

SAMPLE BIDDING DOCUMENTS

Procurement of Management Services



**The World Bank
Washington, D.C.**

December 2007

Foreword

This Sample Bidding Document for Procurement of Management Services (SBDMS) has been prepared by the World Bank to be used on a voluntary, trial basis, for the procurement of management services through International Competitive Bidding (ICB) in projects that are financed in whole or in part by the World Bank. It is consistent with the May 2004 [edition of the] Guidelines for Procurement under IBRD Loans and IDA Credits, revised October 2006.

Because prequalification is considered best practice for the procurement of management services, this SBDMS assumes that prequalification has taken place before bidding. It is recommended that prequalification be carried out in accordance with the procedures indicated in the companion *Sample Prequalification Document: Procurement of Management Services*, issued by the World Bank.

The World Bank has also issued a separate *Technical Note - Sample Prequalification and Bidding Documents for Procurement of Management Services* to provide guidance on how to use the two sample documents mentioned above.

Those wishing to submit comments or questions on this Bidding Document or to obtain additional information on procurement under World Bank-financed projects are encouraged to contact:

Procurement Policy and Services Group
Operations Policy and Country Services Vice-Presidency
The World Bank
1818 H Street, NW
Washington, D.C. 20433 U.S.A.
pdocuments@worldbank.org
<http://www.worldbank.org/procure>

Summary Description

Sample Bidding Document for Procurement of Management Services

PART 1 – Bidding Procedures - Option A: Single Stage Bidding

Section I: Instructions to Bidders (ITB)

This section provides relevant information to help Bidders prepare their Bids for a Single-Stage Bidding process. Information is also provided on the submission, opening, and evaluation of Bids and on the award of Contracts.

Section II. Bid Data Sheet (BDS)

This section consists of provisions that are specific to each Single-Stage Bidding process and that supplement the information or requirements included in Section I, Instructions to Bidders.

Section III. Evaluation and Qualification Criteria

This section contains the criteria to determine the Successful Bid and to ascertain the continued qualification of the Bidder to perform the contract.

Section IV: Bidding Forms

This section contains the forms which are to be completed by the Bidder and submitted as part of its Bid.

Section V. Eligible Countries

This section contains information regarding eligible countries.

PART 1 – Bidding Procedures - Option B: Two-Stage Bidding

Section I: Instructions to Bidders (ITB)

This section provides relevant information to help Bidders prepare their Bids for a Two-Stage Bidding process. Information is also provided on the submission, opening, and evaluation of Bids and on the award of Contracts.

Section II. Bid Data Sheet (BDS)

This section consists of provisions that are specific to each Two-Stage Bidding process and that supplement the information or requirements included in Section I, Instructions to Bidders.

Section III. Evaluation and Qualification Criteria

This section contains the criteria to determine the Successful Bid and to ascertain the continued qualification of the Bidder to perform the contract.

Section IV: Bidding Forms

This section contains the forms which are to be completed by the Bidder and submitted as part of its Bid.

Section V. Eligible Countries

This section contains information regarding eligible countries.

PART 2 – Services Requirements (Common to Options A and B)

Section VI. Schedules of Services Requirements

This section contains the contract's specific Management Services requirements.

PART 3 – Conditions of Contract and Contract Forms (Common to Options A and B)

Section VII. General Conditions (GC)

This section contains the general clauses to be applied in all contracts.

Section VIII. Particular Conditions (PC)

This section consists of Part A, Contract Data, which contains data, and Part B, Specific Provisions, which contains clauses specific to each contract. The contents of this Section supplement the General Conditions and shall be prepared by the Employer.

Section IX: Annex to the Particular Conditions - Contract Forms

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

Attachment: Invitation for Bids

An **Invitation for Bids** form is provided at the end of the Bidding Document for information purposes only. It does not form part of the Bidding Document.

BIDDING DOCUMENT

Issued on: _____

for

Procurement of

*[insert identification of the
Management Services]*

ICB No: *[insert ICB number]*

Project: *[insert name of Project]*

Employer: *[insert name of Employer]*

Table of Contents

PART 1 – Option A: Bidding Procedures - Single-Stage Bidding	3
Section I. Instructions to Bidders.....	5
Section II. Bid Data Sheet.....	31
Section III. Evaluation and Qualification Criteria	37
Section IV. Bidding Forms	39
Section V. Eligible Countries	49
PART 1 – Option B: Bidding Procedures - Two-Stage Bidding.....	51
Section I. Instructions to Bidders.....	53
Section II. Bid Data Sheet.....	83
Section III. Evaluation and Qualification Criteria	87
Section IV. Bidding Forms	89
Section V. Eligible Countries	99
PART 2 – Services Requirements.....	101
Section VI. Schedules of Services Requirements	103
PART 3 – Conditions of Contract and Contract Forms	113
Section VII. General Conditions (GC).....	115
Section VIII. Particular Conditions (PC).....	163
Section IX. Annex to the Particular Conditions - Contract Forms	167

**PART 1 – Option A: Bidding Procedures -
Single-Stage Bidding**

Section I. Instructions to Bidders

Table of Contents

A. General.....	7
1. Scope of Bid.....	7
2. Source of Funds	7
3. Corrupt Practices.....	8
4. Eligible Bidders	10
B. Contents of Bidding Document	12
5. Sections of Bidding Document	12
6. Clarification of Bidding Document, Site Visit, Pre-Bid Meeting.....	13
7. Data Room	14
8. Amendment of Bidding Document.....	14
C. Preparation of Bids	15
9. Cost of Bidding.....	15
10. Language of Bid.....	15
11. Documents Comprising the Bid.....	15
12. Documents Comprising the Methodology and Approach	15
13. Documents Comprising the Financial Proposal.....	16
14. Letter of Bid.....	16
15. Power of Attorney.....	16
16. Bid Security	17
17. Documents Establishing the Qualifications of the Bidder.....	18
18. Currencies of Bid and Payment	18
19. Period of Validity of Bids.....	19
20. Format and Signing of Bid.....	19
D. Submission and Opening of Bids	20
21. Sealing and Marking of Bids	20
22. Deadline for Submission of Bids	20
23. Late Bids	20
24. Withdrawal, Substitution, and Modification of Bids	20
25. Technical Proposal Opening.....	21
26. Financial Proposal Opening.....	22
E. Evaluation and Comparison of Bids.....	23
27. Confidentiality	23
28. General Clarification of Bids	23
29. Selection Method and Evaluation Process	24
30. Deviations, Reservations, and Omissions.....	24

31.	Determination of Responsiveness.....	25
32.	Nonmaterial Nonconformities	26
33.	Technical Bid Evaluation.....	26
34.	Financial Proposal Evaluation	26
35.	Correction of Arithmetical Errors	28
36.	Conversion to Single Currency	28
37.	Employer’s Right to Accept Any Bid, and to Reject Any or All Bids	28
F.	Award of Contract.....	29
38.	Award Criteria	29
39.	Notification of Award.....	29
40.	Signing of Contract.....	29
41.	Performance Security.....	30

Section I. Instructions to Bidders

A. General

1. **Scope of Bid**
 - 1.1 In connection with the Invitation for Bids **indicated in the Bid Data Sheet (BDS)**, the Employer, as **indicated in the BDS**, issues these Bidding Documents for the procurement of Services as specified in Part 2 of these Bidding Documents. The name and identification of the International Competitive Bidding (ICB) are **provided in the BDS**.
 - 1.2 Throughout these Bidding Documents:
 - (a) the term “in writing” means communicated in written form and delivered against receipt;
 - (b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and
 - (c) “day” means calendar day.
2. **Source of Funds**
 - 2.1 The Borrower or Recipient (hereinafter called “Borrower”) **indicated in the BDS** has applied for or received financing (hereinafter called “funds”) from the International Bank for Reconstruction and Development or the International Development Association (hereinafter called “the Bank”) toward the cost of the project **named in the BDS**. The Borrower intends to apply a portion of the funds to eligible payments under the contract(s) for which these Bidding Documents are issued.
 - 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. The Loan Agreement prohibits a withdrawal from the loan account for the purpose of any payment to persons or entities, or for any import of equipment, plant, or materials, 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.

- 3. Corrupt Practices** 3.1 It is the Bank’s policy to require that Borrowers (including beneficiaries of Bank loans), as well as bidders, suppliers, and contractors and their subcontractors under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts.¹ In pursuance of this policy, the Bank:
- (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) “corrupt practice”² is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - (ii) “fraudulent practice”³ is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - (iii) “collusive practice”⁴ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - (iv) “coercive practice”⁵ is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - (v) “obstructive practice” is
 - (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to

¹ In this context, any action taken by a bidder, supplier, contractor, or a sub-contractor to influence the procurement process or contract execution for undue advantage is improper.

² “Another party” refers to a public official acting in relation to the procurement process or contract execution]. In this context, “public official” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

³ A “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

⁴ “Parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

⁵ A “party” refers to a participant in the procurement process or contract execution.

investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or

- (ii) acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under ITB 3. 1 (e) below.
- (b) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;
- (c) will cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of the loan engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur;
- (d) will sanction a firm or individual, including declaring 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, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, a Bank-financed contract; and
- (e) will have the right to require that a provision be included in bidding documents and in contracts financed by a Bank loan, a provision be included requiring bidders, suppliers and contractors to permit the Bank to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by the Bank.

3.2 Furthermore, Bidders shall be aware of the provisions stated

in Sub-Clause 21.6 (h) of the General Conditions.

- 4. Eligible Bidders**
- 4.1 This bidding is open only to prequalified Bidders. Bidders shall provide evidence, as the Employer shall reasonably request, of their continued eligibility in accordance with Section III of the Prequalification Document (PQD). Bidders shall notify the Employer immediately, in writing, of any change in the structure, formation, personnel or qualifications reflected in the Bidder's Application for Prequalification (AFP) that could affect their Eligibility under Section III of the PQD. Failure to notify the Employer of such changes in a timely manner could result in the Bidder's disqualification.
- 4.2 A Bidder may be a natural person, private entity, government-owned entity—subject to ITB 4.6—or any combination of such entities supported by a letter of intent to enter into an agreement or under an existing agreement in the form of a joint venture (JV). In the case of a JV:
- (a) **unless otherwise specified in the BDS**, all partners shall be jointly and severally liable, and
 - (b) the JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the partners of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution.
- 4.3 A Bidder, and all partners constituting the Bidder, may have the nationality of any country as defined under the *Guidelines: Procurement under IBRD Loans and IDA Credits* (hereinafter referred to as the Guidelines), subject to the restrictions specified in Section V, Eligible Countries. A Bidder shall be deemed to have the nationality of a country if the Bidder 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 for any part of the Contract.
- 4.4 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if :
- (a) they have at least one controlling partner 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 bid; 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 bid of another Bidder, or influence the decisions of the Purchaser regarding this bidding process; or
 - (e) a Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which the party is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or
 - (f) a Bidder participated as a consultant in the preparation of the design or technical specifications of any works related to the services that are the subject of the bid;
 - (g) a Bidder was affiliated with a firm or entity that has been hired (or is proposed to be hired) by the Employer or Borrower as Employer's Representative for the Contract.
- 4.5 A firm subject to a declaration of ineligibility pursuant to ITB 3.1(d) of the World Bank Group Anti-Corruption policies⁶ shall be ineligible to be awarded a Bank-financed contract during the debarment period.
- 4.6 Government-owned entities in the Employer's country shall be eligible only if they can establish that they are legally and financially autonomous and operate under commercial law. Also, they shall not be dependent agencies of the Employer.
- 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

⁶ For purposes of this provision, the relevant World Bank Group Anti-Corruption policies are set forth in the Guidelines On Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants, and in the Anti-Corruption Guidelines for IFC, MIGA, and World Bank Guarantee Transactions.

country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the supply of goods or related services required; or

- (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any import of goods or contracting of Works or services from that country or any payments to persons or entities in that country.

B. Contents of Bidding Document

5. Sections of Bidding Document

- 5.1 The Bidding Documents 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 ITB 8.

PART 1 Bidding Procedures

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

PART 2 Services Requirements

- Section VI. Description of Services

PART 3 Conditions of Contract and Contract Forms

- Section VII. General Conditions (GC)
- Section VIII. Particular Conditions (PC)
- Section IX. Annex to the Particular Conditions - Contract Forms

- 5.2 The Invitation for Bids issued by the Employer is not part of the Bidding Document.
- 5.3 The Bidder shall obtain the Bidding Document and its addenda directly from the source stated by the Employer in the Invitation for Bids. The Employer is not responsible for the completeness of the Bidding Document and its addenda if they were obtained otherwise.

- 5.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document. Failure to furnish all information or documentation required by the Bidding Documents may result in the rejection of the bid.
- 6. Clarification of Bidding Document, Site Visit, Pre-Bid Meeting**
- 6.1 A prospective Bidder requiring any clarification of the Bidding Document shall contact the Employer in writing at the Employer's address, and by the means of communication **indicated in the BDS**, or raise his enquiries during the pre-bid meeting if provided for in accordance with ITB 6.4. The Employer will respond in writing to any request for clarification, provided that such request is received no later than twenty-one (21) days prior to the deadline for submission of Bids. The Employer shall forward copies of its response to all Bidders who have acquired the Bidding Document in accordance with ITB 5.3, including a description of the inquiry but without identifying its source. Should the Employer deem it necessary to amend the Bidding Document as a result of a request for clarification, it shall do so following the procedure under ITB 8 and ITB 22.2.
- 6.2 The Bidder is advised to visit and examine the site or sites that are the subject of the proposed Contract, and their surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into the Contract. Such visits to the sites (hereinafter referred to as Site Visits) shall be conducted in accordance with the procedures and during the dates **defined in the BDS**.
- 6.3 The Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of inspection, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its advisors, personnel, consultants and agents from and against all liability in respect thereof, and will be solely responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.

- 6.4 The Bidder's designated representative is invited to attend a pre-bid meeting, **if and as provided for in the BDS**. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage. A site visit conducted by the Employer will be organized **if provided for in the BDS**.
 - 6.5 The Bidder is requested to submit, as far as possible, any questions in writing, to reach the Employer not later than one week before the meeting.
 - 6.6 Minutes of the pre-bid meeting, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Documents in accordance with ITB 5.3. Any modification to the Bidding Documents that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting.
 - 6.7 Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.
- 7. Data Room**
- 7.1 **If specified in the BDS**, the Employer has established a data room (hereinafter called the Data Room) with a selection of relevant data to be accessible to Bidders or their representatives. The address of the Data Room, and other information considered relevant by the Employer (such as an inventory of materials, or dates, rules and procedures for access, and dates of availability) are **as specified in the BDS**.
- 8. Amendment of Bidding Document**
- 8.1 At any time prior to the deadline for submission of Bids, the Employer may amend the Bidding Documents by issuing addenda.
 - 8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document from the Employer in accordance with ITB 5.3. No other communications of any kind whatsoever will modify the Bidding Document.
 - 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Employer may, at its discretion, extend the deadline for the submission of Bids, pursuant to ITB 22.2.

C. Preparation of Bids

- 9. Cost of Bidding** 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- 10. Language of Bid** 10.1 The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Employer, shall be written in the language **specified in the BDS**. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language **specified in the BDS** for the Bid, in which case, for purposes of interpretation of the Bid, such translation shall govern.
- 11. Documents Comprising the Bid** 11.1 The Bid shall comprise the following documents:
- (a) A Technical Proposal, with the following parts:
 - (i) Part I – Letter of Bid, in accordance with ITB 14.1;
 - (ii) Part II – The Bid Security, in accordance with ITB 16;
 - (iii) Part III – Written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.3;
 - (iv) Part IV – In the case of a bid submitted by a JV, JV agreement, or letter of intent to enter into a JV including a draft agreement, indicating at least the parts of the services to be performed by the respective partners;
 - (v) Part V – Methodology and Approach in accordance with ITB 12.1;
 - (vi) Part VI – documents establishing the qualifications of the bidder in accordance with ITB 17.1;
 - (vii) Part VII – any other documents **required by the BDS**.
 - (b) The Financial Proposal in accordance with ITB 13.
- 12. Documents** 12.1 The Methodology and Approach shall consist of the

Comprising the Methodology and Approach

following sub-parts:

- (a) A detailed work plan (hereinafter referred to as the Work Plan) using the corresponding form included in Section IV, Bidding Forms, and setting out the manner in which the Bidder proposes to carry out the services as defined in the Contract and to meet any performance targets specified in the Contract.
- (b) A detailed staffing plan (hereinafter referred to as the Staffing Plan) setting out the Bidder's proposed staffing arrangements as they relate to the requirements in the Contractor's Personnel Schedule (Schedule B), included in Section VI, Schedule of Services Requirements.
- (c) Any other information as stipulated in Section IV, Bidding Forms.

13. Documents Comprising the Financial Proposal

- 13.1 The Financial Proposal shall consist of a completed and properly executed Bid Price Form. The Bid Price Form is included in Section IV of this Bidding Document. Bidders shall complete the Bid Price Form in full and shall not amend or change the form in any way.
- 13.2 The Bidder may quote its prices in accordance with ITB 18.
- 13.3 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of Bids, shall be included in the rates and prices and the total Bid Price submitted by the Bidder.

14. Letter of Bid

- 14.1 Each Bidder shall provide a completed Letter of Bid in accordance with the Letter of Bid forms furnished in Section IV, one each for the Technical Proposal, including its attachment (TECH Form), and for the Financial Proposal.
- 14.2 All forms required in accordance with ITB 14.1 must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.

15. Power of Attorney

- 15.1 Each Bidder shall provide a written power of attorney duly notarized, indicating that the person(s) signing the bid has(ve) the authority to sign the Bid and thus that the bid is binding upon the Bidder during the full period of its validity.

16. Bid Security

- 16.1 The Bidder shall furnish as part of its bid, in original form, either a Bid-Securing Declaration or a bid security **as specified in the BDS**. If a bid security is specified, the bid security shall be in the amount and currency **specified in the BDS**.
- 16.2 A Bid-Securing Declaration shall use the form included in Section IV, Bidding Forms.
- 16.3 If a bid security is specified pursuant to ITB 16.1, the bid security shall be a demand guarantee in any of the following forms at the Bidder's option:
- (a) an unconditional guarantee issued by a bank or surety;
 - (b) an irrevocable letter of credit;
 - (c) a cashier's or certified check; *or*
 - (d) another security **indicated in the BDS**,
- from a reputable source from an eligible country. If the unconditional guarantee is issued by an insurance company or a bonding company located outside the Employer's Country, the issuer shall have a correspondent financial institution located in the Employer's Country to make it enforceable. In the case of a bank guarantee, the bid security shall be submitted either using the Bid Security Form included in Section IV, Bidding Forms or in another substantially similar format approved by the Employer prior to bid submission. In either case, the form must include the complete name of the Bidder. The bid security shall be valid for twenty-eight days (28) beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 22.2.
- 16.4 Any bid not accompanied by an enforceable and compliant bid security, if one is required in accordance with ITB 16.1, shall be rejected by the Employer as non responsive.
- 16.5 The bid security of the unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's furnishing of the performance security pursuant to ITB 41.
- 16.6 The bid security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the performance security.

- 16.7 The bid security may be forfeited:
- (a) if a Bidder withdraws its bid during the Period of Validity of Bids, except as provided in ITB 19.2 or
 - (b) if the successful Bidder fails to:
 - (i) sign the Contract in accordance with ITB 40; or
 - (ii) furnish a performance security in accordance with ITB 41.1.

16.8 The bid security of a Joint Venture (JV) shall be in the name of the JV that submits the bid. If the JV has not been legally constituted at the time of bidding, the Bid Security shall be in the names of all future partners as named in the letter of intent to execute the JV.

16.9 If a bid security is **not required in the BDS** pursuant to ITB 16.1, and

- (a) if a Bidder withdraws its bid during the Period of Validity of Bids specified by the Bidder on the Letter of Bid pursuant to ITB 19.1, except as provided in ITB 19.2, or
- (b) if the Successful Bidder fails to sign the Contract in accordance with ITB 40; or furnish a performance security in accordance with ITB 41; the Borrower may, if provided for **in the BDS**, declare the Bidder disqualified to be awarded a contract by the Employer for a period of time as **stated in the BDS**.

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

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

**18. Currencies of Bid
and Payment**

18.1 Bidders may express the price of their proposal in a maximum of three freely convertible currencies, in addition to the currency of the Employer's country as follows:

- (a) for those inputs to the Services that the bidder expects to supply from within the Employer's country (referred to as "the local currency requirement"), in the currency of the Employer's country **specified in the BDS**; and
- (b) for those inputs to the Services that the bidder expects to supply from outside the Employer's country

(referred to as “the foreign currency requirements”) in up to any three currencies of any country.

18.2 Bidders may be required by the Employer to justify, to the Employer’s satisfaction, their local and foreign currency requirements, and to substantiate the amounts included in the Bid Price Form, in which case a detailed breakdown of the foreign currency requirements shall be provided by Bidders.

19. Period of Validity of Bids

19.1 Bids shall remain valid for the period **specified in the BDS** after the bid submission deadline date prescribed by the Employer. A bid valid for a shorter period shall be rejected by the Employer as non responsive.

19.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Employer may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITB 16.1, it shall also be extended for twenty-eight days (28) beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid.

20. Format and Signing of Bid

20.1 The bidder shall prepare one original of the Technical Proposal and one original of the Financial Proposals as described in ITB 11.1, and clearly mark each as “ORIGINAL.” In addition, the Bidder shall submit copies of the Technical Proposal and the Financial Proposal, in the number **specified in the BDS** and clearly mark them “COPY.”

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

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

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

D. Submission and Opening of Bids

- 21. Sealing and Marking of Bids**
- 21.1 The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked “TECHNICAL PROPOSAL”. Similarly, the original and all copies of the Financial Proposal shall be placed in a sealed envelope clearly marked “FINANCIAL PROPOSAL” with a warning “**DO NOT OPEN WITH THE TECHNICAL PROPOSAL.**” The envelopes containing the Technical and Financial Proposals shall be placed into an outer envelope and sealed.]”.
- 21.2 The inner envelopes and the outer envelope shall:
- (a) bear the name and address of the Bidder;
 - (b) be addressed to the Employer in accordance with ITB 22.1;
 - (c) bear the specific identification of this bidding process indicated in the BDS pursuant to ITB 1.1; and
 - (d) bear a warning not to open before the time and date for bid opening.
- 21.3 If all envelopes are not sealed and marked as required, the Employer will assume no responsibility for the misplacement or premature opening of the bid.
- 22. Deadline for Submission of Bids**
- 22.1 Bids must be received by the Employer at the address and no later than the date and time **indicated in the BDS. When so specified in the BDS**, bidders shall have the option of submitting their Bids electronically. Bidders submitting Bids electronically shall follow the electronic bid submission procedures **specified in the BDS**.
- 22.2 The Employer may, at its discretion, extend the deadline for the submission of Bids by amending the Bidding Document in accordance with ITB 8, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.
- 23. Late Bids**
- 23.1 The Employer shall not consider any bid that arrives after the deadline for submission of Bids, in accordance with ITB 22. Any bid received by the Employer after the deadline for submission of Bids shall be declared late, rejected, and returned unopened to the Bidder.
- 24. Withdrawal,**
- 24.1 A Bidder may withdraw or modify its bid after it has been

**Substitution, and
Modification of
Bids**

submitted by sending a written notice, duly signed by an authorized representative, and shall include copies of the authorization in accordance with ITB 20.3, (except that withdrawal notices do not require copies). A Bidder's modification or withdrawal must be:

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

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

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

**25. Technical
Proposal Opening**

25.1 The Employer shall open the Technical Proposals in public, in the presence of Bidders' designated representatives and anyone who chooses to attend, at the address, and at the date and time **specified in the BDS**. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 22.1, shall be **as specified in the BDS**.

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

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

- 25.3 All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the presence of a bid security, if required; and any other details as the Employer may consider appropriate. No proposal shall be rejected at the proposal opening except for late Bids, in accordance with ITB 23.1.
- 25.4 The Employer shall prepare a record of the proposal opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; and the presence or absence of a bid security, if one was required. The Bidders' representatives who are present shall be requested to sign the attendance sheet. A copy of the record shall be distributed to all Bidders.

26. Financial Proposal Opening

- 26.1 The Financial Proposals shall not be opened by the Employer until the evaluation of the Technical Proposals has been completed.
- 26.2 The Employer shall open the Financial Proposals in public, in the presence of Bidders' designated representatives and anyone who chooses to attend, and at the address specified in the BDS. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 22.1, shall be as specified in the BDS.
- 26.3 Financial Proposals will be opened only from those bidders who:
- (a) have submitted an acceptable Bid Security;
 - (b) have submitted a responsive proposal pursuant to ITB 31; and
 - (c) if applicable, have met the minimum technical scores **specified in the BDS** pursuant to ITB 33.1 (b).

Financial Proposals from bidders who have failed to meet requirements (a) and (b), and, if applicable, requirement (c), above, will be returned unopened.

- 26.4 First, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding proposal being substituted, and the substituted proposal

shall not be opened, but returned to the Bidder. No proposal substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at proposal opening. Envelopes marked "MODIFICATION" shall be opened and read out with the corresponding proposal. No proposal modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at the proposal opening. Only envelopes that are opened and read out at the proposal opening shall be considered further.

- 26.5 All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; and the Bid Price in the Financial Proposal.
- 26.6 The Employer shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, and the presence or absence of a bid security, if one was required. The Bidders' representatives who are present shall be requested to sign the attendance sheet. A copy of the record shall be distributed to all Bidders.

E. Evaluation and Comparison of Bids

27. Confidentiality

- 27.1 Information relating to the evaluation of Bids and recommendation of contract award shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on Contract award is communicated to all Bidders.
- 27.2 Any attempt by a Bidder to influence the Employer in the evaluation of the Bids or Contract award decisions may result in the rejection of its bid.
- 27.3 Notwithstanding ITB 27.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the bidding process, it may do so in writing.

28. General Clarification of Bids

- 28.1 To assist in the examination, evaluation, and comparison of the Bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its bid. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered, and the Employer's request for clarification and the response shall be in writing. If the Bid includes a

financial proposal, no change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Bids, in accordance with ITB 35.

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

29. Selection Method and Evaluation Process

29.1 Selection of the successful bidder will be conducted using one the following methods, **as specified in the BDS**: (i) Lowest-Evaluated Bid Selection, (ii) Quality- and Cost-Based Selection (QCBS), or (iii) Fixed-Budget Selection.

29.2 If, pursuant to ITB 29.1, the selection method is Lowest-Evaluated Bid Selection, the World Bank's *Procurement Guidelines* will apply, and if the selection method is QCBS or Fixed-Budget Selection, the World Bank's *Guidelines for Selection and Employment of Consultants by World Bank Borrowers* will apply.

29.3 Prior to the evaluation of any Bid, the Employer will determine whether each Bid:

- (a) has been properly signed;
- (b) is accompanied by the required securities; and
- (c) is substantially responsive to the bid requirements, pursuant to ITB 31.

29.4 If the selection method pursuant to ITB 29.1 is Lowest-Evaluated Bid, after a Bid is deemed substantially responsive in accordance with ITB 31, the next stage will be the evaluation of the Financial Proposal in accordance with ITB 34.

29.5 If the selection method pursuant to ITB 29.1 is QCBS or Fixed-Budget, after the Bid is deemed substantially responsive, the evaluation process will consist of two stages: (i) evaluation of the Technical Proposal in accordance with ITB 33 and (ii) Evaluation of the Financial Proposal in accordance with ITB 34.

30. Deviations, Reservations, and Omissions

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

- (a) "Deviation" is a departure from the requirements specified in the Bidding Document;

- (b) “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and
 - (c) “Omission” is the failure to submit part or all of the information or documentation required in the Bidding Document.
- 31. Determination of Responsiveness**
- 31.1 The Employer’s determination of a bid’s responsiveness is to be based on the contents of the bid itself, as defined in ITB 11.
- 31.2 A substantially responsive bid is one that meets all the requirements, terms, conditions and specifications of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,
- (a) if accepted, would
 - (i) affect in any substantial way the scope, quality, or performance of the Services specified in the Schedules in Section VI; or
 - (ii) limit in any substantial way, inconsistent with the Bidding Document, the Employer’s rights or the Bidder’s obligations under the proposed Contract; or
 - (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Bids.
- 31.3 If the selection method pursuant to ITB 29.1 is Lowest-Evaluated Bid, the determination of responsiveness will include the Employer’s examination of the technical aspects of the bid submitted in accordance with ITB 13, Methodology and Approach, in particular, to confirm that all criteria in Section III, Evaluation and Qualification Criteria, and the Service Requirements described in Schedules B through F of Section VI, have been met without any material deviation or reservation.
- 31.4 If a bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
- 31.5 If a Bid is not substantially responsive, the Employer will

notify the Bidder that its Bid has been rejected.

**32. Nonmaterial
Nonconformities**

- 32.1 Provided that a bid is substantially responsive, the Employer may waive any nonconformities in the bid that do not constitute a material deviation, reservation or omission.
- 32.2 Provided that a bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the bid. Failure of the Bidder to comply with the request may result in the rejection of its bid.
- 32.3 Provided that a bid is substantially responsive, the Employer shall rectify nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component.

**33. Technical Bid
Evaluation**

- 33.1 For those Bids that are found to be substantially responsive pursuant to ITB 31, and if QCBS or Fixed-Budget Selection is used pursuant to ITB 29.1, the Employer shall evaluate the Technical Proposals using the following evaluation methodology:
- (a) the Employer shall score Technical Proposals by applying the point system specified in Section III for each evaluation criterion. Each proposal will be given an aggregate technical score (St) by adding the scores assigned under each evaluation criterion;
 - (b) A proposal shall be rejected at this stage if it fails to achieve the minimum aggregate technical score **specified in the BDS**; and
 - (c) The Employer will apply any additional steps to the evaluation methodology **as may be indicated in the BDS**.

**34. Financial Proposal
Evaluation**

- 34.1 Only Bids that, in the case of the Lowest Evaluated Bid Selection, have been found substantially responsive in accordance with ITB 31 or, in the case of QCBS or Fixed Budget Selection, have been found substantially responsive in accordance with ITB 31 and have met the minimum technical score specified in the BDS pursuant to ITB 33.1,

shall have their Financial Proposals evaluated.

34.2 To evaluate a Financial Proposal, the Employer shall consider:

- (a) price adjustment for correction of arithmetic errors in accordance with ITB 35;
- (b) The Employer shall apply any additional steps to the evaluation methodology **as may be indicated in the BDS**;
- (c) converting the amount resulting from applying (a) to (b) above, if relevant, to a single currency in accordance with ITB 36;
- (d) adjustment for nonconformities in accordance with ITB 32.
- (e) If a Financial Proposal is seriously unbalanced or front loaded in the opinion of the Employer, the Employer may require the Bidder to produce detailed analyses for any or all items of the Technical and Financial Proposals, to demonstrate the internal consistency of those prices with the methodologies and staffing proposed. After evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the Employer may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.

34.3 The Employer will determine the Successful Bidder following one of the three procedures that follow, as applicable:

- (a) In the case of Lowest-Evaluated Bid Selection, the Employer shall compare all substantially responsive Bids to determine the lowest-evaluated bid. The Bidder with the lowest-evaluated Financial Proposal will be the Successful Bidder.
- (b) In the case of QCBS, the financial scores (Sf) of each Financial Proposal will be computed **as indicated in the BDS**. Bids will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Bid; P = the weight given to the Financial Proposal; where T + P must equal 1) **indicated in the BDS**: $S = S_t \times T + S_f \times P$

Sf x P. The Bidder with the highest combined technical and financial score is the Successful Bidder.

- (c) In the case of Fixed-Budget Selection, the Bidder that submitted the highest ranked Technical Bid within the budget is the Successful Bidder. Bids that exceed the indicated budget will be rejected.

**35. Correction of
Arithmetical
Errors**

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

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

35.2 If the Bidder that submitted the successful bid does not accept the correction of errors, its bid shall be disqualified.

**36. Conversion to
Single Currency**

36.1 For evaluation and comparison purposes, the currency(ies) of the bid shall be converted into a single currency **as specified in the BDS**. The source of the exchange rate shall be **as specified in the BDS**. The date for the exchange rate shall be the deadline for submission of proposals pursuant to ITB 22.1.

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

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

F. Award of Contract

- 38. Award Criteria** 38.1 The Employer shall award the Contract to the Successful Bidder as determined under ITB 34.3, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.
- 39. Notification of Award** 39.1 Prior to the expiration of the period of bid validity, the Employer shall notify the successful Bidder, in writing, that its bid has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the “Letter of Acceptance”) shall specify the sum that the Employer will pay the Contractor in consideration of the execution and completion of the Services (hereinafter and in the Conditions of Contract and Contract Forms called “the Contract Price”) and the requirement for the Contractor to remedy any defects therein as prescribed by the Contract. At the same time, the Employer shall also notify all other Bidders of the results of the bidding and shall publish in *UNDB online* and in the *dgMarket* the results identifying the bid and the following information: (i) name of each Bidder who submitted a Bid; (ii) bid prices as read out at Bid Opening; (iii) name and evaluated prices of each Bid that was evaluated; (iv) name of bidders whose Bids were rejected and the reasons for their rejection; and (v) name of the winning Bidder, and the Price it offered, as well as the duration and summary scope of the contract awarded.
- 39.2 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.
- 39.3 The Employer shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 39.1, requests in writing the grounds on which its Bid was not selected.
- 40. Signing of Contract** 40.1 Promptly after notification, the Employer shall send the successful Bidder the Contract Agreement.
- 40.2 The Successful Bidder shall sign, date, and return the Contract Agreement to the Employer within the timeframe **specified in the BDS**.
- 40.3 **The BDS specifies** whether the Successful Bidder will be required to incorporate in the Employer’s Country as a “special vehicle” company or joint venture, and the additional requirement that the Successful Bidder shall

comply if required to incorporate locally as a “special vehicle” company or joint venture.

41. Performance Security

- 41.1 The successful Bidder shall furnish the performance security after receipt of notification of award from the Employer, within 28 days upon the Bidder’s receipt of the Letter of Acceptance and in accordance with the conditions of contract. The Bidder shall use for that purpose the Performance Security Form included in Section IX, Annex to the Particular Conditions - Contract Forms, or another form acceptable to the Employer. If the performance security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Bidder to be acceptable to the Employer. A foreign institution providing a bond shall have a correspondent financial institution located in the Employer’s Country.
- 41.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security. In that event the Employer may award the Contract to the next highest scoring Bidder whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.

Section II. Bid Data Sheet

A. Introduction	
ITB 1.1	The number of the Invitation for Bids is : _____
ITB 1.1	The Employer is: _____
ITB 1.1	The name of the ICB is: _____ The identification number of the ICB is: _____
ITB 2.1	The Borrower is: _____
ITB 2.1	The name of the Project is: _____
ITB 4.2(a)	The individuals or firms in a joint venture or association _____ <i>[insert "shall" or "shall not"]</i> be jointly and severally liable.
B. Bidding Document	
ITB 6.1	For clarification purposes only, the Employer's address is: Attention: _____ Street Address: _____ Floor/Room number: _____ City: _____ ZIP Code: _____ Country: _____ Telephone: _____ Facsimile number: _____ Electronic mail address: _____ <i>Communications may be sent by _____ [indicate all that apply from "mail", "courier", "fax", and "email"] only.</i>
ITB 6.2	<i>[Indicate procedures and dates for site visits]</i>
ITB 6.4	A Pre-Bid meeting _____ <i>[insert "shall" or "shall not"]</i> take place at the following date, time and place: Date: _____ Time: _____ Place: _____ A site visit conducted by the Employer <i>[insert "shall" or "shall not"]</i> be on _____
ITB 7.1	The Employer _____ <i>[insert "has" or "has not"]</i> established a Data Room. If a Data Room has been established, the Data Room coordinates and other relevant information is as follows: _____ <i>[insert the Data Room coordinates and information considered relevant; otherwise, "not</i>

	<i>applicable”]</i>
C. Preparation of Bids	
ITB 10.1	The language of the bid is: _____
ITB 11.1(vii)	Other documents required as part of the Bid Documents <i>[list them and provide reference to the relevant forms in Section IV]:</i>
ITB 16.1	A <i>[insert “bid security” or “Bid Securing Declaration”]</i> shall be furnished. If a bid security shall be furnished, the amount and currency of the bid security shall be _____.
ITB 16.3(d)	Other type of acceptable securities: <i>[insert name or description of type of acceptable security]</i>
ITB 16.9	A bid security <i>[insert “is” or “is not”]</i> required. <i>[Select one of the two options below as appropriate]</i> If the Bidder incurs in any of the actions prescribed in subparagraphs (a) or (b) of this provision, the Employer will declare the Bidder ineligible to be awarded contracts by the Employer for a period of _____ <i>[insert number]</i> years. <i>Or</i> Not Applicable.
ITB 18.1 (a)	The currency of the Employer’s country is: _____
ITB 19.1	The bid validity period shall be _____ <i>[insert number]</i> days.
ITB 20.1	In addition to the original of the Technical and Financial Proposals, the number of copies of the Technical Proposal is: _____ and the number of copies of the Financial Proposal is: _____
ITB 20.3	The written confirmation of authorization to sign on behalf of the Bidder shall consist of: _____
D. Submission and Opening of Bids	
ITB 22.1	The date and time for submission of bids are: Date: _____ Time: _____ For bid submission purposes only, the Employer’s address is : Attention: _____ Street Address: _____ Floor/Room number: _____

	City: _____ ZIP Code: _____ Country: _____ Bidders <i>[insert "shall" or "shall not"]</i> have the option of submitting their Bids electronically. If bidders have the option of submitting their Bids electronically, the electronic bidding submission procedures shall be: <i>[insert a description of the electronic bidding submission procedures; otherwise, "not applicable".]</i>
ITB 25.1	The opening of the Technical Proposals shall take place at: Street Address: _____ Floor/Room number: _____ City : _____ Country: _____ Date: _____ Time: _____ If bidders have the option of submitting their Bids electronically, the electronic bid opening procedures shall be: <i>[insert a description of the electronic bid opening procedures; otherwise, "not applicable"]</i>
ITB 26.3	The opening of the Financial Proposals shall take place at: Street Address: _____ Floor/Room number: _____ City : _____ Country: _____ Date: _____ Time: _____ If bidders have the option of submitting their Bids electronically, the electronic bid opening procedures shall be: <i>[insert a description of the electronic bid opening procedures; otherwise, "not applicable"]</i>
ITB 29.1	The following selection method will be used: <i>[insert "Lowest-Evaluated Bid", or "QCBS", or "Fixed Budget"]</i>
E. Evaluation, and Comparison of Bids	
ITB 33.1(b)	The minimum aggregate technical score is: <i>[insert score if QCBS or Fixed-Budget apply; otherwise, "not applicable"]</i> _____
ITB 33.1 (c)	The Employer will apply the following additional steps to the evaluation methodology <i>[insert additional steps, if applicable; otherwise, "not applicable"]</i> . _____

ITB 34.2 (b)	The Employer will apply the following additional steps to the evaluation methodology <i>[Insert, for example: “The Employer shall calculate the cost of the Financial Proposal in net present value by applying an annual discount factor of 8 percent;” otherwise, “not applicable”]</i>
ITB 34.3 (b)	<p>In the case of QCBS evaluation, the formula for determining the financial scores is the following: <i>[Insert the following formulae:</i></p> <p>$S_f = 100 \times F_m / F$, in which S_f is the financial score, F_m is the lowest price and F the price of the proposal under consideration.]</p> <p><i>Or</i></p> <p><i>[insert another formula acceptable to the Bank. Refer to the Technical Note for discussion of the advantages/disadvantages of the above formulae]</i></p> <p>The weights given to the Technical and Financial Proposals are: $T = \underline{\hspace{2cm}}$ <i>[insert weight: normally 0.8]</i>, and $P = \underline{\hspace{2cm}}$ <i>[insert weight: normally 0.2]</i></p>
ITB 36.1	<p>The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is: <i>[insert name of local currency]</i></p> <p>The source of exchange rate shall be: <i>[insert name of Central Bank]</i></p>
E. Award of Contract	
ITB 40.2	The Successful Bidder shall sign, date, and return the Contract Agreement to the Employer within <i>[insert number of days]</i> days.
ITB 40.3	<p>The Successful Bidder <i>[insert “shall” or “shall not”]</i> incorporate in the Employer’s Country.</p> <p><i>[When “shall” is selected above, the following shall be added:]</i></p> <p>Additional requirement that a Successful Bidder shall meet when required to incorporate locally as a “special vehicle” company or joint venture: <i>[select one of the following options as applicable:</i></p> <p>The Successful Bidder’s parent company shall co-sign the Contract Agreement.</p> <p><i>Or</i></p> <p>The Successful Bidder shall furnish, along with the signed Contract Agreement and within the timeframe specified pursuant to ITB 40.2, an additional Parent Company Guarantee acceptable to the Employer, in an</p>

	amount equivalent to a period of _____ <i>[insert number of months; 6 months is recommended]</i> months of expenses of the Management Contract.
--	---

Section III. Evaluation and Qualification Criteria

This Section contains all the criteria that the Employer shall use to evaluate Bids and qualify Bidders. No other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms and/or update any information which it submitted to apply for prequalification using the relevant forms included in the Prequalification Document.

1. Evaluation Criteria

The Employer will evaluate the Technical Proposals using the following criteria

Methodology and Workplan					
	<i>[Percentage for, or must meet each criterion with separate row for each criterion]</i>	Methodology and Workplan	<i>[Criteria for evaluating Methodology and Workplan. See Technical Note for Examples]</i>		Submission Requirement: TECH Form
Staffing Plan					
	<i>[Percentage for, or must meet each criterion with separate row for each criterion]</i>	Staffing Plan	<i>[Criteria for evaluating Staffing Plan. See Technical Note for Examples]</i>		Submission Requirement: TECH Form

2. Eligibility and Qualifications

The Employer will verify that the Bidder continues to meet the criteria used for prequalification. The Bidder shall provide updated information in the relevant forms included in the Prequalification Document.

Section IV. Bidding Forms

Table of Forms

Letter of Bid - Technical Proposal Form	40
Description of the Methodology and Work Plan	42
Form of Bid Security	43
Form of Bid-Securing Declaration.....	45
Letter of Bid - Financial Proposal Form	46
Bid Price Form	48

Letter of Bid - Technical Proposal Form

Date: _____
Request for Proposals No.: _____

To: *[Name and address of Employer]*

Ladies and/or Gentlemen,

We, the undersigned, offer to provide the Management Services for *[Insert title of assignment]* in accordance with your Request for Proposal dated *[Insert Date]*, including Addendum Nos. *[insert numbers]*, and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal, and a Financial Proposal sealed under a separate envelope.

We agree to abide by this Technical Proposal, which consists of this letter and Attachments 1 through *[number]* hereto, for a period of *[number]* days from the date fixed for submission of proposals as stipulated in the bidding documents, and it shall remain binding on us, provided that we are invited to negotiate a contract with you before the expiration of that period.

If negotiations are held during the period of validity of the Proposal, we undertake to negotiate on the basis of the proposed staff. Our Proposal is binding upon us and subject to the modifications resulting from Contract negotiations.

If our proposal is accepted, we commit to obtain a performance security in accordance with the Bidding Document;

We continue to meet eligibility requirements satisfied as part of our Prequalification Application except where indicated in related Forms *[Bidder should insert relevant Form numbers]*.

We understand you are not bound to accept any Proposal you receive.

We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in bribery.

Name _____ In the capacity of _____

Signed _____

Duly authorized to sign the bid for and on behalf of _____

Dated on _____ day of _____, _____

Attachments: [In accordance with ITB Sub-Clause 11.1, plus any additional attachment either specified by the Employer in the Bid Data Sheet or included by the Bidder.]

Form TECH – Attachment to the Technical Proposal Description of the Methodology and Work Plan

[in accordance with ITB 12.1]

I. Detailed Work Plan

[Employer to insert more specific requirements, if any, for this section]

II. Detailed Staffing Plan

[Employer to insert more specific requirements, if any, for this section]

Form of Bid Security

(Bank Guarantee)

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

Beneficiary: _____ [Name and Address of Employer]

Date: _____

BID GUARANTEE No.: _____

We have been informed that _____ [name of the Bidder] (hereinafter called "the Bidder") has submitted to you its Proposal dated _____ (hereinafter called "the Proposal") for the execution of _____ [name of contract] under Request for Proposals No. _____ ("the RFP").

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

At the request of the Bidder, 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 Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder:

- (a) has withdrawn its Proposal during the period of proposal validity specified by the Bidder in the Letter of Bid; or
- (b) having been notified of the acceptance of its Proposal by the Employer during the period of proposal validity, (i) fails or refuses to execute the Contract Agreement or (ii) fails or refuses to furnish the performance security, in accordance with the ITB.

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

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. 458.

[signature(s)]

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

Form of Bid-Securing Declaration

Date: _____
 Bid No.: _____
 Alternative No.: _____

To:

We, the undersigned, declare that:

We understand that, according to your conditions, bids must be supported by a Bid-Securing Declaration.

We accept that we will automatically be suspended from being eligible for bidding in any contract with the Borrower for the period of time of _____ starting on _____, if we are in breach of our obligation(s) under the bid conditions, because we:

- (a) have withdrawn our Bid during the period of bid validity specified in the Letter of Bid;
or
- (b) having been notified of the acceptance of our Bid by the Employer during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the ITB.

We understand this Bid-Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of your notification to us of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of our Bid.

Signed: _____

In the capacity of _____

Name: _____

Duly authorized to sign the bid for and on behalf of: [insert complete name of Bidder]

Dated on _____ day of _____, _____

Corporate Seal (where appropriate)

[Note: In case of a Joint Venture, the Bid-Securing Declaration must be in the name of all partners to the Joint Venture that submits the bid.]

Letter of Bid - Financial Proposal Form

Date: _____
Request for Proposals No.: _____

To: *[Name and address of Employer]*

Ladies and/or Gentlemen,

We, the undersigned, offer to provide the Management Services for *[Insert title of assignment]* in accordance with your Request for Proposal dated *[Insert Date]*, including Addendum Nos. *[insert numbers]*, and our Technical Proposal.

Our Financial Proposal which consists of this letter and Attachments 1 through *[number]* hereto, shall be valid for a period of _____ days from the date fixed for submission of proposals; it shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the validity period of the Proposal.

We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract:

Name of Recipient	Address	Reason	Amount
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(If none has been paid or is to be paid, indicate "none.")

We understand that you are not bound to accept any proposal that you may receive.

We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in bribery.

Name _____ In the capacity of _____

Signed _____

Duly authorized to sign the bid for and on behalf of _____

Dated on _____ day of _____, _____

Attachments: *[In accordance with ITB Sub-Clause 13.1, plus any additional attachment either specified by the Employer in the Bid Data Sheet or included by the Bidder]*

Bid Price Form

[Form provided as sample only– Employer may change as necessary. See Technical Note for further discussion]

Contractor's Base Remuneration

Total Fixed Fee:

Section V. Eligible Countries

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

1. In accordance with Para 1.8 of the Guidelines: Procurement under IBRD Loans and IDA Credits, dated May 2004, the Bank permits firms and individuals from all countries to offer goods, works and services for Bank-financed projects. As an exception, firms of a Country or goods manufactured in a Country may be excluded if:

Para 1.8 (a) (i): 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 for the supply of the Goods or Works required, or

Para 1.8 (a) (ii): 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.

2. For the information of borrowers and bidders, at the present time firms, goods and services from the following countries are excluded from this bidding:

(a) With reference to paragraph 1.8 (a) (i) of the Guidelines:

(b) With reference to paragraph 1.8 (a) (ii) of the Guidelines:

**PART 1 – Option B: Bidding Procedures -
Two-Stage Bidding**

Section I. Instructions to Bidders

Table of Contents

A. General.....	55
1. Scope of Bid.....	55
2. Source of Funds	55
3. Corrupt Practices.....	56
4. Eligible Bidders	58
B. Contents of Bidding Document	60
5. Sections of Bidding Document	60
6. Clarification of Bidding Document, Site Visit, Pre-Bid Meeting.....	61
7. Data Room	62
8. Amendment of Bidding Document.....	62
C. Preparation of Bids: Clauses General to First and Second Stage Bids.....	63
9. Cost of Bidding.....	63
10. Language of Bid.....	63
11. Letter of Bid.....	63
12. Power of Attorney.....	63
13. Documents Establishing the Qualifications of the Bidder.....	63
D. Preparation of First Stage Bids.....	63
14. Documents Comprising the First Stage Bid.....	63
15. Documents Comprising the Methodology and Approach	64
16. Format and Signing of First Stage Bid	64
E. Submission of First Stage Bids.....	65
17. Sealing and Marking of First Stage Bids	65
18. Deadline for Submission of First Stage Bids.....	66
19. Late Bids	66
F. Opening and Evaluation of First Stage Bids.....	66
20. Opening of First Stage Bids by Employer	66
21. Preliminary Examination of First Stage Bids	66
22. Technical Evaluation of First Stage Bids.....	67
23. Qualification	67
G. Clarification Meeting.....	67
24. Clarification of First Stage Bids and Review of Bidders' Proposed Deviations and Alternative Solutions.....	68
25. Invitation to Submit Second Stage Bids	68

H. Preparation of Second Stage Bids	69
26. Documents Comprising the Second Stage Bid	69
27. Documents Comprising the Financial Proposal.....	70
28. Confirmation of eligibility and qualifications.....	70
29. Currencies of Bid and Payment	70
30. Bid Security	71
31. Period of Validity of Second Stage Bids	72
32. Format and Signing of Second Stage Bid.....	73
I. Submission of Second Stage Bids.....	73
33. Sealing and Marking of Second Stage Bids.....	73
34. Deadline for Submission of Second Stage Bids	74
35. Late Bids	74
36. Withdrawal, Substitution, and Modification of Second Stage Bids	74
J. Opening, Evaluation and Comparison of Second Stage Bids	75
37. Bid Opening.....	75
38. Confidentiality	76
39. Clarification of Bids.....	77
40. Deviations, Reservations, and Omissions.....	77
41. Determination of Responsiveness.....	77
42. Nonmaterial Nonconformities	78
43. Correction of Arithmetical Errors.....	78
44. Conversion to Single Currency	79
45. Evaluation of Second Stage Bids.....	79
46. Comparison of Bids	80
47. Qualification of the Bidder	80
48. Employer's Right to Accept Any Bid, and to Reject Any or All Bids	81
K. Award of Contract.....	81
49. Award Criteria	81
50. Notification of Award.....	81
51. Signing of Contract.....	81
52. Performance Security.....	82

Section I. Instructions to Bidders

A. General

1. **Scope of Bid**
 - 1.1 In connection with the Invitation for Bids **indicated in the Bid Data Sheet (BDS)**, the Employer, as **indicated in the BDS**, issues these Bidding Documents for the procurement of Services as specified in Part 2 of these Bidding Documents. The name and identification of the International Competitive Bidding (ICB) are **provided in the BDS**.
 - 1.2 Throughout these Bidding Documents:
 - (a) the term “in writing” means communicated in written form and delivered against receipt;
 - (b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and
 - (c) “day” means calendar day.
2. **Source of Funds**
 - 2.1 The Borrower or Recipient (hereinafter called “Borrower”) **indicated in the BDS** has applied for or received financing (hereinafter called “funds”) from the International Bank for Reconstruction and Development or the International Development Association (hereinafter called “the Bank”) toward the cost of the project **named in the BDS**. The Borrower intends to apply a portion of the funds to eligible payments under the contract(s) for which these Bidding Documents are issued.
 - 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. The Loan Agreement prohibits a withdrawal from the loan account for the purpose of any payment to persons or entities, or for any import of equipment, plant, or materials, 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.

- 3. Corrupt Practices** 3.1 It is the Bank’s policy to require that Borrowers (including beneficiaries of Bank loans), as well as bidders, suppliers, and contractors and their subcontractors under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts.⁷ In pursuance of this policy, the Bank:
- (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) “corrupt practice”⁸ is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - (ii) “fraudulent practice”⁹ is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - (iii) “collusive practice”¹⁰ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - (iv) “coercive practice”¹¹ is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - (v) “obstructive practice” is
 - (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a

⁷ In this context, any action taken by a bidder, supplier, contractor, or a sub-contractor to influence the procurement process or contract execution for undue advantage is improper.

⁸ “Another party” refers to a public official acting in relation to the procurement process or contract execution]. In this context, “public official” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

⁹ A “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

¹⁰ “Parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

¹¹ A “party” refers to a participant in the procurement process or contract execution.

Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or

- (ii) acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under ITB 3.1 (e) below.
- (b) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;
- (c) will cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of the loan engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur;
- (d) will sanction a firm or individual, including declaring 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, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, a Bank-financed contract; and
- (e) will have the right to require that a provision be included in bidding documents and in contracts financed by a Bank loan, a provision be included requiring bidders, suppliers and contractors to permit the Bank to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by the Bank.

3.2 Furthermore, Bidders shall be aware of the provisions stated in Sub-Clause 21.6 (h) of the General Conditions.

- 4. Eligible Bidders**
- 4.1 This bidding is open only to prequalified Bidders. Bidders shall provide evidence, as the Employer shall reasonably request, of their continued eligibility in accordance with Section III of the Prequalification Document (PQD). Bidders shall notify the Employer immediately, in writing, of any change in the structure, formation, personnel or qualifications reflected in the Bidder's Application for Prequalification (AFP) that could affect their Eligibility under Section III of the PQD. Failure to notify the Employer of such changes in a timely manner could result in the Bidder's disqualification.
- 4.2 A Bidder may be a natural person, private entity, government-owned entity—subject to ITB 4.6—or any combination of such entities supported by a letter of intent to enter into an agreement or under an existing agreement in the form of a joint venture (JV). In the case of a JV:
- (a) **unless otherwise specified in the BDS**, all partners shall be jointly and severally liable, and
 - (b) the JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the partners of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution.
- 4.3 A Bidder, and all partners constituting the Bidder, may have the nationality of any country as defined under the *Guidelines: Procurement under IBRD Loans and IDA Credits* (hereinafter referred to as the Guidelines), subject to the restrictions specified in Section V, Eligible Countries. A Bidder shall be deemed to have the nationality of a country if the Bidder 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 for any part of the Contract.
- 4.4 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:
- (a) they have at least one controlling partner 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 bid; 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 bid of another Bidder, or influence the decisions of the Purchaser regarding this bidding process; or
 - (e) a Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which the party is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or
 - (f) a Bidder participated as a consultant in the preparation of the design or technical specifications of any works related to the services that are the subject of the bid;
 - (g) a Bidder was affiliated with a firm or entity that has been hired (or is proposed to be hired) by the Employer or Borrower as Employer's Representative for the Contract.
- 4.5 A firm subject to a declaration of ineligibility pursuant to ITB 3.1(d) of the World Bank Group Anti-Corruption policies¹² shall be ineligible to be awarded a Bank-financed contract during the debarment period.
- 4.6 Government-owned entities in the Employer's country shall be eligible only if they can establish that they are legally and financially autonomous and operate under commercial law. Also, they shall not be dependent agencies of the Employer.
- 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 for the supply of goods or related services required; or

12 For purposes of this provision, the relevant World Bank Group Anti-Corruption policies are set forth in the Guidelines On Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants, and in the Anti-Corruption Guidelines for IFC, MIGA, and World Bank Guarantee Transactions.

- (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any import of goods or contracting of Works or services from that country or any payments to persons or entities in that country.

B. Contents of Bidding Document

5. Sections of Bidding Document

- 5.1 The Bidding Documents 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 ITB 8.

PART 1 Bidding Procedures

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

PART 2 Services Requirements

- Section VI. Description of Services

PART 3 Conditions of Contract and Contract Forms

- Section VII. General Conditions (GC)
- Section VIII. Particular Conditions (PC)
- Section IX. Annex to the Particular Conditions - Contract Forms

- 5.2 The Invitation for Bids issued by the Employer is not part of the Bidding Document.
- 5.3 The Bidder shall obtain the Bidding Document and its addenda directly from the source stated by the Employer in the Invitation for Bids. The Employer is not responsible for the completeness of the Bidding Documents and its addenda, if they were obtained otherwise.
- 5.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document. Failure to furnish all information or documentation required by the

Bidding Documents may result in the rejection of the bid.

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

- 6.1 A prospective Bidder requiring any clarification of the Bidding Document shall contact the Employer in writing at the Employer's address, and by the means of communication **indicated in the BDS**, or raise his enquiries during the pre-bid meeting if provided for in accordance with ITB 6.4. The Employer will respond in writing to any request for clarification, provided that such request is received no later than twenty-one (21) days prior to the deadline for submission of Bids. The Employer shall forward copies of its response to all Bidders who have acquired the Bidding Document in accordance with ITB 5.3, including a description of the inquiry but without identifying its source. Should the Employer deem it necessary to amend the Bidding Document as a result of a request for clarification, it shall do so following the procedure under ITB 8 and ITB 18.2.
- 6.2 The Bidder is advised to visit and examine the site or sites that are the subject of the proposed Contract, and their surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into the Contract. Such visits to the sites (hereinafter referred to as Site Visits) shall be conducted in accordance with the procedures **defined in the BDS**.
- 6.3 The Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of inspection, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its advisors, personnel, consultants and agents from and against all liability in respect thereof, and will be solely responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
- 6.4 The Bidder's designated representative is invited to attend a pre-bid meeting, **if and as provided for in the BDS**. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage. A site visit conducted by the Employer will be organized **if provided for in the BDS**.
- 6.5 The Bidder is requested, as far as possible, to submit any questions in writing, to reach the Employer not later than

one week before the meeting.

- 6.6 Minutes of the pre-bid meeting, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Documents in accordance with ITB 5.3. Any modification to the Bidding Documents that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting.
- 6.7 Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

7. Data Room

- 7.1 **If specified in the BDS**, the Employer has established a data room (hereinafter called the Data Room) with a selection of relevant data to be accessible to Bidders or their representatives. The address of the Data Room, and other information considered relevant by the Employer (such as an inventory of materials, or dates, rules and procedures for access) are **as specified in the BDS**.

8. Amendment of Bidding Document

- 8.1 At any time prior to the deadline for submission of Bids, the Employer may amend the Bidding Documents by issuing addenda.
- 8.2 Any addendum issued shall be part of the Bidding Documents and shall be communicated in writing to all who have obtained the Bidding Document from the Employer in accordance with ITB 5.3. No other communications of any kind whatsoever will modify the Bidding Documents.
- 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Employer may, at its discretion, extend the deadline for the submission of Bids, pursuant to ITB 18.2 and ITB 34.2.

C. Preparation of Bids: Clauses General to First and Second Stage Bids

- 9. Cost of Bidding** 9.1 The Bidder shall bear all costs associated with the preparation and submission of all Bids, and the Employer shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- 10. Language of Bid** 10.1 Any Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Employer, shall be written in the language **specified in the BDS**. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language **specified in the BDS**, in which case, for purposes of interpretation of the Bid, such translation shall govern.
- 11. Letter of Bid** 11.1 Each Bidder shall provide with all Bids a completed Letter of Bid in accordance with the corresponding Letter of Bid form furnished in Section IV.
- 11.2 All forms required in accordance with ITB 11.1 must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.
- 12. Power of Attorney** 12.1 Each Bidder shall provide, with all Bids, a written power of attorney duly notarized, indicating that the person(s) signing the bid has(ve) the authority to sign the Bid and thus that the bid is binding upon the Bidder during the full period of its validity.
- 13. Documents Establishing the Qualifications of the Bidder** 13.1 To establish its qualifications to perform the Contract in accordance with Section III, Evaluation and Qualification Criteria, the Bidder shall provide the information requested in the corresponding information sheets included in Section IV, Bidding Forms.

D. Preparation of First Stage Bids

- 14. Documents Comprising the First Stage Bid** 14.1 The First Stage Bid shall comprise a Technical Proposal with the following documents:
- (a) Part I – Letter of Bid, in accordance with ITB 11;
 - (b) Part II – Methodology and Approach, in accordance

with ITB 15.1;

- (c) Part III – documents establishing the qualifications of the bidder in accordance with ITB 13.1;
- (d) Part IV – any other documents **required by the BDS**.

14.2 First Stage Bids are technical Bids only and shall contain no prices or price schedules or other reference to rates and prices for completing the services. First Stage Bids containing such price information may be rejected.

14.3 Bidders shall note that they are permitted to propose technical alternatives or other alternative Bids with their First Stage Bids in addition to or in lieu of the requirements specified in the bidding documents, provided they can document that the proposed alternative Bids are to the benefit of the Employer, that they fulfill the principal objectives of the contract, and that they meet the basic performance and technical criteria specified in the bidding documents. Any alternative bid proposed by bidders in their First Stage Bid will be the subject of discussion during the Clarification Meeting with the Bidder, pursuant to ITB 24.

**15. Documents
Comprising the
Methodology and
Approach**

15.1 The Methodology and Approach shall consist of the following sub-parts:

- (a) A detailed work plan (hereinafter referred to as the Work Plan) using the corresponding form included in Section IV, Bidding Forms, and setting out the manner in which the Bidder proposes to carry out the services as defined in the Contract, and meet any performance targets specified in the Contract.
- (b) A detailed staffing plan (hereinafter referred to as the Staffing Plan) setting out the Bidder's proposed staffing arrangements as they relate to the requirements in the Contractor's Personnel Schedule (Schedule B), included in Section VI, Schedule of Services Requirements .
- (c) Any other information as stipulated in Section IV, Bidding Forms.

**16. Format and
Signing of First
Stage Bid**

16.1 The Bidder shall prepare an original and the number of copies/sets of the bid **specified in the BDS**, clearly marking each one as: "FIRST STAGE BID—ORIGINAL," "FIRST STAGE BID—COPY NO. 1," "FIRST STAGE BID—COPY NO. 2," etc.,

as appropriate.

- 16.2 In the event of any discrepancy between the original and the copies, the original shall prevail.
- 16.3 The original and all copies of each Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation **as specified in the BDS** and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid where entries or amendments have been made shall be signed or initialed by the person signing the Bid.
- 16.4 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.

E. Submission of First Stage Bids

17. Sealing and Marking of First Stage Bids

- 17.1 The Bidder shall seal the original First Stage Bid and each copy of the bid in separate envelopes, each containing the documents specified in ITB 14.1, and shall mark the envelopes as “First Stage Bid—Original” and “First Stage Bid—Copies,” all duly marked as required in ITB 16.1.
- 17.2 The inner and outer envelopes shall
- (a) be addressed to the Employer in accordance with ITB 18.1, and
 - (b) bear the contract name, title and number, and the words “First Stage Bid. Do Not Open Before [date]_____,” to be completed with the time and date specified pursuant to ITB 20.1.
- 17.3 The inner envelopes shall each indicate the name and address of the Bidder to enable the bid to be returned unopened in case it is declared “late.”
- 17.4 If the outer envelope is not sealed and marked as required by ITB 17.2 and ITB 17.3, the Employer will assume no responsibility for the bid’s misplacement or premature opening. If the outer envelope discloses the Bidder’s identity, the Employer will not guarantee the anonymity of the bid submission, but this disclosure will not constitute grounds for bid rejection.

18. Deadline for Submission of First Stage Bids

- 18.1 First Stage Bids must be received by the Employer at the address and no later than the date and time **indicated in the BDS**. **When so specified in the BDS**, bidders shall have the option of submitting their First Stage Bids electronically. Bidders submitting First Stage Bids electronically shall follow the electronic bid submission procedures **specified in the BDS**.
- 18.2 The Employer may, at its discretion, extend the deadline for the submission of First Stage Bids by amending the Bidding Document in accordance with ITB 8, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

19. Late Bids

- 19.1 The Employer shall not consider any First Stage Bid that arrives after the deadline for submission of First Stage Bids, in accordance with ITB 18. Any First Stage Bid received by the Employer after the deadline for submission of First Stage Bids shall be declared late, rejected, and returned unopened to the Bidder.

F. Opening and Evaluation of First Stage Bids

20. Opening of First Stage Bids by Employer

- 20.1 The Employer will open the First Stage Bids in public on the date of bid submission and at the time and place **indicated in the BDS**. Bidder's representatives may attend the opening and shall sign a register as proof of their attendance. If electronic bidding is permitted, specific opening procedures shall be **as specified in the BDS**.
- 20.2 The names of all bidders who submitted First Stage Bids will be read out, and other such details as the Employer, at its discretion, may consider appropriate, will be announced at the opening.
- 20.3 The Employer will prepare minutes of the bid opening.

21. Preliminary Examination of First Stage Bids

- 21.1 The Employer will examine the First Stage Bids to determine whether they are complete, whether the documents have been properly signed and whether the Bids are generally in order. Any First Stage Bids found to be nonresponsive or not meeting the minimum levels of the performance or other criteria specified in the bidding documents will be rejected by the Employer and not included for further consideration. The Employer will also carry out a preliminary examination of any alternative Bids

submitted by bidders.

**22. Technical
Evaluation of First
Stage Bids**

22.1 The Employer will carry out a detailed evaluation of the First Stage Bids in order to determine whether the technical aspects are substantially responsive to the requirements set forth in the bidding documents. In order to reach such a determination, the Employer will examine the information supplied by the bidders, pursuant to ITB 14.1, and other requirements in the bidding documents, taking into account the following factors:

- (a) overall completeness and compliance with the Service Requirements specified in Schedules B through F in Section VI; the technical merits of alternatives offered and deviations from the Technical Specifications; and suitability of the expertise offered;
- (b) any deviations to the commercial and contractual provisions stipulated in the bidding documents; and
- (c) any other relevant factors that the Employer deems necessary or prudent to take into consideration.

22.2 The Employer will also review complete technical alternative Bids, if any, offered by the Bidder, pursuant to ITB 14.3, to determine whether such alternatives may constitute an acceptable basis for a Second Stage Bid to be submitted on its own merits.

23. Qualification

23.1 The Employer will ascertain to its satisfaction whether bidders determined as having submitted responsive First Stage Bids are qualified to satisfactorily perform the contract.

23.2 The determination will take into account the Bidder's financial and technical capabilities and past performance. It will be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder as Part IV of the First Stage Technical Proposal, as well as such other information as the Employer deems necessary and appropriate.

23.3 An affirmative determination will be a prerequisite for the Employer to invite the Bidder to a Clarification Meeting in accordance with ITB 24. A negative determination will result in rejection of the Bidder's bid.

G. Clarification Meeting

- 24. Clarification of First Stage Bids and Review of Bidders' Proposed Deviations and Alternative Solutions**
- 24.1 The Employer may conduct Clarification Meetings with each or any Bidder to clarify any aspects of its First Stage Bid that require explanation at this stage of the evaluation. During these meetings, the Employer may bring to the attention of the Bidder any matters, technical or otherwise, where for whatever reason, it requires amendments or changes to be made to the First Stage Bid. All such amendments or changes required by the Employer will be listed in an Annex to the Memorandum documenting the Clarification Meeting entitled **“Changes Required Pursuant to First Stage Evaluation”** and will be formally notified to the Bidder as part of the invitation to submit the Second Stage Bid.
- 24.2 The Employer will advise the Bidder of any exceptions or deviations in the First Stage Bid, that are unacceptable and that are to be withdrawn in the Second Stage Bid.
- 24.3 The Employer will also advise the Bidder whether the proposed alternative bid, if any, is acceptable, and will identify the degree (if any) to which such an alternative bid may be incorporated in the Bidder's Second Stage Bid.
- 25. Invitation to Submit Second Stage Bids**
- 25.1 At the end of the First Stage evaluation and after holding Clarification Meetings,
- (a) the Employer may issue an amendment to the bidding documents modifying, *inter alia* and as needed, the evaluation criteria or other sections of the Instructions to Bidders, or the Special Conditions of Contract, resulting from the First Stage evaluation and Clarification Meetings, with the objective of improving competition without compromising essential project objectives and/or
 - (b) the Employer will either
 - (i) invite a Bidder to submit an updated Technical Proposal and Financial Proposal in a Second Stage Bid based on the updated Draft Contract and Section III Evaluation and Qualification, and any revisions required for the First Stage Bid as recorded in the Annex to the Memorandum entitled “Changes Required Pursuant to First Stage Evaluation” of the Clarification Meeting, or
 - (ii) invite a Bidder to submit an updated Technical Proposal and Financial Proposal in a Second

Stage Bid based on an alternative bid proposed by the Bidder in its First Stage, taking into account the updated Draft Contract and any other revisions required for the First Stage Bid as recorded in the Memorandum entitled “Changes Required Pursuant to First Stage Evaluation” of the Clarification Meeting, or

- (iii) notify a Bidder that its bid has been rejected on the grounds of being substantially nonresponsive, or that the Bidder does not meet the minimum qualification requirements set forth in the bidding documents.

25.2 Bidders are not allowed to form joint venture(s) with other bidders, nor change the partner or structure of the joint venture if the Bidder in the First Stage was a joint venture, unless requested to do so in writing by the Employer, in or after the Clarification Meeting.

25.3 The deadline for submission of Second Stage Bids will be specified in the invitation to submit Second Stage Bids.

H. Preparation of Second Stage Bids

26. Documents Comprising the Second Stage Bid

26.1 The Second Stage Bid shall comprise the following documents:

- (a) Technical Proposal, Part I – Letter of Bid, in accordance with the Letter of Bid form furnished in Section IV, revised to reflect discussions in the Clarification Meetings, pursuant to ITB 11;
- (b) Technical Proposal, Part II – The Bid Security, in accordance with ITB 30;
- (c) Technical Proposal, Part III – Written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 32.3;
- (d) Technical Proposal, Part IV – In the case of a bid submitted by a JV, JV agreement, or letter of intent to enter into a JV including a draft agreement, indicating at least the parts of the services to be performed by the respective partners;
- (e) Technical Proposal, Part V - a Final Methodology and Approach, including a detailed Work Plan in the corresponding form included in Section IV, Bidding

Forms, and a detailed Staffing Plan, both plans revised as needed to reflect discussions in the Clarification Meetings, pursuant to ITB 24 and amendments to the Bidding Document;

- (f) Technical Proposal, Part VI – documents confirming the eligibility and qualifications of the bidder, and showing any changes to qualifications and eligibility, in accordance with ITB 28;
- (g) Technical Proposal, Part VII – Any other documents **required in the BDS.**
- (h) **A Financial Proposal in accordance with ITB 27.**

**27. Documents
Comprising the
Financial Proposal**

27.1 The Financial Proposal shall consist of a completed and properly executed Bid Price Form. The Bid Price Form is included in Section IV of this Bidding Document. Bidders shall complete the Bid Price Form in full and shall not amend or change the form in any way.

27.2 The Bidder may quote its prices in accordance with ITB 29.

27.3 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of Bids, shall be included in the rates and prices and the total Bid Price submitted by the Bidder.

**28. Confirmation of
eligibility and
qualifications**

28.1 Each Bidder shall provide detailed information on changes, if any, that may have occurred between the time of submitting the First and Second Stage Bids that may have any material effect on the Bidder's eligibility and qualifications to perform the Contract. These changes shall be provided as marked-up or red-lined versions of previous submissions.

**29. Currencies of Bid
and Payment**

29.1 Bidders may express the price of their proposal in a maximum of three freely convertible currencies, in addition to the currency of the Employer's country as follows:

- (a) for those inputs to the Services that the bidder expects to supply from within the Employer's country (referred to as "the local currency requirement"), in the currency of the Employer's country **specified in the BDS**; and
- (b) for those inputs to the Services that the bidder expects to supply from outside the Employer's country (referred to as "the foreign currency requirements") in up to any

three currencies of any country.

29.2 Bidders may be required by the Employer to justify, to the Employer's satisfaction, their local and foreign currency requirements, and to substantiate the amounts included in the Bid Price Form, in which case a detailed breakdown of the foreign currency requirements shall be provided by Bidders.

30. Bid Security

30.1 The Bidder shall furnish as part of its bid, in original form, either a Bid-Securing Declaration or a bid security **as specified in the BDS**. If a bid security is specified, the bid security shall be in the amount and currency **specified in the BDS**.

30.2 A Bid-Securing Declaration shall use the form included in Section IV Bidding Forms.

30.3 If a bid security is specified pursuant to ITB 30.1, the bid security shall be a demand guarantee in any of the following forms at the Bidder's option:

(a) an unconditional guarantee issued by a bank or surety;

(b) an irrevocable letter of credit;

(c) a cashier's or certified check; *or*

(d) another acceptable security **indicated in the BDS**,

from a reputable source from an eligible country. If the unconditional guarantee is issued by an insurance company or a bonding company located outside the Employer's Country, the issuer shall have a correspondent financial institution located in the Employer's Country to make it enforceable. In the case of a bank guarantee, the bid security shall be submitted either using the Bid Security Form included in Section IV, Bidding Forms or in another substantially similar format approved by the Employer prior to bid submission. In either case, the form must include the complete name of the Bidder. The bid security shall be valid for twenty-eight days (28) beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 34.1.

30.4 Any bid not accompanied by an enforceable and compliant bid security, if one is required in accordance with ITB 30,

shall be rejected by the Employer as non responsive.

- 30.5 The bid security of the unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's furnishing of the performance security pursuant to ITB 52.
- 30.6 The bid security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the performance security.
- 30.7 The bid security may be forfeited:
- (a) if a Bidder withdraws its bid during the Period of Validity of Bids, except as provided in ITB 31.2 or
 - (b) if the successful Bidder fails to:
 - (i) sign the Contract in accordance with ITB 51; or
 - (ii) furnish a performance security in accordance with ITB 52.
- 30.8 The bid security of a JV shall be in the name of the JV that submits the bid. If the JV has not been legally constituted at the time of bidding, the Bid Security shall be in the names of all future partners as named in the letter of intent to form a JV.
- 30.9 If a bid security is **not required in the BDS** pursuant to ITB 30.1, and
- (a) if a Bidder withdraws its bid during the Period of Validity of Bids specified by the Bidder on the Letter of Bid pursuant to ITB 31.1, except as provided in ITB 31.2, or
 - (b) if the Successful Bidder fails to sign the Contract in accordance with ITB 51; or furnish a performance security in accordance with ITB 52; the Borrower may, if provided for in the BDS, declare the Bidder disqualified to be awarded a contract by the Borrower for a period of time as **stated in the BDS**.

31. Period of Validity of Second Stage Bids

- 31.1 Second Stage Bids shall remain valid for the period **specified in the BDS** after the bid submission deadline date prescribed by the Employer. A bid valid for a shorter period shall be rejected by the Employer as non responsive.
- 31.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Employer may request Bidders to extend

the period of validity of their Bids. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITB 30.1, it shall also be extended for twenty-eight days (28) beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid.

32. Format and Signing of Second Stage Bid

- 32.1 The Bidder shall prepare an original and the number of copies/sets of the bid **specified in the BDS**, clearly marking each one as “SECOND STAGE BID—ORIGINAL,” “SECOND STAGE BID—COPY NO. 1,” “SECOND STAGE BID—COPY NO. 2,” etc. as appropriate.
- 32.2 In the event of any discrepancy between the original and the copies, the original shall prevail.
- 32.3 The original and all copies of each Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation **as specified in the BDS** and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid where entries or amendments have been made shall be signed or initialed by the person signing the Bid.
- 32.4 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.

I. Submission of Second Stage Bids

33. Sealing and Marking of Second Stage Bids

- 33.1 The bidders shall seal the original and each copy of the bid in separate envelopes, duly marking the envelopes as “SECOND STAGE BID—ORIGINAL” and “SECOND STAGE BID—COPIES.” The envelopes shall be sealed in an outer envelope.
- 33.2 The inner and outer envelopes shall be sealed and
- (a) addressed to the Employer at the address **specified in the BDS**.
 - (b) bear the contract name, the Invitation for Bids title and number indicated in the invitation for Second Stage Bids, and the statement “Do Not Open Before [date]_____” (to be completed with the time and date

specified in the invitation, pursuant to ITB 34.1).

- 33.3 The inner envelopes shall each indicate the name and address of the Bidder so that the bid can be returned unopened in case it is declared “late.”
- 33.4 If the outer envelope is not sealed and marked as required by ITB 35.2, the Employer will assume no responsibility for the bid’s misplacement or premature opening. If the outer envelope discloses the Bidder’s identity, the Employer will not guarantee the anonymity of the bid submission, but this disclosure will not constitute grounds for bid rejection.
- 34. Deadline for Submission of Second Stage Bids**
- 34.1 Second Stage Bids must be received by the Employer at the address and no later than the date and time indicated in the Letter of Invitation to submit a Second Stage Bid. **When so specified in the BDS**, bidders shall have the option of submitting their Second Stage Bids electronically. Bidders submitting Second Stage Bids electronically shall follow the electronic bid submission procedures **specified in the BDS**.
- 34.2 The Employer may, at its discretion, extend the deadline for the submission of Second Stage Bids by amending the Bidding Document in accordance with ITB 8, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.
- 35. Late Bids**
- 35.1 The Employer shall not consider any Second Stage Bid that arrives after the deadline for submission of Second Stage Bids, in accordance with ITB 34. Any Second Stage Bid received by the Employer after the deadline for submission of Second Stage Bids shall be declared late, rejected, and returned unopened to the Bidder.
- 36. Withdrawal, Substitution, and Modification of Second Stage Bids**
- 36.1 A Bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 32.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:
- (a) prepared and submitted in accordance with ITB 32 and ITB 33 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked “SECOND STAGE BID - WITHDRAWAL,”

“SECOND STAGE BID - SUBSTITUTION,” “SECOND STAGE BID - MODIFICATION;” and

- (b) received by the *Employer* prior to the deadline prescribed for submission of bids, in accordance with ITB 35.
- 36.2 Bids requested to be withdrawn in accordance with ITB 36.1 shall be returned unopened to the Bidders
- 36.3 No Second Stage Bid may be modified or withdrawn in the interval between the deadline for submission of Second Stage Bids and the expiration of period of bid validity specified in ITB 31. Withdrawal of a Second Stage Bid during this interval may result in the Bidder’s forfeiture of its bid security, pursuant to ITB 30.7.

J. Opening, Evaluation and Comparison of Second Stage Bids

37. Bid Opening

- 37.1 The Employer shall open the Second Stage bids in public, including withdrawals and modifications made pursuant to ITB 36, in the presence of Bidders’ designated representatives and anyone who chooses to attend, and at the time, date, and location specified in the Letter of Invitation to submit a Second Stage bid. Any specific electronic bid opening procedures required if electronic bidding is permitted shall be **as specified in the BDS**.
- 37.2 First, envelopes marked “SECOND STAGE BID-WITHDRAWAL” shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked “SECOND STAGE BID - SUBSTITUTION” shall be opened and read out and exchanged with the corresponding bid being substituted, and the substituted bid shall not be opened, but returned to the Bidder. No bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at the proposal opening. Envelopes marked “SECOND STAGE BID - MODIFICATION” shall be opened and read out with the corresponding bid. No bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the

modification and is read out at bid opening. Only bids that are opened and read out at bid opening shall be considered further.

- 37.3 All other envelopes shall be opened one at a time, reading out: the name of the Bidder and the Bid Price(s), including any discounts, and indicating whether there is a modification; the presence or absence of a bid security or a Bid-Securing Declaration; and any other details as the Employer may consider appropriate. Only discounts read out at bid opening shall be considered for evaluation. No bid shall be rejected at bid opening except for late bids, in accordance with ITB.35.1.
- 37.4 The Employer shall prepare a record of the Bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid price, including any discounts; and the presence or absence of a bid security or a Bid-Securing Declaration. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders who submitted bids in time, and posted online when electronic bidding is permitted.

38. Confidentiality

- 38.1 Consistent with the requirements of transparency and intellectual property rights, in revising the Second Stage Technical Proposal, information contained in the Bidder's Technical Proposal reviewed in the First Stage shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on contract award is communicated to all Bidders,
- 38.2 Information relating to the evaluation of Bids and recommendation of contract award shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on Contract award is communicated to all Bidders.
- 38.3 Any attempt by a Bidder to influence the Employer in the evaluation of the Bids or Contract award decisions may result in the rejection of its bid.
- 38.4 Notwithstanding ITB 38.3, from the time of First Stage technical proposal opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter

related to the bidding process, it may do so in writing.

- 39. Clarification of Bids**
- 39.1 To assist in the examination, evaluation, and comparison of the bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its bid. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer's request for clarification and the response shall be in writing. No change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids, in accordance with ITB 47.1.
- 39.2 If a Bidder does not provide clarifications of its bid by the date and time set in the Employer's request for clarification, its bid may be rejected.
- 40. Deviations, Reservations, and Omissions**
- 40.1 During the evaluation of Bids, the following definitions apply:
- (a) "Deviation" is a departure from the requirements specified in the Bidding Document;
 - (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and
 - (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Document.
- 41. Determination of Responsiveness**
- 41.1 The Employer's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB 26.
- 41.2 A substantially responsive bid is one that meets all the requirements, terms, conditions and specifications of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,
- (a) if accepted, would
 - (i) affect in any substantial way the scope, quality, or performance of the Services specified in the *Contract*; or
 - (ii) limit in any substantial way, inconsistent with the Bidding Document, the Employer's rights or the Bidder's obligations under the proposed Contract;

or

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

41.3 The Employer shall examine the technical aspects of the bid submitted in accordance with ITB 15, Methodology and Approach, in particular, to confirm that all Service Requirements under Schedules B through F of the Draft Contract have been met without any material deviation or reservation.

41.4 A Second Stage Bid containing technical or commercial alternatives not submitted as part of the First Stage technical proposal will be treated as nonresponsive.

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

**42. Nonmaterial
Nonconformities**

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

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

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

**43. Correction of
Arithmetical
Errors**

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

- (a) if there is a discrepancy between the unit price and the

total price that is obtained by multiplying the unit price and quantity in the Technical Proposal, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;

- (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

43.2 If the Bidder that submitted the successful bid does not accept the correction of errors, its bid shall be disqualified.

44. Conversion to Single Currency

44.1 For evaluation and comparison purposes, the currency(ies) of the bid shall be converted into a single currency **as specified in the BDS.**

45. Evaluation of Second Stage Bids

45.1 The Employer shall use the criteria and methodologies indicated in this Clause. No other evaluation criteria or methodologies shall be permitted.

45.2 Technical Evaluation – The Employer will carry out a detailed evaluation of the Second Stage Bids not previously rejected to determine whether the technical aspects concerning the modifications to the technically acceptable base or alternative bid detailed in the Memorandum entitled “Changes Required Pursuant to First Stage Evaluation”, pursuant to ITB 25.1, have been properly addressed and are substantially responsive to the requirements set forth in the Bidding Document.

45.3 Economic Evaluation – To evaluate a bid, the Employer shall consider the following:

- (a) the bid price, excluding provisional sums and the provision, if any, for contingencies in the Price Schedules;
- (b) price adjustment for correction of arithmetic errors in accordance with ITB 43.1;

- (c) price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 42.3;
- (d) converting the amount resulting from applying (a) to (b) above, if relevant, to a single currency in accordance with ITB 44; and
- (e) the evaluation factors indicated in Section III, Evaluation and Qualification Criteria.

45.4 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.

45.5 If the bid which results in the lowest Evaluated Bid Price, is seriously unbalanced or front loaded in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analyses for any or all items of the Price Schedules, to demonstrate the internal consistency of those prices with the methods and time schedule proposed. After evaluation of the price analyses, taking into consideration the terms of payments, the Employer may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.

46. Comparison of Bids

46.1 The Employer shall compare all substantially responsive bids in accordance with ITB 45.3 to determine the lowest evaluated bid.

47. Qualification of the Bidder

47.1 The Employer shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid still meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

47.2 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the *Employer* shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's qualifications to perform satisfactorily.

- 48. Employer’s Right to Accept Any Bid, and to Reject Any or All Bids** 48.1 The Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all Bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all Bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.

K. Award of Contract

- 49. Award Criteria** 49.1 Subject to ITB 48.1, the Employer shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be eligible and qualified to perform the Contract satisfactorily.

- 50. Notification of Award** 50.1 Prior to the expiration of the period of bid validity, the Employer shall notify the successful Bidder, in writing, that its bid has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the “Letter of Acceptance”) shall specify the sum that the Employer will pay the Contractor in consideration of the execution and completion of the Plant and Installation Services (hereinafter and in the Conditions of Contract and Contract Forms called “the Contract Price”).

- 50.2 At the same time, the Employer shall also notify all other Bidders of the results of the bidding and shall publish in *UNDB online* and in the *dgMarket* the results identifying the bid and the following information: (i) name of each Bidder who submitted a Bid; (ii) bid prices as read out at Bid Opening; (iii) name and evaluated prices of each Bid that was evaluated; (iv) name of bidders whose Bids were rejected and the reasons for their rejection; and (v) name of the winning Bidder, and the Price it offered, as well as the duration and summary scope of the contract awarded.

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

- 50.4 The Employer shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 50.2, requests in writing the grounds on which its Bid was not selected.

- 51. Signing of** 51.1 Promptly after notification, the Employer shall send the

Contract

successful Bidder the Contract Agreement.

- 51.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Employer, **unless otherwise stated in the BDS.**

52. Performance Security

- 52.1 Within twenty-eight (28) days of the receipt of notification of award from the Employer, the successful Bidder shall furnish the performance security in accordance with the General Conditions, subject to ITB 45.5, using for that purpose the Performance Security Form included in Section IX, Contract Forms, or another form acceptable to the Employer. If the performance security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Bidder to be acceptable to the Employer. A foreign institution providing a bond shall have a correspondent financial institution located in the Employer's Country.

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

Section II. Bid Data Sheet

A. Introduction	
ITB 1.1	The number of the Invitation for Bids is : _____
ITB 1.1	The Employer is: _____
ITB 1.1	The name of the ICB is: _____ The identification number of the ICB is: _____
ITB 2.1	The Borrower is: _____
ITB 2.1	The name of the Project is: _____
ITB 4.2(a)	The individuals or firms in a joint venture, consortium or association _____ <i>[insert “shall” or “shall not”]</i> be jointly and severally liable.
B. Contents of Bidding Documents	
ITB 6.1	For clarification purposes only, the Employer’s address is: Attention: _____ Street Address: _____ Floor/Room number: _____ City: _____ ZIP Code: _____ Country: _____ Telephone: _____ Facsimile number: _____ Electronic mail address: _____ <i>Communications may be sent by [indicate all that apply from “mail”, “courier”, “fax”, and “email”] only.</i>
ITB 6.2	<i>[Indicate procedures and dates for site visits]</i>
ITB 6.4	A Pre-Bid meeting _____ <i>[insert “shall” or “shall not”]</i> take place at the following date, time and place: Date: _____ Time: _____ Place: _____ A site visit conducted by the Employer <i>[insert “shall” or “shall not”]</i> be on _____
ITB 7.1	The Employer _____ <i>[insert “has” or “has not”]</i> established a Data Room. If a Data Room has been established, the Data Room coordinates and other relevant information is as follows: _____ <i>[insert the Data Room coordinates and information considered relevant; otherwise, “not</i>

	<i>applicable”]</i>
C. Preparation of Bids: Clauses General to First and Second Stage Bids	
ITB 10.1	The language of the bid is: _____
D. Preparation of First Stage Bids	
ITB 14.1(d)	Any Other Items Required as part of First Stage Bidding Documents <i>[list them and provide reference to forms in Section IV]:</i>
ITB 16.1	Number of copies or sets: <i>[insert number]</i>
ITB 16.3	The written confirmation of authorization to sign on behalf of the Bidder shall consist of: _____
E. Submission of First Stage Bids	
ITB 18.1	<p>For First Stage Bid submission purposes, the Employer’s address is:</p> <p>Attention: <i>[insert full name of person, if applicable, or insert name of the Project Officer]</i></p> <p>Address: <i>[insert street name and number]</i></p> <p>Floor-Room number: <i>[insert floor and room number, if applicable]</i> <i>[important to avoid delays or misplacement of Bids]</i></p> <p>City: <i>[insert name of city or town]</i></p> <p>ZIP Code: <i>[insert postal (ZIP) code, if applicable]</i></p> <p>Country: <i>[insert name of country]</i></p> <p>The deadline for the submission of First Stage Bids is:</p> <p>Date: <i>[insert day, month, and year, i.e. 15 June, 2001]</i></p> <p>Time: <i>[insert time, and identify if a.m. or p.m., i.e. 10:30 a.m.]</i></p> <p>Bidders <i>[insert “shall” or “shall not”]</i> have the option of submitting their Bids electronically.</p> <p>If bidders have the option of submitting their Bids electronically, the electronic bidding submission procedures shall be: <i>[insert a description of the electronic bidding submission procedures, otherwise not applicable]</i></p>
F. Opening and Evaluation of First Stage Bids	
ITB 20.1	<p>Location, date and time for First Stage Bid opening</p> <p>Location: <i>[insert full address]</i></p> <p>Date: <i>[insert day, month, and year, i.e. 15 June, 2001]</i></p>

	<p>Time: <i>[insert time, and identify if a.m. or p.m., i.e. 10:30 a.m.]</i></p> <p>If bidders shall have the option of submitting their Bids electronically, the opening procedures shall be: <i>[insert a description of the electronic bidding submission procedures]</i></p>
	H. Preparation of Second Stage Bids
ITB 26.1(g)	Any Other Items Required as part of Second Stage Bidding Documents <i>[list them and provide reference to forms in Section IV]:</i>
ITB 29.1 (a)	The currency of the Employer's country is: _____
ITB 30.1	<p>A _____ <i>[insert "bid security" or "Bid Securing Declaration"]</i> shall be furnished.</p> <p>If a bid security shall be furnished, the amount and currency of the bid security shall be _____</p>
ITB 30.3(d)	Other type of acceptable securities: <i>[insert name or description of type of acceptable security]</i>
ITB 30.9	<p><i>[Select one of the two options below as appropriate]</i></p> <p>If the Bidder incurs in any of the actions prescribed in subparagraphs (a) or (b) of this provision, the Employer will declare the Bidder ineligible to be awarded contracts by the Employer for a period of _____ <i>[insert number]</i> years.</p> <p>Or</p> <p>Not Applicable.</p>
ITB 31.1	The bid validity period shall be _____ <i>[insert number]</i> days.
ITB 32.1	Number of copies: <i>[insert number]</i>
ITB 32.3	The written confirmation of authorization to sign on behalf of the Bidder shall consist of: _____
	I. Submission of Second Stage Bids
ITB 33.2(b)	<p>For bid submission purposes only, the Employer's address is :</p> <p>Attention: _____</p> <p>Street Address: _____</p> <p>Floor/Room number: _____</p> <p>City: _____</p> <p>ZIP Code: _____</p> <p>Country: _____</p>

	Bidders <i>[insert “shall” or “shall not”]</i> have the option of submitting their Bids electronically.
ITB 34.1	<p>Bidders <i>[insert “shall” or “shall not”]</i> have the option of submitting their Bids electronically.</p> <p>If bidders have the option of submitting their Bids electronically, the electronic bidding submission procedures shall be: <i>[insert a description of the electronic bidding submission procedures, otherwise not applicable]</i></p>
J. Opening and Evaluation of Second Stage Bids	
ITB 37.1	<p>Location for Second Stage Bid opening:</p> <p>If bidders shall have the option of submitting their Bids electronically, the opening procedures shall be: <i>[insert a description of the electronic bidding submission procedures]</i></p>
ITB 44	<p>The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is: <i>[insert name of local currency]</i></p> <p>The source of exchange rate shall be: <i>[insert name of Central Bank]</i></p> <p>The date for the exchange rate shall be: <i>[insert date, e.g. deadline for submission of Second Stage bids]</i></p>
K. Award of Contract	
ITB 51.2	The Successful Bidder shall sign, date, and return the Contract Agreement to the Employer within <i>[number of days]</i> days.

Section III. Evaluation and Qualification Criteria

This Section contains all the criteria that the Employer shall use to evaluate Bids and qualify Bidders. No other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms and/or update any information which it submitted to apply for prequalification using the relevant forms included in the Prequalification Document.

First Stage Bids

1. Evaluation

In addition to the criteria listed in ITB 22.1 (a) – (b) the following factors shall apply:

2. Qualification

Update of Information

The Bidder and any subcontractors shall meet or continue to meet the criteria used at the time of prequalification.

Second Stage Bids

1. Technical Evaluation

Pursuant to ITB 39.3 the following evaluation criteria shall apply:

The Employer will evaluate the Technical Proposals using the following criteria

Methodology and Workplan				
<i>[Must meet each criterion with separate row for each criterion]</i>	Methodology and Workplan	<i>[Criteria for evaluating Methodology and Workplan. See Technical Note for Examples]</i>		Submission Requirement: TECH Form
Staffing Plan				
<i>[Must meet each criterion with separate row for each criterion]</i>	Staffing Plan	<i>[Criteria for evaluating Staffing Plan. See Technical Note for Examples]</i>		Submission Requirement: TECH Form

2. Economic Evaluation

The following factors and methods will apply under ITB 45.3(e):

[insert, for example: "The Employer shall calculate the cost of the Financial Proposal in net present value by applying an annual discount factor of 8 percent".]

3. Qualification - Update of Information

The Bidder and any subcontractors shall meet or continue to meet the criteria used at the time of prequalification.

Section IV. Bidding Forms

Table of Forms

Letter of Bid - Two-Stage Bidding, First Stage Bid	90
Letter of Bid - Two-Stage Bidding, Second Stage Bid.....	92
Bid Price Form.....	94
Form TECH - Description of the Methodology and Workplan.....	95
Form of Bid Security	96
Form of Bid-Securing Declaration.....	97

Letter of Bid Form - Two-Stage Bidding, First Stage Bid

Date: _____

Date: _____

ICB No.: _____

Invitation for Bid No.: _____

To: *[Name and address of Employer]*

[Name of Contract]

Ladies and/or Gentlemen,

Having examined the bidding documents, including Addendum Nos. *[insert numbers]*, the receipt of which is hereby acknowledged, we, the undersigned, offer to execute in conformity with the Bidding Document the following Services: _____

_____;

We further undertake, if invited to do so by you, and at our own cost, to attend a clarification meeting at a place of your choice, for the purpose of reviewing our First Stage Bid and duly noting all amendments and additions thereto, and noting omissions therefrom that you may require.

We further undertake, upon receiving your written invitation, to proceed with the preparation of our Second Stage Bid, updating our First Stage Bid in accordance with the requirements from the Memorandum of the clarification meeting, and completing our commercial bid for performing the Facilities in accordance with our updated technical bid.

We agree to abide by this First Stage Bid, which consists of this letter and Attachments 1 through *[number]* hereto, for a period of *[number]* days from the date fixed for submission of bids as stipulated in the bidding documents, and together with the above written undertakings, it shall remain binding on us, provided that we are invited to attend a clarification meeting with you before the expiration of that period.

We confirm that we continue to meet eligibility requirements satisfied as part of our Prequalification Application except where indicated in related Forms *[Bidder should insert relevant Form numbers]*.

We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in bribery.

Name _____ In the capacity of _____

Signed _____

Duly authorized to sign the bid for and on behalf of _____

Dated on _____ day of _____, _____

Attachments: [In accordance with ITB Sub-Clause 14.1, plus any additional attachment either specified by the Employer in the Bid Data Sheet or included by the Bidder.]

Letter of Bid Form - Two-Stage Bidding, Second Stage Bid

Date: _____

ICB No.: _____

Invitation for Bid No.: _____

To: *[Name and address of Employer]*

[Name of Contract]

Ladies and/or Gentlemen,

Having examined the bidding documents, including Addendum Nos. *[insert numbers]*, and your requirements incorporated in the Memorandum of the clarification meeting held between us on *[date]*, we, the undersigned, offer to execute in conformity with the Bidding Document the following Services: _____

Our bid which consists of this letter and Attachments 1 through *[number]* hereto, shall be valid for a period of _____ days from the date fixed for submission of the Second Stage bids as stipulated in the letter of invitation to submit a Second Stage Bid, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

If our bid is accepted, we commit to obtain a performance security in accordance with the Bidding Document;

We confirm that we continue to meet eligibility requirements satisfied as part of our Prequalification Application except where indicated in related Forms *[Bidder should insert relevant Form numbers]*.

We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract:

Name of Recipient	Address	Reason	Amount
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(If none has been paid or is to be paid, indicate “none.”)

We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed; and

We understand that you are not bound to accept any bid that you may receive.

We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in bribery.

Name _____ In the capacity of _____

Signed _____

Duly authorized to sign the bid for and on behalf of _____

Dated on _____ day of _____, _____

Attachments: [In accordance with ITB Sub-Clause 26.1, plus any additional attachment either specified by the Employer in the Bid Data Sheet or included by the Bidder]

Bid Price Form

[Form provided as sample only– Employer may change as necessary. See Technical Note for further discussion]

Contractor's Base Remuneration

Total Fixed Fee:

Form TECH – Description of the Methodology and Workplan

III. Detailed Workplan [in accordance with ITB 15.1]
[Employer to insert more specific requirements, if any, for this section]

IV. Detailed Staffing Plan
[Employer to insert more specific requirements, if any, for this section]

Form of Bid Security (Bank Guarantee)

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

Beneficiary: _____ *[Name and Address of Employer]*

Date: _____

BID GUARANTEE No.: _____

We have been informed that _____ *[name of the Bidder]* (hereinafter called "the Bidder") has submitted to you its bid dated _____ (hereinafter called "the Bid") for the execution of _____ *[name of contract]* under Invitation for Bids No. _____ ("the IFB").

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

At the request of the Bidder, 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 Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder:

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Form of Bid; or
- (b) having been notified of the acceptance of its Bid by the Employer during the period of bid validity, (i) fails or refuses to execute the Contract Agreement or (ii) fails or refuses to furnish the performance security, in accordance with the ITB.

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

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. 458.

[signature(s)]

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

Form of Bid-Securing Declaration

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

Bid No.: *[insert number of bidding process]*

Alternative No.: *[insert identification No if this is a Bid for an alternative]*

To: *[insert complete name of Employer]*

We, the undersigned, declare that:

We understand that, according to your conditions, bids must be supported by a Bid-Securing Declaration.

We accept that we will automatically be suspended from being eligible for bidding in any contract with the Borrower for the period of time of *[insert number of months or years]* starting on *[insert date]*, if we are in breach of our obligation(s) under the bid conditions, because we:

- (a) have withdrawn our Bid during the period of bid validity specified in the Form of Bid; or
- (b) having been notified of the acceptance of our Bid by the *Employer* during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the ITB.

We understand this Bid-Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of your notification to us of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of our Bid.

Signed: *[insert signature of person whose name and capacity are shown]* In the capacity of *[insert legal capacity of person signing the Bid-Securing Declaration]*

Name: *[insert complete name of person signing the Bid-Securing Declaration]*

Duly authorized to sign the bid for and on behalf of: *[insert complete name of Bidder]*

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

Corporate Seal (where appropriate)

[Note: In case of a Joint Venture, the Bid-Securing Declaration must be in the name of all partners to the Joint Venture that submits the bid.]

Section V. Eligible Countries

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

1. In accordance with Para 1.8 of the Guidelines: Procurement under IBRD Loans and IDA Credits, dated May 2004, the Bank permits firms and individuals from all countries to offer goods, works and services for Bank-financed projects. As an exception, firms of a Country or goods manufactured in a Country may be excluded if:

Para 1.8 (a) (i): 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 for the supply of the Goods or Works required, or

Para 1.8 (a) (ii): 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.

2. For the information of borrowers and bidders, at the present time firms, goods and services from the following countries are excluded from this bidding:

(a) With reference to paragraph 1.8 (a) (i) of the Guidelines:

(b) With reference to paragraph 1.8 (a) (ii) of the Guidelines:

PART 2 – Services Requirements

Section VI. Schedules of Services Requirements

[This section includes the various schedules that comprise the contract specific Management Services requirements, completed by the employer as appropriate.]

Schedule A: Recitals and Objectives	104
Schedule B: Services.....	104
Schedule C: Know-how Transfer and Training.....	104
Schedule D: Performance Targets	105
Schedule E: Contractor's Personnel	105
Schedule F: Specified Capital Works and Finance.....	105
Schedule G: Contractor's Remuneration	106
Schedule H: Procurement Rules	109
Schedule I: Delegation of Management Authority	109
Schedule J: Financial Management of the Utility.....	110
Schedule K: Reporting Requirements.....	110
Schedule L: Utility Personnel Retrenchment.....	110
Schedule M: Insurance Required	110
Schedule N : Extension and Rebidding	111

Schedule A: Recitals and Objectives

A.1 Recitals

[Insert Background and Context – See Section VII, General Conditions, Sub-Clause 1.6.1]

A.2 Objectives

[Insert Objectives – See Section VII, General Conditions, Sub-Clause 1.7]

Schedule B: Services

Table 1: Services

Services	Pre-Conditions
<p><i>[List services as required including:</i></p> <ul style="list-style-type: none"> ▪ <i>General management of the utility</i> ▪ <i>Specific Services such as</i> <ul style="list-style-type: none"> <i>i) Improving billing system</i> <i>ii) Developing maintenance plans</i> <i>iii) Managing network extensions</i> <i>iv) Managing meter installations</i> <i>v) Etc]</i> 	<p><i>[For each service, list key complementary inputs, such as loans, capital costs, Government decisions, on which it depends]</i></p>

Schedule C: Know-how Transfer and Training

C.1 Know-how and systems to be transferred

C.2 Software, systems, and manuals to be left at the end of the contract

C.3 Training program required

Schedule D: Performance Targets

Table 2: Performance Targets

	Periods			
Performance Targets		<i>[Insert target value for each period]</i>		
<i>[Insert indicators to be used]</i>				

Schedule E: Contractor's Personnel

[List positions and Key Staff members and Key Subcontractors.]

[Specify Substitution Fee for Key Staff and Key Subcontractors. See Section VII, General Conditions, Sub-Clauses 3.6 and 8.2. The Substitution fee should be high enough to deter changes, but not so large as to seem punitive to the Contractor. A figure of US\$10,000 might be about right, but this should be assessed case by case.]

Schedule F: Specified Capital Works and Finance

[Specify any Capital Works the Contractor is to manage, and its role.]

[Specify any Finance the Contractor is to procure, and its role. See Section VII, General Conditions, Clause 9.]

[When the Contractor is to be responsible for sourcing, negotiating, and otherwise procuring finance for the Utility, these obligations need to be thoroughly spelled out.]

Schedule G: Contractor's Remuneration

[See Section VII, General Conditions, Sub-Clause 12.1.]

G.1 Contractor's Base Remuneration

Table 3: Base Remuneration

Period					
Amount Currency Units					

[List Base Remuneration to be paid in each period or delete above and describe alternative basis for Base Remuneration payments, e.g., on basis of staff inputs times unit rates]

G.2 Contractor's Incentive Remuneration

[Insert here amount to be paid for achieving performance targets in schedule D]

G.3 Contractor's Capital Works Remuneration

[Insert remuneration for managing Capital Works. See Section VII, General Conditions, Sub-Clause 9.2]

G.4 Contractor's Sourcing of Finance Remuneration

[Insert any remuneration for managing finance raising. See Section VII, General Conditions, Sub-Clause 9.3]

G.5 Contractor's Other Remuneration

[Insert any other remuneration to be paid]

G.6 Payment Terms

[Insert payment terms.]

G.7 Advance Payments

Amount of Advance Payment _____

[Should generally be enough to cover Contractor's expected mobilization costs. See Technical Note, Section 4.8.3]

[Insert here rules for repaying advance payment, for example by deductions from Base Remuneration payments. See Section VII, General Conditions, Sub-Clause 12.2]

G.8 Rate for Delayed Payments

[Insert here – see Section VII, General Conditions, Sub-Clause 12.3]

G.9 Adjustment of Remuneration

G.9 Adjustment of Remuneration

[Note: In order to adjust the remuneration for foreign and/or local inflation, a price adjustment provision should be included here if the contract has duration of more than 18 months or if the foreign or local inflation is expected to exceed 5% per annum. The adjustment should be made every 12 months after the date of the contract for remuneration in foreign currency and – except if there is very high inflation in the Employer’s country, in which case more frequent adjustments should be provided for – at the same intervals for remuneration in local currency. Remuneration in foreign currency should be adjusted by using the relevant index for salaries in the country of the respective foreign currency (which normally is the country of the Contractor) and remuneration in local currency by using the corresponding index for the Employer’s country. A sample provision is provided below for guidance:

Payments for remuneration made in accordance with Section VII, General Conditions, Clause 12.1 in *[foreign and/or] [local]* currency shall be adjusted as follows:

- (a) Remuneration paid in foreign currency pursuant to the rates set forth in Section G.1 of Schedule G shall be adjusted every 12 months (and, the first time, with effect for the remuneration earned in the 13th calendar month after the date of the Contract) by applying the following formula:

$$R_f = R_{fo} \times \frac{I_f}{I_{fo}} \quad \{ \text{or} \quad R_f = R_{fo} \times \frac{I_f}{I_{fo}} \}$$

where R_f is the adjusted remuneration, R_{fo} is the remuneration payable on the basis of the rates set forth in Section G.1 of Schedule G for remuneration payable in foreign currency, I_f is the official index for salaries in the country of the foreign currency for the first month for which the adjustment is supposed to have effect, and I_{fo} is the official index for salaries in the country of the foreign currency for the month of the date of the Contract.

- (b) Remuneration paid in local currency pursuant to the rates set forth in Section G.1 of Schedule G shall be adjusted every *[insert number]* months (and, for the first time, with effect for the remuneration earned in the *[insert number]*th calendar month after the date of the Contract) by applying the following formula:

$$R_l = R_{lo} \times \frac{I_l}{I_{lo}} \quad \{ \text{or} \quad R_l = R_{lo} \times \frac{I_l}{I_{lo}} \}$$

where R_l is the adjusted remuneration, R_{lo} is the remuneration payable on the basis of the rates set forth in Section G.1 of Schedule G for remuneration payable in local currency, I_l is the official index for salaries in the Employer’s country for the first month for which the adjustment is to have effect and, I_{lo} is the official index for salaries in the Employer’s country for the month of the date of the Contract.]

Schedule H: Procurement Rules

[Insert in this Schedule any specific procurement rules the contractor is to observe. See Section VII, General Conditions, Sub-Clause 9.4]

H1. Procurement for Utility Operations

H2. Procurement for Services

H3. Procurement for Utility Capital Works

H4. Procurement for Specified Capital Works

Schedule I: Delegation of Management Authority

Table 4: Delegation of Management Authority

Delegations	Limits
Delegated power to manage Utility Personnel <i>[List here delegated powers if any]</i>	<i>[List here limits or controls on each delegated power]</i>
Delegated power to commit Utility to expenditure <i>[List here delegated powers if any]</i>	
Delegated power to commit Utility to borrowing <i>[List here delegated powers if any]</i>	
Delegated power to enter contracts <i>[List here delegated powers if any]</i>	
Any other delegated power <i>[List here delegated powers if any]</i>	

Schedule J: Financial Management of the Utility

[Specify here how to deal with cash shortfall and other Utility financial management issues- See Section VII, General Conditions, Sub-Clause 12.6.2]

Schedule K: Reporting Requirements

[Insert reports either Party is to produce including contents, deadlines and formats. See Section VII, General Conditions, Clauses 10 and 14.]

Schedule L: Utility Personnel Retrenchment

[Enter here any limits on retrenchment, or any retrenchment plan which is to be implemented. See Section VII, General Conditions, Sub-Clause 11.7]

Schedule M: Insurance Required

Table 5: Insurance Required

Risk	Insuring Party	Amount per occurrence	Minimum Total Limit	Detailed description of risk
Protection of Contractor's Personnel				
Professional Indemnity				
Public Liability				
Motor Vehicle				

Schedule M: Insurance Required (continued)

Periods for submission of insurance: (a) evidence of insurance. (b) relevant policies	<i>[Insert period for submission of evidence of insurance and policy. Period may be from 14 days to 28 days.]</i> _____ days _____ days
Maximum amount of deductibles for insurance of the Employer's risks	<i>[Insert maximum amount of deductibles]</i>

Schedule N : Extension and Subsequent Bidding

[See Section VII, General Conditions, Sub-Clause 19.4]

PART 3 – Conditions of Contract and Contract Forms

Section VII. General Conditions (GC)

[Name of Employer]

[Name of Contract]

Section VII. General Conditions (GC)

1.	Definition and Interpretation.....	120
1.1	Definitions.....	120
1.2	Interpretation.....	124
1.3	Communications.....	125
1.4	Law and Language.....	125
1.5	Priority of Documents.....	125
1.6	Recitals and Objectives.....	126
2.	Commencement and Duration.....	126
2.1	Conditions of Effectiveness.....	126
2.2	Commencement.....	127
2.3	Duration.....	127
3.	General Provisions.....	127
3.1	Assignment.....	127
3.2	Contractor's Representative.....	127
3.3	Employer's Representative.....	128
3.4	Communications by the Contractor.....	128
3.5	Subcontractors.....	128
3.6	Key Subcontractors.....	129
3.7	Assignment of Benefit of Subcontract.....	129
3.8	Compliance with Laws.....	129
3.9	Joint and Several Liability.....	129
3.10	Inspections and Audit by the Bank.....	130
4.	Obligations of the Contractor.....	130
4.1	Services to be Performed and Other Obligations.....	130
4.2	Pre-Conditions.....	130
4.3	Non Availability of the Pre-Conditions.....	130
4.4	Cost of Performing the Services.....	131
5.	Conflict of Interest.....	131
5.1	General.....	131
5.2	Contractor not to benefit from commissions, discounts, etc.....	131
5.3	Contractor and Affiliates not to engage in certain activities.....	131
5.4	Prohibition of conflicting activities.....	131
6.	Know-How Transfer and Training.....	131
6.1	Requirement to transfer know-how and systems.....	131
6.2	Requirement to provide training.....	132
6.3	Cost of know-how transfer and training.....	132

7.	Performance Targets	132
8.	Staff to be Provided by the Contractor.....	132
8.1	Provision of Contractor’s Personnel	132
8.2	Substitution of Contractor’s Key Staff Member or Key Subcontractor	132
8.3	Labor Laws	133
8.4	Health and Safety	133
8.5	Contractor’s Personnel Qualifications	133
8.6	Foreign Personnel	133
9.	Procurement and Management of Capital Works and Finance.....	134
9.1	Responsibility to Manage Utility Capital Works and Finance	134
9.2	Responsibilities for Specified Capital Works	134
9.3	Responsibilities for Specified Finance.....	134
9.4	Procurement Rules	134
10.	Contractor’s reporting	135
10.1	Contractor’s reporting requirements	135
11.	Delegation of Management Authority to the Contractor	135
11.1	Delegation of Management Authority	135
11.2	Contractor to be advisor on other management matters	135
11.3	Further Delegation during the term of the Contract.....	136
11.4	Purpose of Exercise of Delegated Management Authority.....	136
11.5	Suspension of Delegated Management Authority	136
11.6	Utility’s Personnel	136
11.7	Utility Personnel Retrenchment.....	136
12.	Contractor’s Remuneration and Costs	136
12.1	Contractor’s Remuneration	136
12.2	Advance Payment	137
12.3	Delayed Payment	137
12.4	Sufficiency of the Contractor Remuneration	138
12.5	Contractors Costs and Account.....	138
12.6	Utility Financial Issues	138
13.	Obligations and Rights of the Employer.....	138
13.1	Access to land	138
13.2	Right to use facilities	138
13.3	Payments by the Employer	139
13.4	Support by the Employer	139
13.5	Supervision by the Employer.....	139
13.6	Permits, Licenses or Approvals	139
13.7	Utility’s Personnel Cooperation.....	139
13.8	Employer’s Financial Arrangements	140
14.	Employer’s Reporting	140

14.1	Employer’s reporting requirements	140
15.	Intellectual and Industrial Property Rights	140
15.1	Intellectual Property and Copyright.....	140
15.2	Intellectual Property Infringements	141
15.3	Confidentiality Obligations of the Contractor	142
15.4	Confidentiality and Publication Obligations of the Employer.....	142
16.	Liability, Risk Allocation, Securities, Bonds and Insurance.....	142
16.1	Limitation of Liability.....	142
16.2	Indemnities.....	143
16.3	Performance Security.....	143
16.4	General Requirements for Insurances.....	144
16.5	Insurance Required	145
16.6	Employer’s Risks.....	145
16.7	Consequences of Employer’s Risks.....	146
17.	Force Majeure	147
17.1	Definition of Force Majeure	147
17.2	Notice of Force Majeure	147
17.3	Duty to Minimize Delay	147
17.4	Consequences of Force Majeure.....	148
17.5	Force Majeure Affecting Subcontractor	148
17.6	Optional Termination, Payment and Release.....	148
17.7	Release from Performance.....	148
18.	Suspension of Services	148
18.2	Employer’s Entitlement to Suspend the Services and Delegated Management Authority	149
19.	Contract Variation, Extension and Rebidding.....	150
19.1	Employer Variations	150
19.2	Value Management	150
19.3	Decision on Value Management Proposal.....	151
19.4	Adjustments for Changes in Law.....	151
19.5	Extension and Subsequent Bidding	151
20.	Dispute Resolution	152
20.1	Dispute Resolution.....	152
21.	Default and Termination	155
21.1	Notification and Cure Plans	155
21.2	Remedying the Default within the Applicable Cure Period	156
21.3	Failure to cure	156
21.4	Ways the Contract may be terminated.....	157
21.5	Termination by the Employer for Convenience.....	157
21.6	Termination by the Employer for Cause.....	157

21.7	Termination by the Contractor for Cause	158
21.8	Payment on Termination by the Employer for Convenience.....	159
21.9	Payment on Termination by the Employer for Cause.....	159
21.10	Payment on Termination by the Contractor for Cause	160
21.11	Payment on Termination for Prolonged Force Majeure	160
21.12	Actions on Termination	161

General Conditions

1. Definition and Interpretation

1.1 Definitions

In the Contract the following words and expressions shall have the meanings stated below, unless otherwise required by the context.

1.1.1 The Contract

- (a) “Contract” means the General Conditions, the Particular Conditions which include Part A and Part B, the Letter of Acceptance, the Letter of Bid, the Schedules, and any Addenda.
- (b) “Contract Data” means the pages completed by the Employer entitled Contract Data which constitute Part A of the Particular Conditions.
- (c) “Letter of Acceptance” means the letter of formal acceptance, signed by the Employer, of the Letter of Bid, including any annexed memoranda comprising agreements between and signed by both Parties. If there is no such letter of acceptance, the expression “Letter of Acceptance” means the Contract Agreement and the date of issuing or receiving the Letter of Acceptance means the date of signing the Contract Agreement.
- (d) “Letter of Bid” means the document entitled Letter of Bid, which was completed by the Contractor and includes the signed offer to the Employer for the Services.
- (e) “Schedules” means the documents entitled Schedule of Services Requirements, included in Section VI of the bidding document used to award the Contract.
- (f) “Bid” means the Letter of Bid.

1.1.2 Parties and Persons

- (g) “Bank” means the financing institution (if any) **named in the Contract Data**.
- (h) “Borrower” means the person (if any) **named as the borrower in the Contract Data**.
- (i) “Contractor” means the person(s) named as contractor in the Letter of Bid and the legal successors in title to this person(s).
- (j) “Contractor’s Personnel” means the Contractor’s Representative and all personnel whom the Contractor utilizes on the Facilities, who may include the staff, labor and other employees of the Contractor and of each Subcontractor (including Key Subcontractors); and any other personnel assisting the Contractor in the execution of the Services.
- (k) “Contractor’s Representative” means the person named by the Contractor in the Contract or appointed from time to time by the Contractor under Sub-Clause 21.7 [Contractor’s Representative], who acts on behalf of the Contractor.
- (l) “Employer” means the person **named as employer in the Contract Data** and the legal successors in title to this person.

- (g) “Employer’s Representative” means the person named by the Employer in accordance with Sub-Clause 3.3 (a) to represent and act for the Employer at all times during the performance of the Contract.
- (h) “Employer’s Personnel” means all staff employed by the Employer.
- (i) “Government” means the Government of the Country.
- (j) “Independent Expert” means the person appointed in accordance with Sub-Clause 20.1.2 [Independent Expert].
- (k) “Key Staff” means those individuals listed as Key Staff in the Bid, or any person appointed, with the agreement of the Employer, as a Key Staff, for a part of the Services; and the legal successors in title to each of these persons.
- (l) “Key Subcontractor” means those Subcontractors listed as Key Subcontractors in the Bid, or any person appointed, with the agreement of the Employer, as a Key Subcontractor, for a part of the Services; and the legal successors in title to each of these persons.
- (m) “Party” means the Employer or the Contractor, as the context requires, and “Parties” means both.
- (n) “Subcontractor” means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Services; and the legal successors in title to each of these persons.
- (o) “Third Party” means a person or an entity other than a Party, the Utility, the Utility Board, the Government, the Borrower or the Bank.
- (p) “Utility” means the utility (if any) **named in the Contract Data**.
- (q) “Utility Board” means the Board or other body with governance and management supervision responsibilities over the Utility specified in the Contract Data pursuant to Sub-Clause 1.1.2(o).

1.1.3 Dates, Tests, Periods and Completion

- (a) “Base Date” means the date 28 days prior to the latest date for submission of the Bid.
- (b) “Commencement Date” means the date defined under Sub-Clause 2.2 [Commencement].
- (c) “Day” means a calendar day and “year” means 365 days.
- (d) “Effective Date” has the meaning given in Sub-Clause 2.1 [Conditions of Effectiveness].

1.1.4 Money and Payments

- (a) “Contractor’s Account” means paid for the by the Contractor, as defined in Sub-Clause 12.5.1.
- (b) “Contractor’s Base Remuneration” means the Remuneration specified in Schedule G to be the Contractor’s Base Remuneration, or is no such amount is specified, the amount of the Contractor’s Remuneration which is not dependent on meeting Performance Targets.

- (c) “Contractor’s Remuneration” means the price defined in Clause 12.1 [Contractor’s Remuneration], and includes adjustments in accordance with the Contract.
- (d) “Cost” means all expenditure reasonably incurred (or to be incurred) by the Contractor, whether on or off the Facilities, including overhead and similar charges, but does not include profit.
- (e) “Foreign Currency” means a currency in which part (or all) of the Contractor’s Remuneration is payable, but not the Local Currency.
- (f) “Liquidated Damages on Termination for the Employer’s Convenience” means the amount specified in the Contract Data pursuant to Sub-Clause 21.10(f)(i) to be payable in the event of Termination by the Employer for Convenience pursuant to Sub-Clauses 21.5 and 21.8.
- (g) “Local Currency” means the currency of the Country.
- (h) “Utility’s Account” means paid for the by the Utility, as defined in Sub-Clause 12.6.1.

1.1.5 Services and Goods

- (a) “Contractor’s Equipment” means all apparatus, machinery, vehicles and other things required for the execution and completion of the Services and the remedying of any defects. But excludes Employer’s Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Facilities.
- (b) “Goods” means Contractor’s Equipment, Materials, Plant, or any of them as appropriate.
- (c) “Services” has the meaning given in Clause 4.1 [Services to be Performed and Other Obligations].

1.1.6 Corrupt or Fraudulent Practices

- (a) “Coercive Practice”¹³ is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.
- (b) “Collusive Practice”¹⁴ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.
- (c) “Corrupt Practice”¹⁵ is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.

¹³ “Party” refers to a participant in the procurement process or contract execution.

¹⁴ “Parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

¹⁵ “Another party” refers to a public official acting in relation to the procurement process or contract execution]. In this context, “public official” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

- (d) “Fraudulent Practice”¹⁶ is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.
- (e) “Obstructive Practice” is (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under Sub-Clause 3.10 [Inspections and Audits by the Bank].

1.1.7 Other Definitions

- (a) “Arbitration” means the process described as arbitration in Sub-Clause 20.1.4 [Arbitration].
- (b) “Capital Works” means construction work or the procurement and installation of capital equipment intended to extend, rehabilitate or replace the Facilities.
- (c) “Condition Precedent” means one of the Conditions of Effectiveness listed in Sub-Clause 2.1 [Conditions of Effectiveness].
- (d) “Contractor’s Documents” means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract.
- (e) “Country” means the country in which the Facilities (or most of it) is located, where the Services are to be executed.
- (f) “Cure Period” means, in respect of a Default Notice given to the Contractor under Sub-Clause 21.1 [Notification and Cure Plans], the period specified in the Default Notice (or if no such period is specified 10 Business Days from the date of the Default Notice) as varied or extended under Sub-Clause 21.2 [Remedying the Default within the Applicable Cure Period].
- (g) “Default” means a failure by a Party to perform its obligations under the Contract.
- (h) “Delegation of Management Authority” means the delegation to the Contractor of authority to manage the Facilities and the Utility which is granted under Clause 11 [Delegation of Management Authority to the Contractor].
- (i) “Pre-Conditions” means something the Employer, the Utility or a third party shall do or provide, on which performance of the Service is contingent, and which is listed as a dependency in Schedule B.
- (j) “Employer’s Equipment” means the apparatus, machinery and vehicles (if any) made available by the Employer for the use of the Contractor in the execution of the Services,

¹⁶ “Party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

as stated in the Specification; but does not include Plant which has not been taken over by the Employer.

- (k) “Facilities” means all assets of the Employer which are to be managed by the Contractor, and any other places as may be specified in the Contract as forming part of the Facilities.
- (l) “Force Majeure” is defined in Sub-Clause 17.1 [Definition of Force Majeure].
- (m) “Laws” means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.
- (n) “Objectives” has the meaning given under Sub-Clause 1.6.2 [Objectives].
- (o) “Performance Security” means the security (or securities, if any) under Sub-Clause 16.3 [Performance Security].
- (p) “Proposed Substitute Key Staff Member or Key Subcontractor” have the meaning given in Sub-Clause 8.2 [Substitution of Contractor’s Key Staff Member or Key Subcontractor].
- (q) “Recitals” has the meaning given under Sub-Clause 1.6.1 [Recitals].
- (r) “Specified Capital Works” means Capital Works which are the responsibility of the Contractor under Sub-Clause 9.2 [Responsibilities for Specified Capital Works].
- (s) “Substitution Fee” is the amount to be paid by the Employer for substituting another person in place of a Key Staff Member or Key Subcontractor, in accordance with Sub-Clause 8.2 [Substitution of Contractor’s Key Staff Member or Key Subcontractor].
- (t) “Unforeseeable” means not reasonably foreseeable and against which adequate preventive precautions could not reasonably be taken by an experienced contractor by the date for submission of the Bid.
- (u) “Utility Capital Works” means Capital Works which are not Specified Capital Works.
- (v) “Value Management Proposal” has the meaning given under Sub-Clause 19.2 [Value Management].
- (w) “Variation” means any change to the Services, which is instructed or approved as a variation under Clause 19.1 [Employer Variations].
- (x) “Variation Proposal” has the meaning given under Sub-Clause 19.1.1 [Decision on Employer’s Variation Request].
- (y) “Variation Request” has the meaning given under Sub-Clause 19.1 [Employer Variations].

1.2 Interpretation

In the Contract, except where the context requires otherwise:

- (a) words indicating one gender include all genders;
- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;

- (c) provisions including the word “agree”, “agreed” or “agreement” require the agreement to be 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 “Bid” is synonymous with “bid” and “Bidder” with “bidder” and “Bid documents” with “bidding documents”.
- (f) the marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

1.3 Communications

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

- (a) in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission **as stated in the Contract Data**; and
- (b) delivered, sent or transmitted to the address for the recipient’s communications **as stated in the Contract Data**. However:
 - (i) if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
 - (ii) if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Independent Expert, a copy shall be sent to the Employer’s Representative or the other Party, as the case may be.

1.4 Law and Language

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

The ruling language of the Contract shall be that **stated in the Contract Data**.

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

1.5 Priority of Documents

The documents forming the Contract (as attached hereto) 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 addenda Nos. (if any)

- (c) the Letter of Acceptance,
- (d) the Particular Conditions,
- (e) these General Conditions,
- (f) the Schedules of Services Requirements
- (g) the Letter of Bid

If an ambiguity or discrepancy is found in the documents, the Independent Expert appointed in accordance with Sub-Clause 20.1.2 [Independent Expert] will rule as to the interpretation. This ruling will be binding, unless one of the Parties refers it to Arbitration with 30 days of the ruling being given.

1.6 Recitals and Objectives

1.6.1 Recitals

The Recitals are the background facts about the Parties, the provision of utility services in the Country, and other facts and intentions set out in Schedule A (A.1). The Recitals are not legally binding, but may be used as context to assist in interpretation of the contract.

1.6.2 Objectives

The Objectives the Employer wishes to achieve by entering the Contract are set out in Schedule A (A.2)

2. Commencement and Duration

2.1 Conditions of Effectiveness

This Contract shall become effective from the date, or Effective Date, on which all the following Conditions of Effectiveness are fulfilled, except for Sub-Clause 2.1 [Conditions of Effectiveness], Sub-Clause 19.5 [Extension and Subsequent Bidding], and Clauses 1 [Definitions and Interpretations] and 3 [General Provisions], which become effective on the date of signature of the Letter of Acceptance.

- (a) If the Contractor is an unincorporated joint venture, notification to the Employer by the member of a joint venture of their leader, as required by Sub-Clause 3.9 [Joint and Several Liability]
- (b) Notification of the Contractor's Representative to the Employer by the Contractor as required by Sub-Clause 3.2 [Contractor's Representative].
- (c) Notification of the Employer's Representative to the Contractor by the Employer as required by Sub-Clause 3.3 [Employer's Representative].
- (d) Appointment of the Independent Expert in accordance with Sub-Clause 20.1.2 [Independent Expert].
- (e) Delivery of the Performance Security to the Employer by the Grantor in accordance with Sub-Clause 16.3 [Performance Security].
- (f) Other conditions **listed in the Contract Data.**

2.2 Commencement

- (a) Within (7) days of the satisfaction of the conditions specified in Sub-Clause 2.1 [Conditions of Effectiveness], the Employer shall issue the Certificate of Commencement to the Contractor. The date of issue of the Certificate of Commencement shall be the “Commencement Date”.
- (b) The Contractor shall commence the provision of the Services no later than 3 days after receipt of the Certificate of Commencement and the Employer shall return the Bid Security to the Contractor on such Date.
- (c) The Contractor and the Employer shall use their best effort and endeavors to procure the satisfaction of the Conditions of Effectiveness specified in Sub-Clause 2.1 [Conditions of Effectiveness] as soon as practicable and in any event no later than sixty (60) days after the date hereof.
- (d) If the conditions specified in Sub-Clause 2.1 [Conditions of Effectiveness] are not fulfilled or waived by mutual agreement of the Parties within ninety (90) days of the date hereof, each Party shall have the right to terminate this Contract immediately and neither Party hereto shall be liable to the other for any damages or losses in respect thereof, except that if the Contractor has intentionally failed to fulfill any of these conditions, the Contractor shall forfeit the Bid Security.

2.3 Duration

Unless terminated earlier in accordance with Clause 21 [Default and Termination], this Contract shall remain in effect until the period **stated in the Contract Data** has passed after the Commencement Date.

3. General Provisions

3.1 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.

3.2 Contractor’s Representative

The Contractor shall appoint a Contractor’s Representative and shall give him all authority necessary to act on the Contractor’s behalf under the Contract. If the Contractor is an unincorporated Joint Venture, the Contractor’s Representative shall have the authority to bind all members of the Joint Venture.

The Contractor’s Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Employer Representative has received prior notice signed by the

Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

The Contractor's Representative shall be fluent in the language for communications defined in Sub-Clause 1.4 [Law and Language]. If these other persons are not fluent in the said language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Employer's Representative.

3.3 Employer's Representative

- (a) The Employer shall name its representative before the Effective Date.
- (b) The Employer may change its representative from time to time and shall give notice of the change without delay. The Employer shall not change its representative at a time and in such a manner as to impede the progress of the Services.
- (c) The Employer's Representative shall represent and act for the Employer at all times during the performance of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract by the Employer shall be given by the Employer's Representative otherwise provided.

3.4 Communications by the Contractor

All notices, instructions, information and other communications given by the Contractor to the Employer under the Contract shall be given to the Employer's Representative except as herein otherwise provided.

3.5 Subcontractors

The Contractor shall not subcontract the whole of the Services.

The Contractor shall be responsible for the acts or defaults of any Subcontractor, his agents or employees, as if they were the acts or defaults of the Contractor. **Unless otherwise stated in the Contract Data:**

- (a) the Contractor shall not be required to obtain consent to suppliers solely of Materials, or to a subcontract for which the Subcontractor is named in the Contract;
- (b) the prior consent of the Employer's Representative shall be obtained to other proposed Subcontractors;
- (c) the Contractor shall give the Employer's Representative not less than 28 days' notice of the intended date of the commencement of each Subcontractor's work, and of the commencement of such work on the Facilities; and
- (d) each subcontract shall include provisions which would entitle the Employer to require the subcontract to be assigned to the Employer under Sub-Clause 3.7 [Assignment of Benefit of Subcontract] (if or when applicable) or in the event of termination under Sub-Clause 21.5 [Termination by Employer for Convenience].

The Contractor shall ensure that the requirements imposed on the Contractor by Sub-Clause 15.3 [Confidentiality Obligations of the Contractor] apply equally to each Subcontractor.

Where practicable, the Contractor shall give fair and reasonable opportunity for contractors from the Country to be appointed as Subcontractors.

3.6 Key Subcontractors

The Contractor shall use the services of any Key Subcontractor specified in its Bid, unless the Employer is reasonably satisfied that the:

- (a) The Key Subcontractor is not available; or
- (b) The performance of the Services will not suffer if the Subcontractor is not used.

The Contractor may provide another person (the “Proposed Substitute Key Subcontractor”) in substitution for a Key Subcontractor (as identified in Schedule E) only on fulfillment of the following conditions:

- (a) Proving to the reasonable satisfaction of the Employer that the Key Subcontractor is not available;
- (b) Proving to the reasonable satisfaction of the Employer that the Proposed Substitute Key Subcontractor is as suitable for the services as the Key Subcontractor that is not available.
- (c) Payment by the Contractor of a Substitution Fee of the amount specified in Schedule E.

3.7 Assignment of Benefit of Subcontract

If a Subcontractor’s obligations extend beyond the expiry date of the Contract and the Employer, prior to this date, instructs the Contractor to assign the benefit of such obligations to the Employer, then the Contractor shall do so. Unless otherwise stated in the assignment, the Contractor shall have no liability to the Employer for the work carried out by the Subcontractor after the assignment takes effect.

3.8 Compliance with Laws

The Contractor shall, in performing the Contract, comply with applicable Laws. **Unless otherwise stated in the Contract Data:**

- (a) the Employer shall have obtained (or shall obtain) the planning, zoning, resource abstraction, environmental discharge permission for the normal operation of the Facilities, and the Employer shall indemnify and hold the Contractor harmless against and from the consequences of any failure to do so; and
- (b) the Contractor shall give all notices, pay all taxes, duties and fees, and obtain all permits, licenses and approvals, as required by the Laws in relation to the execution and completion of the Services in so far as these relate to the Services themselves and not to the operation of the Facilities, and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so.

3.9 Joint and Several Liability

If the Contractor constitutes (under applicable Laws) a Joint Venture of two or more persons:

- (a) these persons shall be deemed to be jointly and severally liable to the Employer for the performance of the Contract;
- (b) these persons shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these persons; and
- (c) the Contractor shall not alter its composition or legal status without the prior consent of the Employer.

3.10 Inspections and Audit by the Bank

The Contractor and its Subcontractors (i) shall keep accurate and systematic accounts and records in respect of the Services under this Contract, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time changes and costs, and the bases thereof, and (ii) shall permit the Employer or its designated representative and/or the Bank, and up to five (5) years from expiration or termination of this Contract, to inspect the accounts, records and other documents relating to the submission of proposals and contract performance, and make copies thereof as well as to have them audited by auditors appointed by the Employer or the Bank, if so required by the Employer or the Bank as the case may be. Any act intended to materially impede the exercise of the Bank's inspection and audit rights may amount to Obstructive Practice as defined under Sub-Clause 11.6 (e). The Contractor's attention is drawn to Sub-Clause 21.6 (h) which provides inter alia, that Obstructive Practice constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility under the Procurement Guidelines of the Bank).

4. Obligations of the Contractor

4.1 Services to be Performed and Other Obligations

The Contractor shall perform the Services set out in Schedule B – Services and the other obligations described in Clauses 4, 5, 6, 7, 8, and 9.

4.2 Pre-Conditions

The performance by the Managing Contractor of its obligations under the Contract shall be contingent on the availability of the Pre-Conditions listed in Schedule B.

4.3 Non Availability of the Pre-Conditions

Unless Schedule B provides a different mechanism for determining the implications of non-availability of the Services, in the event that any of the Pre-Conditions pursuant to Sub-Clause 4.2 [Pe-Conditions] are not available to the extent that, in the opinion of the Independent Expert, the non-availability of such Pre-Conditions:

- (a) makes it unreasonable to expect the Contractor to perform some or all of the Services, the Contractor shall be relieved of its responsibilities to perform those services, or
- (b) affects the achievement of any of the Performance Targets, such Performance Targets shall be reduced for the duration for which the Pre-Conditions are not available to the extent that the Independent Expert determines at its sole discretion.

4.4 Cost of Performing the Services

The performance of the Services shall be at the cost of the Contractor, unless otherwise specified in Schedule B.

5. Conflict of Interest

5.1 General

The Contractor shall hold the Employer's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.

5.2 Contractor not to benefit from commissions, discounts, etc.

- (a) The payment of the Contractor pursuant to Sub-Clause 12.1 [Contractor's Remuneration] shall constitute the Contractor's only payment in connection with this Contract and, subject to Sub-Clause 5.3 [Contractor and Affiliates not to Engage in Certain Activities] hereof, the Contractor shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and the Contractor shall use its best efforts to ensure that any Sub-Contractors, as well as the Personnel and agents of either of them, similarly shall not receive any such additional payment.
- (b) Furthermore, if the Contractor, as part of its obligations under the Contract, has the responsibility of advising the Employer on the procurement of goods, works or services, the Contractor shall comply with the Bank's applicable procurement guidelines, and shall at all times exercise such responsibility in the best interest of the Employer. Any discounts or commissions obtained by the Contractor in the exercise of such procurement responsibility shall be for the account of the Employer.

5.3 Contractor and Affiliates not to engage in certain activities

The Contractor agrees that, during the term of this Contract and after its termination, the Contractor and any entity affiliated with the Contractor, as well as any Subcontractor and any entity affiliated with such Subcontractors, shall be disqualified from subsequently providing goods, works or services (other than consulting services) for a project resulting from or directly related to the Contractor's Services for the preparation or implementation of such project.

5.4 Prohibition of conflicting activities

The Contractor shall not engage, and shall cause its Personnel as well as their Sub-Contractors and their Personnel not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.

6. Know-How Transfer and Training

6.1 Requirement to transfer know-how and systems

The Contractor shall:

- (a) Transfer such know-how, management systems, manuals, utility management software and similar knowledge, tools and capacity for managing a utility as are specified in Schedule C.
- (b) Leave with the Utility such, at the Termination or expiration of the Contract, management systems, manuals, utility management software and similar tools as are specified in Schedule C.

6.2 Requirement to provide training

The Contractor shall provide such training and development of Utility Personnel as is specified in Schedule C.

6.3 Cost of know-how transfer and training

The performance of the obligations under this Clause 5 shall be at the cost of the Contractor, unless otherwise specified in Schedule C.

7. Performance Targets

The Performance Targets will be the targets for key indicators set out in Schedule D.

In performing the Services and exercising its Delegated Management Authority, the Contractor shall use its best endeavors to achieve or exceed the Performance Targets.

Achieving the Performance Targets is not to result in any additional remuneration to the Contractor, except to the extent specified in Schedule G (G.2).

Failure to achieve the Performance Targets is not to result in any penalty, or create ground for termination of the Contract, except to the extent specified in Schedule C or Schedule G.

8. Staff to be Provided by the Contractor

8.1 Provision of Contractor's Personnel

The Contractor shall provide the Contractor's Personnel set out in Schedule E, to fill the positions listed in Schedule E, for the periods or days specified in Contractor's Personnel.

All costs of providing the Staff specified in Schedule E are to be for the Contractor's Account, unless otherwise specified in Schedule E.

8.2 Substitution of Contractor's Key Staff Member or Key Subcontractor

The Contractor may provide another person (the "Proposed Substitute Key Staff Member" or "Proposed Substitute Key Subcontractor") in substitution for a Key Staff or a Key Subcontractor (as identified in Schedule E) only on fulfillment of the following conditions:

- (a) Proving to the reasonable satisfaction of the Employer that the Key Staff Member or Key Subcontractor is not available because of ill-health, death, or because he is no longer employed or subcontracted by the Contractor
- (b) Proving to the reasonable satisfaction of the Employer that the Proposed Substitute Key Staff Member or Key Subcontractor is as suitable for the job as the Key Staff Member or Key Subcontractor who is not available. To satisfy itself as to the suitability of the

Proposed Substitute Key Staff Member or Proposed Substitute Key Subcontractor, the Employer may, among other things:

- (i) check the references of the Proposed Substitute Key Staff Member or Proposed Key Subcontractor, and/or
 - (ii) require the Proposed Substitute Key Staff Member or Proposed Substitute Key Subcontractor to attend an interview with the Employer in the Country. Any costs incurred in the Proposed Substitute Key staff Member or Proposed Substitute Key Subcontractor attending the interview will be for the Contractor's Account.
- (c) Payment by the Contractor of a Substitution Fee of the amount specified in Schedule E.

8.3 Labor Laws

The Contractor shall comply with all the relevant labor Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

The Contractor shall require the Contractor's Personnel to obey all applicable Laws, including those concerning safety at work. The Contractor shall also require its Subcontractors to do the same with their respective personnel.

8.4 Health and Safety

The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel.

8.5 Contractor's Personnel Qualifications

The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Employer's Representative may require the Contractor to remove (or cause to be removed) from the Facilities or the performance of the Services, any Contractor's Personnel, including the Contractor's Representative if applicable, who:

- (a) persists in any misconduct or lack of care,
- (b) carries out duties incompetently or negligently,
- (c) fails to conform with any provisions of the Contract, or
- (d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment.

If requested by the Employer, the Contractor shall then substitute the person removed with another person. This substitution must be in accordance with Sub-Clause 8.2.

8.6 Foreign Personnel

The Contractor may bring in to the Country any foreign personnel who are necessary for the execution of the Services except for the categories of staff **specified in the Contract Data** that, in accordance with applicable Country Laws, must be hired locally if and to the extent that a sufficient number of appropriately qualified staff is locally available. The Contractor shall ensure that these personnel are provided with the required residence visas and work permits. The

Employer will, if requested by the Contractor, use his best endeavours in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national, or government permission required for bringing in the Contractor's personnel.

The Contractor shall be responsible for the return of these personnel to the place where they were recruited or to their domicile. In the event of the death in the Country of any of these personnel or members of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for their return or burial.

9. Procurement and Management of Capital Works and Finance

9.1 Responsibility to Manage Utility Capital Works and Finance

Unless otherwise specified in Schedule F, the Contractor will not be directly responsible for Capital Works or sourcing finance, but will be responsible for managing the Utility Personnel responsible for these functions, to the extent that this is within the definition of Services to be performed, and the Delegation of Management Authority.

9.2 Responsibilities for Specified Capital Works

The Contractor will be responsible for designing, procuring, managing and supervising Capital Works to the extent set out in Schedule F.

The cost of Specified Capital Works will be to the Utility's Account, unless otherwise specified in Schedule F.

The Contractor will not receive any remuneration for discharging its responsibilities under this Sub-Clause 9.2, unless otherwise specified in Schedule G.

9.3 Responsibilities for Specified Finance

The Contractor will be responsible for sourcing, negotiating or otherwise procuring finance for the Utility as specified in Schedule F.

The Contractor will not receive any remuneration for discharging its responsibilities under this Sub-Clause, unless otherwise specified in Schedule G.

9.4 Procurement Rules

9.4.1 Procurement for Utility operations

In discharging its responsibilities to procure, or manage the procurement of, materials, supplies and services for the operations of the Utility, the Contractor will follow good commercial practice designed to ensure fairness, transparency and value for money, including any specific procurement rules set out in Schedule H.

9.4.2 Procurement for Provision of the Services

The Contractor is free to procure anything required for the provisions of Services as it wishes provided that:

- (a) This Contract was awarded competitively to the satisfaction of the Bank, and

(b) The thing being procured is for the Contractor's Account.

Except that if there are any provisions governing the procurement of things required for the provisions of the Services stated in Schedule H, the Contractor shall comply with those provisions.

9.4.3 Procurement for Utility Capital Works and Specified Capital Works

In discharging its responsibilities to procure, or manage the procurement of anything required for Utility Capital Works and Specified Capital Works, the Contractor will follow good commercial practice designed to ensure fairness, transparency and value for money, including any specific procurement rules set out in Schedule H.

10. Contractor's reporting

10.1 Contractor's reporting requirements

Unless otherwise stated in Schedule K, monthly progress reports shall be prepared by the Contractor and submitted to the Employer's Representative in six copies. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates. The Contractor shall comply with all other reporting requirements specified in Schedule K.

11. Delegation of Management Authority to the Contractor

11.1 Delegation of Management Authority

Regardless of the relationship and interdependency between the Utility Board and the Employer, as may be defined by the Utility's charter or other internal documents, for the purpose of this Contract, the Employer is the Party to the Contract and is deemed to act on behalf and with the authorization of the Utility Board. In this capacity, the Employer confers on the Contractor the Delegated Management Authority over the areas and to the extent specified in Schedule I. This delegation is irrevocable during the term of the Contract.

11.2 Contractor to be advisor on other management matters

All management authority not explicitly delegated to the Contractor is retained by the Employer.

If in the Contractor's opinion it would be beneficial to the performance of the Services and achievement of the Objectives for such management authority to be exercised in a particular way, the Contractor shall advise the Employer of this, and provide reasons in writing. The Employer will give the Contractor written notice of its decision within the period **specified in the Contract Data**. If the Employer decides not to follow the Contractor's advice, it will give written reasons for its decision when it informs the Contractor.

The Contractor shall comply with the decisions of the Employer in management matters which are not the subject of Delegated Management Authority, to the extent that this is consistent with this Contract, and in particular with Schedule B, Schedule F, and Schedule H.

11.3 Further Delegation during the term of the Contract

The Employer may delegate further powers to the Contractor during the term of the Contract. Such further delegations are to be in writing. The delegations may be revocable or irrevocable, as specified in the delegation. Such delegations will be effective unless the Contractor refuses to accept the delegation. To be effective, such refusal must be given in writing within 30 days of receiving the notice of delegation.

11.4 Purpose of Exercise of Delegated Management Authority

The Contractor shall exercise any Delegated Management Authority to perform the Services and meet the Performance Targets, in accordance with good utility management practices.

11.5 Suspension of Delegated Management Authority

The delegation of powers shall be suspended during periods of Suspension of the Service, in accordance with Sub-Clause 18.2 [Employer's Entitlement to Suspend the Services and Delegated Management Authority].

11.6 Utility's Personnel

The Utility's Personnel will continue to be employed by the Utility. They will not become employees of the Contractor by virtue of this Contract.

The Contractor's Personnel will not be employees of the Utility by virtue of this Contract.

The Contractor's power to manage the Utility's Personnel will be as set out in the delegation of management authority to the Contractor under this Clause.

11.7 Utility Personnel Retrenchment

Provisions related to staff retrenchment set out in Schedule L will be binding on the Parties.

12. Contractor's Remuneration and Costs

12.1 Contractor's Remuneration

12.1.1 Amount and conditions of payment

The amount and conditions of payment of the Contractor's Remuneration shall be as specified in Schedule G.

12.1.2 Responsibility for Payment

Payment of the Remuneration shall be the responsibility of the Employer, unless otherwise specified in Schedule G.

12.1.3 Payment to be made without penalty or deduction

The Remuneration shall be paid in full without penalty or deduction unless otherwise provided in Schedule G, or this Contract.

12.1.4 Dates for payment

The dates for payment of the Contractor's Remuneration shall be as specified in Schedule G.

12.1.5 Currencies of Payment

The Contractor Remuneration shall be paid in the currency or currencies named in Schedule G.

12.1.6 Adjustment of Remuneration for Inflation

The Contractor Remuneration shall be adjusted as stated in Schedule G.

12.2 Advance Payment

The Advance Payment or payment to the Contractor in advance of work done, if any, shall be as specified in Schedule G.

Any advance payment shall be paid as an interest-free loan for mobilization, when the Contractor submits a guarantee in accordance with this Sub-Clause. The total Advance Payment, the number and timing of installments (if more than one), and the applicable currencies and proportions, shall be as stated in Schedule G.

The guarantee shall be in amounts and currencies equal to the Advance Payment. This guarantee shall be issued by an entity and from within a country (or other jurisdiction) approved by the Employer, and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer.

The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid, but its amount may be progressively reduced by the amount repaid by the Contractor. If the terms of the guarantee specify its expiry date, and the advance payment has not been repaid by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid.

Unless stated otherwise in Schedule G, the advance payment shall be repaid through equal percentage deductions from the Contractor's Base Remuneration.

If the advance payment has not been repaid prior to the Termination of the Contract, the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Employer.

12.3 Delayed Payment

If the Contractor does not receive payment in accordance with Sub-Clause 12.1 [Contractor's Remuneration], the Contractor shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period of delay. This period shall be deemed to commence on the date for payment.

Unless otherwise stated in Schedule G, these financing charges shall be calculated at the annual rate of three percentage points above the discount rate of the central bank in the country of the currency of payment, and shall be paid in such currency.

The Contractor shall be entitled to this payment without formal notice or certification, and without prejudice to any other right or remedy.

12.4 Sufficiency of the Contractor Remuneration

The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Contractor Remuneration, taking into account all available data, and fully understanding the Services to be provided, and the conditions in which the Services are to be performed.

12.5 Contractors Costs and Account

12.5.1 Contractor's Account

An item which is expressed to be "for the Contractor's Account" shall be paid for by the Contractor from its own funds and not from the funds of the Employer or the Utility. The Contractor will be responsible for meeting the cost of items for the Contractor's Account whether or not the Contractor's Remuneration is sufficient to cover the cost, or whether or not the cost was anticipated, and whether or not the Contractor has the funds available.

12.6 Utility Financial Issues

12.6.1 Utility's Account

An item which is expressed to be "for the Utility's Account" shall be paid for by the Employer.

All costs which are not specified by this Contract to be for the Contractor's Account, or the responsibility of another person, shall be for the Employer's Account.

12.6.2 Procedure if the Utility's incomings are not sufficient to cover its outgoings

The Utility shall cause the Parties responsible for its financial management to manage it prudently and in accordance with good commercial practice, and attempt to pay the obligations of the Utility as they fall due.

In the event that the Utility is unable to pay its obligations as they fall due, the Utility shall cause the Parties responsible for its financial management to follow the rules and processes set out in Schedule J.

13. Obligations and Rights of the Employer

13.1 Access to land

The Employer hereby grants free of charge to the Contractor, as from the Commencement Date, access to all land within the Service Area in respect of which access is required for the performance of the Services by the Contractor.

13.2 Right to use facilities

The Employer hereby grants free of charge to the Contractor, as from the Commencement Date, the right to access and use the Facilities.

If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right, the Contractor shall be entitled on request to an adjustment in the Operator Remuneration sufficient to put it in the same position it would have been in had the Employer honoured its obligations under this Sub-Clause.

13.3 Payments by the Employer

The Employer shall make payments to the Contractor in accordance with the terms of this Contract.

13.4 Support by the Employer

The Employer shall use its best efforts to ensure that the Government shall provide the Contractor such assistance as may be required (e.g., issuance of permits, licenses, approvals, authorizations, etc.) during the term of this Contract.

The Employer shall use its best efforts to ensure adequate finance pursuant to the Project as defined herein to fund any capital investment program and shall keep the Contractor informed of the progress of such applications and negotiations.

13.5 Supervision by the Employer

- (a) The Employer shall supervise the Contractor in the performance of its obligations under this Contract.
- (b) The Employer shall review and approve or comment upon all reports submitted by the Contractor pursuant Clause 14 [Employer's Reporting].
- (c) The Employer shall be given reasonable access during normal working hours to premises, works and sites of the Contractor for the purposes of inspection and certification. For the avoidance of doubt the term "Employer" as used herein shall include duly authorized officers, employees, representatives of the Employer and the Financial and Technical Auditors.

13.6 Permits, Licenses or Approvals

The Employer shall (where he is in a position to do so) provide reasonable assistance to the Contractor at the request of the Contractor:

- (a) by obtaining copies of the Laws of the Country which are relevant to the Contract but are not readily available, and
- (b) for the Contractor's applications for any permits, licenses or approvals required by the Laws of the Country:
 - (i) which the Contractor is required to obtain
 - (ii) for the delivery of Goods, including clearance through customs, and
 - (iii) for the export of Contractor's Equipment when it is removed from the Facilities.

13.7 Utility's Personnel Cooperation

The Employer and the Utility shall be responsible for ensuring that the Utility's Personnel and other contractors on the Facilities co-operate with the Contractor's efforts in performance of the Services.

13.8 Employer's Financial Arrangements

The Employer shall submit, within 28 days after receiving any request from the Contractor, reasonable evidence that financial arrangements have been made and are being maintained which will enable the Employer to pay the Contractor Remuneration (as estimated at that time) in accordance with Clause 12 [Contractor's Remuneration]. Before the Employer makes any material change to his financial arrangements, the Employer shall give notice to the Contractor with detailed particulars.

In addition, if the Bank has notified to the Borrower that the Bank has suspended disbursements under its loan, which finances in whole or in part the execution of the Services, the Employer shall give notice of such suspension to the Contractor with detailed particulars, including the date of such notification, with a copy to the Independent Expert, within 7 days of the Borrower having received the suspension notification from the Bank. If alternative funds will be available in appropriate currencies to the Employer to continue making payments to the Contractor beyond a date 60 days after the date of Bank notification of the suspension, the Employer shall provide reasonable evidence in such notice of the extent to which such funds will be available.

14. Employer's Reporting

14.1 Employer's reporting requirements

The Employer shall comply with the reporting requirements specified in Schedule K.

15. Intellectual and Industrial Property Rights

15.1 Intellectual Property and Copyright

As between the Parties, the Contractor shall retain the copyright and other intellectual property rights in any technical or Employer's Representative inventions or innovations made by or on behalf of the Contractor in providing the Services and in the Contractor's, Parent's and Shareholders' proprietary software, as applicable, that the Contractor modified for use in connection with the Services (the "Contractor's Innovations and Software").

The Contractor, by signing the Contract, gives the Employer a non-terminable, transferable, non-exclusive, royalty-free license to copy, use and communicate the Contractor's Innovations and Software and any other software used or purchased by the Contractor in the performance of the Services (the "Other Software"), including making and using modifications of them. This license shall,

- (a) apply throughout the actual or intended working life, whichever is longer, of the relevant parts of the Facilities;
- (b) entitle any person in proper possession of the relevant part of the Facilities to copy, use and communicate the Contractor's Innovations and Software and the Other Software for the purposes of managing, operating and maintaining the Facilities;
- (c) in the case of Contractor's Innovations and Software and the Other Software which are in the form of computer programs and other software, permit their use on any computer at the Facilities and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor; and

- (d) entitle the Employer to make the Contractor's Innovations and Software and the Other Software available for inspection by a prospective bidder who may be involved in the process to select a Subsequent Contractor.

As between the Parties, the Employer owns and will continue to own all data with respect to the Facilities and Customers.

15.2 Intellectual Property Infringements

15.2.1 Meaning of Infringement and Claim

In this Sub-Clause, "infringement" means an infringement (or alleged infringement) of any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Services; and "claim" means a claim (or proceedings pursuing a claim) alleging an infringement.

15.2.2 Notice of Claims

Whenever a Party does not give notice to the other Party of any claim within 28 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under Sub-Clause 15.2 [Intellectual Property Infringement].

15.2.3 Contractor to Indemnify Employer

The Contractor shall indemnify and hold the Employer and the Utility harmless against and from any other claim which arises out of or in relation to the performance of the Services or the Contractor's management of the Utility.

15.2.4 Employer to indemnify Contractor

The Employer shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:

- (a) an unavoidable result of the Contractor's compliance with the Contract, or
- (b) a result of any Services being used by the Employer:
 - (i) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or
 - (ii) in conjunction with anything not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.

15.2.5 Right to manage settlement and litigation

If a Party is entitled to be indemnified under this Sub-Clause 15.2 [Intellectual Property Infringement], the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party.

15.3 Confidentiality Obligations of the Contractor

15.3.1 Confidentiality

The Contractor shall keep confidential and shall not, without the written consent of the Employer, divulge to any Third Party any documents, data or other information arising directly or indirectly from the performance of Services under the Contract, whether such information has been furnished prior to, during or following termination of the Contract.

However, the Contractor may furnish to its Subcontractors such documents, data and other information to the extent required for the Subcontractors to perform their work under the Contract, in which event the Contractor shall obtain from such Subcontractors an undertaking of confidentiality similar to that imposed on the Contractor under this Sub-Clause 15.3 [Confidentiality Obligations of the Contractor].

15.3.2 Use of information

The Contractor shall not use such documents, data and other information received from the Employer for any purpose other than as are required for the performance of the Contract. The Contractor shall not publish, permit to be published, or disclose any particulars of the Contract, Assets or Facilities in any trade or technical paper or advertising materials without the prior written consent of the Employer.

15.3.3 Exceptions for publicly available information

The obligations of the Contractor under Sub-Clause 15.3 [Confidentiality Obligations of the Contractor] shall not apply to that information which,

- (a) now or hereafter enters the public domain through no fault of the Contractor;
- (b) can be proven to have been possessed by the Contractor at the time of disclosure and which was not previously obtained, directly or indirectly, from the Employer; or
- (c) otherwise lawfully becomes available to the Contractor from a Third Party that has no obligation of confidentiality.

15.4 Confidentiality and Publication Obligations of the Employer

Unless otherwise stated in the Contract Data, the Employer has the right and intention to:

- (a) Publish the Contract in its entirety in the World Bank Private Participation in Infrastructure Database, and such other media as it deems appropriate, and
- (b) Publish the Performance Targets and the progress against those Performance Targets in appropriate mass circulation media in the Country.

16. Liability, Risk Allocation, Securities, Bonds and Insurance

16.1 Limitation of Liability

Neither Party shall be liable to the other Party for loss of use of any Services, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, whether in contract, tort or otherwise, other than as

specifically provided in Sub-Clause 21.9 [Payment on Termination by the Employer for Cause]; Sub-Clause 16.2 [Indemnities]; Sub-Clause 16.6.1 [Consequences of Employer's Risks] and Sub-Clause 15.1 [Intellectual Property and Copyright].

The total liability of the Contractor to the Employer, under or in connection with the Contract, whether in contract, tort or otherwise, shall not exceed the sum **stated in the Contract Data**, or (if such multiplier or other sum is not so stated), the Contractor Base Remuneration.

This Sub-Clause shall not limit liability in any case of fraud, deliberate default, gross negligence, or reckless misconduct by the defaulting Party.

16.2 Indemnities

The Contractor shall indemnify and hold harmless the Employer, the Employer's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

- (a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the execution and completion of the Services, unless attributable to any negligence, willful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents, and
- (b) damage to or loss of any property, real or personal, to the extent that such damage or loss arises out of or in the course of or by reason of the Contractor's performance or non-performance of the Services and the remedying of any defects, unless and to the extent that any such damage or loss is attributable to any negligence, willful act or breach of the Contract by the Employer, the Employer's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

The Employer shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, willful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents.

16.3 Performance Security

Unless an amount is **not stated in the Contract Data**, the Contractor shall obtain (at his cost) a Performance Security for proper performance, in the form, amount and currencies **stated in the Contract Data**.

The Contractor shall deliver the Performance Security to the Employer within 28 days after receiving the Letter of Acceptance, and shall send a copy to the Independent Expert. The Performance Security shall be issued by an entity and from within a country (or other jurisdiction) approved by the Employer, and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer. If the institution issuing the Performance Security is located outside the country of the Employer, it shall have a corresponding financial institution located in the country of the Employer to make it enforceable.

The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executed and completed the Services and been released from liability under this Contract. If the terms of the Performance Security specify its expiry date, and the Contractor has

not become entitled to receive the Performance Certificate by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Services have been completed and any defects have been remedied.

The Employer shall not make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract.

The Employer shall not make a claim under the Performance Security unless the Independent Expert first certifies that there are “prima facie” grounds for making a claim.

The Employer shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent to which the Employer was not entitled to make the claim.

The Employer shall return the Performance Security to the Contractor within 21 days after receiving a copy of the Performance Certificate.

16.4 General Requirements for Insurances

In this Clause, “insuring Party” means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant Sub-Clause.

Wherever the Contractor is the insuring Party, each insurance shall be effected with insurers and in terms approved by the Employer. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.

Wherever the Employer is the insuring Party, each insurance shall be effected with insurers and in terms consistent with the details annexed in Schedule M.

If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Clause, (i) the Contractor shall act under the policy on behalf of these additional joint insured except that the Employer shall act for Employer’s Personnel, (ii) additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer, and (iii) the insuring Party shall require all additional joint insured to comply with the conditions stipulated in the policy.

Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.

The relevant insuring Party shall, within the respective periods **stated in the Contract Data** (calculated from the Commencement Date), submit to the other Party:

- (a) evidence that the insurances described in this Clause have been effected, and
- (b) copies of the policies for the insurances as required by Schedule M.

When each premium is paid, the insuring Party shall submit evidence of payment to the other Party.

Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes to the execution of the Services and ensure that insurance is maintained in accordance with this Clause.

Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give notice to the other Party.

If the insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintain under the Contract, or fails to provide satisfactory evidence and copies of policies in accordance with this Sub-Clause, the other Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these premiums to the other Party, and the Contractor Remuneration shall be adjusted accordingly.

Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the Employer, under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or the Employer in accordance with these obligations, liabilities or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Contract, and the other Party neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party.

16.5 Insurance Required

Each Party shall effect and maintain insurance as specified in Schedule M.

16.6 Employer's Risks

The risks referred to in Sub-Clause 16.7 [Consequences of Employer's Risks] below, insofar as they directly affect the execution of the Services in the Country, are:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (b) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors, revolution, insurrection, military or usurped power, or civil war, within the Country,
- (c) riot, commotion or disorder within the Country by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors,
- (d) munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, within the Country, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity,
- (e) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds,
- (f) use or occupation by the Employer of any part of the Permanent Services, except as may be specified in the Contract,
- (g) any operation of the forces of nature which is Unforeseeable.

16.7 Consequences of Employer's Risks

Notwithstanding anything contained in the Contract, the Contractor shall have no liability whatsoever for or with respect to,

- (a) destruction of or damage to the Facilities or any part thereof;
- (b) destruction of or damage to property of the Employer or any Third Party; or
- (c) injury or loss of life,

if such destruction, damage, injury or loss of life is caused by any Employer's Risks, and the Employer shall indemnify and hold the Contractor harmless from and against any and all claims, liabilities, actions, lawsuits, damages, costs, charges or expenses arising on consequence of or in connection with the same.

If the Facilities or any property of the Contractor used or intended to be used for the purposes of the Services sustains destruction or damage by reason of any Employer's Risks, the Employer shall pay for,

- (a) replacing or making good any property or investments of the Contractor so destroyed or damaged; and
- (b) replacing or making good any such destruction or damage to the Facilities or any part thereof,

so far as may be required by the Employer, and as may be necessary for completion of the Services.

If the Employer does not require the Contractor to replace or make good any such destruction or damage to the Facilities, the Employer shall either request a change in accordance with Sub-Clause 19.1 [Employer Variations] excluding the performance of the Services in respect of that part of the Facilities thereby destroyed or damaged or, where the loss, destruction or damage affects a substantial part of the Facilities, shall terminate the Contract, pursuant to Sub-Clause 17.7 [Release from Performance].

Notwithstanding anything contained in the Contract, the Employer shall pay the Contractor for any increased Costs that are in any way attributable to, consequent on, resulting from, or in any way connected with any Employer's Risks, if the Contractor notifies the Employer in writing of any such increased cost as soon as practicable.

If, during the term of the Contract, any Employer's Risks occur that financially or otherwise materially affect the execution of the contract by the Contractor, the Contractor shall use its reasonable efforts to execute the Contract with due and proper consideration given to the safety of its and its Subcontractors' personnel engaged in the work on the Services. If the execution of the Services becomes impossible or is substantially prevented for a single period of more than 60 days or an aggregate period of more than 120 days on account of any Employer's Risks, the Parties will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Contract by giving a notice to the other.

In the event of termination pursuant to this Sub-clause, the rights and obligations of the Employer and the Contractor shall be as specified in Sub-Clause 17.7 [Release from Performance].

17. Force Majeure

17.1 Definition of Force Majeure

In this Clause, “Force Majeure” means an exceptional event or circumstance:

- (a) which is beyond a Party’s control,
- (b) which such Party could not reasonably have provided against before entering into the Contract,
- (c) which, having arisen, such Party could not reasonably have avoided or overcome, and
- (d) which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (ii) rebellion, terrorism, sabotage by persons other than the Contractor’s Personnel and other employees of the Contractor and Subcontractors, revolution, insurrection, military or usurped power, or civil war,
- (iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor’s Personnel and other employees of the Contractor and Subcontractors, or the Employer’s Personnel
- (iv) munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the Contractor’s use of such munitions, explosives, radiation or radio-activity, and
- (v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

17.2 Notice of Force Majeure

If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract

17.3 Duty to Minimize Delay

Each Party shall at all times use all reasonable endeavors to minimize any delay in the performance of the Contract as a result of Force Majeure.

A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

17.4 Consequences of Force Majeure

If the Contractor is prevented from performing its substantial obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 17.2 [Notice of Force Majeure], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled to:

- (a) an extension of time for any such delay, if completion of the services is or will be delayed, and
- (b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 17.2 [Definition of Force Majeure] and, in the case of sub-paragraphs (ii) to (iv), occurs in the Country, payment of any such Cost.

17.5 Force Majeure Affecting Subcontractor

If any Subcontractor is entitled under any contract or agreement relating to the Services to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

17.6 Optional Termination, Payment and Release

If the execution of substantially all the Services in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Sub-Clause 17.2 [Notice of Force Majeure], or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 21.12 [Actions on Termination].

17.7 Release from Performance

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfill its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

- (a) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and
- (b) the sum payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause 21.11 [Payment on Termination for Prolonged Force Majeure] if the Contract had been terminated under Sub-Clause 17.6 [Optional Termination, Payment and Release].

18. Suspension of Services

18.1.1 Suspension for non-payment

If the Employer:

- (a) fails to pay the Contractors any sum due under the Contract within the period specified in the Contract;
- (b) fails to approve any invoice or supporting documents without just cause under the Contract;
- (c) commits a substantial breach of the Contract, including preventing the exercise of the Contractor's Delegated Management Authority
- (d) fails to provide possession of or access to the Facilities

the Contractor may, after giving not less than 14 days' notice to the Employer, suspend work (or reduce the rate of work) unless and until the failure or breach which gave rise to the suspension has been rectified.

18.1.2 Suspension in the event of loan suspension

Notwithstanding the above, if the Bank has suspended disbursements under the loan or credit from which payments to the Contractor are being made, in whole or in part, for the execution of the Services, and no alternative funds are available as provided for in Sub-Clause 13.8 [Employer's Financial Arrangements], the Contractor may by notice suspend work or reduce the rate of work at any time, but not less than 7 days after the Borrower having received the suspension notification from the Bank.

18.1.3 No prejudice to other remedies

The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 12.3 [Delayed Payment] and to termination under Sub-Clause 21.7 [Termination by the Contractor for Cause].

18.1.4 Compensation for costs from suspension

If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall be entitled to:

- (a) an extension of time for any such delay, and
- (b) payment of a costs actually and reasonably incurred as a result of the suspension

18.2 Employer's Entitlement to Suspend the Services and Delegated Management Authority

The Employer may suspend the Services and Delegation of Management Authority, if this is necessary in the public interest, by notice to the Contractor. Such notice shall specify the effective date of the suspension, the reasons for the suspension, and the date on which the suspension will end.

If the Employer suspends the Services in accordance with this Sub-Clause 18.2, the Contractor shall then cease to perform its obligations under the Contract. However, the Contractor shall still be entitled to the Contractor Remuneration under the Contract.

If the suspension continues for more than 90 days, the Contractor may, by notice to the Employer, treat the suspension as Termination for Employer Convenience.

19. Contract Variation, Extension and Rebidding

19.1 Employer Variations

At any time during the Term of the Contract the Employer's Representative may request a Variation by giving to the Contractor a Variation Request. A Variation Request shall specify

- (a) A brief description of the Change to the Services
- (b) the effect on any other provisions of the Contract
- (c) a reasonable period within which the Contractor is required to respond.

19.1.1 Decision on Employer's Variation Request

On receiving a Variation Request the Contractor shall respond in writing as soon as practicable, and in any event within the period stipulated in accordance with Sub-Clause 19.1 [Employer Variations], either by giving reasons why he cannot comply (if this is the case) or by submitting a Variation Proposal containing:

- (a) a description of the proposed work to be performed and a program for its execution,
- (b) an estimate of the adjustment in Operator Remuneration which would be necessary to put the Contractor in the same financial position as if the Variation were not implemented

The Employer shall then:

- (a) Accept the Variation Proposal, which shall then modify the Contract so far as is specified in the Variation Proposal; or
- (b) Notify the Contractor that it has decided not to proceed with Variation or
- (c) Notify the Contractor that it does not agree with the proposed adjustment in Operator Remuneration or other terms of the Contract, and refer the issue for determination through the Dispute Resolution procedure under Sub-Clause 20.1 [Dispute Resolution].

19.2 Value Management

The Contractor may, at any time, submit to the Employer's Representative a written Value Management Proposal which (in the Contractor's opinion) will, if adopted: (i) reduce the cost of providing the services; or (ii) further the Objectives of the Contract; or (iii) otherwise be of benefit to the Employer or the Utility.

The Value Management Proposal shall be prepared at the cost of the Contractor and shall include:

- (a) description of the proposed Change to the Services
- (b) a description of the proposed work to be performed and a program for its execution,
- (c) any proposed adjustment in Operator Remuneration
- (d) the effect on any other provisions of the Contract.

If the Value Management Proposal would allow the same Services to be performed at lower cost, then the proposed adjustment in the Operator Remuneration shall be such as to share the benefits of the savings equally between the Contractor and the Employer.

If the effect of the Value Management Proposal would be to increase both the scope of the Services and the cost of the Services, then the proposed adjustment in the Operator Remuneration shall be such as to put the Contractor in the same financial position as it would be if the Value Management Proposal were not implemented

19.3 Decision on Value Management Proposal

On receiving a Value Management Proposal the Employer shall either:

- (a) Accept the Value Management Proposal, which shall then modify the Contract so far as is specified in the Value Management Proposal; or
- (b) Decline to accept the Value Management Proposal.

19.4 Adjustments for Changes in Law

“Change in Law” means a change in the Laws of the Country (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the Base Date, which affect the Contractor in the performance of obligations under the Contract.

If the Contractor incurs additional Cost as a result of a Change in Law, the Operator Remuneration shall be adjusted so as put the Contractor in the same financial position as it would be if the Change in Law had not occurred.

If the Parties cannot agree on the required adjustment to the Operator Remuneration, either Party may refer the issue for determination through the procedure under Sub-Clause 20.1 [Dispute Resolution].

19.5 Extension and Subsequent Bidding

19.5.1 Extension of the Contract

Unless otherwise provided for in Schedule N, the Contract may be extended for an additional period of no more than the initial term of the Contract. Such an extension may be requested by the Employer, following the process set out in 19.1 [Employer Variation], or by the Contractor following the process set out in 19.2 [Value Management], must be agreed by the Parties, and may not be determined under the Dispute Resolution process.

However, the Parties may agree to refer the request for an extension to the Independent Expert. If the parties refer the request for an extension to the Independent Expert they shall agree, prior to the referral, whether the Independent Expert’s recommendation will be advisory only, or binding.

If requested to make a recommendation under this section, the Independent Expert shall be guided by:

- (a) The Objectives of the Contract
- (b) Such additional objectives as the Employer may inform him of which appear to him to be reasonable
- (c) The need for the Contractor to make a fair profit on its efforts, which he may assess by reference to the profits actually achieved or expected to be achieved under the Contract

- (d) The desirability of rewarding the Contractor for success in achieving the Employer's objectives.

19.5.2 Subsequent Bidding for a Similar Contract

Unless otherwise provided in Schedule N, the contractor shall not be precluded from bidding for any similar contract which is offered by the Employer or the Utility after the termination or expiration of this contract. In case of such a subsequent bidding, the Contractor will be requested by the Employer to provide in due time a detailed report satisfactory to the Employer about the Services under this Contract, such Report to be made available by the Employer to all other potential bidders.

20. Dispute Resolution

20.1 Dispute Resolution

20.1.1 Amicable Settlement

- (a) If any dispute arises out of or in connection with this Contract, either Party may give notice to the other Party of the same, whereupon the Parties shall meet promptly and in a good faith attempt to reach an amicable settlement.
- (b) In the event that the Parties do not resolve a dispute in accordance with this Sub-Clause within twenty (20) days of notice of the dispute being given, then either Party may refer the dispute to the Independent Expert for determination pursuant to the procedure set forth in Sub-Clause 20.1.2 [Independent Expert].

20.1.2 Independent Expert

- (a) By the date of Contract signing, the Contractor shall indicate to the Employer in writing its acceptance of one of the potential Independent Experts **proposed in the Contract Data** by the Employer or otherwise present to the Employer for its acceptance, a counter-proposal with the names of one or more individuals. The Employer shall respond in writing to the Contractor by the date **stated in the Contract Data**, and in case of a negative response, with a copy to the appointing entity or official **named in the Contract Data**, who shall then appoint the Independent Expert after due consultation with both Parties. If the Contractor fails to indicate its acceptance of one of the Employer-proposed individuals or present a counter-proposal, or if the Employer fails to respond to the Contractor's counterproposal by the due dates indicated above for each event, or if the Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the Independent Expert declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, then the appointing entity or official **named in the Contract Data** shall, upon request of either or both of the Parties and after due consultation with both Parties, appoint the Independent Expert. The appointment(s) made by the appointing entity or official shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.
- (b) The Independent Expert shall be a professional experienced in the type of services covered under the Contract and with the interpretation of contractual documents, and

shall be fluent in the language for communications defined in the Contract. The Independent Expert shall be (and the terms of this appointment shall so provide that he or she is) independent of the Parties and shall act impartially. The Independent Expert's appointment may be terminated only by mutual agreement between the Parties. The Expert's terms of appointment shall expire as the Parties may mutually agree.

- (c) In making its determination, the Independent Expert shall:
 - (i) have regard to the Services required to be performed hereunder and the terms and conditions of this Contract; and
 - (ii) ensure that the position of the Parties is restored to the position they would have been in if the event triggering the dispute under this Section had not occurred and all the Parties had complied with the Contract.
- (d) The Party who initially issued the notice of intention to refer the dispute to the Independent Expert shall within ten (10) days of such notice submit to the Independent Expert and to the other Party the following documents:
 - (i) A description of the dispute;
 - (ii) A statement of that Party's position; and
 - (iii) Copies of relevant documentary evidence in support.
- (e) Within ten (10) days of receipt of the above documents, the other Party shall submit:
 - (i) A description of the dispute;
 - (ii) A statement of that Party's position; and
 - (iii) Copies of relevant documentary evidence in support.
- (f) The Independent Expert may call for such further documentary evidence and/or interview such persons as it deems necessary in order to reach their decision.
- (g) The expert shall give notice to the Parties of its decision within twenty (20) days of receipt of the documents provided under Section d) or e) as the case may be.
- (h) Unless this Contract has already been terminated or abandoned, the Parties shall in every case continue to proceed with the performance of their rights and obligations under this Contract with all due diligence whilst the Independent Expert is reviewing the dispute
- (i) The decision of the Independent Expert shall be binding unless and until one Party, within ten (10) days of the date of such decision, issues a notice of intention to refer the matter to arbitration in accordance with Sub-Clause 20.1.4 [Arbitration].
- (j) Each Party shall bear its own costs of preparing the materials for and making presentations to the Expert.

20.1.3 Payment of the Independent Expert

The costs of engaging the Independent Expert shall be borne equally by the Parties. The Independent Expert shall be paid as follows, in the currency **named in the Contract Data** or as otherwise indicated in the appointment notice issued in accordance with Sub-Clause 20.1.2 [Independent Expert]:

- (a) a retainer fee per calendar month, which shall be considered as payment in full for:
 - (i) being available on 28 days' notice for all site visits and hearings;
 - (ii) becoming and remaining conversant with all project developments and maintaining relevant files;
 - (iii) all office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties; and
 - (iv) all services performed hereunder except those referred to in sub-paragraphs (b) and (c) of this Sub-Clause.

The retainer fee shall be paid with effect from the last day of the calendar month in which the appointment becomes effective; until the last day of the calendar month in which the Contract expires, unless the Independent Expert resigns or his appointment is otherwise terminated by the Parties.

- (b) a daily fee which shall be considered as payment in full for:
 - (i) each day or part of a day up to a maximum of two days' travel time in each direction for the journey between the Independent Expert's home and the site, or another location of a meeting that the Independent Expert is required to attend;
 - (ii) each working day on Site visits, hearings or preparing decisions; and
 - (iii) each day spent reading submissions in preparation for a hearing.
- (c) all reasonable expenses including necessary travel expenses (air fare in less than first class, hotel and subsistence and other direct travel expenses) incurred in connection with the Independent Expert's duties, as well as the cost of telephone calls, courier charges, faxes and telexes: a receipt shall be required for each item in excess of five percent of the daily fee referred to in sub-paragraph (b) of this Sub-Clause;
- (d) any taxes properly levied in the Country on payments made to the Independent Expert (unless a national or permanent resident of the Country) under this Sub-Clause.

20.1.4 Arbitration

Unless indicated otherwise in the Contract Data, all disputes arising out of or in connection with this Contract, not settled by amicable settlement or by the Independent Expert, in respect of which the Independent Expert's determination has not become final and binding, shall be finally settled by arbitration. Unless otherwise agreed by both Parties:

- (a) For contracts with foreign contractors:
 - (i) international arbitration with proceedings administered by the international arbitration institution **appointed in the Contract Data**, in accordance with the rules of arbitration of the appointed institution;

- (ii) the place of arbitration shall be the city where the headquarters of the appointed arbitration institution is located or such other place selected in accordance with the applicable arbitration rules; and
 - (iii) the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4; and
- (b) For contracts with domestic contractors, arbitration with proceedings conducted in accordance with the laws of the Employer's country.

The arbitrators shall have full power to open up, review and revise any determination of the Independent Expert, relevant to the dispute. Nothing shall disqualify representatives of the Parties from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrators to the evidence or arguments previously put before the Independent Expert to obtain its determination, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the Independent Expert shall be admissible in evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the Services. The obligations of the Parties and the Independent Expert shall not be altered by reason of any arbitration being conducted during the progress of the Services.

20.1.5 Survival

The dispute resolution provisions contained in Sub-Clause 20.1.4 [Arbitration] shall survive termination of this Contract.

21. Default and Termination

21.1 Notification and Cure Plans

If a Default occurs, the Party not in Default may, in addition to any other remedies it has, give the Defaulting Party a notice in writing ("**Default Notice**") specifying:

- (a) that a Default has occurred;
- (b) the events or circumstances constituting the Default; and
- (c) if the Default is capable of being cured or remedied, a reasonable Cure Period in which to cure or remedy the Default.

The Party not in Default may specify in the Default Notice:

- (a) that it requires the Defaulting Party to provide to the Party not in Default a written plan ("Cure Plan") which specifies the reason the Default occurred, how the Defaulting Party intends to remedy the Default, the time that the Defaulting Party will require to remedy the Default and includes additional information on such matters as the Party not in Default requires; and

- (b) a reasonable time by which the Defaulting Party must provide the Cure Plan to the Party not in Default .

The Party not in Default may, by notice to the Defaulting Party, vary the Cure Period having regard to information provided to it in relation to a Cure Plan.

21.2 Remediating the Default within the Applicable Cure Period

Upon receipt of a Default Notice, if the Default is capable of being cured or remedied, the Defaulting Party must cure or remedy the Default within the Cure Period.

In addition to its obligations under Sub-Clause 21.1 [Notification and Cure Plans], if the Party not in Default has required the Defaulting Party to provide a Cure Plan, the Defaulting Party must:

- (a) provide a Cure Plan within the time requested by the Defaulting Party;
- (b) comply with the Cure Plan; and
- (c) report to the Party not in Default on progress in relation to the Cure Plan at the times and in the manner specified by the Party not in Default .

The Defaulting Party may, by notice to the Defaulting Party, request an extension to a Cure Period. The Defaulting Party may only request such an extension once in relation to a particular Default. The notice must specify:

- (a) the reason why the Defaulting Party is not able to cure or remedy the Default within the existing Cure Period,
- (b) the additional time that the Defaulting Party requires to cure or remedy the Default and
- (c) any other information that is relevant to the Party not in Default's assessment of the request.

The Defaulting Party may not give such a notice unless it has diligently sought to cure or remedy the relevant Default. The Party not in Default must not unreasonably withhold its consent to a request for such an extension of a Cure Period unless the Party not in Default believes, on reasonable grounds, that the extension of the Cure Period would have a material adverse effect on the provision of the Services or the use by the Party not in Default of the Facilities.

21.3 Failure to cure

If the Party not in Default has given a Default Notice to the Defaulting Party and:

- (a) where the Default is capable of being cured or remedied, the Defaulting Party does not provide a Cure Plan acceptable to the Party not in Default within the time required in the Default Notice (if applicable);
- (b) where the Default is capable of being cured or remedied, the Defaulting Party does not diligently pursue the Cure Plan (if applicable) or otherwise comply with its obligations under Sub-Clause 21.2 [Remediating the Default within the Applicable Cure Period];
- (c) where the Default is capable of being cured or remedied, the Default is not cured or remedied within the Cure Period and, if applicable, in accordance with the Cure Plan; or
- (d) the Default is not capable of being cured or remedied.

The Party not in Default may (without prejudice to any of its other rights with respect to the Default), exercise all or any of the following remedies:

- (a) sue the Defaulting Party for compensation for the Default, and exercise all available legal and equitable remedies including without limitation suing for specific performance, injunctive relief or such other orders as the Party not in Default considers appropriate;
- (b) terminate this Agreement.

21.4 Ways the Contract may be terminated

The Contract may be terminated by:

- (a) The Employer for Convenience, in accordance with Sub-Clause 21.5 [Termination by the Employer for Convenience],
- (b) The Employer for Cause, in accordance with Sub-Clause 21.6 [Termination by the Employer for Cause], or
- (c) The Contractor for Cause, in accordance with Sub-Clause 21.7 [Termination by the Contractor for Cause].

21.5 Termination by the Employer for Convenience

The Employer shall be entitled to terminate the Contract, at any time for the Employer's convenience, by giving notice of such termination to the Contractor. The termination shall take effect 28 days after the later of the dates on which the Contractor receives this notice or the Employer returns the Performance Security.

The Employer shall not terminate the Contract under this Sub-Clause in order to arrange for the Services to be executed by another contractor or to avoid a termination of the Contract by the Contractor under Sub-Clause 21.7 [Termination by the Contractor for Cause].

After this termination, the Contractor shall proceed in accordance with Sub-Clause 21.12 [Actions on Termination] and shall be paid in accordance with Sub-Clause 21.8 [Payment on Termination by the Employer for Convenience].

21.6 Termination by the Employer for Cause

The Employer shall be entitled to terminate the Contract for cause, if the Contractor:

- (a) in accordance with Sub-Clause 21.3 [Failure to Cure], is the Defaulting Party referred to in that Sub-Clause,
- (b) fails to comply with Sub-Clause 16.3 [Performance Security],
- (c) abandons the Services or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,
- (d) without reasonable excuse fails to proceed with the Services,
- (e) subcontracts the whole of the Services or assigns the Contract without the required agreement,

- (f) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events, or
- (g) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
 - (i) for doing or forbearing to do any action in relation to the Contract, or
 - (ii) for showing or forbearing to show favour or disfavour to any person in relation to the Contract,
 - (iii) or if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (f). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination, or.
- (h) Engages, as determined by the Employer, in any Corrupt Practice, Coercive Practice, Collusive Practice, Fraudulent Practice or Obstructive Practice.

In any of these events or circumstances, the Employer may, upon giving 14 days' notice to the Contractor, terminate the Contract and expel the Contractor from the Facilities. However, in the case of sub-paragraph (e) or (f), the Employer may by notice terminate the Contract immediately.

The Employer's election to terminate the Contract shall not prejudice any other rights of the Employer, under the Contract or otherwise.

21.7 Termination by the Contractor for Cause

The Contractor shall be entitled to terminate the Contract if:

- (a) in accordance with Sub-Clause 21.3 [Failure to Cure], if the Contractor is the Defaulting Party referred to in that Sub-Clause,
- (b) the Employer fails to pay any part of the Contractor's Remuneration within 56 days of it falling due
- (c) the Employer substantially fails to perform his obligations under the Contract in such manner as to materially and adversely affect the ability of the Contractor to perform the Contract,
- (d) the Employer fails to comply with Sub-Clause 3.1 [Assignment], or
- (e) the Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.

In the event the Bank suspends the loan or credit from which part or whole of the payments to the Contractor are being made, if the Contractor has not received the sums due to him within 7 days of the due date, the Contractor may, without prejudice to the Contractor's

entitlement to financing charges under Sub-Clause 12.3 [Delayed Payment] take one of the following actions, namely (i) suspend work or reduce the rate of work, or (ii) terminate his employment under the Contract by giving notice to the Employer, with a copy to the Independent Expert, such termination to take effect 14 days after the giving of the notice.

In any of these events or circumstances, the Contractor may, upon giving 14 days' notice to the Employer, terminate the Contract. However, in the case of sub-paragraph (g), the Contractor may by notice terminate the Contract immediately.

The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.

21.8 Payment on Termination by the Employer for Convenience

Upon termination of this Contract pursuant to Sub-Clause 21.5 [Termination by the Employer for Convenience] the Employer shall make the following payments to the Contractor:

- (a) any portion of the Remuneration payable to the Contractor for Services satisfactorily performed or Performance Target achieved prior to the Termination of the Contract;
- (b) the Costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment, Materials and Supplies from the Facilities and in the repatriation of the Contractor's Personnel and its Subcontractors' personnel;
- (c) any amounts required to be paid by the Contractor to its Subcontractors in connection with the termination of any Subcontracts, including any reasonable cancellation charges;
- (d) the reasonable Costs incurred by the Contractor in protecting and handing over the Facilities pursuant to Sub-Clause 21.12 [Actions on Termination]; and
- (e) the reasonable Costs of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with Third Parties in connection with the Contract and that are not otherwise covered by this Sub-Clause 21.8 [Payment on Termination by the Employer for Convenience].

The only payments to be made to the Contractor on termination by the Employer pursuant to Sub-Clause 21.5 [Termination by the Employer for Convenience] are those set out in this Sub-Clause 21.8. The Contractor shall not make any other claim for lost or foregone profits, revenues, consequential damages or any other costs, damages, expenses or losses of any kind as a result of or in connection with the termination of this Contract.

21.9 Payment on Termination by the Employer for Cause

Upon termination of this Contract pursuant to Sub-Clause 21.6 [Termination by the Employer for Cause], the Employer shall make the following payments to the Contractor:

- (a) any portion of the Remuneration payable to the Contractor for Services satisfactorily performed or Performance Target achieved prior to the Termination of the Contract and
- (b) the reasonable Costs incurred by the Contractor in protecting and handing over the Facilities pursuant to Sub-Clause 21.12 [Actions on Termination].

The only payments to be made to the Contractor on termination by the Employer pursuant to Sub-Clause 21.6 [Termination by the Employer for Cause] are those set out in this Sub-Clause 21.9.

The Contractor shall not make another claim for lost or foregone profits, revenues, consequential damages or any other costs, damages, expenses or losses of any kind as a result of or in connection with the termination of this Contract.

21.10 Payment on Termination by the Contractor for Cause

Upon termination of this Contract pursuant to Sub-Clause 21.7 [Termination by the Contractor for Cause] the Employer shall make the following payments to the Contractor:

- (a) any portion of the Remuneration payable to the Contractor for Services satisfactorily performed or Performance Target achieved prior to the Termination of the Contract;
- (b) the Costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment, Materials and Supplies from the Facilities and in the repatriation of the Contractor's Personnel and its Subcontractors' personnel;
- (c) any amounts required to be paid by the Contractor to its Subcontractors in connection with the termination of any Subcontracts, including any reasonable cancellation charges;
- (d) the reasonable Costs incurred by the Contractor in protecting and handing over the Facilities pursuant to Sub-Clause 21.12 [Actions on Termination];
- (e) the reasonable Costs of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with Third Parties in connection with the Contract and that are not otherwise covered by this Sub-Clause 21.8 [Payment on Termination by the Employer for Convenience]; and
- (f) a payment in compensation for lost profits under the contract, which shall be either:
 - (i) the amount for Liquidated Damages on Termination for Employer Convenience **specified in the Contract Data**, or if no such amount is specified,
 - (ii) the amount of profit the Contractor would be expected to lose as a result of early termination of the contract. The Contractor shall submit an estimate of this amount. The Employer shall either pay this amount, or submit it to dispute resolution under Sub-Clause 20.1 [Dispute Resolution].

The only payments to be made to the Contractor on termination by the Employer pursuant to Sub-Clause 21.7 [Termination by the Contractor for Cause] are those set out in this Sub-Clause 21.10. The Contractor shall not make another claim for lost or foregone profits, revenues, consequential damages or any other costs, damages, expenses or losses of any kind as a result of or in connection with the termination of this Contract.

21.11 Payment on Termination for Prolonged Force Majeure

Upon termination of this Contract pursuant to Sub-Clause 17.6 [Optional Termination, Payment and Release] the Employer shall make the following payments to the Contractor:

- (a) any portion of the Remuneration payable to the Contractor for Services satisfactorily performed or Performance Target achieved prior to the Termination of the Contract
- (b) the Costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment, Materials and Supplies from the Facilities and in the repatriation of the Contractor's Personnel and its Subcontractors' personnel;

- (c) any amounts required to be paid by the Contractor to its Subcontractors in connection with the termination of any Subcontracts, including any reasonable cancellation charges;
- (d) the reasonable Costs incurred by the Contractor in protecting and handing over the Facilities pursuant to Sub-Clause 21.12 [Actions on Termination].
- (e) the reasonable Costs of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with Third Parties in connection with the Contract and that are not otherwise covered by this Sub-Clause 21.11 [Payment on Termination for Prolonged Force Majeure].

21.12 Actions on Termination

In all cases of Termination the Contractor shall promptly:

- (a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting the Facilities, or handing the over for safe and uninterrupted operation by the Employer or another party, including co-operating with the Employer in such manner as the Employer reasonably requires to ensure that the Services provided by the Contractor can be provided by another service provider or by the Employer itself.
- (b) leave the Facilities
- (c) deliver to the Employer all records related to the Contract and Services
- (d) deliver all documents, know-how, information technology software and other intellectual property required for the provision of the Services and management of the Utility which were required to be left with the Employer or Utility at the Termination of the Contract under Clauses 6 [Know-How Transfer and Training] and 15 [Intellectual and Industrial Property Rights].

Section VIII. Particular Conditions (PC)

The following Particular Conditions shall supplement the GC. Whenever there is a conflict, the provisions herein shall prevail over those in the GC.

Part A - Contract Data

Conditions	Sub-Clause	Data
Financing Institution's name	1.1.2(a)	World Bank
Borrower's name	1.1.2(b)	
Employer's name and address	1.1.2(f) & 1.3 (b)	
Utility's Name	1.1.2(o)	
Electronic transmission systems	1.3(a)	
Governing Law	1.4	
Ruling language	1.4	
Language for communications	1.4	
Additional Conditions of Effectiveness	2.1(f)	
Period of Contract	2.3	[] months
Contractor's responsibility for the acts or defaults of its Subcontractors	3.5	<i>[insert any statements different from the requirements established under Sub-Clause 3.5 (a) – (d)]</i>
Compliance with Laws	3.8	<i>[insert any statements different from the requirements established under Sub-Clause 3.8]</i>
Categories of staff that must be hired locally if and to the extent that a sufficient number of appropriately qualified staff is locally available	8.6	
Period within which the Employer should make a decision on Contractor's management advice	11.2	[] days

Employers intention to publish the Contract and Performance Targets	15.4	<p>The Employer _____ <i>[insert “has” or “does not have”]</i> the right and intention to:</p> <p>(a) publish the Contract in its entirety in the World Bank Private Participation in Infrastructure Database and such other media as it deems appropriate, and</p> <p>(b) publish the Performance Targets and the progress against those Performance Targets in appropriate mass circulation media in the Country.</p>
Maximum total liability of the Contractor to the Employer	16.1	<p><i>[Select one of the two options below as appropriate]</i></p> <p>The product of _____ <i>[insert a multiplier less or greater than one]</i> times the Contractor Remuneration,</p> <p>or</p> <p>_____ <i>[insert amount of the maximum total liability]</i></p>
Performance Security	16.3	<p>The performance security will be in the form of a _____ <i>[insert either one of “demand guarantee” or “performance bond”]</i> in the amount(s) of <i>[insert related figure(s)]</i> percent of the Contractor Remuneration and in the same currency(ies) of the Contractor Remuneration.</p>
Periods for required submissions by the relevant insuring Party to the other Party	16.4	<p>Period (calculated from the Commencement Date) for submission of:</p> <p>(a) evidence that the insurances described in Clause 16 have been effected: _____ <i>[insert period of time]</i>, and</p> <p>(b) copies of the policies for the insurances as required by Schedule M: _____ <i>[insert period of time]</i></p>
List of Employer-proposed potential Independent Experts	20.1.2	
Date by which the Employer shall respond to Contractor’s counterproposal (if any)	20.1.2	
Appointing entity or official in case of disagreement between the Parties	20.1.2	
Currency for payment of the Independent Expert	20.1.3	

Arbitration	20.1.4	<i>[insert arbitration method for final settlement of disputes, if different from international arbitration]</i>
International arbitration institution	20.1.4(a)(i)	
Amount of Liquidated Damages on Termination for Employer Convenience	21.10 (f)(i)	

Part B - Specific Provisions

[Insert any specific provisions]

Section IX. Annex to the Particular Conditions - Contract Forms

Table of Forms

Notification of Award	168
Contract Agreement	169
Performance Security	170
Advance Payment Security	174

Notification of Award

Letter of Acceptance

[letterhead paper of the Employer]

[date]

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

This is to notify you that your Bid dated *[date]* for execution of the *[name of the Contract and identification number, as given in the Contract Data]* for the Contractor Remuneration of the equivalent of *[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Bidders, is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose one of the Performance Security Forms included in Section IX, Annex to the Particular Conditions - Contract Forms, of the Bidding Document

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Agency: _____

Attachment: Contract Agreement

Contract Agreement

THIS AGREEMENT made the _____ day of _____, _____, between _____ of _____ (hereinafter “the Employer”), of the one part, and _____ of _____ (hereinafter “the Contractor”), of the other part:

WHEREAS the Employer desires that the Services known as _____ should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Services and the remedying of any defects therein,

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
 - (a) the addenda Nos. _____ (if any)
 - (b) the Letter of Acceptance
 - (c) the Particular Conditions
 - (d) the General Conditions;
 - (e) the Schedules of Services Requirements,
 - (f) the Letter of Bid
3. In consideration of the payments to be made by the Employer to the Contractor as indicated in this Agreement, the Contractor hereby covenants with the Employer to execute the Services therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Services, the Contractor Remuneration or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of _____ on the day, month and year indicated above.

Signed by _____ (for the Employer)

Signed by _____ (for the Contractor)

Signed by _____ (Contractor’s Parent Company)

[This last signature line to be added when the Successful Bidder is required to incorporate in the Employer’s Country, pursuant to ITB 40.3, and a Parent Company Guarantee is not required in the corresponding BDS]

Performance Security

Option 1: (Demand Guarantee)

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

Beneficiary: _____ [Name and Address of Employer]

Date: _____

PERFORMANCE GUARANTEE No.: _____

We have been informed that _____ [name of Contractor] (hereinafter called "the Contractor") has entered into Contract No. _____ [reference number of the contract] dated _____ with you, for the execution of _____ [name of contract and brief description of Services] (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 Contractor, 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],¹ such sum being payable in the types and proportions of currencies in which the Contractor Remuneration is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, and a statement by the Independent Expert under the Contract [insert name of Independent Expert] stating that in his opinion there is prima facie evidence of the specified breach, without your needing to prove or to show grounds for your demand or the sum specified therein.

¹ The Guarantor shall insert an amount representing the percentage of the Contractor Remuneration specified in the Contract and denominated either in the currency(cies) of the Contract or a freely convertible currency acceptable to the Employer.

This guarantee shall expire, no later than the Day of, 2...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. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

[signature(s)]

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

² *Insert the date twenty-eight days after the expected completion date. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."*

Option 2: Performance Bond

By this Bond _____ as Principal (hereinafter called “the Contractor”) and _____] as Surety (hereinafter called “the Surety”), are held and firmly bound unto _____] as Obligee (hereinafter called “the Employer”) in the amount of _____, for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contractor Remuneration is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Contractor has entered into a written Agreement with the Employer dated the _____ day of _____, 20 ____, for _____ in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Employer to be, in default under the Contract, the Employer having performed the Employer’s obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- (1) complete the Contract in accordance with its terms and conditions; or
- (2) obtain a Bid or bids from qualified Bidders for submission to the Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the lowest responsive Bidder, arrange for a Contract between such Bidder and Employer and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contractor Remuneration; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contractor Remuneration,” as used in this paragraph, shall mean the total amount payable by Employer to Contractor under the Contract, less the amount properly paid by Employer to Contractor; or
- (3) pay the Employer the amount required by Employer to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Handback Certificate.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators, successors, and assigns of the Employer.

In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this _____ day of _____ 20 ____.

SIGNED ON _____ on behalf of _____

By _____ in the capacity of _____

In the presence of _____

SIGNED ON _____ on behalf of _____

By _____ in the capacity of _____

In the presence of _____

Advance Payment Security

Demand Guarantee

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

Beneficiary: _____ [Name and Address of Employer]

Date: _____

ADVANCE PAYMENT GUARANTEE No.: _____

We have been informed that _____ [name of Contractor] (hereinafter called "the Contractor") has entered into Contract No. _____ [reference number of the contract] dated _____ with you, for the execution of _____ [name of contract and brief description of Services] (hereinafter called "the Contract").

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

At the request of the Contractor, 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]¹ upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than the costs of mobilization in respect of the Services.

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

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, on the ___ day of _____, 2___². Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

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

² Insert the expected expiration date of the Contract. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

[signature(s)]

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

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