firm has engaged in Prohibited Practices in competing for, or in executing, a Bank-financed Contract;
 - (e) reserves the right, where a Borrower or a firm has been found by the final judgement of a judicial process in a member country of the Bank or by the enforcement (or similar) mechanism of another international organisation, including Mutual Enforcement Institutions to have engaged in Prohibited Practices.
 - (i) to cancel all or part of the Bank financing for such Borrower; and
 - (ii) to declare that such a firm is ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed Contract; and
 - (f) will have the right to require that, in contracts financed by the Bank, a provision be included requiring sub-suppliers, contractors, sub-contractors, concessionaires, consultants and sub-consultants to permit the Bank to inspect their accounts and records relating to the performance of the Contract and to have them audited by auditors appointed by the Bank.
- 3.2 Furthermore, tenderers shall be aware of the provisions stated in Sections VI and VII, General and Particular Conditions of Contract as. the case may be.

4. Eligible Tenderers

- 4.1 The Bank permits firms and individuals from all countries to offer goods, works and services for Bank-financed projects regardless of whether the country is a member of the Bank. Consistent with international law, the proceeds of the Bank’s loans, equity investment or guarantees shall not be used for payment to persons or entities or for any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations. Persons or entities, or suppliers offering goods and

services, covered by such prohibition shall therefore not be eligible for the award of Bank-financed contracts.

- 4.2 A Tenderer may be a natural person, private entity, government-owned entity—subject to Instructions to Tenderers (hereinafter referred to as “ITT”) 4.6 or any combination of such entities in the form of a Joint Venture, Consortium, or Association joint venture, consortium, or association (JVCA). In the case of a JVCA:
- (a) unless otherwise specified in the TDS, all partners shall be jointly and severally liable; and
 - (b) the JVCA shall nominate a Representative who shall have the authority to conduct all businesses for and on behalf of any and all the partners of the JVCA during the Tender process and, in the event the JVCA is awarded the Contract, during Contract execution.
- 4.3 A Tenderer, and all parties constituting the Tenderer, shall have the nationality of an eligible country. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers and subsuppliers for any part of the Contract including Related Services.
- 4.4 A Tenderer shall not have a conflict of interest. All tenderers found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest with one or more parties in this Tendering process, if:
- (a) they have controlling partners in common; or
 - (b) they receive or have received any direct or indirect subsidy from any of them; or
 - (c) they have the same legal representative for purposes of this Tender; or
 - (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the tender of another Tenderer, or influence the decisions of the Purchaser or the Employer regarding this tendering process; or
 - (e) a Tenderer participates as a Tenderer or a partner in a JVCA in more than one Tender in this Tender process. Participation as a Tenderer or a partner in a JVCA in more than one Tender will result in the disqualification of all Tenders in which it is involved. However, this does not limit the inclusion of the same subcontractor in more than one Tender. For the purpose of this provision, a subcontractor is not deemed to be participating in the Tender process; or
 - (f) a Tenderer, its affiliates or parent organisation has participated in the feasibility or design stages of a project, that Tenderer, its affiliates or parent organisation shall not be eligible to participate in a tender for contracts involving the supply of goods, works or services, including architectural or engineering services, for the project, unless it can be demonstrated that such participation would not constitute a conflict of interest. Such determination must be made prior to the submission of a tender or
 - (g) a Tenderer participated as a consultant in the preparation of Section V: Requirements that are the subject of the tender or
 - (h) a Tenderer or any of its affiliates has been hired, or is proposed to be hired,

by the Purchaser or the Employer or the Borrower for the supervision of the Contract.

- 4.5 A Tenderer shall be disqualified if the Tenderer, an affiliate of the Tenderer, a party constituting the Tenderer or an affiliate of a party constituting the Tenderer, is under a declaration of ineligibility by the Bank in accordance with ITT 3, at the date of the deadline for Tender submission or thereafter.
- 4.6 No affiliate of the Purchaser or the Employer shall be eligible to tender or participate in a tender in any capacity whatsoever unless it can be demonstrated that there is not a significant degree of common ownership, influence or control amongst the affiliate and the Purchaser or the Employer or the Borrower.
- 4.7 Tenderers shall provide such evidence of their continued eligibility satisfactory to the Purchaser or the Employer, as the Purchaser or Employer shall reasonably request.
- 4.8 Firms shall be excluded if:
- (a) as a matter of law or official regulation, the Borrower's country prohibits commercial relations with that country, provided that the Bank is satisfied that such exclusion does not preclude effective competition; 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 from that country or any payments to persons or entities in that country.
- 4.9 In case a prequalification process has been conducted prior to the Tender process, this Tender is open only to pre-qualified tenderers.
- 4.10 Where a prequalification process has been conducted prior to the Tendering process, the formation of a joint venture after prequalification as well as any change in a prequalified joint venture will be subject to the written approval of the Purchaser or the Employer prior to the deadline for submission of tenders. Such approval may be denied if (i) partners withdraw from a joint venture and the remaining partners do not meet the qualifying requirements; (ii) the level of participation by partners or the structure of the joint venture is substantially changed; (iii) the new joint venture is not qualified; (iv) in the opinion of the Purchaser or the Employer, a substantial reduction in competition may result; or (v) request for a change in the prequalification status of the Tenderer is received by the Purchaser or the Employer after the date 28 days prior to the deadline for tender submission. The Purchaser or the Employer will use its best efforts to notify any changes in the list of prequalified tenderers as soon as it would be possible and in any event prior to the tenders' opening.

5. Eligible Goods and Related Services

- 5.1 All goods and services to be supplied under the Contract and financed by the Bank, shall have as their country of origin an eligible country of the Bank in accordance with ITT 4.1.
- 5.2 For purposes of this paragraph, the term "Goods" includes commodities, raw material, machinery, equipment, and industrial plants; and "Related Services" includes services such as insurance, transportation, installation, commissioning, training, and initial maintenance.
- 5.3 The term "Country of Origin" means the country where the Goods have been mined, grown, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article

results that differs substantially in its basic characteristics from its imported components.

- 5.4 The nationality of the firm that produces, assembles, distributes, or sells the Goods shall not determine their origin.

B. CONTENTS OF TENDER DOCUMENT

6. Sections of Tender Document

- 6.1 The Tender Document consist of the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITT 8.
- Section I: Instructions to Tenderers (ITT)
 - Section II: Tender Data Sheet (TDS)
 - Section III: Evaluation and Qualification Criteria
 - Section IV: Tender Forms
 - Section V: Supply Requirements
 - Section VI: General Conditions of Contract (GCC)
 - Section VII: Particular Conditions of Contract (PCC)
 - Section VIII: Annex to the PCC Contract Forms
- 6.2 The Invitation for Tenders issued by the Purchaser or the Employer is not part of the Tender Document.
- 6.3 The Tenderer shall obtain the Tender Document from the source stated by the Purchaser or the Employer in the Invitation for Tenders; otherwise the Purchaser or the Employer is not responsible for the completeness of the Tender Document.
- 6.4 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the Tender Document. Failure to furnish all information or documentation required by the Tender Document may result in the rejection of the Tender.

7. Clarification of Tender Document, Site Visit, Pre-Tender Meeting

- 7.1 A prospective Tenderer requiring any clarification of the Tender Document shall contact the Purchaser or the Employer in writing at the Purchaser or the Employer's address indicated in the TDS or raise his enquiries during the pre-Tender meeting if provided for in accordance with ITT 7.4. The Purchaser or the Employer will respond to any request for clarification, provided that such request is received prior to the deadline for submission of Tenders, within the number of days specified in the TDS. The Purchaser's or the Employer's response shall be in writing with copies to all tenderers who have acquired the Tender Document in accordance with ITT 6.3, including a description of the inquiry but without identifying its source. Should the Purchaser or the Employer deem it necessary to amend the Tender Document as a result of a request for clarification, it shall do so following the procedure under ITT 8 and ITT 22.2.
- 7.2 Where applicable, the Tenderer is advised to visit and examine the project site and obtain for itself on its own responsibility all information that may be necessary for preparing the Tender and entering into a Contract for the provision of the Supply Requirements or Requirements. The costs of visiting the site shall be at the Tenderer's own expense.
- 7.3 Pursuant to ITT 7.2, where the Tenderer and any of its personnel or agents have been granted permission by the Purchaser or the Employer to enter upon its premises and lands for the purpose of such visit, the Tenderer, its personnel, and agents will release and indemnify the Purchaser or 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 visit.

- 7.4 The Tenderer's designated representative is invited to attend a pre-Tender meeting, if provided for in the TDS. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage. If so provided for in the TDS, the Purchaser or the Employer will organise a site visit.
- 7.5 The Tenderer is requested, as far as possible, to submit any questions in writing, to reach the Purchaser or the Employer not later than one week before the meeting.
- 7.6 Minutes of the pre-Tender 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 tenderers who have acquired the Tender Document in accordance with ITT 6.3. Any modification to the Tender Document that may become necessary as a result of the pre-Tender meeting shall be made by the Purchaser or the Employer exclusively through the issue of an Addendum pursuant to ITT 8 and not through the minutes of the pre-Tender meeting.
- 7.7 Non-attendance at the pre-Tender meeting will not be a cause for disqualification of a Tenderer.

8. Amendment of Tender Document

- 8.1 At any time prior to the deadline for submission of Tenders, the Purchaser or the Employer may amend the Tender Document by issuing addenda.
- 8.2 Any addendum issued shall be part of the Tender Document and shall be communicated in writing to all who have obtained the Tender Document from the Purchaser or the Employer in accordance with ITT 6.3.
- 8.3 To give prospective tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Purchaser or the Employer may, at its discretion, extend the deadline for the submission of Tenders, pursuant to ITT 22.2

C. PREPARATION OF TENDERS

9. Cost of Tendering

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

10. Language of Tender

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

11. Documents Comprising the Tender

- 11.1 The Tender shall comprise the documents listed in the TDS.

12. Letter of Tender and Price Schedules

- 12.1 The Tenderer shall submit the Letter of Tender using the form furnished in Section IV: Tender Forms. This form must be completed without any alterations to its format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.

- 13. Alternative Tenders** 13.1 Unless otherwise indicated in the TDS, alternative proposals or alternative times for completion shall not be considered. If alternative proposals or alternative times for completion are permitted their method of evaluation shall be as stipulated in Section III: Evaluation and Qualification Criteria.
- 14. Tender Prices and Discounts** 14.1 Tender prices and discounts quoted by the Tenderer in the Letter of Tender in the Price Schedules shall conform to the requirements specified in the TDS.
- 15. Currencies of Tender** 15.1 The currency(ies) of the Tender and the currency(ies) for payment shall be as specified in the TDS.
- 16. Documents Establishing the Qualifications of the Tenderer** 16.1 To establish its qualifications to perform the Contract in accordance with Section III, Evaluation and Qualification Criteria, the Tenderer shall provide the information requested in Section IV: Tender Forms.
- 17. Documents Establishing the Eligibility of Goods and Related Services** 17.1 To establish the eligibility of the Goods and Services in accordance with ITT 5, tenderers shall complete the forms, included in Section IV: Tender Forms.
- 18. Period of Validity of Tenders** 18.1 Tenders shall remain valid for the period specified in the TDS after the Tender submission deadline date prescribed by the Purchaser or the Employer. A Tender valid for a shorter period shall be rejected by the Purchaser of the Employer as non-responsive.
- 18.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Purchaser or the Employer may request tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a tender security is requested in accordance with ITT 19, the Tenderer granting the request shall also extend the tender security for twenty-eight (28) calendar days beyond the deadline of the extended validity period. A Tenderer may refuse the request without forfeiting its tender security. A Tenderer granting the request shall not be required or permitted to modify its Tender, except as provided in ITT 18.3.
- 18.3 In the case of fixed price contracts, if the award is delayed by a period exceeding fifty-six (56) calendar days beyond the expiry of the initial Tender validity, the Contract price shall be adjusted as specified in the request for extension. Tender evaluation shall be based on the Tender Price without taking into consideration the above adjustment.
- 19. Tender Security** 19.1 If so required in the TDS, the Tenderer shall furnish as part of its Tender, the original of a tender security using the form included in Section IV: Tender Forms. The tender security amount and currency shall be as specified in the TDS.
- 19.2 If a tender security is specified pursuant to ITT 19.1, the tender security shall be a demand guarantee in any of the following forms at the Tenderer's option:
- (a) an unconditional guarantee issued by a bank;
 - (b) an irrevocable letter of credit; or
 - (c) a cashier's or certified check
- from a reputable source. In the case of a bank guarantee, the tender security shall

be issued by a reputable bank. If specified in the TDS, the issuing bank shall have the minimum credit rating stated in the TDS. The bank guarantee shall be submitted either using the Tender Security Form in Section IV: Tender Forms or in another substantially similar format approved by the Purchaser or the Employer prior to Tender submission. In either case, the form must include the complete name of the Tenderer. The tender security shall be valid for twenty-eight days (28) beyond the original validity period of the Tender, or beyond any period of extension if requested under ITT 18.2.

19.3 If a tender security is specified pursuant to ITT 19.1, any Tender not accompanied by a substantially responsive tender security shall be rejected by the Purchaser or the Employer as non-responsive.

19.4 If a tender security is specified pursuant to ITT 19.1, the tender security of unsuccessful tenderers shall be returned as promptly as possible upon the successful Tenderer's furnishing of the performance security pursuant to ITT 38.

19.5 The tender security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract Agreement and furnished the required performance security.

19.6 The tender security may be forfeited:

- (a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer in the Letter of Tender or
- (b) if the successful Tenderer fails to:
 - (i) sign the Contract Agreement in accordance with ITT 37; or
 - (ii) furnish a performance security in accordance with ITT 38 (if so required in the TDS).
 - (iii) accept the arithmetical correction of its Tender in accordance with ITT 30.

19.7 The tender security of a JVCA shall be in the name of the JVCA that submits the Tender or as otherwise stated in the TDS.

20. Format and Signing of Tender

20.1 The Tenderer shall prepare one original set of the documents comprising the Tender as described in ITT 11 and clearly mark it "ORIGINAL." In addition, the Tenderer shall submit copies of the Tender, in the number specified in the TDS and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.

20.2 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorised to sign on behalf of the Tenderer. This authorisation shall consist of a written confirmation as specified in the TDS and shall be attached to the Tender. The name and position held by each person signing the authorisation must be typed or printed below the signature. The number of copies of the tender required shall be specified in the TDS.

20.3 A Tender submitted by a JVCA shall comply with the following requirements:

- (a) Unless not required in accordance with ITT 4.2 (a), be signed so as to be legally binding on all partners; and
- (b) Include the Representative's authorisation referred to in ITT 4.2 (b), consisting of a power of attorney signed by those legally authorised to sign on behalf of the JVCA.

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

D. SUBMISSION AND OPENING OF TENDERS

21. Submission, Sealing and Marking of Tenders

21.1 Tenderers may always submit their Tenders by mail or by hand. If so specified in the TDS, tenderers shall have the option of submitting their Tenders electronically. Procedures for submission, sealing and marking are as follows:

- (a) Tenderers submitting Tenders by mail or by hand shall enclose the original and copies of the Tender in separate sealed envelopes. If so permitted in accordance with ITT 13, alternative proposals, and copies thereof, shall also be placed in separate envelopes. The envelopes shall be duly marked as "ORIGINAL," "ALTERNATIVE," "ORIGINAL COPY," and "ALTERNATIVE COPY" These envelopes shall then be enclosed in one single package. The rest of the procedure shall be in accordance with ITT 21.2 and 21.3.
- (b) Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures specified in the TDS.

21.2 The inner and outer envelopes shall:

- (a) bear the name and address of the Tenderer;
- (b) be addressed to the Purchaser or the Employer in accordance with ITT 22.1;
- (c) bear the specific identification of this Tendering process pursuant to ITT 1.1; and
- (d) bear a warning not to open before the time and date for Tender opening

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

22. Deadline for Submission of Tenders

22.1 Tenders must be received by the Purchaser or the Employer at the address and no later than the date and time indicated in the TDS.

22.2 The Purchaser or the Employer may, at its discretion, extend the deadline for the submission of Tenders by amending the Tender Document in accordance with ITT 8, in which case all rights and obligations of the Purchaser or the Employer and tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

23. Late Tenders

23.1 The Purchaser or the Employer shall not consider any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT 22. Any Tender received by the Purchaser or the Employer after the deadline for submission of

Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

24. Withdrawal, Substitution, and Modification of Tenders

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

- (a) prepared and submitted in accordance with ITT 20 and ITT 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 Purchaser or the Employer prior to the deadline prescribed for submission of Tenders, in accordance with ITT 22.

24.2 Tenders requested to be withdrawn in accordance with ITT 24.1 shall be returned unopened to the tenderers.

24.3 No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Letter of Tender or any extension thereof.

25. Tender Opening

25.1 The Purchaser or the Employer shall conduct the Tender opening in public, in the presence of tenderers' designated representatives and anyone who chooses to attend, and at the address, date and time specified in the TDS. Any specific electronic Tender opening procedures required if electronic Tendering is permitted in accordance with ITT 21.1, shall be as specified in the TDS.

25.2 First, envelopes marked "Withdrawal" shall be opened and read out and the envelope with the corresponding Tender shall not be opened, but returned to the Tenderer. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorisation to request the withdrawal and is read out at Tender opening. Next, envelopes marked "Substitution" shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorisation to request the substitution and is read out at Tender opening. Envelopes marked "Modification" shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorisation to request the modification and is read out at Tender opening. Only Tenders that are opened and read out at Tender opening shall be considered further.

25.3 The Purchaser or the Employer shall open all other envelopes one at a time and read out: the name of the Tenderer, the Tender Price(s), any discounts and their application methodology, alternative Tenders, the presence or absence of a tender security; and any other details as the Purchaser or the Employer may consider appropriate. Only discounts and alternative Tenders read out at Tender opening shall be considered for evaluation. No Tender shall be rejected at Tender opening except for late Tenders, in accordance with ITT 23.1.

25.4 The Purchaser or the Employer shall prepare a record of the Tender opening that shall include, as a minimum: the name of the Tenderer and whether there is a withdrawal, substitution, or modification; the Tender Price, per lot if applicable, including any discounts and alternative proposals; and the presence or absence of a tender security (if so required by the TDS). The tenderers' representatives who are present shall be requested to sign the record. The omission of a Tenderer'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 tenderers who submitted Tenders in time, and posted online when electronic Tendering is permitted.

E. EXAMINATION OF TENDERS

- 26. Confidentiality**
- 26.1 Information relating to the evaluation of Tenders shall not be disclosed to tenderers or any other persons not officially concerned with such process until information on Contract award is communicated to all tenderers.
- 26.2 Any attempt by a Tenderer to influence improperly the Purchaser or the Employer in the evaluation of the Tenders or Contract award decisions may result in the rejection of its Tender.
- 26.3 Notwithstanding ITT 26.1, from the time of Tender opening to the time of Contract award, if any Tenderer wishes to contact the Purchaser or the Employer on any matter related to the tendering process, it should do so in writing.
- 27. Clarification of Tenders**
- 27.1 To assist in the examination, evaluation, and comparison of the Tenders and qualification of the tenderers, the Purchaser or the Employer may, at its discretion, ask any Tenderer for a clarification of its Tender, allowing a reasonable time for response. Any clarification submitted by a Tenderer that is not in response to a request by the Purchaser or the Employer shall not be considered. The Purchaser's or the Employer's request for clarification and the response shall be in writing. No change in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Purchaser or the Employer in the evaluation of the Tenders, in accordance with ITT 30.
- 27.2 If a Tenderer does not provide clarifications of its Tender by the date and time set in the Purchaser's or the Employer's request for clarification, its Tender may be rejected.
- 28. Determination of Responsiveness**
- 28.1 The Purchaser's or the Employer's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT 11.
- 28.2 A substantially responsive Tender is one that meets the requirements of the Tender Document without material deviation, reservation, or omission as defined below:
- (a) **"Deviation"** is a departure from the requirements specified in the Tender Document;
- (b) **"Reservation"** is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Tender Document; and
- (c) **"Omission"** is the failure to submit part or all of the information or documentation required in the Tender Document.
- 28.3 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 Requirements as specified in Section V: Supply Requirements; or
 - (ii) limit in any substantial way, inconsistent with the Tender Document, the Purchaser's or the Employer's rights or the Tenderer's obligations under the proposed Contract; or
- (b) if rectified, would unfairly affect the competitive position of other tenderers presenting substantially responsive Tenders.

28.4 The Purchaser or the Employer shall examine the technical aspects of the Tender in particular, to confirm that all requirements of Section V: Supply Requirements have been met without any material Deviation, Reservation, or Omission.

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

29. Nonmaterial Nonconformities

29.1 Provided that a Tender is substantially responsive, the Purchaser or the Employer may waive any quantifiable nonconformities in the Tender that do not constitute material Deviations, Reservations or Omissions. The cost of all quantifiable deviations or omissions shall be added to the tender price in question. A reasonable estimate of the cost will be made by the Purchaser or Employer, taking into consideration the corresponding tender prices of other responsive tenderers or other appropriate market prices. Such costs will be at the Purchaser's or Employer's sole discretion. A Tenderer will not be requested or permitted to offer a price adjustment for rectifying such deviations or omissions. Deviations and other factors that are in excess of the requirements of the tender documents or otherwise result in unsolicited benefits for the Purchaser or Employer shall not be taken into account in tender evaluation.

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

F. TENDER EVALUATION AND COMPARISON

30. Evaluation of Tenders and Correction of Arithmetical Errors

30.1 The Purchaser or the Employer shall use the criteria and methodologies indicated in Section III: Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted.

30.2 Provided that the Tender is substantially responsive, the Purchaser or the Employer shall correct arithmetical errors on the following basis:

- (a) Where there are errors between the total of the amounts given under the column for the price breakdown and the amount given under the Total Price, the former shall prevail and the latter will be corrected accordingly;
- (b) 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 Purchaser or 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 accordingly;

- (c) 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
- (d) 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.

30.3 If a Tenderer does not accept the correction of errors, its Tender shall be declared non-responsive and rejected and its tender security may be forfeited.

31. Conversion to Single Currency

31.1 For evaluation and comparison purposes, the currency(ies) of the Tender shall be converted into a single currency as specified in Section III: Evaluation and Qualification Criteria.

32. Tender Adjustments

32.1 For the evaluation and comparison purposes the Purchaser or the Employer shall adjust the Tender prices using the criteria and methodology specified in Section III: Evaluation and Qualification Criteria.

33. Qualification of the Tenderer

33.1. The Purchaser or the Employer shall determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated and substantially responsive Tender meets the qualifying criteria specified in Section III: Evaluation and Qualification Criteria.

33.2. The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 16.

33.3. An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event the Purchaser or the Employer shall proceed to the next lowest evaluated Tender to make a similar determination of that Tenderer's qualifications to perform satisfactorily.

33.4. Notwithstanding the provisions of ITT 33.3, the Purchaser or the Employer reserves the right to waive any minor deviations from the qualifying criteria specified in Section III: Evaluation and Qualification Criteria that do not materially affect the capability of the Tenderer to perform the Contract.

34. Purchaser or Employer's Right to Accept Any Tender, and to Reject Any or All Tenders

34.1 The Purchaser or the Employer reserves the right to accept or reject any tender, and to annul the Tendering process and reject all Tenders at any time prior to Contract award, without thereby incurring any liability to tenderers. In case of annulment, all Tenders submitted and specifically, Tender securities, shall be promptly returned to the tenderers.

- 35. Award Criteria** 35.1 The Purchaser or the Employer shall award the Contract to the Tenderer whose Tender has been determined to be the lowest evaluated Tender and is substantially responsive to the Tender Document, provided further that the Tenderer is determined to be qualified to perform the Contract satisfactorily.
- 36. Notification of Award** 36.1 Prior to the expiration of the period of Tender validity, the Purchaser or the Employer shall notify the successful Tenderer, in writing, that its Tender has been accepted.
- 36.2 Until a formal Contract is prepared and executed, the notification of award shall constitute a binding Contract.
- 36.3 At the same time, the Purchaser or the Employer shall also notify all other tenderers of the results of the tendering exercise, and shall publish in the Bank's website the results identifying the Tender and lot numbers and the following information: (i) name of each Tenderer who submitted a Tender; (ii) Tender prices as read out at Tender opening; (iii) name and evaluated prices of each Tender that was evaluated; (iv) name of tenderers whose Tenders were rejected and the reasons for their rejection; and (v) name of the winning Tenderer, and the price it offered, as well as the duration and summary scope of the Contract awarded. After publication of the award, unsuccessful tenderers may request in writing to the Purchaser or the Employer for a debriefing seeking explanations on the grounds on which their Tenders were not selected. The Purchaser or the Employer shall promptly respond in writing to any unsuccessful Tenderer who, after Publication of Contract award, requests a debriefing.
- 37. Signing of Contract Agreement** 37.1 Promptly upon notification, the Purchaser or the Employer shall sign and send the successful Tenderer the Contract Agreement.
- 37.2 Within twenty-eight (28) calendar days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to the Purchaser or the Employer.
- 37.3 Upon the successful Tenderer's furnishing of the signed Contract Agreement and Performance Security pursuant to ITT 38, the Purchaser or the Employer will discharge its tender security, pursuant to ITT 19.
- 38. Performance Security** 38.1 If so required in the TDS, within twenty-eight (28) days of the receipt of notification of award from the Purchaser or the Employer, the successful Tenderer shall furnish the performance security in accordance with the conditions of Contract, using for that purpose the Performance Security Form included in Section VIII: Annex to the PCC - Contract Forms, or another form acceptable to the Purchaser or the Employer. If the performance security furnished by the successful Tenderer is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Tenderer to be acceptable to the Purchaser or Employer. A foreign institution providing a bond shall have a correspondent financial institution located in the Purchaser's or Employers Country.
- 38.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security. In that event the Purchaser or the Employer may award the Contract to the next lowest evaluated Tenderer whose offer is substantially responsive and is determined by the Purchaser or the Employer to be qualified to perform the Contract satisfactorily.

H. COMPLAINTS

39. Complaint Procedure

39.1 In the event that any Tenderer wishes to submit a formal complaint with regard to any aspect of the procurement process, the Tenderer shall follow the procedures contained in Annex 1: Guidance to Tenderers of the Bank's Procurement Policies and Rules (PP&R) (see - www.ebrd.com/news/publications/policies/procurement-policies-and-rules.html). Further information in this respect is also published on the Bank's website (see - www.ebrd.com/work-with-us/procurement/project-procurement-complaints.html).

Section II: Tender Data Sheet

TABLE OF CONTENTS

A. Scope of Tender.....	19
B. Preparation of Tenders	20
C. Submission and Opening of Tenders	21
D. Award of Contract.....	22

Section II: Tender Data Sheet, provides the specific information in relation to corresponding paragraphs in Section I: Instructions to Tenderers, and must be prepared by the Purchaser for each specific procurement.

The Purchaser should specify in the Tender Data Sheet information and requirements specific to the circumstances of the Purchaser, the processing of the procurement, the applicable rules regarding tender prices, currency and the tender evaluation criteria that will apply to the tenders. In preparing Section II, the following aspects should be verified:

- (a) Information that specifies and complements provisions of Section I must be incorporated.*
- (b) Amendments and/or supplements, if any, to provisions of Section I, as necessitated by the circumstances of the specific procurement, must also be incorporated.*

Boxed guidance notes and provisions in italic font are illustrative provisions containing instructions and guidance which the drafter should follow. They are not part of the text, and should not be included in the final tender document. All reference numbers provided in this Section shall be construed as reference numbers in Section I: Instruction to Tenderers (ITT).

A. Scope of Tender

- 1.1 The Purchaser is: *[specify the name of the Purchaser]*
- 1.1 The name of the Tender process is: *[insert complete name]*
The identification number of the Tender process is: *[insert identification number]*
The number and identification of lots comprising this Tender process are: *[insert number and identification of each lot, if applicable]*
- 2 **Source of Funds**
- 2.1 The Borrower is: *[specify the name of the Borrower]*
- 2.2 The name of the Project is: *[insert name of the Project]*
- 7 **Clarification of Tender Document, Site Visit, Pre-tender meeting**
- 7.1 For clarification purposes only, the Purchaser's contact details are:
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]*
Postal Code: *[insert postal (ZIP) code, if applicable]*
Country: *[insert name of country]*
Facsimile number: *[insert phone number, with country and city codes]*
email address: *[insert email address, if applicable]*

The deadline for clarification requests should normally be set at the date no later than 14 days prior to the deadline for submission of Tenders

Requests for clarification should be received by the Purchaser no later than *[insert no. of days]*, prior to the deadline for submission of Tenders

B. Preparation of Tenders

10 Language of the Tender

10.1 The language of the tender is: *[insert language]*

11 Documents Comprising the Tender

11.1 The Tender shall comprise the following documents:

(a) Letter of Tender and Attachment 1 to the Letter of Tender – Covenant of Integrity;

(b) Price Schedule for Goods and Related Services;

(c) Completed Technical Specifications and Statement of Compliance;

(d) Tenderer Information and Qualification Forms as listed in Section IV: Tender Forms; and,

[insert any other documentary requirements, for example, Manufacturers Authorization Form), evidence of in country representation), Tender Security (if so required by ITT 19.1), written confirmation of authorization (if so required by ITT 20.2).]

14 Tender Prices and Discounts

14.1 The prices quoted by the Tenderer in the Letter of Tender shall be fixed and will not be subject to adjustment during the performance of the Contract.

[The following sample provisions may be used for sovereign operations where taxes and duties need to be excluded for evaluation purposes. For non-sovereign operations the Delivered Duty Paid DDP Incoterm may be used.]

The Tenderer shall quote prices as required in the Price Schedule included in Section IV: Tender Forms. The Tenderer shall indicate on the Price Schedule the unit price and total Tender price of the Goods it proposes to supply under the Contract. Prices indicated on the Price Schedule shall be entered separately in the following manner:

(a) For Goods: The price of Goods shall be quoted Delivered at Place (DAP) _____ *[insert the final destination for delivery]*. In the event that the Goods offered will be supplied from within the Purchaser's country, the price of the Goods shall be inclusive of all customs duties or import taxes and sales and other taxes already paid or payable on the Goods in the Purchaser's country if this Contract is awarded but exclusive of VAT which shall be stated in the Letter of Tender. Any such customs duties or import taxes and sales and other taxes shall be shown separately in the Price Schedule in the box provided.

(b) For Related Services: The price of Related Services as detailed in Section V: Requirements and the Technical Specification shall be quoted inclusive of all taxes, duties and levies and charges payable in the Purchaser's country but exclusive of VAT which shall be stated in the Letter of Tender.

14.2 The delivery term stated in ITT 14.1 shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce, Paris.

14.3 The prices quoted by the Tenderer in the Letter of Tender and in the Price Schedule shall include all discounts and be fixed.

15 Currency(ies) of the Tender

15.1 The currency of the tender and the currency for payment is: _____ *[insert the currency or currencies in which the tenders must be quoted]*

18 Period of Validity of Tenders

- 18.1 ***[Insert the number of days deemed appropriate by the Purchaser. The period should be sufficient to permit completion of evaluation and comparison of tenders, review of the evaluation report by the Bank (if so required), obtaining of all necessary approvals and notification of the award. Typically, the validity period should be 45 days. A realistic period should be specified in order to avoid the need for extensions].***

The tender validity period shall be: *[insert the number of days deemed appropriate]* calendar days from the closing date of the tender.

19 Tender Security

[Insert amount deemed appropriate by the Purchaser. The amount shall be expressed as a fixed amount. Tender security will be normally in the range of 2-5 per cent of the estimated cost of the Goods and Services].

- 19.1 A tender security *is/is not* required.

[amend as appropriate – if a tender security is required, the draft tender security contained in the Bank’s STD for Goods and Related Services (available at www.ebrd.com/work-with-us/procurement/project-procurement/standard-procurement-documents.html) shall be included in Section IV: Tender Forms].

[Insert amount deemed appropriate by the Purchaser. The amount shall be expressed as a fixed amount. Tender security will be normally in the range of 2-5 per cent of the estimated cost of the Goods and Services].

If a tender security is required, the amount and currency of the tender security shall be *[insert amount in figures and words and currency]*.

The issuing bank of the tender security shall have a minimum credit rating of: _____
[insert details of minimum credit rating or delete this provision]

C. Submission and Opening of Tenders

20 Format and Signing of Tender

- 20.1 In addition to the original version of the tender, the number of copies required is: ***[insert number of copies]***.
- 20.2 No written confirmation of authorisation to sign on behalf of the Tenderer is required. ***[if such written confirmation is required, replace text and provide details of the required format and include in TDS 11.1 (e)]***

22 Deadline for Submission of Tenders

For **tender submission purposes** only, the Purchaser’s address is:

Attention: *[insert full name of person, if applicable]*

- 22.1 Purchasers name: *[insert Purchaser’s name]*

Street Address: *[insert street address and number]*

Floor/Room number: *[insert floor and room number, if applicable]*

City: *[insert name of city or town]*

Postal Code: *[insert postal (ZIP) code, if applicable]*

Country: *[insert name of country]*

[The minimum period for the preparation of tenders shall not be less than 14 days]

The deadline for tender submission is:

Date: *[insert date (as day, month, and year)]*

Time: *[insert the time and time zone]*

25 Tender Opening

25.1 The Tender opening shall take place at:

Name: *[insert Purchasers or organisations name]*

Street Address: *[insert street address and number]*

Floor/Room number: *[insert floor and room number, if applicable]*

City: *[insert name of city or town]*

Postal Code: *[insert postal (ZIP) code, if applicable]*

Country: *[insert name of country]*

Date: *[insert date (as day, month, and year)]*

Time: *[insert the time and time zone]*

[The date for Tender opening shall be the same as for tender submission specified under ITT Para 22.1 above. The time should also be the same as specified under ITT Para 22.1 or immediately thereafter].

D. Award of Contract**35 Award Criteria**

35.2 ***[This is an optional paragraph, to be used only where appropriate and should be deleted if not applicable].***

The variation should not normally exceed 15 percent. In the event that the Purchaser wishes to increase the original quantities beyond 15 percent limit, the Purchaser shall seek the Bank's prior no objection.

The maximum percentage by which quantities may be increased is 15%.

The maximum percentage by which quantities may be decreased is 15%.

38 Performance Security

38.1 A performance security *is/is not* required. ***[amend as appropriate – if a performance security is required, the draft performance security contained in the Bank's STD for Goods and Related Services (available at www.ebrd.com/work-with-us/procurement/project-procurement/standard-procurement-documents.html) shall be included in Section VIII: Annex to the PCC - Contract Forms].***

Section III: Evaluation and Qualification Criteria

TABLE OF CONTENTS

A: Evaluation Criteria and Methodology	24
B. Qualification Criteria.....	25

This Section contains all the criteria that the Purchaser shall use to evaluate tenders and qualify Tenderers. In accordance with ITT 30.1, no other factors, methods or criteria shall be used.

A: Evaluation Criteria and Methodology

ITT 30.1 Evaluation of Tenders and Correction of Arithmetical Errors

The evaluation of tenders and the correction of arithmetical errors shall be undertaken by the Purchaser in accordance with the following methodology:

- (a) All tenders submitted pursuant to ITT 25 shall be subjected to an arithmetical check. In the event that any tender is identified as containing an arithmetical error, the tender price shall be corrected in accordance with the provisions of ITT 30.2.
- (b) The cost of VAT (as stated in the Letter of Tender) shall be excluded from the tender prices for evaluation and comparison purposes.
- (c) For Sovereign operations, for Goods to be supplied from within the Purchaser's country, solely for evaluation and comparison purposes, all customs duties or import taxes and sales and other taxes already paid or payable on the Goods in the Purchaser's country if this Contract is awarded shall be excluded from the tender prices.
- (d) Following the completion of a), b) and c) above, the Purchaser shall subject only the lowest priced tender to a detailed evaluation to determine whether the tender is substantially responsive to the tender documents in accordance with the provisions of ITT 28 and ITT 29.
- (e) In the event that the lowest priced tender is determined to be substantially responsive in accordance with the provisions of ITT 28 and ITT 29, the Purchaser shall establish whether the Tenderer is qualified to perform the Contract in accordance with the provisions of Section B: Qualification Criteria below. In the event that the Tenderer is determined to be qualified to perform the Contract in accordance with ITT 33.1 the Tenderer shall be determined as eligible for Contract award in accordance with ITT 35.
- (f) In the event that the lowest priced tender is determined to be substantially non-responsive to the tender documents in accordance with ITT 28 and ITT 29 the tender shall be rejected and the above procedure shall be applied to the second lowest priced tender and so forth.
- (g) In the event that the lowest priced tender is determined to contain a quantifiable deviation or omission in accordance with ITT 29.1, the cost of the deviation shall be added to the tender price for the purposes of establishing the evaluated tender price. If, the cost of the deviation or omission does not impact upon the ranking of the lowest priced Tenderer, the Purchaser will proceed in accordance with para d) above. If the cost of the deviation or omission does impact upon the ranking of the lowest priced Tenderer, the Purchaser shall reassess the ranking of the tenderers and proceed in accordance with para d) above.
- (h) In the event that the Tenderer that has submitted the lowest tender price or the lowest evaluated tender price in accordance with the above is not determined to be qualified to perform the Contract in accordance with ITT 33.1, the tender shall be rejected and the Purchaser shall make a similar determination with regard to the second ranked Tenderer and so forth.

**** The above methodology has been designed for sovereign operations. For sub-sovereign operations, further consideration may be given to the possibility to include taxes and duties in the tender evaluation process as provided for in the Bank's PP&R****

B. Qualification Criteria

ITT 33.1 To be qualified for Contract award in accordance with ITT 33.1, the Tenderer must demonstrate to the Purchaser that it substantially satisfies the requirements, specified below:

(a) Average Annual Turnover

Minimum average annual turnover of euro *[insert value]* (), within the last *[insert number]* () years; and,

(b) Experience

Experience as Supplier, in at least *[insert number]* () contracts within the last *[insert number]* () years, each with a value of at least *[insert value]* (), that have been successfully and substantially completed and that are similar to the proposed Goods. The similarity shall be based on the nature and complexity of the Goods compared with the Goods described in Section V: Supply Requirements;

[Insert any specific requirements for Joint Ventures]

[Consider inserting additional requirements (and forms) from the STD for Goods with regard to Non-Performance, Financial Resources and Financial Soundness, if appropriate]

In order to demonstrate compliance with the above mentioned qualification criteria, the Tenderer shall provide all the requested information in accordance with the forms provided in sub-section 3, Tenderer Information and Qualification Forms of Section IV: Tender Forms. For the purpose of determining the euro equivalent of other currencies the euro equivalent value should be calculated at the exchange rate at the middle of each year reported, as set by the central bank of the Tenderer's country or similar institution.

Section IV: Tender Forms

This Section contains Tender Forms which must be completed and submitted by the Tenderer.

TABLE OF FORMS

1. Letter of Tender	27
Attachment 1 to Letter of Tender - Covenant of Integrity	29
2. Price Schedule for Goods and Related Services	31
3. Tenderer Information and Qualification Forms.....	33
Form A: Tenderer Information Sheet	33
Form B: Average Annual Turnover	34
Form C: Specific Experience.....	35

1. Letter of Tender

Note for Tenderers: The Tenderer must prepare the Letter of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and address. All text within square brackets [] is for guidance in preparing this form and shall be deleted by the Tenderer from the final document.

Date: _____

Tenderers ref: _____

Invitation for Tender No.: _____

To: _____

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Tender Documents, including Addenda issued in accordance with ITT 8.
- (b) We offer to supply, in conformity with the Tender Documents, the following Goods and Related Services:.....
- (c) The total price of our Tender, excluding any discounts offered in item (d) below, **exclusive of VAT**, is: _____ [enter figures and words]

Delete the following if VAT is not to be included in the tender price

and the total price of our Tender, excluding any discounts offered in item (d) below, **inclusive of VAT**, is: _____ [enter figures and words];

- (d) The discounts offered and the methodology for their application are: _____;
- (e) Our tender shall be valid for a period _____ [insert validity period as specified in ITT 18.1] days from the date fixed for the Tender submission deadline in accordance with the Tender Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) We acknowledge that Attachment 1 to the Letter of Tender – Covenant of Integrity, forms part of this Letter of Tender.
- (g) If our Tender is accepted, we commit to obtain a performance security in accordance with the Tender Document [if a performance security is not required delete this provision];
- (h) Our firm, including any subcontractors or suppliers and subsuppliers for any part of the Contract, have nationalities from eligible countries.
- (i) We, including any subcontractors or suppliers and subsuppliers for any part of the Contract have no conflict of interest in accordance with ITT 4.4;

- (j) We, including any of our subcontractors or suppliers and subsuppliers for any part of the Contract, have not been declared ineligible by the Bank, under the Purchaser’s country laws or official regulations or by an act of compliance with a decision of the United Nations Security Council.
- (k) We are not participating as a Tenderer or as a partner in a JVCA in more than one Tender in this Tendering process in accordance with ITT 4.4(e), other than alternative offers submitted in accordance with ITT 13;
- (l) We are not a government-owned entity/ We are a government-owned entity but we meet the requirement stated in ITT 4.6 **[use one of the two options as appropriate];**
- (m) We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering process or execution of the Contract:

Name of Recipient	Address	Reason	Amount

(If no one has been paid or is to be paid, indicate “No One.”)

- (n) We understand that this tender, 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.
- (o) We understand that you are not bound to accept the lowest evaluated tender or any other tender that you may receive.
- (p) If awarded the contract, the person named below shall act as Supplier’s Representative:

Name:	
In the capacity of:	
Signed:	
Duly authorised to sign the Tender for and on behalf of:	
Date:	

Attachment 1 to Letter of Tender - Covenant of Integrity

To: _____ *(insert name of Purchaser)* _____

We declare and covenant that neither we nor anyone, including any of our directors, employees, agents, joint venture partners, consultants or sub-contractors, where these exist, acting on our behalf with due authority or with our knowledge or consent, or facilitated by us, has engaged, or will engage, in any Prohibited Practice (as defined below) in connection with the tendering process or in the execution or supply of any works, goods or services for **[insert the name of the contract]** (the “Contract”) and covenant to so inform you if any instance of any such Prohibited Practice shall come to the attention of any person in our organisation having responsibility for ensuring compliance with this Covenant.

We shall, for the duration of the tender process and, if we are successful in our tender, for the duration of the Contract, appoint and maintain in office an officer, who shall be a person reasonably satisfactory to you and to whom you shall have full and immediate access, having the duty, and the necessary powers, to ensure compliance with this Covenant.

We declare and covenant that, except for the matters disclosed in this Covenant of Integrity:

- (i) we, our subsidiaries and affiliates, and all of our directors, employees, agents or joint venture partners, where these exist, have not been convicted in any court of any offence involving a Prohibited Practice in connection with any tendering process or provision of works, goods or services during the ten years immediately preceding the date of this Covenant;
- (ii) none of our directors, employees, agents or a representatives of a joint venture partner, where these exist, has been dismissed or has resigned from any employment on the grounds of being implicated in any Prohibited Practice;
- (iii) we, our subsidiaries and affiliates and our directors, employees, agents or joint venture partners, where these exist, are not prohibited from participation in a tendering procedure on the grounds of having been found by the final judgement of a judicial process or a finding by the enforcement (or similar) mechanism of another international organisation to have engaged in a Prohibited Practice;
- (iv) we, our subsidiaries and affiliates, as well as any subcontractors, or suppliers or affiliates of the subcontracts or supplier are not subject to any sanction imposed by resolution of the United Nations Security Council.

If applicable, provide full disclosure of any convictions, dismissal, resignations, exclusions or other information relevant to Articles i) ii) iii) (iv)(v) (vi) or (vii) in the box below.

Name of Entity Required to be Disclosed	Reason Disclosure is Required ³

³ For each matter disclosed, provide details of the measures that were taken, or shall be taken, to ensure that neither the disclosed entity nor any of its directors, employees or agents commits any Prohibited Conduct in connection with the Tender for this Contract.

For the purpose of this Covenant, the terms set forth below define Prohibited Practices as one or more of the following:

- (i) a **“Corrupt Practice”** which means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (ii) a **“Fraudulent Practice”** which means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (iii) a **“Coercive Practice”** which means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party to influence improperly the actions of a party;
- (iv) a **“Collusive Practice”** which means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
- (v) a **“Theft”** which means the misappropriation of property belonging to another party;
- (vi) a **“Misuse of Bank’s Resources or Bank Assets”** which means improper use of the Bank’s Resources and Bank Assets, committed either knowingly or recklessly; and,
- (vii) an **“Obstructive Practice”** which means any of (1) destroying, falsifying, altering or concealing of evidence material to a Bank investigation, which impedes the Bank’s investigation; (2) making false statements to investigators in order to materially impede a Bank investigation into allegations of a Prohibited Practice; (3) failing to comply with requests to provide information, documents or records in connection with a Bank investigation; (4) threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to a Bank investigation or from pursuing the investigation; or (5) materially impeding the exercise of the Bank’s contractual rights of audit or inspection or access to information.

Following the submission of our tender, we grant the project financier, the European Bank for Reconstruction and Development (EBRD) and/or persons appointed by them, the right of inspection of our, and any proposed subcontractors, accounts and records and permission to have any such accounts and records audited by auditors appointed by the Bank, if required by the Bank. We accept to preserve these records generally in accordance with applicable law but in any case for at least six years from the date of substantial performance of the Contract.

We further declare that no affiliate of the Purchaser is participating in our tender in any capacity whatsoever.

Name:	
In the capacity of:	
Signed:	
Duly authorised to sign for and on behalf of:	
Date:	

2. Price Schedule for Goods and Related Services

Date: _____

Tender No.: _____

Name of the Tenderer: _____

Currency: _____

A. Goods

1	2	3	4	5
Item	Description	Quantity	Unit price DAP [<i>insert named place</i>]	Total price per item (3 x 4)
1.				
2.				
3.				
4				
Total Price (Goods) DAP [<i>insert named place</i>]				_____ **

B. List of mandatory spares

1	2	3	4	5
Item	Description	Quantity	Unit price	Total price (3 x 4)
1.				
2.				
3.				
4				
Total Price (Spare parts) DAP [<i>insert named place</i>]				

** For Goods and spare parts that will be supplied from within the Purchaser's country, the above total price is inclusive of all customs duties or import taxes and sales and other taxes already paid or payable on the Goods in the Purchaser's country if this Contract is awarded in the amount of: _____

C. Related Services

1	2	3	4	5
Item	Description	Quantity	Unit price	Total price (3 x 4)
1.				
2.				
3.				
4.				
Total Price (Related Services)				

Name:	
In the capacity of:	
Signed:	
Duly authorised to sign the Tender for and on behalf of:	
Dated on _____ day of _____, _____.	

Note:

1. In case of discrepancy between unit price and total, these will be adjusted in accordance with the Instructions to Tenderers.
2. Prices and currencies to be in accordance with the Instructions to Tenderers.
3. All items in the Section V: Supply Requirements must be entered and priced in the appropriate Price Schedule. Items not priced will be treated in accordance with the Instructions to Tenderers.

3. Tenderer Information and Qualification Forms

To establish its qualifications to perform the Contract in accordance with Section III: Evaluation and Qualification Criteria, the Tenderer shall provide the information requested in the corresponding Information Sheets included hereunder.

Date: _____

Tender No.: _____

Page _____ of _____ pages

Form A: Tenderer Information Sheet

Tenderer Information	
Tenderer's legal name	
In case of JVCA, legal name of each partner	
Tenderer's actual or intended country of constitution, Incorporation, or Registration	
Tenderer's year of constitution, Incorporation, or Registration	
Tenderer's legal address in country of constitution	
Tenderer's authorized representative (name, address, telephone numbers, email address)	

Form B: Average Annual Turnover

Each Tenderer or member of a JVCA must fill in this form

Annual Turnover Data for the Last 3 Years			
Year	Amount Currency	Exchange Rate	euro Equivalent*
Average Annual Turnover**			

The information supplied should be the Annual Turnover of the Tenderer or each member of a JVCA in terms of the amounts billed to clients for each year for work in progress or completed, converted to euros at the rate of exchange at the end of the period reported.

**For the purpose of determining the euro equivalent of other currencies the euro equivalent value should be calculated at the exchange rate at the middle of each year reported, as set by the central bank of the Tenderer's country or similar institution.*

****Average annual turnover is calculated as the total certified payments received for supply in progress or completed, divided by 3.**

Form C: Specific Experience

Tenderer's Legal Name: _____

Date: _____

JVCA Partner's Legal Name: _____

Tender No.: _____

Page _____ of _____ pages

**Each Tenderer or member of a JVCA must complete this form.
Complete one (1) form per Contract.**

Similar Contract No. <i>[insert specific number]</i> of <i>[total number of contracts]</i> required	Information (to be completed by Tenderer)
Contract Identification	
Award date	
Completion date	
Role in Contract Contractor Sub-contractor	
Total Contract amount and euro equivalent	
If a partner in a JVCA, specify participation in total Contract amount: Percent of Total Amount and euro equivalent	
Purchaser's Name: Address: Telephone/fax number: email:	
Description of the similarity compared with the goods described in Section V: Supply Requirements	

Section V: Supply Requirements

The list of Goods, related services and mandatory spare parts to be inserted in the Tender documents by the Purchaser, as applicable prior to issue of the Tender Document. Tables to be expanded as necessary

EXAMPLE:

1. Goods			
Item No	Name of Goods	Brief Description	Quantity

EXAMPLE:

2. Related Services			
Item No	Name of Related Service	Brief Description	Quantity

EXAMPLE:

3. List of Mandatory Spare Parts			
Item No	Name of mandatory spare parts	Brief Description	Quantity

a) The delivery schedule expressed as weeks/months stipulates hereafter a delivery date which is the date of delivery **DAP** (_____).

b) Delivery - All items to be delivered **DAP** (_____) within (__) weeks from the Effectiveness Date of the Contract. Related Services shall be completed with (__) weeks of delivery of the goods.

c) The Named Destination for delivery **DAP** is: _____.

d) The Effectiveness Date of the Contract is the date of Contract signing.

Technical Specifications and Statement of Compliance

The following note is intended only as information for the Purchaser and shall be deleted for the final version of the Tender Document.

Care must be taken in drafting specifications to ensure that they are not restrictive. Recognised international standards should be used wherever possible. Where other particular standards are used, i.e. national standards of the Purchaser's country, the specifications should clearly state that equipment, materials, and workmanship that meet other authoritative standards, and which ensure at least a substantially equal quality or performance as the standards mentioned, will also be acceptable. Reference to brand names and catalogue numbers should be avoided as far as possible; where unavoidable they should always be followed by the words "or at least equivalent".

Item No.	Technical Specification	Statement of Compliance with Comments*
	<p>* Tenderers must provide the following details in the space provided: Manufacturer name, make, model, 'comply' or 'not comply' as appropriate, and if 'not-comply' all technical deviations must be clearly set out alongside the appropriate line in the specification. Comments such as "blanket compliance" are not acceptable. Compliance statements shall be supported by manufacturers' leaflets or readable photocopies. <u>A completed 'Technical Specifications and Statement of Compliance' must be submitted as a part of the Tenderer's Tender in accordance with TDS 11.1.</u></p>	
1	<p><i>[Insert name of item and required technical specifications]</i></p>	<p>Manufacturer: _____ Make: _____ Model: _____ (these details must be provided for <u>all</u> items)</p>
2		
3	Related Services	

Section VI: General Conditions of Contract

TABLE OF CLAUSES

1.1	Definitions	40
1.2	Communications	42
1.3	Law and Language	42
1.4	Priority of Documents	42
1.5	Contract Agreement.....	42
1.6	Assignment	43
1.7	Copyright	43
1.8	Compliance with Laws	43
1.9	Inspections and Audit by the Bank	43
2.	Prohibited Practices	43
3.	Eligibility	44
4	Notices	45
5.	Settlement of Disputes.....	45
6	Scope of Supply	45
7.	Delivery.....	45
8.	Supplier's Responsibilities	45
9.	Contract Price	46
10.	Terms of Payment.....	46
11.	Taxes and Duties	46
12.	Performance Security	46
13.	Subcontracting.....	46
14.	Specifications and Standards.....	46
15.	Packing and Documents	47
16.	Insurance	47
17.	Transportation	47

18.	Inspections and Tests	47
19.	Liquidated Damages	47
20	Warranty.....	47
21.	Limitation of Liability	48
22.	Force Majeure	48
23	Change Orders and Contract Amendments	49
24.	Termination.....	49

These General Conditions of Contract (GCC), read in conjunction with the Particular Conditions (PCC) and other documents listed therein, constitute a complete document expressing the rights and obligations of the parties.

GCC reference **General Conditions of Contract**

1. General Provisions

1.1 Definitions

In the Conditions of Contract (“these Conditions”), which include the Particular Conditions and these General Conditions, the following words and expressions shall have the following stated meanings. 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 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].

“Contract Documents” means the documents listed in the Contract Agreement, including any amendments thereto.

“Contract Price” means the price payable to the Supplier as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.

“Completion” means the fulfilment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.

1.1.1.4 “Letter of Acceptance” means the letter of formal acceptance, signed by the Purchaser.

1.1.1.5 “Letter of Tender” means the document entitled Letter of Tender, which was completed by the Supplier and includes the signed offer to the Purchaser for the Goods.

1.1.1.6 “Specification” means the document entitled Technical Specifications and Statement of Compliance, as included in the Contract and any additions and modifications to the specification in accordance with the Contract. Such document specifies the Goods.

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

1.1.1.8 “GCC” means the General Conditions of Contract.

**GCC
reference****General Conditions of Contract**

1.1.1.9 “PCC” means the Particular Conditions of Contract.

1.1.2 Parties and Persons

1.1.2.1 “Party” means the Purchaser or the Supplier, as the context requires.

1.1.2.2 “Purchaser” means the person named as purchaser in the PCC and the legal successors in title to this person(s).

1.1.2.3 “Supplier” means the person(s) named as Supplier in the Letter of Tender accepted by the Purchaser and the legal successors in title to this person(s).

1.1.2.4 “Subcontractor” means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Goods or the Related Services; and the legal successors in title to this person.

1.1.2.5 “Bank” means the European Bank for Reconstruction and Development.

1.1.2.6 “Borrower” means the person (if any) named as the borrower in the PCC.

1.1.3 Money and Payments

1.1.3.1 “Contract Price” means the price defined in sub-clause GCC 10, The Contract Price, and includes adjustments in accordance with the Contract.

1.1.4 Goods

1.1.4.1 “Goods” means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Purchaser under the Contract.

1.1.4.2 “Related Services” means the services incidental to the supply of the Goods, such as insurance, transportation, installation, commissioning, training, initial maintenance and other such obligations of the Supplier under the Contract.

1.1.5 Other Definitions

1.1.5.1 “Purchaser’s Country” is the country specified in the PCC.

1.1.5.2 “Eligible Countries” means any country not subject to payment or import restrictions as a consequence of a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

1.1.5.3 “Laws” means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.

1.1.5.4 “Project Site,” means the place named in the PCC.

1.1.5.5 Incoterms

(a) Unless inconsistent with any provisions in the Contract, the meaning of any trade term and the

**GCC
reference** **General Conditions of Contract**

rights and obligations of Parties thereunder shall be as prescribed by Incoterms.

(b) The Incoterms, when used, shall be governed by the rules prescribed in the current edition of Incoterms, specified in the PCC, and published by the International Chamber of Commerce, Paris, France

1.2 Communications

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be 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 PCC. Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed.

1.3 Law and Language

The Contract shall be governed by the law of the country or other jurisdiction stated in the PCC.

The ruling language of the Contract and the language for communications shall be that stated in the PCC.

1.4 Priority of Documents

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

- (a) the Contract Agreement (if any);
- (b) the Letter of Acceptance;
- (c) the Letter of Tender;
- (d) the Particular Conditions;
- (e) these General Conditions;
- (f) the Technical Specifications and Statement of Compliance;
- (g) Drawings (if any), and
- (h) the Schedules and any other documents forming part of the Contract.

If an ambiguity or discrepancy is found in the documents, the Purchaser shall issue any necessary clarification or instruction.

1.5 Contract Agreement

The Parties shall enter into a Contract Agreement within 28 days after the Supplier 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

**GCC
reference** **General Conditions of Contract**

charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Purchaser.

1.6 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 may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party.

1.7 Copyright

The copyright in all drawings, documents, and other materials containing data and information furnished to the Purchaser by the Supplier herein shall remain vested in the Supplier or, if they are furnished to the Purchaser directly or through the Supplier by any third Party, including suppliers of materials, the copyright in such materials shall remain vested in such third Party.

1.8 Compliance with Laws

The Supplier shall, in performing the Contract, comply with applicable Laws.

1.9 Inspections and Audit by the Bank

The Supplier shall permit the Bank and/or persons appointed by the Bank to inspect the Site and/or the Supplier's (including its sub-suppliers, contractors, subcontractors, consultants or subconsultants) accounts and records relating to the performance of the Contract and to have such accounts and records audited by auditors appointed by the Bank if required by the Bank.

The Supplier shall maintain all documents and records related to the Contract in accordance with applicable law but in any case for at least six years from the date of substantial performance of the Contract.

The Supplier shall provide any documents necessary for the investigation of allegations of Prohibited Practices and require its employees or agents with knowledge of the Contract to respond to questions from the Bank.

2. Prohibited Practices

2.1 The Bank requires that Borrowers (including beneficiaries of Bank loans), as well as tenderers, suppliers, sub-suppliers, contractors, subcontractors, concessionaires, consultants and subconsultants under Bank financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Bank:

(a) defines, for the purposes of this provision, the terms set forth below as follows:

- (i) a **"Coercive Practice"** which means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party to influence improperly the actions of a party;

GCC reference	General Conditions of Contract
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- (ii) a **“Collusive Practice”** which means an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - (iii) a **“Corrupt Practice”** which means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - (iv) a **“Fraudulent Practice”** which means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - (v) a **“Misuse of the Bank’s Resources or Bank Assets”** which means improper use of the Bank’s Resources or Bank Assets, committed either knowingly or recklessly;
 - (vi) an **“Obstructive Practice”** which means any of (1) destroying, falsifying, altering or concealing of evidence material to a Bank investigation, which impedes the Bank’s investigation; (2) making false statements to investigators in order to materially impede a Bank investigation into allegations of a Prohibited Practice; (3) failing to comply with requests to provide information, documents or records in connection with a Bank investigation; (4) threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to a Bank investigation or from pursuing the investigation; or (5) materially impeding the exercise of the Bank’s contractual rights of audit or inspection or access to information; and,
 - (vii) a **“Theft”** which means the misappropriation of property belonging to another party.
- (b) will cancel the portion of the Bank financing allocated to a Contract for goods, works, services or concessions if it at any time determines that Prohibited Practices were engaged in by representatives of the Borrower or of a beneficiary of the Bank financing during the procurement or the execution of that Contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to remedy the situation;
- (c) may declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed Contract if it at any time determines that the firm has engaged in Prohibited Practices in competing for, or in executing, a Bank-financed Contract; and
- (d) reserves the right, where a Borrower or a firm has been found by the final judgement of a judicial process in a member country of the Bank or a finding by the enforcement (or similar) mechanism of another international organisation, including Mutual Enforcement Institutions, to have engaged in Prohibited Practices:
- (i) to cancel all or part of the Bank financing for such Borrower; and
 - (ii) to declare that such a firm is ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed Contract.

3. Eligibility

- 3.1 The Supplier and its Subcontractors shall have the nationality of an Eligible Country. A Supplier or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or is constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.
- 3.2 All Goods and Related Services to be supplied under the Contract and financed by the Bank shall have their origin in Eligible Countries. For the purpose of this Clause, origin means the country where the Goods have been grown, mined, cultivated, produced, manufactured, or processed; or through

**GCC
reference** **General Conditions of Contract**

manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

4 Notices

- 4.1 Any notice given by one Party to the other, pursuant to the Contract shall be in writing to the address specified in the PCC. The term “in writing” means communicated in written form with proof of receipt.

5. Settlement of Disputes

- 5.1 The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any dispute arising between them under or in connection with the Contract.
- 5.2 If, after twenty-eight (28) days from the commencement of such consultation, the Parties have failed to resolve their dispute by such mutual consultation, then either Party may give notice to the other Party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the PCC.
- 5.3. Notwithstanding any reference to arbitration herein,
- (a) the Parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
 - (b) the Purchaser shall pay the Supplier any monies due the Supplier.

6 Scope of Supply

- 6.1 The Goods and Related Services to be supplied shall be as specified in Section V: Supply Requirements.

7. Delivery

- 7.1 Delivery of the Goods and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in Section V: Supply Requirements. The shipping and other documents to be furnished by the Supplier are specified in the PCC. The documents specified therein shall be received by the Purchaser before arrival of the Goods and, if not received, the Supplier shall be responsible for any consequent expenses.

8. Supplier's Responsibilities

- 8.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GCC 6, and the Delivery and Completion Schedule, as per GCC 7.

**GCC
reference General Conditions of Contract****9. Contract Price**

- 9.1 Unless otherwise prescribed in the PCC, the Contract Price shall be fixed throughout the duration of Contract performance.

10. Terms of Payment

- 10.1 The Contract Price shall be paid as specified in the PCC.

11. Taxes and Duties

- 11.1 For Goods manufactured outside the Purchaser's country the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Purchaser's country.
- 11.2 For Goods manufactured within the Purchaser's country the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Purchaser.
- 11.3 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in the Purchaser's Country, the Purchaser shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

12. Performance Security

- 12.1 If so required in the PCC, the Supplier shall, within twenty-eight (28) days of the notification of Contract award, provide a performance security for the performance of the Contract of the amount specified in the PCC.

13. Subcontracting

- 13.1 The Supplier shall notify the Purchaser in writing of all subcontracts awarded under the Contract if not already specified in the Tender. Such notification, in the original Tender or later, shall not relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.
- 13.2 Subcontracts shall comply with the provisions of GCCs 2 and 3.

14. Specifications and Standards

- 14.1 The Supplier shall ensure that the Goods and Related Services comply with technical requirements, as specified in Section V: Supply Requirements.

**GCC
reference General Conditions of Contract****15. Packing and Documents**

- 15.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods' final destination and the absence of heavy handling facilities at all points in transit.
- 15.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the PCC, and in any other instructions ordered by the Purchaser.

16. Insurance

- 16.1 Unless otherwise specified in the PCC, the Goods supplied under the Contract shall be fully insured, in a freely convertible currency from an eligible country, against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the PCC.

17. Transportation

- 17.1 Unless otherwise specified in the PCC, the responsibility for arranging transportation of the Goods shall be in accordance with the specified Incoterms.

18. Inspections and Tests

- 18.1 The Supplier shall at its own expense and at no cost to the Purchaser carry out all such tests and/or inspections of the Goods and Related Services as specified in the PCC.

19. Liquidated Damages

- 19.1 If the Supplier fails to deliver any or all of the Goods, by the date(s) of delivery, or perform the Related Services within the period specified in the Contract, the Purchaser may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the PCC of the Contract Price for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in the PCC. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to GCC 24.

20 Warranty

- 20.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.

GCC reference General Conditions of Contract

- 20.2 The Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.
- 20.3 Unless otherwise specified in the PCC, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the PCC, or for eighteen (18) months after the date of shipment, from the port, or place of loading in the country of origin, whichever period concludes earlier.
- 20.4 The Purchaser shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.
- 20.5 Upon receipt of such notice, the Supplier shall, within the period specified in the PCC, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.
- If having been notified, the Supplier fails to remedy the defect within the period specified in the PCC, the Purchaser may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

21. Limitation of Liability

- 21.1 Except in cases of gross negligence or wilful misconduct:
- (a) the Supplier shall not be liable to the Purchaser, whether in Contract, in tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser; and
 - (b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort, or otherwise, shall not exceed the Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Supplier to indemnify the Purchaser with respect to patent infringement.

22. Force Majeure

- 22.1 A Party's failure or delay in performing any of its obligations under this Contract will not be deemed a breach of this Contract to the extent that such failure or delay is directly due to any Force Majeure Event.
- 22.2 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but are not limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall

GCC reference **General Conditions of Contract**

seek all reasonable alternative means for performance not prevented by the Force Majeure event.

- 25.3 If a Force Majeure Event arises, the affected Party shall promptly notify the other Party in writing of such condition and the cause thereof. Unless otherwise directed by the other party in writing, the affected Party shall continue to perform its obligations under the Contract as far as is reasonably practicable, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure Event

23 Change Orders and Contract Amendments

- 23.1 The Purchaser may at any time order the Supplier through notice in accordance with GCC 4 make changes to the general scope of the Contract.
- 23.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended.
- 23.3 Subject to the above, no variation in, or modification of, the terms of the Contract shall be made except by written agreement signed by the Parties.

24. Termination**24.1 Termination for Default**

The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the Contract in whole or in part:

- (i) if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract as provided for in GCC 19; or,
- (ii) if the Supplier, in the judgment of the Purchaser, has engaged in Prohibited Practices, as defined in GCC 2, in competing for, or in executing the Contract.

24.2 Termination for Insolvency

The Purchaser may at any time terminate the Contract by giving notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Purchaser.

Section VII: Particular Conditions of Contract

The following Particular Conditions of Contract (PCC) shall supplement the GCC. Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

Boxed guidance notes and provisions in italic font contain instructions and guidance which the drafter should follow. They are not part of the text and should not be included in the final document.

All reference Clauses and Sub-clauses provided in the Particular Conditions of Contract shall be construed as reference Clauses and Sub-clauses in Section VI: General Conditions of Contract.

GCC reference	Particular Conditions of Contract
	<p>General Provisions</p> <p>1.1.2.2 The Purchaser is: [<i>insert the name of Purchaser</i>]</p> <p>1.1.2.6 The Borrower is: [<i>insert name of the borrower</i>]</p> <p>1.1.5.1 The Purchaser's Country is: [<i>insert the name of the Purchaser's country</i>]</p> <p>1.1.5.4 The Project Site is: [<i>insert description, if applicable</i>]</p> <p>1.3 The governing law is that of: [<i>insert name of the country</i>]. The language for communications is [<i>name of language for communications only if different from the ruling language</i>]: The ruling language is: [<i>this shall be the ruling language specified in the Instructions to Tenderers</i>]</p> <p>4.1 For notices, the Purchaser's address shall be: Attention: _____ Purchasers Name _____ Street Address: _____ Floor/ Room number: _____ City: _____</p>

Postal Code: _____

Country: _____

Telephone: _____

Facsimile number: _____

Email: _____

5.2 EXAMPLE

The rules of procedure for arbitration shall be as follows:

- (a) In the case of a dispute between the Purchaser and a Supplier which is a national of the Purchaser's country, the dispute shall be referred to adjudication/arbitration in accordance with the laws of the Purchaser's country.
- (b) In the case of a dispute between the Purchaser and a foreign Supplier, the dispute shall be settled by arbitration in accordance with the provisions of the UNCITRAL Arbitration Rules.
- (c) The place of arbitration shall be [*insert place*].
- (d) The arbitration proceedings shall be conducted in the language governing the Contract.

Notwithstanding any referral of a dispute to arbitration herein:

- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
- (b) the Purchaser shall pay the Supplier any monies due the Supplier.

7.1 b) The shipping and other documents to be furnished by the Supplier are:

EXAMPLE

- (i) Original and (____) copies of the Supplier's invoice showing the Goods' description, quantity, unit price and total amount;
- (ii) Original and (____) copies of the transport document;
- (iii) Original and (____) copies of packing list identifying contents of each package;
- (iv) Manufacturer's/Supplier's warranty certificate;
- (vi) Inspection certificate, issued by the nominated inspection agency and the Supplier's factory inspection report (if applicable);
- (vii) Certificate of origin

10.1 a) The Contract Price shall be paid as follows:

EXAMPLE

One hundred (100) percent of the Contract Price of the Goods despatched shall be paid within 30 days of the Purchaser's receipt of the documents specified in Clause 7 and a claim supported by an acceptance certificate issued by the Purchaser for the respective delivery.

Payment for Related Services shall be made within thirty (30) days of receipt of an invoice supported by a certificate issued by the Purchaser declaring that the contracted Services have been performed.

Payments will be made in [insert currency or currencies specified in the Supplier's tender and in the tender documents for the Services in question]

- 15.2** The packing, marking and documentation within and outside the packages shall be: *[insert details required for packing marking and documentation]*
- 16.1** In accordance with the DAP Incoterm, the Supplier is responsible for the transit of the goods to the Project Site but is not obliged to arrange insurance.
- 18.1** The inspections and tests shall be:
Pre-shipment inspection: *[If applicable, specify inspection and tests and where they shall be undertaken]*
Final acceptance: *[If applicable, specify inspection and tests and where they shall be undertaken]*
- 19.1** The liquidated damage shall be: 0.5 % per week.
The maximum percentage of liquidated damages shall be: 10%
- 20.3** For the purposes of the warranty, the place(s) of final destination(s) shall be: *[insert final destination]*
- 20.5** The period for repair or replacement shall be: *[insert number of days]* days.

Section VIII: Annex to the PCC - Contract Forms

This Section contains Contract Forms which once completed will constitute part of the Contract.

The Contract Agreement form shall only be completed by the successful Tenderer, after Contract award.

TABLE OF CONTENTS

1. Letter of Acceptance	54
2. Contract Agreement	56

1. Letter of Acceptance

[on letterhead paper of the Purchaser]

..... *[date]*

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

Subject: *[Notification of Award Contract No.]*

This is to notify you that your Tender dated *[insert date]* for the execution of the *[insert name of the Contract and identification number]* for the amount of *[insert amount(s) in figures and words and name(s) of currency(ies)]*, as corrected and modified in accordance with the Instructions to Tenderers is hereby accepted by us.

You are requested to furnish the Performance Security in the amount of *[insert amount (s) in figures and words and name(s) of currency(ies)]* within 28 days in accordance with the Conditions of Contract, using for that purpose the Performance Security Form included in Section VIII: Annex to the PCC - Contract Forms of the Tender Document.

If a Performance Security has not been requested the above provision should be deleted from the Letter of Acceptance

In accordance with ITT 37.2 of the Tender Document you are requested to sign, date and return the Agreement within 28 days of receipt.

Signed by:
Name and Title of Signatory
For and on behalf of the Purchaser
Name:

Address:

Date:

Attachment: Contract Agreement

2. Contract Agreement

THIS CONTRACT AGREEMENT is made on the *[insert number]* day of *[insert month]*, *[insert year]*.

BETWEEN

- (1) *[insert complete name and principle place of business of the Purchaser]*, a *[insert description of type of legal entity, for example, an agency of the Ministry of {insert name of Ministry/agency} of the Government of {insert name of Country of the Purchaser}, or corporation incorporated under the laws of {insert name of Country of the Purchaser}]* and having its principal place of business at *[insert address of the Purchaser]* (hereinafter called “the Purchaser”),

and

- (2) *[insert name of the Supplier]*, a corporation incorporated under the laws of *[insert country of Supplier]* and having its principal place of business at *[insert address of Supplier]* (hereinafter referred to as “the Supplier”).

WHEREAS the Purchaser invited tenders for Goods and Related Services, described as *[insert brief description of the Goods and Related Services]* and has accepted a Tender by the Supplier for the supply of these Goods and Related Services, and the Purchaser agrees to pay the Supplier 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.

The Purchaser and the Supplier 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, in order of precedence, shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.

- (a) the Letter of Acceptance
- (b) the Letter of Tender
- (c) the Addenda Nos *[insert addenda numbers if any]*.
- (d) the Particular Conditions
- (e) the General Conditions
- (f) the Requirements
- (g) the Technical Specifications and Statement of Compliance
- (h) the Drawings *(if any)*
- (i) the completed Price Schedules and any other documents forming part of the Contract.

3. In consideration of the payments to be made by the Purchaser to the Supplier as indicated in this Agreement, the Supplier hereby covenants with the Purchaser to supply of the Goods and Related Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.

4. The Purchaser hereby covenants to pay the Supplier in consideration of the supply of the Goods and Related Services 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.

Agreement to be executed in accordance with the laws of *[insert name of the borrowing country]* on the day, month and year indicated above.

Signed by:	Signed by:
Name and Title of Signatory	Name and Title of Signatory
For and on behalf of the Purchaser in the presence of	for and on behalf the Supplier in the presence of
Witness:	Witness:
Name:	Name:
Address:	Address:
Date:	Date: