



European Bank
for Reconstruction and Development

Standard Tender Documents Procurement of Goods and Related Services

User Guide

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Standard Tender Documents Procurement Goods and Related Services User Guide

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A. PREFACE

These Standard Tender Documents and User's Guide have been prepared by the European Bank for Reconstruction and Development (the Bank) for the procurement of goods and related services through open tendering procedures in compliance with the Bank's Procurement Policies and Rules for projects that are financed in whole or in part by the Bank.

These Standard Tender Documents are derived from the Master Document for Procurement of Goods prepared by the Multilateral Development Banks and International Financing Institutions. The procedures and practices which are presented in them reflect the "best practices" by these institutions.

Purchasers or their procurement consultants should complete the 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.

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. [] 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
 - Bank Guarantee for Advance Payment;

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

PART 1 – TENDERING PROCEDURES

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.

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 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. Eligible Countries

This Section includes information regarding eligible countries.

PART 2 –SUPPLY REQUIREMENTS**Section VI. 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.

PART 3 – CONDITIONS OF CONTRACT AND CONTRACT FORMS**Section VII. 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 VIII Particular Conditions of Contract. (PCC)

Section VIII. Particular Conditions of Contract (PCC)

The contents of this Section contain clauses specific to each Contract that modify or supplement Section VII, 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 IX: 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.

B. REVISIONS

This revision of the Standard Tender Document incorporates a number of changes reflecting the experience of the Bank in using previous versions of this document. The key changes are as follows:

1. Invitation for Tenders (IFT)

- The (IFT) now includes a reference to the Bank's Procurement Policies and Rules (PP&R) as the applicable procurement rules.

2. Section I - Instructions to Tenderers (ITT)

- ITT Clause 2 now includes a reference to the Bank's PP&R as the applicable procurement rules.
- ITT Clause 3 has been updated to include "*an obstructive practice*" and "*a misuse of the Bank's resources*" as additional prohibited practices.
- ITT Clause 19 now clarifies that if the tender security is provided in the form of a bank guarantee it shall be issued by a 'reputable bank' and, if required, provides an option for the Purchaser to require that the tender security is issued by a bank with a minimum credit rating.

- ITT Clause 19.6 now includes the Tenderer's refusal to accept arithmetical errors as a basis for forfeiture of the tender security.
- New addition: ITT Clause 29 – Nonmaterial Nonconformities. As long as a tender is 'substantially responsive', this provision will permit a Purchaser to request a tenderer to submit any necessary missing information and/or documentation to rectify any nonmaterial nonconformities within a reasonable period of time.
- New addition to ITT Clause 30 (formally ITT Clause 29) which provides the Purchaser with the option (but not obligation) to call the tender security in the event that the Tenderer fails to accept the correction of any arithmetical errors.
- New addition to ITT Clause 33 (formally ITT Clause 32) which provides the Purchaser with the right to waive any minor deviations to the qualification criteria that do not materially affect the capability of the tenderer to perform the Contract.
- ITT Clause 37 now includes a requirement for the Purchaser to sign the Contract Agreement that is sent to the successful tenderer.
- A new ITT Clause 39 has been added to the ITT which provides details of the process to be followed in the event that any tenderer wishes to submit a formal complaint with regard to the procurement process.

3. Section III: Evaluation and Qualification Criteria

The section pertaining to Qualification Criteria has been updated as follows:

- The 'Table References' previously at the beginning of this section which duplicated the information provided in the Qualification Tables have been deleted;
- In the Qualification Tables, the text under "Joint Venture, Consortium or Association" is modified to make a reference to requirements for the "Lead Partner" and "Each Other Partners";
- Sub-Factor 2.2.1 History of Non-Performing Contracts is updated to ensure consistency with the Bank's Prequalification Guidance Note (i.e. the tenderer shall not have a "consistent history of litigation" resulting in awards against the tenderer).
- In the Qualification Form, FIN-2: Average Annual Turnover, a reference to the exchange rate to be used has been added.

4. Section IV: Tender Forms

- A new provision has been inserted into the Letter of Tender which will require the Tenderer to state its tender price both **exclusive** of VAT and **inclusive** of VAT (if VAT is to be included in the tender price) so that both can be announced/published at the tender opening);
- A new provision has been inserted into the Letter of Tender which will require the Tenderer to certify that neither it or its' subcontractors or suppliers has 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.
- A new provision has been inserted into the draft Form of Tender Security which provides the Purchaser with the right to call the tender security in the event that the Tenderer fails to accept the correction of any arithmetical errors.
- The text of the draft form of Tender Security has been updated to include a statement that the guarantee is subject to ICC publication No. 758 except that article 15(a) is excluded (article 15(a) requires any claim under the guarantee to be supported by a statement from the beneficiary indicating in what respect the applicant is in breach of its obligations under the Contract).

5. General Conditions of Contract (GCC)

- GCC Clauses 25 – Force Majeure and 28 – Termination have been modified to align these provisions with current industry norms.

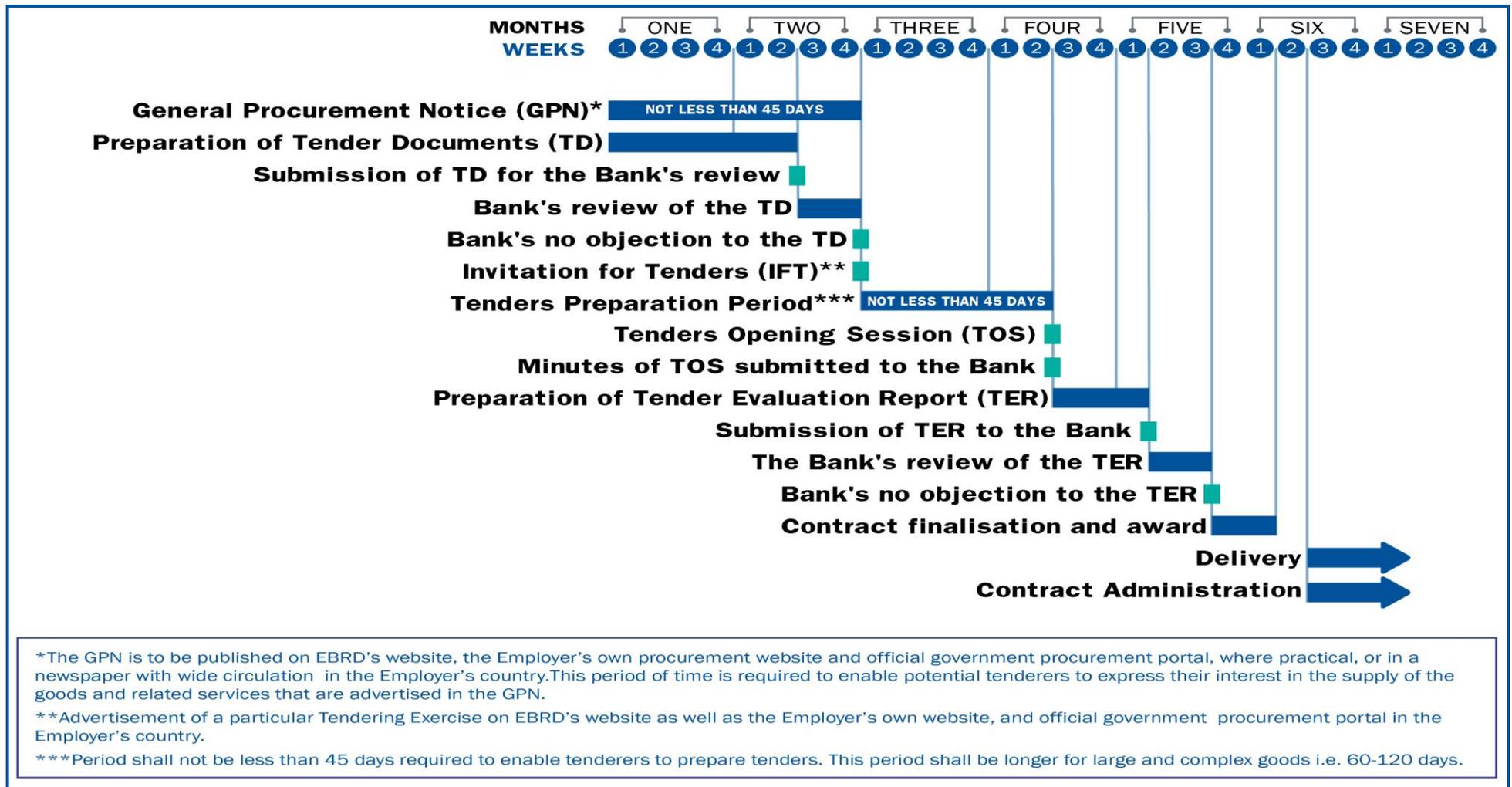
6. Section IX: Contract Forms

- The text of the draft Performance Security has been updated to include a statement that the guarantee is subject to ICC publication No. 758 except that article 15(a) is excluded.

- The text of the draft Advance Payment Guarantee has been updated to provide for the reduction of the value of the guarantee, to permit a claim to be made in the event that the supplier has failed to repay the advance payment in accordance with the Contract conditions and includes a statement that the guarantee is subject to ICC publication No. 758 except that article 15(a) is excluded.

C. ESSENTIAL STEPS OF THE OPEN TENDERING PROCESS

The Instruction to Tenderers included in these Standard Tender Documents is designed for a single stage tendering process with or without prequalification. The following flow chart reflects the essential steps of the open tendering process when no prequalification has been carried by the Purchaser prior to the Invitation for tenders.



D. INVITATION FOR TENDERS

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

The Invitation for Tenders must be published no earlier than 45 calendar days after the publication of the General Procurement Notice on the Bank's website (www.ebrd.com) 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. An example of this would include a requirement for a minimum level of experience in execution of works of the nature and complexity that are similar to the works for which the Invitation for Tenders is issued.

INVITATION FOR TENDERS

... [insert the name of the Country]

... [insert name of the Project]

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

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].

[Name of Purchaser] hereinafter referred to as "the Purchaser", intends to use part of the proceeds of a loan from the Bank towards the cost of [insert name of the Project].

The Purchaser now invites sealed tenders from Suppliers for the following Contract[s] to be funded from part of the proceeds of the loan:

- [For each Contract include a concise description of the goods and related services as applicable. State size and principal quantities. For contracts involving works provide locations, estimated duration and advise if any contracts are to be implemented concurrently.].

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 paragraph if the tender does not involve more than one Contract/ lot.

Tendering for contracts that are to be financed with the proceeds of a loan from the Bank is open to firms from any country.

To be qualified for the award of a Contract, Tenderers must satisfy the following minimum criteria:

- ... [Indicate any particular postqualification requirements, which should be the same criteria set out in the Instructions to Tenderers].

Delete the above paragraph if not applicable.

Tender documents may be obtained from the office at the address below upon payment of a non-refundable fee of ... **[state currency and value]** or equivalent in a convertible currency.

Only a nominal fee should be charged for tender documents, solely to cover the costs of reproduction and despatching the documents by courier.

[Give instructions for payment by bank transfer or the like in addition to requirements for submitting Bank receipt of payment to the Purchaser].

Upon receiving appropriate evidence of payment of the non-refundable fee, the documents will be promptly dispatched by courier, however, no liability can be accepted for loss or late delivery. If requested the documents can also be dispatched electronically after the presentation by the prospective tenderer of appropriate evidence of payment of the non-refundable fee. In the event of any discrepancy between electronic and hard copies of the documents, the hard copy shall prevail.

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]** or its equivalent in a convertible currency.

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

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 should be no less than 45 calendar days after the date of publication of this notice or the availability of the tender documents, whichever is the latest. A period of 60 calendar days is normal and is also preferable. For complex or large contracts as well as for tenders requiring a pre-tender meeting or site visit a longer period would be necessary.

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>

A register of potential Tenderers who have purchased the tender documents may be inspected at the address below.

Prospective Tenderers may obtain further information from, and also inspect and acquire the tender documents at, the following office:

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

[Insert date of letter] Date:_____

TENDER DOCUMENT FOR PROCUREMENT OF GOODS AND RELATED SERVICES

PROCUREMENT OF:

Issued on:	
Tender No:	
Purchaser:	
Country:	

Tender Document

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PART 1 – TENDERING PROCEDURES

Section I: Instructions to Tenderers

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Section I. Instructions to Tenderers

A. GENERAL

- | | |
|--|--|
| 1. Scope of Tender | <p>1.1 The Purchaser indicated in Section II, Tender Data Sheet (herein after referred to as “TDS”) issues this Tender Document for the procurement of Goods as specified in Section VI, 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 VII, 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: http://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> <p style="margin-left: 40px;">(i) a coercive practice which means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;</p> <p style="margin-left: 40px;">(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;</p> <p style="margin-left: 40px;">(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;</p> <p style="margin-left: 40px;">(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;</p> <p style="margin-left: 40px;">(v) a misuse of the Bank’s resources which means improper use of the Bank’s resources, committed either intentionally or through reckless disregard;</p> <p style="margin-left: 40px;">(vi) an obstructive practice which means (i) destroying, falsifying, altering or concealing of evidence material to a Bank investigation, which impedes the Bank’s investigation; (ii) making false statements to investigators in order to</p> |

materially impede a Bank investigation into allegations of a Prohibited Practice; (iii) failing to comply with requests to provide information, documents or records in connection with a Bank investigation; (iv) 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 (v) 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, 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 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 suppliers, 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 Section VII and VIII, General and Particular Conditions of Contract.

4. Eligible Tenderers

4.1 A Tenderer may be a natural person, private entity, government-owned entity—subject to Instructions to Tenderers (hereinafter referred to as “ITT”) 4.5—or any combination of such entities in the form of a 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.

4.2 A Tenderer, and all parties constituting the Tenderer, shall have the nationality of an eligible country, in accordance with Section V, Eligible Countries. 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 sub-

suppliers for any part of the Contract including Related Services.

- 4.3 A Tenderer shall not have a conflict of interest. All Tenderers found to have in conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest with one or more parties in this Tender 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 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 VI, Supply 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 Borrower for the supervision of the Contract.
- 4.4 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.
- 4.5 No affiliate of the Purchaser 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 Borrower.
- 4.6 Tenderers shall provide such evidence of their continued eligibility satisfactory to the Purchaser, as the Purchaser shall reasonably request.
- 4.7 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.
- 4.8 In case a prequalification process has been conducted prior to the Tender process, this Tender is open only to pre-qualified Tenderers.

- 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 as listed in Section V, Eligible Countries.
- 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 Parts 1, 2, and 3, which include all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITT 8.
- PART 1 Tendering Procedures**
- Section I. Instructions to Tenderers (ITT)
 - Section II. Tender Data Sheet (TDS)
 - Section III. Evaluation and Qualification Criteria
 - Section IV. Tender Forms
 - Section V. Eligible Countries
- PART 2 Supply Requirements**
- Section VI. Supply Requirements
- PART 3 Contract Forms**
- Section VII. General Conditions of Contract (GCC)
 - Section VIII. Particular Conditions of Contract (PCC)
 - Section IX. Annex to the PCC Contract Forms
- 6.2 The Invitation for Tenders issued by the Purchaser is not part of the Tender Document.
- 6.3 The Tenderer shall obtain the Tender Document from the source stated by the Purchaser in the Invitation for Tenders; otherwise the Purchaser 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 in writing at the Purchaser 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 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 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 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. 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 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 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 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 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 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 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 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 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 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, 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 following:
- (a) Letter of Tender and Attachment 1 to the Letter of Tender – Covenant of Integrity;
 - (b) completed Schedules as provided in Section IV, Tender Forms;
 - (c) tender Security, in accordance with ITT 19;
 - (d) at the Tenderer's option, alternative proposals, if permissible, in accordance with ITT 13;

- (e) written confirmation authorising the signatory of the Tender to commit the Tenderer, in accordance with ITT 20.2;
- (f) documentary evidence establishing the eligibility of the Goods and Services offered by the tenderer, in accordance with ITT 17.1;
- (g) documentary evidence establishing the Tenderer's qualifications in accordance with the requirements of Section III, Evaluation and Qualification Criteria, using the relevant forms furnished in Section IV, Tender Forms;
- (h) documentary evidence as specified in the TDS, establishing the conformity of the Goods and Services offered by the Tenderer with the Tender Document, using the relevant forms furnished in Section IV, Tender Forms;
- (i) in the case of a tender submitted by a JVCA, a JVCA agreement, indicating at least the parts of the Supply Requirements to be executed by the respective partners and
- (j) any other document required 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 shall not be considered. If alternative proposals are permitted, their method of evaluation shall be as stipulated in Section III, Evaluation and Qualification Criteria.

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

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

13.4 When specified in the TDS, Tenderers are permitted to submit alternative technical solutions for specified parts of the requirements, and such parts shall be identified in the TDS, as will the method for their evaluation, and described in Section VI, Supply Requirements.

14. Tender Prices and Discounts

14.1 The prices and discounts quoted by the Tenderer in the Letter of Tender and in the Price Schedules shall conform to the requirements specified in ITT 14.2.

14.2 Unless otherwise provided in the TDS and the Contract, the prices quoted by the Tenderer shall be fixed.

14.3 The price to be quoted in the Letter of Tender in accordance with ITT 12.1, shall be the total price of the Tender excluding any discounts offered.

14.4 The Tenderer shall quote any unconditional discounts and the methodology for their application in the Letter of Tender in accordance with ITT 14.1.

14.5 The terms EXW, CIP, DAP and other similar terms shall be governed by the rules prescribed in the current edition of Incoterms, published by The International Chamber of Commerce, Paris.

14.6 The Tenderer shall quote prices as required in each Price Schedule included in

Section IV, Tender Forms. The Tenderer shall indicate on the appropriate Price Schedule the unit price (where applicable) and total Tender price of the Goods it proposes to supply under the Contract. The Tenderer's separation of price components will be solely for the purpose of facilitating the comparison of tenders by the Purchaser and will not in any way limit the Purchaser's right to Contract on any of the terms offered. Prices indicated on the price schedule shall be entered separately in the following manner unless otherwise specified in the TDS:

- (a) For Goods to be supplied from within the Purchaser's country:
 - (i) the price of the Goods, quoted EXW inclusive of all customs duties or import taxes and sales and other taxes already paid or payable on the components and raw materials used in the manufacture or assembly of Goods, but exclusive of any sales and other taxes on the finished Goods which will be payable in the Purchaser's country if this Contract is awarded;
 - (ii) any customs duties or other similar import taxes paid or payable on directly imported components incorporated or to be incorporated in the Goods;
 - (iii) any VAT, sales and other similar taxes on the finished Goods which will be payable in the Purchaser's country if this Contract is awarded;
- (b) For Goods to be supplied from outside the Purchaser's country:
 - (i) the price of the Goods quoted CIP (border point or place of destination as specified in the TDS) exclusive of customs duties and other taxes payable in the Purchaser's country;
 - (ii) the price of the Goods quoted on the basis of any other Incoterms specified in the TDS;
- (c) Related Services:
 - (i) the price for inland transportation, insurance and other local costs related to transportation of the Goods (delivered EXW or CIP (border or port)) to their final destination, if specified in the TDS;
 - (ii) the price of incidental (associated) services outlined in the TDS and detailed in the Section VI – Supply Requirements, the Conditions of Contract and Technical Specifications.

The price of Related Services shall be inclusive of all taxes, duties, levies and charges payable in the Purchaser's country as of thirty (30) days prior to the deadline for submission of tenders, but exclusive of any VAT, sales or other similar taxes on the services which will be payable in the Purchaser's country if the Contract is awarded.

14.7 Unless otherwise specified in the TDS, prices quoted by the Tenderer shall be fixed during the Tenderer's performance of the Contract and not subject to variation on any account. A tender submitted with an adjustable price quotation which is not consistent with this paragraph will be rejected by the Purchaser as non-responsive pursuant to ITT 28. However, if in accordance with the TDS, prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract, a tender submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.

14.8 If so indicated pursuant to ITT 1.1, tenders are being invited for individual contracts (lots) or for any combination of contracts (packages). Unless otherwise indicated in the TDS, prices quoted shall correspond to 100% of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Tenderers wishing to offer any price reduction for the award of more than one Contract shall specify the applicable price reductions in accordance with ITT 14.4, provided the tenders for all lots are submitted and opened at the same time.

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

16.1 To establish its qualifications to perform the Contract the Tenderer shall provide the information requested in Section III, Evaluation and Qualification Criteria, the

- Qualifications of the Tenderer** Tenderer shall provide the information requested in Section IV, Tender Forms.
- 16.2 If so required in the TDS, a Tenderer shall submit the Manufacturer's Authorisation, using the form included in Section IV, Tender Forms where the Tenderer does not manufacture or produce the Goods it offers to supply.
- 16.3 If so required in the TDS, a Tenderer shall submit evidence that it will be represented by an Agent in the country, equipped and able to carry out the Supplier's maintenance, repair and spare parts-stocking obligations prescribed in the Conditions of Contract and Supply Requirements, where a Tenderer does not conduct business within the Purchaser's Country.
- 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 Clause 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. A tender valid for a shorter period shall be rejected by the Purchaser as non-responsive.
- 18.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Purchaser 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 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 included in Section IV, Tender Forms or in another substantially similar format approved by the Purchaser 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 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 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 in accordance with ITT 37; or
 - (ii) furnish a performance security in accordance with ITT 38.
 - (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 4.1 (a), be signed so as to be legally binding on all partners and
- (b) Include the Representative's authorisation referred to in ITT 4.1 (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 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 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 at the address and no later than the date and time indicated in the TDS.

22.2 The Purchaser 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 and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

23. Late Tenders

23.1 The Purchaser 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 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 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 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 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 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 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. 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 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 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 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 shall not be considered. The Purchaser'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 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 request for clarification, its Tender may be rejected.
- 28. Determination of Responsiveness** 28.1 The Purchaser'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 as follows:
- (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 Supply Requirements as specified in Section VI; or
- (ii) limit in any substantial way, inconsistent with the Tender Document, the Purchaser'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 shall examine the technical aspects of the Tender in particular, to confirm that all requirements of Section VI 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 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 may waive any quantifiable nonconformity in the Tender that does not constitute a material Deviation, Reservation or Omission.

29.2 Provided that a Tender is substantially responsive, the Purchaser 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 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 shall correct arithmetical errors as indicated in Section III, Evaluation and Qualification Criteria.

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 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 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 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 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.

33.5 The capabilities of the manufacturers and subcontractors proposed in its Tender to be used by the lowest evaluated Tenderer for identified major items of the Supply Requirements will also be evaluated for acceptability in accordance with the criteria and methodologies defined in Section III, Evaluation and Qualification Criteria. Their participation should be confirmed with a letter of intent between the parties, as needed. Should a manufacturer or subcontractor be determined to be unacceptable, the Tender will not be rejected, but the Tenderer will be required to substitute an acceptable manufacturer or subcontractor without any change to the Tender price.

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

34.1 The Purchaser 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.

G. AWARD OF CONTRACT

35. Award Criteria

35.1 The Purchaser shall award the Contract to the Tenderer whose offer 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.

35.2 At the time the Contract is awarded, the Purchaser reserves the right to increase or decrease the quantity of Goods and Services originally specified in Section VI, Supply Requirements, provided this does not exceed the percentages specified in the TDS, and without any change in the unit prices or other terms and conditions of the Tender and the Tender Document.

36. Notification of Award

36.1 Prior to the expiration of the period of Tender validity, the Purchaser 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 shall also notify all other Tenderers of the results of the Tendering, and shall publish on 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 for a debriefing seeking explanations on the grounds on which their Tenders were not selected. The Purchaser 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 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.

37.3 Upon the successful Tenderer's furnishing of the signed Contract Agreement and Performance Security pursuant to ITT 38, the Purchaser will discharge its Tender Security, pursuant to ITT 19.

38. Performance Security

38.1 Within twenty-eight (28) calendar days of the receipt of notification of award from the Purchaser, 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 IX, Contract Forms, or another form acceptable to

the Purchaser. 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. A foreign institution providing a bond shall have a correspondent financial institution located in the Purchaser's 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 may award the Contract to the next lowest evaluated Tenderer whose offer is substantially responsive and is determined by the Purchaser to be qualified to perform the Contract satisfactorily.

39. Complaints

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 - <http://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 - <http://www.ebrd.com/work-with-us/procurement/project-procurement-complaints.html>).

Section II: Tender Data Sheet

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Section II: Tender Data Sheet

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). Provisions entitled "EXAMPLE" in this Section are optional and may be included in the final tender document at the Purchaser's discretion.

A. Introduction

ITT 1 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]*

ITT 2 Source of Funds

- 2.1 The Borrower is: *[specify the name of the Borrower]*
- 2.1 The name of the Project is: *[insert name of the Project]*

ITT 4. Eligible Tenderers

4.8 EXAMPLE:

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 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, 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 after the date 28 days prior to the deadline for tender submission.

The Purchaser 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.

ITT 5 Eligible Goods and Related Services

- 5.1 *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. Clients will not exclude a firm from open competition for a Contract for reasons unrelated to its capability to perform the Contract in question unless, as a matter of law or official regulations, the Client's country prohibits commercial relations with the firm's country. Any such restriction must be explicitly specified in the Tender Data Sheet and is subject to the Bank's prior approval.*

Consistent with international law, the proceeds of the Bank's loans, equity investment or guarantees should 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 should therefore not be eligible for the award of Bank-financed contracts.

Subject to paragraph ITT Para 4, this invitation for tenders is open to suppliers from any country.

B. Contents of Tender Document

ITT 7 Clarification of Tender Document, Site Visit, Pre-tender meeting

- 7.1 For **clarification purposes** only, the Purchaser's address is:
Attention: *[insert full name of person, if applicable]*
Street Address: *[insert street address and number]*
Floor/Room number: *[insert floor and room number, if applicable]*

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

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 28 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

7.4

Pre-tender meeting should normally take place at least 28 days prior to the deadline for tenders submission and coincide with the deadline for clarification requests specified in ITT Para 7.1 above.

A Pre-Tender meeting *[insert "will" or "will not"]* take place.

If a Pre-Tender meeting will take place, it will be at the following date, time and place:

Date: *[insert date, if applicable]*

Time: *[insert time, if applicable]*

Place: *[insert place, if applicable]*

A site visit conducted by the Purchaser *[insert "will be" or "will not be"]* organized.

If a Site Visit is organized, it will be at the following date, time and place:

Date: *[insert date, if applicable]*

Time: *[insert time, if applicable]*

Place: *[insert place, if applicable]*

C. Preparation of Tenders

ITT 10

Language of Tender

10.1

In case of sovereign operations the tender documents, including all published procurement notices, shall be prepared in one of the Bank's working languages.

"Sovereign operations" are Bank-financed public sector operations which are extended to, or guaranteed by, a recipient member country of the Bank. In the interest of open competition as well as economy and efficiency, the Bank requires that the tender documents also be prepared in the English language, which shall be specified in the tender documents as the governing language. In addition, further sets of the tender documentation may be prepared in the local language, in order to assist local firms in tendering.

In the case of sub-Sovereign operations, the tender documents, including all published procurement notices, can be prepared in the local language or other commercially accepted language, which can also be specified in the tender documents as the governing language.

"Sub-Sovereign operations" are Bank-financed public sector operations other than those extended to, or guaranteed by, a recipient member country of the Bank. All procurement and Contract documentation shall also be prepared and issued in the English language. The Bank will determine on the basis of such English language documentation whether procurement has been carried out in accordance with the agreed procedures.

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

ITT 11 Documents Comprising the Tender

- 11.1 (h) The Tenderer must provide the following documentary evidence to establish the conformity of the Goods and Services:

EXAMPLE:

The documentary evidence of the Goods' and Services' conformity to the tender documents may be in the form of literature, drawings and data, and shall consist of:

- (a) a detailed description of the essential technical and performance characteristics of the Goods;
- (b) a list giving full particulars, including available sources and current prices, of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Goods for a period of [**specify number of years**] years, following commencement of the use of the Goods by the Purchaser;
- (c) a paragraph-by-paragraph commentary on the Purchaser's Supply Requirements demonstrating substantial responsiveness of the Goods and Services to those specifications or a statement of deviations and exceptions to the provisions of the Supply Requirements; and
- (d) any other requirements specified below [**specify other requirements**].

For purposes of the commentary to be furnished pursuant to paragraph (c) above, the tenderer shall note that, unless the Supply Requirements specifically provide otherwise, standards for workmanship, material and equipment, and references to brand names or catalogue numbers designated by the Purchaser in the Supply Requirements, are intended to be descriptive only and not restrictive. The tenderer may substitute alternative standards, brand names and/or catalogue numbers in its tender, provided that it demonstrates to the Purchaser's satisfaction that the substitutions ensure substantial equivalence to those designated in the Supply Requirements.

- 11.1 (j) The Tenderer shall submit with its tender the following additional documents: **[specify additional documents, if required]**

ITT 13 Alternative Tenders

- 13.1 Alternative Tenders **[insert "shall" or "shall not"]** be permitted.

- 13.2 ***In the event that alternative times for completion are permitted, the Purchaser shall specify the method for evaluating different times for completion in Section III, Evaluation and Qualification Criteria***

Alternative times for completion **[insert "are" or "are not"]** permitted.

If alternative times for completion are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria.

- 13.4 Alternative technical solutions for parts of the Supply Requirements are not permitted.

In the event that alternative technical solutions for parts of the Supply Requirements are permitted, the Purchaser shall specify the method for evaluating such alternative technical solutions in Section III, Evaluation and Qualification Criteria

Alternative technical solutions are permitted for the following parts of the Supply Requirements:

- ***[Specify parts of the Supply Requirements for which alternative technical solutions are permitted]***

If alternative technical solutions for parts of the Supply Requirements are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria.

ITT 14 Tender Prices and Discounts

14.2 Prices *[insert "shall" or "shall not"]* be adjustable.

14.6 Final Place of Destination: *[specify the place of final destination]*

14.6(a)(b)

In the case of Sovereign operations (see definition in TDS para 10.1 above), import duties and any taxes payable on imported and locally supplied Goods would normally not be eligible for financing by the Bank. Thus, tender prices must exclude import duties and any taxes payable on imported and locally supplied Goods. However, the tender prices may include all costs associated with the transportation of the Goods to the final destination.

In the case of sub-Sovereign operations, import duties and taxes would normally be eligible for financing by the Bank and therefore may be included in the tender prices and taken into account in the evaluation of tenders.

EXAMPLE FOR SUB-SOVEREIGN OPERATIONS ONLY:

(a) For Goods to be supplied from within the Purchaser's country:

- (i)** the price of the Goods, quoted EXW inclusive of all customs duties or import taxes and sales and other taxes already paid or payable on the components and raw materials used in the manufacture or assembly of Goods; and
- (ii)** any sales and other taxes on the finished Goods which will be payable in the Purchaser's country if this Contract is awarded

(b) For Goods to be supplied from outside the Purchaser's country:

- (i)** the price of the Goods quoted DDP (place of destination) inclusive of customs duties and other taxes payable in the Purchaser's country

14.6(b) (ii)

In the case of Sovereign operations, Bank clients often use CIP (border point or place of destination) terms of delivery under which the Supplier is considered as having fulfilled his delivery obligations when the Goods have been delivered into the custody of the first carrier on the date or within the period stipulated in the Contract. However, project needs increasingly require more rigorous delivery responsibilities to be allocated to suppliers including placement of the Goods at the disposal of the Purchaser at the named place of destination on the date or within the period stipulated in the Contract. In these instances, Purchasers may consider using delivery terms such as DAP (Delivered at Place).

EXAMPLE:

(b) For Goods to be supplied from outside the Purchaser's country:

- (ii)** the price of the Goods quoted DAP (place of destination) exclusive of customs duties and other taxes payable in the Purchaser's country

The following are to be used when the Purchaser requires Tenderers to price the cost of inland transportation, insurance and other local costs related to transportation of the Goods (delivered EXW or CIP (border or port)) to their final destination as part of the tender price for CIP (border or port) and EXW terms of delivery. Purchasers shall delete reference to CIP (border or port), as appropriate, in cases where CIP (place of destination) or DAP terms of delivery is specified under TDS para 14.6 (b) (ii).

EXAMPLE:

The price for inland transportation, insurance and other local costs related to transportation of the Goods (delivered EXW or CIP (border or port), as may be applicable) to their final destination shall be quoted as part of the tender price for CIP and EXW terms of delivery.

- 14.6(c)(ii) The Related Services are: *[specify related services with reference to Supply Requirements, the Conditions of Contract and other sections of the tender documents as appropriate]*

ITT 15 Currencies of Tender

15.1

The Purchaser shall, with the agreement of the Bank, determine the currency or currencies in which the tender prices must be quoted. Normally, the currency of the tender shall be the same as the currency of the bank's loan so that any exchange rate fluctuation risk would be born by the Tenderers. Consistent with the requirements of the local legislation, the Purchaser may either require Tenderers to quote the Goods or parts thereof to be supplied from within the Purchaser's country in the local currency. Where the Purchaser permits local Tenderers to quote prices for the Goods and Services that the Tenderer expects to supply from within the Purchaser's country in the foreign currency, to ensure consistency with the laws of the Purchaser's country, the Purchaser may wish considering to effect payments in the local currency using the exchange rate published by the Central Bank of the Purchaser's country on the date of payment. An appropriate statement to this effect shall be made in the tender documents.

The currency(ies) of the tender and the payment currency(ies) shall be as described below:

Tenderers are allowed to quote in *[insert the currency or currencies in which the tenders must be quoted, as may be agreed with the Bank]*, further referred to as "the foreign currency", and the currency of the Purchaser's country, further referred to as "the local currency":

- (a) The unit rates and prices shall be quoted by the Tenderer in the Price Schedules separately in the following currencies:
- (i) for Goods and Services that the Tenderer expects to supply from within the Purchaser's country, in the local currency; and
 - (ii) for Goods and Services that the Tenderer expects to supply from outside the Purchaser's country in *[insert the currency or currencies in which the tenders must be quoted as may be agreed with the Bank]*.
- (b) Tenderers may be required by the Purchaser to justify, to the Purchaser's satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Section IV.

ITT 16 Documents establishing the Qualifications of the Tenderer

16.2

The Tenderer *[insert "shall" or "shall not"]* submit with its tender, the Manufacturer's Authorisation for the following Goods or parts of the Goods:

- *[insert description of the Goods or parts thereof]*.

16.3

The Tenderer *[insert "shall" or "shall not"]* submit with its tender, evidence that it will be represented by an Agent in the country.

16.4

ADDITIONAL CLAUSE

EXAMPLE:

Tenderers shall not be permitted to claim the experience and capability of their parent companies for the purposes of meeting the minimum qualification requirements.

The Purchaser shall consider the experience and qualification of the tenderer only on their sole merits.

In the event that the Purchaser intends to permit Tenderers to claim the experience and capability of their parent companies for the purposes of meeting the qualification criteria specified in the tender documents, a clear statement to this effect must be made in the tender documents. The tender documents shall also specify the minimum requirements for acceptance of the Tenderers' parent company guarantee by the Purchaser. The main purpose of parent company guarantee is to ensure that the Contract is performed satisfactorily i.e. the Supplier's parent company will provide the necessary resources and is fully committed, along with its subsidiary to ensuring such performance.

EXAMPLE:

If a tenderer wishes to claim the experience and capability of its parent company for the purposes of meeting the minimum qualification requirements, the tenderer shall submit with its tender an irrevocable guarantee from its parent company. The format of the parent company guarantee shall be approved by the Purchaser prior to tender submission and shall specify, as a minimum:

- the names of the parties to the parent company guarantee including the name of the Purchaser, the tenderer and its guarantor;
- the name of the Contract relating to which the guarantee is provided;
- the validity of the guarantee, which shall be consistent with the time for completion or delivery required under the Contract;
- the law governing the guarantee, which shall be the same as the law governing the Contract; and
- the cumulative limit of liability of the Guarantor under the guarantee which shall not be less than the limit of liability of the tenderer under the Contract

Failure to furnish suitable parent company guarantee may result in the rejection of the tender.

ITT 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 90 days. With regards to major and complex plant and equipment the validity period may be longer. 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.

18.3

The below provision is mandatory for the use under Bank-funded projects as it would be unfair to penalise the successful tenderer for oversight of an action that cannot be attributed to the tenderer's fault i.e. protracted evaluation by the Purchaser.

The value of the foreign cost factor should be based on, or comparable to, the expected annual increase in international prices. The value of the local cost factor, if denominated in the local currency, should be based on the projected inflation in the Purchaser's country. If local costs are denominated in a hard currency, then the expected annual increase in international prices should be used. Alternatively the local cost component could be converted to a currency widely used in international trade on the date of notification of award and adjusted using the same index as the foreign cost component.

If the award is delayed by a period exceeding twenty-eight (28) days beyond the expiry of the initial tender validity, the Contract price shall be adjusted as follows:

The adjustment of the Contract Price shall be from the original expiry date of the tender validity pro rata up to the date of award of the Contract and shall be calculated on the basis of an annual increase for foreign costs of *[insert figure]* percent and an annual increase for local costs of *[insert figure]* percent. Tender evaluation shall be based on the Tender Price without taking into consideration the above correction.

ITT 19 Tender Security

19.1

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.

A tender security *[insert "is" or "is not"]* required.

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]

19.7

JVCA Tenderers seldom represent long term established corporate entities with the existing bank accounts and credit history. JVCA Tenderers are often formed for the purposes of the execution of the particular Contract and may experience difficulties in raising a conforming tender security in the name of the JVCA within the deadline for tenders submission, especially in the instances where no prequalification has been carried out prior to the Invitation for Tenders. The Purchaser may therefore consider permitting JVCA Tenderers to submit the tender security by a partner of the JVCA on condition the tender security would be issued for and on behalf of the entire JVCA.

EXAMPLE:

The Tender Security of a JVCA can be in the name of a partner of the JVCA on condition that the Tender Security clearly specifies the names of all partners of the JVCA and states that the Security is submitted for and on behalf of the JVCA.

Failure to furnish a conforming tender security required by the Tender Document shall result in the rejection of the Tender.

ITT 20 Format and Signing of Tender

20.1 In addition to the original of the tender, the number of copies is: *[insert number of copies required]*.

20.2 The written confirmation of authorisation to sign on behalf of the Tenderer shall consist of: a Power of Attorney:

(a) indicating that the person(s) signing the tender has/have the authority to sign the tender and the tender is thus binding upon the Tenderer.

(b) In the case of Tenders submitted by an existing JVCA signed by all parties **(i)** stating that all parties shall be jointly and severally liable, if so required in accordance with ITT 4.1(a), and **(ii)** nominating a Representative who shall have the authority to conduct all business for and on behalf of any and all the parties of the JVCA during the Tender process and, in the event the JVCA is awarded the Contract, during Contract execution.”]

D. Submission and Opening of Tenders

ITT 21 Submission, Sealing and Marking of Tenders

21.1

Purchasers wishing to use any electronic tendering application shall obtain preliminary no objection from the Bank. The Purchaser shall afford sufficient time to enable the Bank to arrange for an appropriate independent audit of the software application. The wording of the above paragraphs shall be agreed with the Bank on a case by case basis depending on the outcome of the Bank's audit.

Tenderers shall not have the option of submitting their tenders electronically.

21.1 (b) ITT Para 21.1 (b) shall not apply.

ITT 22 Deadline for Submission of Tenders

22.1 For tender submission purposes only, the Purchaser 's address is:

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

Purchaser's name *[insert 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 deadline for tender submission is:

Date: [insert date (as day, month, and year)] Time: [insert the time and time zone]

ITT 25 Tender Opening

25.1 The Tender opening shall take place at:

Organisation *[insert 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 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.

E. Tender Evaluation and Comparison

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

F. Award of Contract

ITT 35 Award Criteria

35.1 Award criteria for lots

This provision is to be used where tenders are invited for a number of lots and Tenderers have been invited to offer discounts for the award of more than one Contract.

Subject to paragraph 35, the Purchaser will award the Contract(s) to the tenderer(s) whose tender(s) has been determined to be substantially responsive and the combination of which, including any discounts offered, yield the lowest total evaluated price, provided further that the Tenderers are determined to be qualified to perform the Contract satisfactorily.

The Contract award will be to a single tenderer if its tender offers the lowest total evaluated price and the tenderer is determined to be qualified to perform the Contract satisfactorily.

35.2

This is an optional paragraph, to be used only where appropriate. 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%.

Section III: Evaluation and Qualification Criteria

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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. Provisions entitled "EXAMPLE" in this Section are optional and may be included in the final tender document at the Purchaser's discretion.

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. The Tenderer shall provide all the information requested in the forms included in Section IV, Tender Forms.

1. Evaluation Criteria and Methodology

13 Alternative Tenders

13.1 Technical Alternative Proposals

The following is to be used when technical alternatives are accepted but only that of the lowest evaluated conforming tenderer is considered.

EXAMPLE:

Tenderers wishing to offer technical alternatives to the requirements of the tender documents must first price the Purchaser's technical specifications as described in Section VI, Supply Requirements and shall further provide all information necessary for a complete evaluation of the alternative by the Purchaser, including, as appropriate, drawings, design calculations, technical specifications, breakdown of prices, and other relevant details. Only the technical alternatives, if any, of the lowest evaluated responsive tenderer shall be considered by the Purchaser.

The following to be used when technical alternatives are accepted and these will be considered on their own merits providing that the base tender is priced.

EXAMPLE:

Tenderers wishing to offer technical alternatives to the requirements of the tender documents must first price the Purchaser's technical specifications as described in Section VI, Supply Requirements and shall further provide all information necessary for a complete evaluation of the alternative by the Purchaser, including, as appropriate, drawings, design calculations, Technical Specifications, breakdown of prices, and other relevant details. Technical alternatives which comply with the performance specifications for the Goods shall be considered by the Purchaser on their own merits.

Commercial Alternative Proposals

The following is to be used when unspecified financial or administrative alternatives are accepted, however, only that of the lowest evaluated conforming tender is considered.

EXAMPLE:

Tenderers wishing to qualify their tenders or otherwise deviate from the requirements of the tender documents on matters of a financial/administrative nature shall present such qualifications or deviations in the form of an alternative offer to the basic tender requirements, provided always that, for the alternative to be considered, the tenderer must supply a fully priced conforming tender. The attention of Tenderers is drawn to the provisions of ITT Para 28.5 regarding the rejection of tenders which are not substantially responsive to the requirements of the tender documents. Each alternative offer shall be accompanied by a detailed description and price breakdown indicating the tenderer's estimate of the cost implications to the Purchaser if the alternative offer were to be accepted by the Purchaser and incorporated in the Contract. Tenders containing qualifications and deviations which are not so detailed and priced as alternative offers

may be rejected. After completion of evaluation and comparison of tenders, the Purchaser reserves the right to accept or reject any alternative offer submitted pursuant to this paragraph by the lowest evaluated responsive tenderer

13.2 **Alternative Time for Delivery or Completion Schedule**

Alternative Time for Delivery or Completion Schedule *[insert "shall" or "shall not"]* be permitted.

Evaluation methodology and criteria for Alternative Times for Delivery or Completion Schedule are specified with reference to ITT Para 32.1 (b) of Section III, Evaluation and Qualification Criteria.

14 **Discounts**

The Purchaser will adjust the Tender Price, using the methodology prescribed by the Tenderer in its Letter of Tender, to take account of the Discounts offered by the Tenderer as read out during the Tender Opening.

In the event of any ambiguity in the Tenderer's methodology, the benefit of the doubt shall be given to the Purchaser. If a Tenderer does not accept the Purchaser's determination, its tender shall be declared non-responsive and its Tender Security shall be forfeited.

28 **Determination of Responsiveness**

ADDITIONAL CLAUSE

28.6 **Quantifiable Nonmaterial Nonconformities**

Non-substantive deviations or omissions (commercial and technical) in the tender will not constitute cause for rejection but shall be reflected in the evaluation wherever practicable and appropriate. The cost of all quantifiable deviations or omissions will be added to the tender price in question. A reasonable estimate of the cost will be made by the Purchaser, taking into consideration the corresponding quotations of other responsive Tenderers or other appropriate market prices. Such costs will be at the Purchaser'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 shall not be taken into account in tender evaluation.

30 **Correction of Arithmetical Errors**

30.2 **Correction of Arithmetical Errors**

- (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 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;
- (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.

31 Conversion to a Single Currency

If tenders are invited to be quoted in more than one currency, the Purchaser shall state the currency to which prices will be converted. Conversion shall be at the selling exchange rate published by the central bank or any commercial bank in the Purchaser's country. The Purchaser must enter the name of the bank and the date of the exchange rate to be used. That date must be no earlier than 30 days prior to the deadline specified for the submission of tenders and no later than the expiry of the initial validity period specified in ITT Para 18.1. It is customary to use the date of the deadline specified for the submission of tenders.

If tenders are invited to be quoted in more than one currency, the currency that shall be used for tender evaluation and comparison purposes to convert all tender prices expressed in various currencies into a single currency is: *[insert the name of the currency]*

The source of exchange rate shall be: *[insert the name of the source of the exchange rates].*

The date for the exchange rate shall be: *[specify date (day/month/year)]*

32 Tender Adjustments

32.1 The Purchaser's evaluation of a tender will exclude and not take into account:

- (a) in the case of goods to be supplied from within the Purchaser's country, or from abroad, sales and other similar taxes on the finished goods which will be payable in the Purchaser's country, if a Contract is awarded to the tenderer;
- (b) in the case of goods to be supplied from within the Purchaser's country, customs duties or other similar import taxes on directly imported components incorporated or to be incorporated in the goods, payable in the Purchaser's country, if a Contract is awarded to the tenderer;
- (c) any allowance for price adjustment during the period of performance of the Contract, if provided in the Contract.

The following paragraphs are optional and should only be used if factors other than tender prices are to be considered in the evaluation. The examples illustrated here should only be used where appropriate and the others should be deleted. Additional factors may be necessary for certain very specific tenders. Evaluation factors should meet the following criteria:

- *the factor could have an impact on the Contract price and on Contract performance (including the rights and obligations of the Purchaser and the supplier), in terms of Contract time, quality (including technical performance) and risk;*
- *there would potentially be a measurable variation between performance of different tenders because of the factor;*
- *the factor's variations and impact on performance and price can be reasonably quantified in a reliable, fair and objective manner.*

ADDITIONAL CLAUSE

32.2 The adjustment shall be made using the following methodology:

EXAMPLE:

The adjustment shall be made using the following methodology:

In evaluating each tender, the Purchaser will determine for each tender the evaluated tender price by adjusting the tender price using the following factors and methodology:

- (a) cost of inland transportation;

- (b) delivery schedule offered in the tender;
- (c) deviations in payment schedule from that specified in the Special Conditions of Contract;
- (d) the cost of components, mandatory spare parts, and service;
- (e) the availability in the Purchaser's country of spare parts and after-sales services for the equipment offered in the tender;
- (f) the projected operating and maintenance costs;
- (g) the performance and productivity of the equipment offered;
- (h) the availability of the equipment offered; and/or
- (i) other specific criteria indicated in the Technical Specifications.

EXAMPLE:32.2 (a) **Inland Transportation, Insurance and Incidentals:**

The following are to be used when the Purchaser requires Tenderers to price the cost of inland transportation, insurance and other local costs related to transportation of the Goods (delivered EXW or CIP (border or port)) to their final destination as part of their tender price for CIP and EXW terms of delivery. Purchasers shall delete reference to CIP, as appropriate, in cases where DAP terms of delivery are specified with reference to ITT 14.6 (b) (i).

If the cost of inland transportation, insurance, and other costs incidental to delivery of the Goods within the Purchaser's country to their final destination has not been requested to be quoted as part of the tender price for CIP and EXW terms of delivery, these costs shall be included in the tender price for the evaluation purposes.

EXAMPLE:32.2 (b) **Delivery or Completion Schedule:**

The following is to be used when alternative times for completion are not permitted.

The Purchaser requires delivery of the Goods covered under the invitation, within the time specified in Section VI – Supply Requirements. Tenderers offering delivery beyond this time will be rejected as non-responsive. No benefits will be given for early delivery.

The following is to be used when alternative times for completion are permitted.

The Purchaser requires that the Goods covered under the invitations for tenders shall be delivered (shipped) within the delivery time or completion schedule specified in the Supply Requirements (base time). A delivery "adjustment" will be calculated for each tenderer's tenders offering delivery beyond the base time at **[insert figure]** per cent of the tenderer's tender price of the Goods and related services for each week of delay beyond the base and such adjustment will be added to the tender price for the evaluation purposes up to a maximum of **[insert figure]** per cent of the CIP price of the Goods. No credit will be given for early delivery.

The above percentage figures should be the same as or less than those specified for liquidated damages for delay under Sub-clause 20.1 of the Contract and up to a maximum of 10 percent. The adjustment can be either a percentage of the tender price or a fixed amount, denominated in the currency used for comparison of tenders.

EXAMPLE:32.2 (c) **Deviation in Payment Schedule:**

Tenderers shall state their tender price for the terms of payment specified in Sub clause 11.1 of Section VIII, Particular Conditions of Contract. Tenders will be evaluated on the basis of this base

price. Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in tender price they wish to offer for such alternative payment schedule. The reduction thus offered shall not be taken into account for the tender evaluation purposes.

At contract award, the Purchaser reserves the right to accept or reject any alternative payment schedule and associated reduction in tender price.

EXAMPLE:

32.2 (d) **The cost of components, mandatory spare parts, and service**

The list of the items and quantities of major assemblies, components and mandatory spare parts and services likely to be required during the initial [*specify number of years*] year period of operation following commencement of the use of the Goods by the Purchaser is provided in the list of Goods and Services in Section VII, Supply Requirements. The total cost of these items at the unit prices quoted in each tender will be added to the tender price.

OR

The Purchaser will draw up a list of high usage and high value items of components and spare parts, along with estimated quantities of usage in the initial [*specify number of years*] year period of operation following commencement of the use of the Goods by the Purchaser. The total cost of these items and quantities will be computed from spare parts unit prices submitted by the tenderer in accordance with ITT Para 11.1 (g) (b) and added to the tender price.

OR

The Purchaser will estimate the cost of spare parts usage in the initial [*specify number of years*] year period of operation following commencement of the use of the Goods by the Purchaser, based on information furnished by each tenderer in accordance with ITT 11.1 (g) (b), as well as on past experience of the Purchaser or other purchasers in similar situations. Such costs shall be added to the tender price.

EXAMPLE:

32.2 (e) **Spare Parts and After Sales Service Facilities in the Purchaser's Country**

The cost to the Purchaser of establishing the minimum service facilities and parts inventories, as outlined in the Supply Requirements or the Technical Specifications, if quoted separately, shall be added to the tender price.

EXAMPLE:

32.2 (f) **Projected Operating and Maintenance Costs**

Since the operating and maintenance costs of the Goods under procurement form a major part of the life cycle costs of the equipment, these costs will be evaluated in accordance with the following criteria for a period of [*specify number of years*] years operation of the Goods:

- (i) Operating costs: fuel cost (and/or other inputs) shall be based on [*insert figure*] kms/hours of operation per year at a fuel price of [*insert fuel price*];
- (ii) Maintenance costs: spare parts costs (and/or other inputs) shall be based on [*insert figure*] kms/hours of operation based on the guaranteed figures provided by the tenderer in response to (_____) of the Technical Specifications;
- (iii) all future costs will be discounted to present value at a discount factor of [*specify discount factor*] percent.

EXAMPLE:

32.2 (g) **Performance and productivity of the equipment offered**

Tenderers shall state the guaranteed performance or efficiency in response to the Technical Specifications. For each drop or increase in the performance or efficiency below or above the norm specified in the Technical Specifications, an adjustment of (_____) will be added or

subtracted from the tender price, representing the capitalised loss or cost benefit to the Purchaser using the following methodology:

[specify methodology]

The Purchaser must specify the evaluation methodology including an appropriate adjustment factor. The adjustment factor will apply to a fixed performance or efficiency requirement that must be specified in the Technical Specifications. The Purchaser shall ensure that an appropriate reference in the Technical Specification shall be provided in the methodology. The Bank may require an appropriate justification of the adjustment factor proposed by the Purchaser including detailed breakdown of all relevant cost items.

The Purchaser shall also ensure that the Contract shall specify appropriate testing procedures as well as sufficient rate of liquidated damages for failure to meet the minimum performance or efficiency of the Goods as guaranteed by the Supplier at the time of tendering. The rate of liquidated damages shall be equal to or higher than the adjustment factor applied for the evaluation of the Supplier's tender.

EXAMPLE:

32.2 (h) **Availability of the Equipment offered**

Tenderers shall state the guaranteed availability of the Goods in response to the Technical Specifications. For each drop or increase in the availability of the Goods below or above the norm, an adjustment of (_____) will be added to or subtracted from the tender price, representing the capitalised loss or cost benefit to the Purchaser using the following methodology:

[specify methodology]

The Purchaser must specify the evaluation methodology including an appropriate adjustment factor. The adjustment factor will apply to a fixed availability requirement that must be specified in the Technical Specifications. The Purchaser shall ensure that an appropriate reference in the Technical Specification shall be provided in the methodology. The Bank may require an appropriate justification of the adjustment factor proposed by the Purchaser including detailed breakdown of all relevant cost items.

The Purchaser shall also ensure that the Contract shall specify appropriate testing procedures as well as sufficient rate of liquidated damages or otherwise a penalty for failure to meet the minimum availability of the Goods as guaranteed by the Supplier at the time of tendering. The Purchaser may consider setting forth the penalty in the form of an extension of the warranty period that would be substantially longer, exponential, then the reduction of the actual availability of the Goods or, where expressed in monetary terms, equal or higher than the adjustment factor applied for the evaluation of the Supplier's tender.

EXAMPLE:

The tenderer shall demonstrate how the availability target will be met, by producing written examples of existing machines of the same or similar type used by other Purchasers, including statistical information. Sufficient information shall be given by the tenderer to enable the Purchaser to approach the previous purchasers and obtain confirmation of the data given.

Availability shall be calculated using the formula:

$$A = \frac{T_t - (\sum(F_n * MTTR) + \sum(M_n * MTTM))}{T_t} \times 100\%$$

Where:

- A is availability;
- T_t is the total time required measured over at least the longest maintenance period;
- F_n is the number of failures of each machine in time, T_t; i.e. F_n = T_t/Mean Time Between Failures
- MTTR is the mean time to repair, including mean time to recover machine from breakdown

	location, if applicable
Mn	is the number of scheduled maintenance events in time, Tt, i.e. $Mn = Tt/\text{Maintenance Periodicity}$
MTTM	is the mean time to maintain, including time to recover machine from breakdown location and transport to service location.

In abbreviated terms, this is:

$$A = \frac{\text{Total time} - (\text{Downtime due to failures} + \text{Downtime due to maintenance})}{\text{Total time}} \times 100\%$$

Qualification Criteria

- 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 regarding eligibility, experience, equipment, financial position and litigation history, specified in the following Qualification Tables 2.1, 2.2, 2.3, and 2.4.

2. Qualification Tables

Factor	Table 2.1 Eligibility					
Sub-Factor	Criteria	Tenderer				Documentation Required
	Requirement	Single Entity	Joint Venture, Consortium or Association			
			All partners combined	The Lead Partner	Each Other Partner	
2.1.1 Conflict of Interest	No- conflicts of interests as described in ITT 4.3.	Must meet requirement	N/A	Must meet requirement	Must meet requirement	Letter of Tender
2.1.2 Bank Ineligibility	Not having been declared ineligible by the Bank as described in ITT 4.4.	Must meet requirement	N/A	Must meet requirement	Must meet requirement	Letter of Tender
2.1.3 Government Owned Entity	Compliance with conditions of ITT 4.5	Must meet requirement	N/A	Must meet requirement	Must meet requirement	Form ELI-1 AND ELI-2 with attachments
2.1.4 Ineligibility based on a United Nations resolution or Borrower's country law	Not having been excluded as a result of the Borrower's country laws or official regulations, or by an act of compliance with UN Security Council resolution, in accordance with ITT 4.7	Must meet requirement	N/A	Must meet requirement	Must meet requirement	Letter of Tender

N/A DENOTES NOT APPLICABLE

Table 2.2 Historical Contract Non-Performance						
Factor	Criteria					Documentation Required
Sub-Factor	Requirement	Tenderer				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	The Lead Partner	Each Other Partner	
2.2.1 History of non-performing contracts	<p>The Tenderer, or any partner in a JVCA, shall not have a consistent history of litigation and/or arbitration resulting in awards against the Tenderer, or any partner in a JVCA, within the last [insert number] _____ () years.</p> <p>This determination shall be based solely on fully settled disputes or litigation. A fully settled dispute or litigation is one that has been resolved in accordance with the Dispute Resolution Mechanism under the respective Contract, and where all appeal instances available to the Tenderer have been exhausted.</p>	Must meet requirement	Must meet requirement	Must meet requirement	Must meet requirement	Form HIS - 1
2.2.2 Pending Litigation	<p>All pending litigation shall in total not represent more than [insert number] percent (%) of the Tenderer's net worth and shall be treated as resolved against the Tenderer.</p>	Must meet requirement	Must meet requirement	Must meet requirement	Must meet requirement	Form HIS - 1

N/A denotes Not Applicable

Factor	Table 2.3 Financial Situation					
Sub-Factor	Criteria	Tenderer				Documentation Required
	Requirement	Single Entity	Joint Venture, Consortium or Association			
			All partners combined	The Lead Partner	Each Other Partner	
2.3.1 Historical Financial Performance	<i>Submission of audited balance sheets, or if not required by the law of the Tenderer’s country, other financial statements acceptable to the Purchaser, for the last [insert number] () years to demonstrate the current soundness of the Tenderer’s financial position and its prospective long term profitability.</i>	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>Form FIN – 1 with attachments</i>
2.3.2. Average Annual Turnover	<i>Minimum average annual turnover of [insert value], calculated as total certified payments received for contracts in progress or completed, within the last [insert number] () years.</i>	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>Must meet [insert number] percent (%) of the requirement</i>	<i>Must meet [insert number] percent (%) of the requirement</i>	<i>Form FIN – 2</i>
2.3.3. Financial Resources	<i>The Tenderer must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet: (i) the following cash-flow requirement: [insert]and (ii) the overall cash flow requirements for this Contract and its current commitments.</i>	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>Must meet [insert number] percent (%) of the requirement</i>	<i>Must meet [insert number] percent (%) of the requirement</i>	<i>Form FIN – 3 Form FIN – 4</i>

N/A denotes Not Applicable

Factor	Table 2.4 Experience					
Sub-Factor	Criteria					Documentation Required
	Requirement	Tenderer				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	The Lead Partner	Each Other Partner	
2.4.1 Experience	<p><i>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 physical size, complexity, methods/technology or other characteristics as described in Section VI, Supply Requirements.</i></p>	<p><i>Must meet requirement</i></p>	<p><i>Must meet requirement</i></p>	<p><i>(Insert criterion for the Lead Partner)</i></p>	<p><i>(Insert criterion for each other Partner)</i></p>	<p><i>Form EXP - 1</i></p>

Section IV: Tender Forms

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

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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: _____

Tender No.: _____

Alternative No.: _____

To: _____

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Tender Document, including Addenda issued in accordance with Instructions to Tenderers paragraph 8;
- (b) We offer to supply, in conformity with the Tender Document, 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 the 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 furnish a performance security in accordance with the Tender Document;
- (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 4.3;
- (j) 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 4.3, other than alternative offers submitted in accordance with ITT 13;
- (k) We, including any of our subcontractors or suppliers 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;
- (l) We are not a government-owned entity/ We are a government entity but we meet the requirement stated in ITT 4.5 **[use one of the two options as appropriate];**

(m) The following commissions, gratuities, or fees have been paid or are to be paid 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) or (iv) in the box below.

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

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

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

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.

(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** which means improper use of the Bank’s resources, committed either intentionally or through reckless disregard;

(vi) an **obstructive practice** which means (i) destroying, falsifying, altering or concealing of evidence material to a Bank investigation, which impedes the Bank’s investigation; (ii) making false statements to investigators in order to materially impede a Bank investigation into allegations of a Prohibited Practice; (iii) failing to comply with requests to provide information, documents or records in connection with a Bank investigation; (iv) 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 (v) 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.

Following the submission of our tender, we grant the project financier, the Bank 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:	

Price Schedule

EXAMPLE:

Price Schedule for Goods and Related Services

Goods to be supplied from within the Purchaser’s country

Date: _____

Tender No.: _____

Alternative No.: _____

Name of the Tenderer: _____

1	2	3	4	5	6	7
Item	Description	Quantity	Unit Price EXW ref. ITT 14.6(a)(i)	Import duties and taxes on directly imported components. ref. ITT 14.6 (a)(ii)	Sales and other taxes payable if Contract is awarded ref. ITT 14.6 (a)(iii)	Total price per item (3 x 4)
Total Amount (Goods)						

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 VI – 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.

EXAMPLE:

Price Schedule for Goods and Related Services

Goods to be supplied from outside the Purchaser's country

Date: _____

Tender No.: _____

Alternative No.: _____

Name of the Tenderer: _____

1	2	3	4	5	6
Item	Description	Quantity	Unit price CIP (border) ref. ITT 14.6(b)(i)	Unit price (other Incoterms) ref. ITT 14.6(b)(ii)	Total price per item (3 x 4)
Total amount (Goods)					

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 VI – 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.

EXAMPLE:

Price Schedule for Related Services to be supplied

Date: _____

Tender No.: _____

Alternative No.: _____

Name of the Tenderer: _____

1	2	3	4	5		6	
Item	Description	Quantity	Charges for inland delivery to final destination ref. ITT 14.6(c)(i)	Price of associated services ref. ITT 14.6(c)(ii)		Total	
				Foreign currency (A)	Local currency (B)	Foreign currency (5A)	Local currency (4 + 5B)
Total amount (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 VI – 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.
4. Column 4 should only be used where prices are requested CIP/CIF (port of entry) and EXW (local suppliers).

Form of Tender Security

Note for Tenderer: All text within square brackets [] is for use in preparing this form and shall be deleted from the final document.

_____ [Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: _____ [Name and Address of Purchaser]

Date: _____

TENDER GUARANTEE No.: _____

We have been informed that _____ [name of the Tenderer] (hereinafter called "the Tenderer") has submitted to you its tender dated _____ (hereinafter called "the Tender") for the execution of _____ [name of Contract] under Invitation for Tenders No. _____ ("the IFT").

Furthermore, we understand that, according to your conditions, tenders must be supported by a tender guarantee.

At the request of the Tenderer, we _____ [name of Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ [amount in figures] (_____) [amount in words] upon receipt by us of your first demand in writing accompanied by a written statement stating that the Tenderer is in breach of its obligation(s) under the Tender conditions, because the Tenderer:

- (a) has withdrawn its Tender during the period of Tender validity specified by the Tenderer in the Letter of Tender; or
- (b) does not accept the correction of arithmetic errors, in accordance with the Tender Document; or,
- (c) having been notified of the acceptance of its Tender by the Purchaser during the period of tender validity, (i) fails or refuses to execute the Contract Form, if required, or (ii) fails or refuses to furnish the performance security, in accordance with the Tender Document.

This guarantee will expire: (a) if the Tenderer is the successful Tenderer, upon our receipt of copies of the Contract signed by the Tenderer and the performance security issued to you upon the instruction of the Tenderer; and (b) if the Tenderer is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of your notification to the Tenderer of the name of the successful Tenderer; or (ii) twenty-eight days after the expiration of the Tenderer's Tender.

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

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758 except that article 15(a) is hereby excluded.

[signature(s)]

Authorised for [name of issuing bank]

Manufacturer's Authorisation

Note for Tenderer: The Tenderer shall require the Manufacturer to fill in this Form in accordance with the instructions indicated. This letter of authorisation should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer. The Tenderer shall include it in its Tender, if so indicated in the TDS. All text within square brackets [] is for use in preparing this form and shall be deleted from the final document.

Date: [insert date (as day, month and year) of Tender Submission]

Tender No.: [insert number of Tendering process]

To: [insert complete name of Purchaser]

WHEREAS

We [insert complete name of Manufacturer], who are official manufacturers of [insert type of goods manufactured], having factories at [insert full address of Manufacturer's factories], do hereby authorise [insert complete name of Tenderer] to submit a Tender the purpose of which is to provide the following goods, [insert name and or brief description of the goods], manufactured by us and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 21 of the General Conditions, with respect to the goods offered by the above firm.

Signed: [insert signature(s) of authorised representative(s) of the Manufacturer]

Name: [insert complete name(s) of authorised representative(s) of the Manufacturer]

Title: [insert title]

Duly authorised to sign this Authorisation on behalf of: [insert complete name of Manufacturer]

Dated on _____ day of _____, _____ [insert date of signing]

Tenderer's Qualification

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.

Form ELI-1: Eligibility Tenderer Information Sheet

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

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)	
<p>Attached are copies of the following original documents.</p> <div style="margin-top: 10px;"> <div style="display: flex; align-items: flex-start; margin-bottom: 10px;"> <div style="border: 2px solid black; width: 40px; height: 40px; margin-right: 10px;"></div> <div> <p>1. In case of single entity, articles of incorporation or constitution of the legal entity named above, in accordance with ITT 4.1 and 4.2.</p> </div> </div> <div style="display: flex; align-items: flex-start; margin-bottom: 10px;"> <div style="border: 2px solid black; width: 40px; height: 40px; margin-right: 10px;"></div> <div> <p>2. Authorization to represent the firm or JVCA named in above, in accordance with ITT 20.2.</p> </div> </div> <div style="display: flex; align-items: flex-start; margin-bottom: 10px;"> <div style="border: 2px solid black; width: 40px; height: 40px; margin-right: 10px;"></div> <div> <p>3. In case of JVCA, letter of intent to form JVCA or JVCA agreement, in accordance with ITT 4.1.</p> </div> </div> <div style="display: flex; align-items: flex-start;"> <div style="border: 2px solid black; width: 40px; height: 40px; margin-right: 10px;"></div> <div> <p>4. In case of a government-owned entity, any additional documents not covered under 1 above required to comply with ITT 4.5</p> </div> </div> </div>	

Form ELI-2: JVCA Information Sheet

Date: _____

Tender No.: _____

Page _____ of _____ pages

Each member of a JVCA must complete this form

Tenderer's legal name	
JVCA Partner's or Subcontractor's legal name	
JVCA Partner's or Subcontractor's country of constitution	
JVCA Partner's or Subcontractor's year of constitution	
JVCA Partner's or Subcontractor's legal address in country of constitution	
JVCA Partner's or Subcontractor's authorized representative information (name, address, telephone numbers, fax numbers, email address)	
<p>Attached are copies of the following original documents.</p> <p><input type="checkbox"/> 1. Articles of incorporation or constitution of the legal entity named above, in accordance with ITT 4.1 and 4.2.</p> <p><input type="checkbox"/> 2. Authorization to represent the firm named above, in accordance with ITT 20.2.</p> <p><input type="checkbox"/> 3. In the case of government-owned entity, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITT Sub-Clause 4.5.</p>	

Form HIS-1: Historical Contract Non-Performance

The following table shall be filled in for the Tenderer and for each partner of a JVCA

Tenderer's Legal Name: _____
 Date: _____
 Joint Venture Party Legal Name: _____
 Tender Ref. and title: _____
 Page _____ of _____ pages

Non-Performing Contracts in accordance with Section III, Qualification Criteria and Requirements					
Tenderers, including each partner of a JVCA, shall detail below any current and past litigation and/or arbitration (with an indication of the matters in dispute, the parties involved, the amounts in dispute and the outcome, where available) resulting from contracts completed or under execution by the Tenderer, including each partner of a JVCA, during the number of years specified in Section III, Qualification Criteria and Requirements, requirement 2.1.					
Year	Contract	Parties involved	Cause of litigation or matter in dispute	Disputed amount [state currency] equivalent	Outcome of the dispute/litigation

The following abbreviations shall be used: *F* - dispute/litigation was resolved in favour of the Tenderer (or partner of a JVCA), *A* - the decision on dispute/litigation was against the Tenderer, or *P* - dispute/litigation is still in progress.

Pending Litigation, in accordance with Section III, Qualification Criteria and Requirements			
<input type="checkbox"/>		No pending litigation in accordance with Section III, Qualification Criteria and Requirements, Sub-Factor 2.2.	
<input type="checkbox"/>		Pending litigation in accordance with Section III, Qualification Criteria and Requirements, Sub-Factor 2.2 as indicated below.	
Year	Outcome as Percentage of Total Assets	Contract Identification	Total Contract Amount (current value, EURO equivalent)
		Contract Identification: Name of Purchaser: Address of Purchaser: Matter in dispute:	

Form FIN-1: Financial Situation

Each Tenderer or member of a JVCA must complete this form with the Financial Data (euro equivalent)] for the previous 3 years.

Information from Balance Sheet (EURO EQUIVALENT)

	Year 1: <i>(Enter year)</i>	Year 2: <i>(Enter year)</i>	Year 3: <i>(Enter year)</i>
Total Assets			
Total Liabilities			
Net Worth			
Current Assets			
Current Liabilities			

Information from Income Statement (EURO EQUIVALENT)

	Year 1: <i>(Enter year)</i>	Year 2: <i>(Enter year)</i>	Year 3: <i>(Enter year)</i>
Total Revenues			
Profits Before Taxes			
Profits After Taxes			

<input type="checkbox"/>	<p>Attached are copies of financial statements (balance sheets including all related notes, and income statements) for the last three years, as indicated above, complying with the following conditions.</p> <p>All such documents reflect the financial situation of the Tenderer or partner to a JVCA, and not sister or parent companies. Historic financial statements must be audited by a certified accountant. Historic financial statements must be complete, including all notes to the financial statements. Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).</p>
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Form FIN-2: 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 EUR equivalent of other currencies the EUR 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 the number of years specified in Section III, Evaluation Criteria, Sub-Factor 2.3.2.

Form FIN-3: Financial Resources

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit and other financial means, net of current commitments, available to meet the total cash flow demands of the subject Contract or contracts as indicated in Section III, Evaluation and Qualification Criteria.

No	Source of financing	Amount (euro equivalent)
1.		
2.		
3.		
4.		

Form FIN-4: Current Contract Commitments

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

Name of Contract	Purchaser, contact address, tel & fax and email address	Value of outstanding supply (current euro equivalent)	Estimated completion date	Average monthly invoicing over last six months (euro/month)
1.				
2.				
3.				
4.				
5.				
etc.				

Form EXP-1: 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.

Similar Contract No. <i>[insert specific number]</i> of <i>[total number of contracts]</i> required	Information	
Contract Identification		
Award date Completion date		
Role in Contract		
Total Contract amount		euro
If a partner in a JVCA, specify participation in total Contract amount	_____ %	euro _____
Purchaser's Name:		
Address:		
Telephone/fax number:		
email:		

Form EXP – 1 Experience (cont.)

Tenderer's Legal Name: _____

Page _____ of _____ pages

JVCA Partner's Legal Name: _____

Complete one (1) form per Contract.

Similar Contract No. <i>[insert specific number]</i> of <i>[total number of contracts]</i> required	Information
Description of the similarity in accordance with Sub-Factor 2.4.2(a) of Section III:	
Amount	
Physical size	
Complexity	
Technology	

Section V: Eligible Countries

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.

PART 2 – SUPPLY REQUIREMENTS

Section VI: Supply Requirements

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1. List of Goods and Related Services

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:

1.1 List of Goods			
List No.	Name of Goods	<u>Brief Description</u>	<u>Quantity</u>

EXAMPLE:

1.2 List of Related Services			
List No.	Name of Related Service	<u>Brief Description</u>	<u>Quantity</u>

EXAMPLE:

1.3 List of Mandatory Spare Parts			
List No.	Name of mandatory spare parts	<u>Brief Description</u>	<u>Quantity</u>

2. Delivery and Completion Schedule

Text of Delivery and Completion Schedules to be inserted in the Tender documents by the Purchaser, as applicable prior to the issue of the Tender Document.

The required date of arrival on the Project Site is no later than: _____.

The required completion date is no later than: _____.

Name of Goods or <u>Related Service</u>	Delivery Schedule (<u>dd/mm/yyyy</u>)

3. Technical Specifications

These notes for preparing specifications are intended only as information for the Purchaser or the person drafting the tender documents. They should not be included in the final documents

Preparing the Technical Specifications:

A set of precise and clear specifications are a prerequisite for Tenderers to respond realistically and competitively to the requirements of the Purchaser without qualifying their tenders. The specifications must be drafted to permit the widest possible competition whilst presenting a clear statement of the required standards of workmanship, materials and performance of the goods and services to be procured. This is consistent with realising the objectives of economy, efficiency and fairness, will ensure the responsiveness of tenders and will facilitate the task of tender evaluation and transparency of the award. The specifications should require that all goods and materials to be incorporated in the goods be new, unused and of the most recent or current models. They should also incorporate all recent improvements in design and materials unless otherwise provided for in the Specifications.

Wherever appropriate, standardised general technical specifications covering workmanship, materials, manufacturing, quality assurance and testing should be used with deletions or addenda for the particular procurement.

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".

Text of Technical Specifications to be inserted in the Tender documents by the Purchaser, as applicable.

Item No.	Full Technical Specification of Goods required	

EXAMPLE:

Equivalence of Standards and Codes

Wherever reference is made in the Technical Specifications to specific standards and codes to be met by the goods and materials to be furnished or tested, the provisions of the latest current edition or revision of the relevant standards or codes in effect shall apply, unless otherwise expressly stated in the Specifications. Where such standards and codes are national or related to a particular country or region, other authoritative standards that ensure substantial equivalence to the standards and codes specified will be acceptable.

4. Drawings

These notes for preparing drawings are intended only as information for the Purchaser or the person preparing the Tender documents. They should not be included in the final document.

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

Where appropriate, the Purchaser should attach other pertinent documentation such as drawings, diagrams, site plan, etc. which would assist Tenderers to submit a responsive Tender.

The Supplier may be requested to provide drawings or samples either with its Tender or more commonly, for review prior to delivery during Contract implementation.

PART 3 – CONDITIONS OF CONTRACT AND CONTRACT FORMS

Section VII: General Conditions of Contract

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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.

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.

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

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

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

1.1.1.6 “Drawings” means the drawings of the Goods, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Purchaser in accordance with the Contract.

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

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

“GCC” means the General Conditions of Contract.

“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.

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 each of these persons.

1.1.2.5 “Bank” means the financing institution (if any) named in the PCC.

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

“Eligible Countries” means the countries and territories eligible as listed in Section V.

1.1.3 Dates, Tests, Periods and Completion

- 1.1.3.1** “Base Date” means the date 28 days prior to the latest date for submission of the Tender.
- 1.1.3.2** “Acceptance Test” means the tests (if any) which are specified in the Contract and which are carried out in accordance with the Specification for the purpose of issuing the “Acceptance Certificate”.
- 1.1.3.3** “day” means a calendar day and “year” means 365 days.

1.1.4 Money and Payments

- 1.1.4.1** “Contract Price” means the price defined in Sub-Clause 10, The Contract Price, and includes adjustments in accordance with the Contract.

1.1.5 Goods

- 1.1.5.1** “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.
- 1.1.5.2** “Related Services” means the services incidental to the supply of the Goods, such as insurance, transportation, installation, commissioning, training and initial maintenance and other such obligations of the Supplier under the Contract.

1.1.6 Other Definitions

- 1.1.6.1** “Purchaser’s Country” is the country specified in the PCC.
- 1.1.6.2** “Force Majeure” is defined in Clause 25, Force Majeure.
- 1.1.6.3** “Laws” means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.
- 1.1.6.4** “Performance Security” means the security (or securities, if any) under Sub-Clause 13, Performance Security.
- 1.1.6.5** “Project Site,” where applicable, means the place named in the PCC.
- 1.1.6.6** “Unforeseeable” or “Unforeseen” means not reasonably foreseeable by an experienced Supplier by the Base Date.
- 1.1.6.7** “Change Order” or “Change” is defined in Sub-clause 26, Change Orders and Contract Amendments

1.2 Interpretation

- 1.2.1** Interpretation of the Contract, except where the context requires otherwise:
- (a) words indicating one gender include all genders;
 - (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
 - (c) provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing;
 - (d) “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
 - (e) the word “tender” is synonymous with “bid” and “tenderer” with “bidder” and the words “tender documents” with “bidding documents”.
- The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.
- 1.2.2** If the context so requires it, singular means plural and vice versa.
- 1.2.3 Incoterms**
- (a) Unless inconsistent with any provisions in the Contract, the meaning of any trade term and the 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
- 1.2.4 Entire Agreement**
- The Contract constitutes the entire agreement between the Purchaser and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of the Parties with respect thereto made prior to the date of Contract.

1.2.5 Amendment

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorised representative of each Party thereto.

1.2.6 Nonwaiver

(a) Subject to GCC 1.2.5(b) below, no relaxation, forbearance, delay, or indulgence by either Party in enforcing any of the terms and conditions of the Contract or the granting of time by either Party to the other shall prejudice, affect, or restrict the rights of that Party under the Contract, neither shall any waiver by either Party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

(b) Any waiver of a Party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorised representative of the Party granting such waiver, and must specify the right and the extent to which it is being waived.

1.2.7 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

1.3 Communications

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:

(a) in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the PCC; and

(b) delivered, sent or transmitted to the address for the recipient's communications as stated in the PCC. However:

(i) if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and

(ii) if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued

Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party.

1.4 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 shall be that stated in the PCC.

The language for communications shall be that stated in the PCC. If no language is stated there, the language for communications shall be the ruling language of the Contract.

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

The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Supplier.

1.5 Priority of Documents

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

(a) the Contract Agreement (if any),

(b) the Letter of Acceptance,

(c) the Letter of Tender,

(d) the Particular Conditions

(e) these General Conditions,

(f) the Specification,

(g) the Drawings, 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.

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

1.7 Assignment

Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party:

(a) may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party, and

(b) may, as security in favour of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.

1.8 Copyright

1.8.1 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.

1.9 Confidential Details

The Supplier's and the Purchaser's Personnel shall disclose all such confidential and other information as may be reasonably required in order to verify the Supplier's compliance with the Contract and allow its proper implementation.

Each of them shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any particulars of the Goods prepared by the other Party without the prior agreement of the other Party. However, the Supplier shall be permitted to disclose any publicly available information, or information otherwise required to establish his qualifications to compete for other projects.

Notwithstanding the above, the Supplier may furnish to its Subcontractor(s) such documents, data and other information it receives from the Purchaser to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Supplier under this Clause.

1.10 Compliance with Laws

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

Unless otherwise stated in the Particular Conditions:

(a) the Purchaser shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the Purchaser's Country which (i) such authorities or undertakings require the Purchaser to obtain in the Purchaser's name, and (ii) are necessary for the execution of the Contract, including those required for the performance by both the Supplier and the Purchaser of their respective obligations under the Contract;

(b) the Supplier shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the Purchaser's Country which such authorities or undertakings require the Supplier to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Supplier's and Subcontractor's personnel and entry permits for all imported Supplier's Equipment. The Supplier shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Purchaser under GCC Sub-Clause 1.10(a) hereof and that are necessary for the performance of the Contract. The Supplier shall indemnify and hold harmless the Purchaser from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Supplier or its personnel, including the Subcontractors and their personnel, but without prejudice to GCC Sub-Clause 10.1 hereof.

1.11 Joint and Several Liability

If the Supplier is a joint venture, consortium, or association (JVCA) of two or more persons, all such persons shall be jointly and severally bound to the Purchaser for the fulfilment of the provisions of the Contract, unless otherwise specified in the PCC, and shall designate one of such persons to act as a leader with authority to bind the JVCA. The composition or the constitution of the JVCA shall not be altered without the prior consent of the Purchaser.

1.12 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. Contract Documents

Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

3. Prohibited Practices

3.1 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 the 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 the Bank's resources** which means improper use of the Bank's resources, committed either intentionally or through reckless disregard;

(vi) an **obstructive practice** which means (i) destroying, falsifying, altering or concealing of evidence material to a Bank investigation, which impedes the Bank's investigation; (ii) making false statements to investigators in order to materially impede a Bank investigation into allegations of a Prohibited Practice; (iii) failing to comply with requests to provide information, documents or records in connection with a Bank investigation; (iv) 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 (v) 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.

4. Eligibility

- 4.1 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.
- 4.2 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 manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

5. Notices

- 5.1 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.
- 5.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

6. Settlement of Disputes

- 6.1 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.
- 6.2 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.
- 6.3. 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.

7. Scope of Supply

- 7.1 The Goods and Related Services to be supplied shall be as specified in Section VI, Supply Requirements.

8. Delivery

- 8.1** Subject to GCC 27.1, the Delivery of the Goods and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in Section VI, 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.

9. Supplier's Responsibilities

- 9.1** The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GCC 7, and the Delivery and Completion Schedule, as per GCC 8.

10. Contract Price

- 10.1** Unless otherwise prescribed in the PCC, the Contract price shall be fixed throughout the duration of Contract performance.

11. Terms of Payment

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

The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCC 8 and upon fulfilment of all other obligations stipulated in the Contract.

- 11.2** Payments shall be made promptly by the Purchaser, no later than sixty (60) days after submission of an invoice or request for payment by the Supplier, and after the Purchaser has accepted it.

- 11.3** The currencies in which payments shall be made to the Supplier under this Contract shall be those in which the Tender price is expressed.

- 11.4** In the event that the Purchaser fails to pay the Supplier any payment by its due date, or within the period set forth in the PCC, the Purchaser shall pay to the Supplier interest on the amount of such delayed payment, at the rate shown in the PCC, for the period of delay, until payment has been made in full, whether before or after judgment, or arbitration award.

12. Taxes and Duties

- 12.1** 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.

- 12.2** 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.

- 12.3** 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.

13. Performance Security

- 13.1** 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.

- 13.2** If so required, pursuant to GCC 13.1, the performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Purchaser, and shall be in one of the forms stipulated by the Purchaser in the PCC, or in another form acceptable to the Purchaser.

- 13.3** The proceeds of the performance security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.

- 13.4** The performance security shall be discharged by the Purchaser and returned to the Supplier not later than twenty-eight (28) days following the date of completion of the Supplier's performance

obligations under the Contract, including any warranty obligations, unless specified otherwise in the PCC.

14. Subcontracting

- 14.1** 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.
- 14.2** Subcontracts shall comply with the provisions of GCCs 3 and 4.

15. Specifications and Standards

- 15.1** (a) The Supplier shall ensure that the Goods and Related Services comply with technical requirements, as specified in Section VI, Supply Requirements.
- (b) The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Purchaser
- (c) Wherever references are made in the Contract to codes and standards, in accordance with which it shall be executed, the addition or the revised version of such codes and standards shall be those specified in Section VI, Supply Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Purchaser and shall be treated in accordance with GCC 26.

16. Packing and Documents

- 16.1** 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.
- 16.2** 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.

17. Insurance

- 17.1** 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.

18. Transportation

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

19. Inspections and Tests

- 19.1** 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.
- 19.2** The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the Goods' final destination, or in another place in the Purchaser's country as specified in the PCC. Subject to GCC 19.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.
- 19.3** The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC 19.2, provided that the Purchaser bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and

board and lodging expenses.

- 19.4** Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain from any relevant third Party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection.
- 19.5** The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- 19.6** The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.
- 19.7** The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice pursuant to GCC 19.4.
- 19.8** The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report pursuant to GCC 19.6, shall release the Supplier from any warranties or other obligations under the Contract.

20. Liquidated Damages

- 20.1** Except as provided under GCC 27, 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 28.

21. Warranty

- 21.1** 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.
- 21.2** Subject to GCC 15.1(b), 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.
- 21.3** 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.
- 21.4** 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.
- 21.5** 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.

22. Patent Indemnity

22.1 The Supplier shall, subject to the Purchaser's compliance with GCC 22.2, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

- (a) the installation of the Goods by the Supplier or the use of the Goods in the country where the Site is located; and
- (b) the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

22.2 If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GCC 22.1, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

22.3 If the Supplier fails to notify the Purchaser within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf.

The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.

The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Purchaser.

23. Limitation of Liability

23.1 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.

24. Change in Laws and Regulations

24.1 If, within less than twenty-eight (28) days prior to the date of Tender Submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the place of the Purchaser's country where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be

correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC 10.

25. Force Majeure

- 25.1** 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.
- 25.2** For the purposes of this Clause, "Force Majeure Event" means an event or situation beyond the control of a Party that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of a Party. Such events may include, but are not limited to, acts of a Party in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 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

26. Change Orders and Contract Amendments

- 26.1** The Purchaser may at any time order the Supplier through notice in accordance with GCC 5, to make changes within the general scope of the Contract in any one or more of the following:
- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
 - (b) the method of shipment or packing;
 - (c) the place of delivery; and
 - (d) the Related Services to be provided by the Supplier.
- 26.2** 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. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of the Purchaser's change order.
- 26.3** Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the Parties and shall not exceed the prevailing rates charged to other Parties by the Supplier for similar services.
- 26.4** 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.

27. Extensions of Time

- 27.1** If at any time during performance of the Contract, the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC 8, the Supplier shall promptly notify the Purchaser in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the Parties by amendment of the Contract.
- 27.2** Except in case of Force Majeure, as provided under GCC 25, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC 20, unless an extension of time is agreed upon, pursuant to GCC 27.1.

28. Termination

28.1 Notice to Correct

If the Supplier fails to carry out any obligation under the Contract, the Purchaser may by notice require the Supplier to make good the failure within a specified reasonable time.

28.2 Termination for Default

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

- 28.2
- (i) if the Supplier has failed to comply with a notice under GCC 28.1;
 - (ii) if the Supplier has failed to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC 27; or
 - (iii) if the Supplier, in the judgment of the Purchaser, has engaged in Prohibited Practices, as defined in GCC 3, in competing for, or in executing the Contract.
- (b) In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC 28.2(a), the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

28.3 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.

28.4 Termination for Convenience

- (a) The Purchaser, by notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective. The effective date of the termination notice shall be as specified in the PCC.
- (b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the effective date of the notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:
- (i) to have any portion completed and delivered at the Contract terms and prices; and/or
 - (ii) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

29. Export Restrictions

- 29.1 Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Purchaser, to the country of the Purchaser, or to the use of the goods or services to be supplied, which arise from trade regulations from a country supplying those goods, or services, and which substantially impede the Supplier from meeting its obligations under the Contract, shall release the Supplier from the obligation to provide deliveries or services, always provided however, that the Supplier can demonstrate to the satisfaction of the Purchaser and of the Bank that it has completed all formalities in a timely manner, including applying for permits, authorisations, and licenses necessary for the delivery of the goods or services under the terms of the Contract.

Section VIII: Particular Conditions of Contract

The following Particular Conditions of Contract 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 VII, General Conditions of Contract.

GCC reference	Particular Conditions of Contract
	General Provisions
1.1.2.2	The Purchaser is: <i>[Insert the name of Purchaser]</i>
1.1.2.5	The Bank is: <i>[Insert name of the financing institution financing the Contract]</i>
1.1.2.6	The Borrower is: <i>[insert name of the borrower]</i>
1.1.6.1	The Purchaser's Country is: <i>[insert the name of the Purchaser's country]</i>
1.1.6.5	The Project Site is: <i>[insert description, if applicable]</i>
1.2.3 (a)	The version of Incoterms shall be the current edition of Incoterms, published by The International Chamber of Commerce, Paris.
1.4	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 language specified in the Instructions to Tenderers]</i>
1.6	The Parties shall enter into a Contract Agreement within 28 days after the Supplier receives the Letter of Acceptance.
1.11	The individuals or firms in a joint venture, consortium or association shall be held jointly and severally liable.
5	Notices
5.1	For notices , the Purchaser's address shall be: Attention: _____ Purchasers Name _____ Street Address: _____ Floor/ Room number: _____ City: _____ Postal Code: _____ Country: _____

Telephone: _____

Facsimile number: _____

Email address: _____

6 Settlement of Disputes

6.2 The rules of procedure for arbitration shall be as follows:

EXAMPLE:

- (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*].
- (d) The arbitration proceedings shall be conducted in the language governing the Contract.

8 Delivery

8.1 The shipping and other documents to be furnished by the Supplier are:

The following examples are appropriate for contracts placed CIP and EXW. Different conditions and documents may be required for DAP and DDP terms of delivery.

EXAMPLE:

- (a) For Goods supplied from outside the Purchaser's country: the Goods shall be delivered CIP (place of destination).

Upon shipment, the Supplier shall notify the Purchaser and the Insurance Company by email or fax of the full details of the shipment, including: Contract number; description of Goods; quantity; the number and date of the usual transport document (such as railway or road consignment note, bill of lading, or multimodal transport document); date of shipment; expected date of arrival; vessel and ports of loading and discharge, if appropriate.

The Supplier shall mail the following documents to the Purchaser, with a copy to the Insurance Company:

- (i) copies of the Supplier's invoice showing the Goods' description, quantity, unit price and total amount;
- (ii) original and (_____) copies of the negotiable, clean, on-board bill of lading marked "freight prepaid" and (_____) copies of non-negotiable bill of lading;
- (iii) copies of packing list identifying contents of each package;
- (iv) insurance certificate;
- (v) Manufacturer's/Supplier's warranty certificate;
- (vi) inspection certificate, issued by the nominated inspection agency and the Supplier's factory inspection report;
- (vii) certificate of origin

The above documents shall be received by the Purchaser at least one week before arrival of the Goods at the port or place of arrival, and, if not received, the Supplier will be responsible for any consequent expenses.

EXAMPLE:

(b) For Goods supplied from within the Purchaser's country:

Upon delivery of the Goods to the transporter, the Supplier shall notify the Purchaser and mail the following documents to the Purchaser:

- (i) copies of the Supplier's invoice showing the Goods' description, quantity, unit price and total amount;
- (ii) delivery note, railway receipt or truck receipt;
- (iii) Manufacturer's or Supplier's warranty certificate;
- (iv) inspection certificate issued by the nominated inspection agency, and the Supplier's factory inspection report;
- (v) evidence of payment of customs duties or other similar import taxes on directly imported components incorporated in the Goods.

The above documents shall be received by the Purchaser before arrival of the Goods and, if not received, the Supplier will be responsible for any consequent expenses.

EXAMPLE:

Services:

- (i) copy of the Supplier's invoice, which should provide a full description of the Services performed

10 Contract price**10.1** Price adjustments *[insert shall or shall not]* apply.

If any price adjustment applies, the following method shall be used to calculate the price adjustment:

$$P_1 = P_0 \times \{a + b(L_1 / L_0) + c(M_1/M_0)\} - P_0$$

In which:

- P_1 = adjustment amount payable to the Supplier
- P_0 = Contract Price (base price)
- a = fixed element of representing profits and overheads included in the Contract Price
- b = estimated percentage of labour component in the Contract Price
- c = estimated percentage of material component in the Contract Price
- L_0, L_1 = labour cost indices applicable to the appropriate industry in the country of origin on the base date and date for adjustment, respectively.
- M_0, M_1 = material cost indices for the major raw material on the base date and date for adjustment, respectively, in the country of origin.

The coefficients a, b and c shall be specified by the Purchaser in the tender documents. The sum of the three coefficients should be one (1) in every application of the formula. Coefficient "a" is generally in the range of five (5) to fifteen (15) percent.

The tenderer shall indicate the source of the indices and the base date indices in its tender.

Base date = thirty (30) days prior to the deadline for submission of tenders.

Date of adjustment = (___) weeks prior to date of shipment (representing the mid-point of the period of manufacture).

The above price adjustment formulae shall be invoked by either party subject to the following conditions:

- (a) Price adjustment will be applied only if the resulting increase or decrease is more than (____) percent of the Contract Price;

Two (2) percent would be an acceptable percentage above.

- (b) No price increase shall be allowed beyond the original delivery dates unless specifically stated in the extension letter. No price adjustment shall be allowed for periods of delay for which the Supplier is entirely responsible. The Purchaser will however be entitled to any decrease in the prices of the Goods and Services subject to adjustment.
- (c) The total adjustment under this clause shall be subject to a ceiling of plus or minus (____) per cent of the Contract Price.

Ten (10) percent would be an acceptable percentage above.

- (d) If the currency in which the Contract Price P_0 is expressed is different from the currency of the country of origin of the labour and materials indices, a correction factor will be applied to avoid incorrect adjustments of the Contract Price. The correction factor shall correspond to the ratio of exchange rates between the two currencies on the base date and the date for adjustment as defined above;
- (e) no price adjustment shall be payable on the portion of the Contract Price paid to the Supplier as advance payment.

11 Terms of payment

The following example is appropriate for contracts placed CIP and EXW. Different conditions of payment may be required for DAP and DDP terms of delivery reflecting the ownership transfer of the ownership of the Goods during the delivery and associated risks.

11.1 The terms of payment shall be as follows:

EXAMPLE:

The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:

- (a) Payment for Goods supplied from outside the Purchaser's country shall be made in _____ ***[insert currency or currencies specified in the Supplier's tender]*** in the following manner:
- (i) ***Advance payment:*** Ten (10) percent of the Contract Price shall be paid within thirty (30) days of signing the Contract, and upon submission of a claim and a bank guarantee in a form acceptable to the Purchaser, for an equivalent amount valid until the Goods are delivered;
 - (ii) ***On shipment:*** Eighty (80) percent of the Contract Price of the Goods shipped shall be paid through an irrevocable confirmed letter of credit opened in favour of the Supplier in a bank in its country, upon submission of documents specified in Clause 8; and
 - (iii) ***On acceptance:*** Ten (10) percent of the Contract Price of the Goods received shall be paid within thirty (30) days of receipt of the Goods, upon submission of a claim supported by the acceptance certificate issued by the Purchaser for the respective delivery.
- (b) Payment for Goods supplied from within the Purchaser's country shall be made in _____ ***[insert currency specified in the tender documents for local expenditure]*** in the following manner:
- (i) ***Advance payment:*** Ten (10) percent of the Contract Price of the Goods delivered shall be paid within thirty (30) days of signing the Contract against a simple

receipt and a bank guarantee in a form acceptable to the Purchaser for an equivalent amount valid until the Goods are delivered;

- (ii) On delivery: Eighty (80) percent of the Contract Price of the Goods delivered shall be paid on receipt of Goods and upon submission of the documents specified in Clause 8.
- (iii) On acceptance: Ten (10) percent of the Contract Price of the Goods received shall be paid within thirty (30) days of receipt of the Goods upon submission of a claim supported by the acceptance certificate issued by the Purchaser for the respective delivery.

Payment against import duties and taxes on directly imported components incorporated in the Goods will only be made for the amounts evidenced as paid, up to and not exceeding the amount specified for such import duties and taxes in the Supplier's tender price.

- (c) Payment for Services, including local transport, 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.

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

11.2 The Supplier shall nominate up to 3 (three) accounts and notify these to the Purchaser within 28 days after the Supplier receives the Letter of Acceptance. Payments shall be made by the Purchaser only to the account(s) nominated by the Supplier in accordance with this Clause.

11.4 The payment-delay period after which the Purchaser shall pay interest to the Supplier is **[insert number]** days.

The interest rate that shall be applied is: **[insert percent interest rate]** %.

13 Performance Security

13.1 A performance security **[insert "shall" or "shall not"]** be required.

If a performance security is required, the amount of performance security as a percentage of the Contract Price shall be: **[specify percentage: five (5) to ten (10) percent of the Contract Price is reasonable; it should not normally exceed ten (10) percent]**.

13.3 If a performance security is required, the currency shall be: **[specify the currency. Normally, the currency(ies) in which the Contract Price is payable]**

If required, the performance security shall be in the form of unconditional bank guarantee.

13.4 Discharge of Performance Security shall take place:

EXAMPLE:

After delivery and acceptance of the Goods, the performance security shall be reduced to two (2) percent of the Contract Price to cover the Supplier's warranty obligations in accordance with GCC Clause 21.3

16 Packing and Documents

16.2 The packing, marking and documentation within and outside the packages shall be: **[insert details required for packing marking and documentation]**

17 Insurance

17.1 The insurance coverage shall be in an amount equal to 110 percent of the CIF or CIP value of the Goods from "warehouse to warehouse" on an "All Risks" basis, including War Risks and Strikes.

If not in accordance with Incoterms, insurance coverage shall be as follows: **[specify insurance requirements, if different from above]**

18 Transportation

18.1 Responsibility for arranging transportation of the Goods shall be in accordance with the specified Incoterms.

If not in accordance with Incoterms, responsibility for transportation shall be as follows: [*specify transportation arrangements, if different from above*]

19 Inspection and tests

19.1 The inspections and tests shall be:

Preshipment inspection: [*specify inspection and tests*]

Final acceptance: [*specify inspection and tests*]

19.2 The inspections and tests shall be conducted at: _____

20 Liquidated Damages

20.1 The liquidated damage shall be: _____ % per week.

The maximum percentage of liquidated damages shall be: _____%

Applicable rate would normally be set at one half (0.5 of a) percent per week and the maximum deduction should not exceed ten (10) percent of the Contract Price.

21 Warranty

21.3 The period of validity of the warranty shall be as follows:

EXAMPLE:

In partial modification of the provisions, the warranty period shall be (_____) hours of operation or (_____) months from date of acceptance of the Goods or (_____) months from the date of shipment, whichever occurs earlier. The Supplier shall, in addition, comply with the performance and/or consumption guarantees specified under the Contract. If, for reasons attributable to the Supplier, these guarantees are not attained in whole or in part, the Supplier shall, at its discretion, either:

(a) make such changes, modifications, and/or additions to the Goods or any part thereof, as may be necessary in order to attain the contractual guarantees specified in the Contract at its own cost and expense, and to carry out further performance tests in accordance with Clause 19;

OR

(b) pay liquidated damages to the Purchaser with respect to the failure to meet the contractual guarantees. The rate of these liquidated damages shall be (_____)...

The rate shall be equal to or higher than the adjustment rate used in the tender evaluation for the respective performance factors.

EXAMPLE:

Without prejudice to Clauses 21.3, 21.4 and 21.5, the Supplier shall promptly correct, at no cost to the Purchaser, any defect in any goods or parts repaired or replaced pursuant to Clauses 21.3, 21.4 and 21.5 above, upon receipt of a written notice of defect within 12 months of the acceptance of the repaired or replaced goods or parts.

For the purposes of the warranty, the place(s) of final destination(s) shall be: [*insert final destination*]

21.5 The period for repair or replacement shall be: ***[insert number of days]*** days.

28 **Termination**

28.4 (a) The effective date of the termination notice shall be: ***[insert number of weeks/months]*** weeks/months ***[delete as applicable]*** from the date of the notice of termination.

The period for the effectiveness of the termination notice shall be appropriate to the nature of the goods to be provided under the Contract (for example, a Contract for the supply of off-the-shelf goods might only require a two week notice period whereas a Contract for the supply of buses or similar heavy, complex equipment might require, say, three or six months notice).

Section IX: Annex to the PCC - Contract Forms

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

The forms for the 2. Contract Agreement, 3. Performance Security and 4. Advance Payment Security, when required, shall only be completed by the successful Tenderer after the Contract award.

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1. Letter of Acceptance

[on letterhead paper of the Purchaser]

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

..... *[date]*.....

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 IX (Contract Forms) of the Tender Document.

Authorised Signature:

Name of Signatory:

Title of Signatory:

Name of Purchaser:

Address of Purchaser:

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 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 called “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 Supply Requirements
- (g) the Drawings; and
- (h) the completed 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 *[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: _

3. Performance Security

[The bank, as requested by the successful Tenderer, shall fill in this form in accordance with the instructions indicated]

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

Tendering Process Reference: [insert no. and title of Tendering process]

Bank's Branch or Office: [insert complete name of Guarantor]

Beneficiary: [insert complete name of Purchaser]

PERFORMANCE GUARANTEE No.: [insert Performance Guarantee number]

We have been informed that [insert complete name of the Supplier] (hereinafter called "the Supplier") has entered into Contract No. [insert number] dated [insert day and month], [insert year] with you, for the supply of [description of Goods and related Services] and the remedying of any defects therein (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a Performance Guarantee is required.

At the request of the Supplier, we hereby irrevocably undertake to pay you any sum(s) not exceeding [insert amount(s)¹ in figures and words] such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing declaring the Supplier to be in default under the Contract, without cavil or argument, or your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This Guarantee shall expire no later than the [insert number] day of [insert month] [insert year],² and any demand for payment under it must be received by us at this office on or before that date. This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

.....[Signatures of authorised representatives of the bank]

Note –

All italicized text is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.

¹ *The bank shall insert the amount(s) specified in the PCC and denominated, as specified in the PCC, either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Purchaser.*

² *Dates established in accordance with Clause 13.4 of the General Conditions of Contract ("GCC"), taking into account any warranty obligations of the Supplier under Clause 21.3 of the GCC intended to be secured by a partial Performance Guarantee. The Purchaser should note that in the event of an extension of the time to perform the Contract, the Purchaser would need to request an extension of this Guarantee from the Bank. Such request must be in writing and must be made prior to the expiration date established in the Guarantee. In preparing this Guarantee, the Purchaser might consider adding the following text to the Form, at the end of the penultimate paragraph: "We agree to a one-time extension of this Guarantee for a period not to exceed [six months] [one year], in response to the Purchaser's written request for such extension, such request to be presented to us before the expiry of the Guarantee."*

4. Advance Payment Security

[The bank, as requested by the successful Tenderer, shall fill in this form in accordance with the instructions indicated]

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

Tendering Process Reference: [insert number and title of Tendering process]

[bank's letterhead]

Beneficiary: [insert legal name and address of Purchaser]

ADVANCE PAYMENT GUARANTEE No.: [insert Advance Payment Guarantee no.]

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

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

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum *[insert amount in figures]* () *[insert amount in words]* is to be made against an advance payment guarantee.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures¹]* () *[insert amount in words]* upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

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

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

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, has been certified for payment, or on the *[insert day]* day of *[insert month]*, 2 *[insert year]*, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees ICC Publication No.758, except that the supporting statement under Article 15(a) is hereby excluded.

..... *[Seal of Bank and Signature(s)]*.

Note –

All italicized text is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.

¹ The Guarantor shall insert an amount representing the amount of the advance payment denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Purchaser.