

# **Procurement of Works**

## **BIDDING DOCUMENT for Procurement of**

**Design and Build of the TESDA Innovation Center with Rehabilitation  
Works, RTIC-Tacloban Leyte**

**Issued on: 28 February 2024**

**Invitation for Bids No.: CW301/A**

**OCB No.: CW301/A**

**Employer: Technical Education and Skills Development Authority**

**Country: Philippines**

# Preface

This Bidding Document for the Procurement of Works has been prepared by Technical Education and Skills Development Authority and is based on the Standard Bidding Document for the Procurement of Works–Small Contracts (*SBD Works-Small*) issued by the Asian Development Bank dated December 2021.

ADB's *SBD Works-Small* has the structure and the provisions of the Master Procurement Document entitled "Bidding Documents for the Procurement of Works–Small Contracts", prepared by multilateral development banks and other public international financial institutions except where ADB-specific considerations have required a change.

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This section consists of provisions that are specific to each procurement and supplement the information or requirements included in Section 1 (Instructions to Bidders).

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# Section 1: Instructions to Bidders

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## General

1. **Scope of Bid**
  - 1.1 In connection with the Invitation for Bids (IFB) indicated in the Bid Data Sheet (BDS), the Employer, as indicated in the BDS, issues this Bidding Document for the procurement of the Works as specified in Section 6 (Employer's Requirements). The name, identification, and number of contracts of this bidding are provided in the BDS.
  - 1.2 Throughout this Bidding Document,
    - (a) the term "in writing" means communicated in written form and delivered against receipt;
    - (b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; 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 Asian Development Bank (hereinafter called "ADB") 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 this Bidding Document is issued.
  - 2.2 Payments by ADB will be made only at the request of the Borrower and upon approval by ADB in accordance with the terms and conditions of the Financing Agreement between the Borrower and ADB (hereinafter called "Financing Agreement"), and will be subject in all respects to the terms and conditions of that Financing Agreement. No party other than the Borrower shall derive any rights from the Financing Agreement or have any claim to the funds.
3. **Fraud and Corruption**
  - 3.1 ADB requires Borrowers (including beneficiaries of ADB-financed activity) and their personnel, as well as firms and individuals participating in an ADB-financed activity, including but not limited to, Bidders, Suppliers, and Contractors, agents, subcontractors, subconsultants, service providers, subsuppliers, manufacturers (including their respective officers, directors, employees and personnel) under ADB-financed contracts to observe the highest standard of ethics during the procurement and execution of such contracts in accordance with ADB's Anticorruption Policy (1998, as amended from time to time). In pursuance of this policy, ADB
    - (a) defines, for the purposes of this provision, the terms set forth below as follows:
      - (i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
      - (ii) "fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

- (iii) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
  - (iv) "collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
  - (v) "abuse" means theft, waste, or improper use of assets related to ADB-related activity, either committed intentionally or through reckless disregard;
  - (vi) "conflict of interest" means any situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations; and
  - (vii) "integrity violation" is any act, as defined under ADB's Integrity Principles and Guidelines (2015, as amended from time to time), which violates ADB's Anticorruption Policy, including (i) to (vi) above and the following: obstructive practice, violations of ADB sanctions, retaliation against whistleblowers or witnesses, and other violations of ADB's Anticorruption Policy, including failure to adhere to the highest ethical standard.
- (b) will reject a proposal for award if it determines that the Bidder recommended for award or any of its officers, directors, employees, personnel, subconsultants, subcontractors, service providers, suppliers or manufacturers has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations in competing for the Contract;
  - (c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of ADB financing engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation, including by failing to inform ADB in a timely manner at the time they knew of the integrity violations;
  - (d) will impose remedial actions on a firm or an individual, at any time, in accordance with ADB's Anticorruption Policy and Integrity Principles and Guidelines, including declaring ineligible, either

indefinitely or for a stated period of time, to participate<sup>1</sup> in ADB-financed, -administered, or -supported activities or to benefit from an ADB-financed, -administered, or -supported contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations; and

- (e) will have the right to require that a provision be included in bidding documents and in contracts financed, administered, or supported by ADB, requiring Bidders, suppliers, and contractors, consultants, manufacturers, service providers and other third parties engaged or involved in ADB-related activities, and their respective officers, directors, employees and personnel, to permit ADB or its representative to inspect the site and their assets, accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by ADB.
- 3.2 All Bidders, consultants, contractors, suppliers, manufacturers, service providers, and other third parties engaged or involved in ADB-related activities, and their respective officers, directors, employees and personnel, are obliged to cooperate fully in any investigation when requested by ADB to do so. As determined on a case by case basis by ADB, such cooperation includes, but is not limited to, the following:
- (a) being available to be interviewed and replying fully and truthfully to all questions asked;
  - (b) providing ADB with any items requested that are within the party's control including, but not limited to, documents and other physical objects;
  - (c) upon written request by ADB, authorizing other related entities to release directly to ADB such information that is specifically and materially related, directly or indirectly, to the said entities or issues which are the subject of the investigation;
  - (d) cooperating with all reasonable requests to search or physically inspect their person and/or work areas, including files, electronic databases, and personal property used on ADB activities, or that utilizes ADB's Information and Communications Technology (ICT) resources or systems (including mobile phones, personal electronic devices, and electronic storage devices such as external disk drives);
  - (e) cooperating in any testing requested by ADB, including but not limited to, fingerprint identification, handwriting analysis, and physical examination and analysis; and
  - (f) preserving and protecting confidentiality of all information discussed with, and as required by, ADB.
- 3.3 All Bidders, consultants, contractors and suppliers require their officers, directors, employees, personnel, agents to shall ensure that, in its

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<sup>1</sup> Whether as a Contractor, Subcontractor, Consultant, Manufacturer or Supplier, or Service Provider; or in any other capacity (different names are used depending on the particular Bidding Document).

contracts with its subconsultants, Subcontractors and other third parties engaged or involved in ADB-related activities, such subconsultants, Subcontractors and other third parties similarly are obliged to cooperate fully in any investigation when requested by ADB to do so.

- 3.4 The Employer hereby puts the Bidder on notice that the Bidder or any Joint Venture partner of the Bidder (if any) may not be able to receive any payments under the Contract if the Bidder or any of its Joint Venture partners, as appropriate, is, or is owned (in whole or in part) by a person or entity subject to applicable sanctions.
- 3.5 Furthermore, Bidders shall be aware of the provisions of GCC 28.3 and 73.2 (i).

#### **4. Eligible Bidders**

- 4.1 A Bidder may be a natural person, private entity, or government-owned enterprises subject to ITB 4.5-or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a Joint Venture. In the case of a Joint Venture:
  - (a) all partners shall be jointly and severally liable; and
  - (b) the Joint Venture shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the parties of the Joint Venture during the bidding process and, in the event the Joint Venture is awarded the Contract, during contract execution.
- 4.2 A Bidder, and all parties constituting the Bidder, shall have the nationality of an eligible country, in accordance with Section 5 (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 including related services.
- 4.3 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 be in a conflict of interest with one or more parties in this bidding process if any of, including but not limited to, the following apply:
  - (a) they have controlling partners in common; or
  - (b) they receive or have received any direct or indirect subsidy from any of them; or
  - (c) they have the same legal representative for purposes of this 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 material information about or improperly influence the Bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or

- (e) a Bidder participates in more than one bid in this bidding process, either individually or as a partner in a Joint Venture, except for alternative offers permitted under ITB 13 of the Bidding Document. This will result in the disqualification of all Bids in which it is involved. However, subject to any finding of a conflict of interest in terms of ITB 4.3 (a)–(d) above, this does not limit the participation of a Bidder as a Subcontractor in another Bid or of a firm as a Subcontractor in more than one Bid; or
  - (f) a Bidder, Joint Venture partner, associates, parent company, or any affiliated entity, participated as a Consultant in the preparation of the design or technical specifications of the works that are the subject of the Bid; or
  - (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 Engineer for the Contract; or
  - (h) a Bidder would be providing goods, works, or nonconsulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the BDS ITB 2.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or
  - (i) a Bidder that has a financial or familial relationship with staff of the Employer including project implementing/executing agency, or of a recipient of a part of the loan who: (i) are directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to ADB throughout the procurement process and execution of the contract.
- 4.4 A firm will not be eligible to participate in any procurement activities under an ADB-financed, -administered, or -supported project while under temporary suspension or debarment by ADB pursuant to its Anticorruption Policy (see ITB 3), whether such debarment was directly imposed by ADB, or enforced by ADB pursuant to the Agreement for Mutual Enforcement of Debarment Decisions. A bid from a temporarily suspended or debarred firm will be rejected and such bid may be in breach of debarment conditions, thereby subject to further ADB's investigation.
- 4.5 Government-owned enterprises in the Borrower's country shall be eligible only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not a dependent agency of the Borrower.
- 4.6 A Bidder shall not be under suspension from Bidding by the Employer as the result of the execution of a Bid–Securing Declaration.
- 4.7 Bidders shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.

- 4.8 Bidders shall be excluded if, 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, or payments to, a particular country, person or entity in respect of goods or services originating in that country. Where the Borrower's country prohibits payments to a particular person or entity or for particular goods or services by such an act of compliance, that firm shall be excluded.
5. **Eligible Materials, Equipment, and Services**
- 5.1 The materials, equipment, and services to be supplied under the Contract shall have their origin in eligible source countries as defined in ITB 4.2 above and all expenditures under the Contract will be limited to such materials, equipment, and services. At the Employer's request, Bidders may be required to provide evidence of the origin of materials, equipment, and services.
- 5.2 For purposes of ITB 5.1 above, "origin" means the place where the materials and equipment are mined, grown, produced, or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that differs substantially in its basic characteristics or in purpose or utility from its components.

## **Contents of Bidding Document**

6. **Sections of Bidding Document**
- 6.1 The Bidding Document consists of Parts I, II, and III, which include all the sections indicated below, and should be read in conjunction with any addenda issued in accordance with ITB 8.

### **PART I Bidding Procedures**

- Section 1 Instructions to Bidders (ITB)
- Section 2 Bid Data Sheet (BDS)
- Section 3 Evaluation and Qualification Criteria (EQC)
- Section 4 Bidding Forms (BDF)
- Section 5 Eligible Countries (ELC)

### **PART II Requirements**

- Section 6 Employer's Requirements (ERQ)

### **PART III Conditions of Contract and Contract Forms**

- Section 7 General Conditions of Contract (GCC)
- Section 8 Particular Conditions of Contract (PCC)

## Section 9 Contract Forms (COF)

- 6.2 The IFB issued by the Employer is not part of the Bidding Document.
- 6.3 The Employer is not responsible for the completeness of the Bidding Document and their addenda, if they were not obtained directly from the source stated by the Employer in the IFB.
- 6.4 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 Document may result in the rejection of the bid.
- 7. Clarification of Bidding Document, Site Visit, Pre-Bid Meeting**
- 7.1 A prospective Bidder requiring any clarification on the Bidding Document shall contact the Employer in writing at the Employer's address indicated in the BDS or raise his inquiries during the pre-bid meeting if provided for in accordance with ITB 7.4. The Employer will respond in writing to any request for clarification, provided that such request is received prior to the deadline for submission of bids, within a period given in the BDS. The Employer shall forward copies of its response to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. 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.
- 7.2 The Bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself, on its own risk and responsibility, all information that may be necessary for preparing the Bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense.
- 7.3 The Bidder and any of its personnel or agents will be granted permission by the Employer to enter its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
- 7.4 The Bidder's designated representative is invited to attend a pre-bid meeting, if 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.
- 7.5 The Bidder is requested to submit any questions in writing, to reach the Employer not later than 1 week before the meeting.
- 7.6 Minutes of the pre-bid meeting, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3. Any modification to the Bidding Document that may become necessary as a result of the pre-bid meeting shall be made by

the Employer exclusively through the issue of an addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting.

7.7 Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

**8. Amendment of Bidding Document**

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

8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document from the Employer in accordance with ITB 6.3.

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.

**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 in no case 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, in which case, for purposes of interpretation of the Bid, such translation shall govern.

**11. Documents Comprising the Bid**

11.1 The Bid shall comprise the following:

- (a) Letter of Bid;
- (b) completed Schedules, in accordance with ITB 12 and ITB 14, or as stipulated in the BDS;
- (c) Bid Security or Bid-Securing Declaration, in accordance with ITB 19;
- (d) alternative Bids, at Bidder's option and if permissible, in accordance with ITB 13;
- (e) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2;
- (f) documentary evidence in accordance with ITB 17, establishing the Bidder's qualifications to perform the contract;
- (g) Technical Proposal in accordance with ITB 16;
- (h) any other document required in the BDS.

11.2 In addition to the requirements under ITB 11.1, Bids submitted by a Joint Venture shall include a copy of the Joint Venture Agreement entered into by all partners. Alternatively, a Letter of Intent to execute a Joint Venture Agreement in the event of a successful Bid shall be signed by

all partners and submitted with the Bid, together with a copy of the proposed agreement.

**12. Letter of Bid and Schedules**

12.1 The Letter of Bid, Schedules, and all documents listed under Clause 11, shall be prepared using the relevant forms in Section 4 (Bidding Forms), if so provided. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested and as required in the BDS.

**13. Alternative Bids**

13.1 Unless otherwise indicated in the BDS, alternative Bids shall not be considered.

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

13.3 When specified in the BDS pursuant to ITB 13.1, and subject to ITB 13.4 below, Bidders wishing to offer technical alternatives to the requirements of the Bidding Document must first price the Employer's design as described in the Bidding Document and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology, and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Employer.

13.4 When specified in the BDS, Bidders are permitted to submit alternative technical solutions for specified parts of the Works. Such parts will be identified in the BDS and described in Section 6 (Employer's Requirements). The method for their evaluation will be stipulated in Section 3 (Evaluation and Qualification Criteria).

**14. Bid Prices and Discounts**

14.1 The prices and discounts quoted by the Bidder in the Letter of Bid and in the Schedules shall conform to the requirements specified below.

14.2 The Bidder shall submit a bid for the whole of the works described in ITB 1.1 by filling in prices for all items of the Works, as identified in Section 4 (Bidding Forms). In case of admeasurement contracts, the Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Bill of Quantities. Unit rates and prices for all items of the Works described in the Bill of Quantities shall be expressed in positive values. If unit rates and prices are expressed in negative values, the bid will be rejected.

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

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

- 14.5 The prices shall be either fixed or adjustable as specified in the BDS.
- (a) In the case of Fixed Price, prices quoted by the Bidder shall be fixed during the Bidder's performance of the contract and not subject to variation on any account. A Bid submitted with an adjustable price will be treated as nonresponsive and rejected.
  - (b) In the case of Adjustable Price, prices quoted by the Bidder shall be subject to adjustment during performance of the contract to reflect changes in the cost elements such as labor, material, transport, and contractor's equipment in accordance with the provisions of the Conditions of Contract. A Bid submitted with a fixed price will be treated as nonresponsive and be rejected. The Bidder shall furnish the indexes and weightings for the price adjustment formulas in the Tables of Adjustment Data included in Section 4 (Bidding Forms) and the Employer may require the Bidder to justify its proposed indexes and weightings. Any bid that omits indexes and weightings shall be subject to clarification with the Bidder.
- 14.6 If so indicated in ITB 1.1, bids are invited for individual contracts or for any combination of contracts (packages). Bidders wishing to offer any price reduction for the award of more than one Contract shall specify in their bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Price reductions or discounts shall be submitted in accordance with ITB 14.4, provided the Bids for all contracts are submitted and opened at the same time.
- 14.7 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the rates and prices and the total bid price submitted by the Bidder.
- 15. Currencies of Bid and Payment**
- 15.1 The currency(ies) of the Bid and payment shall be as specified in the BDS.
- 15.2 Bidders may be required by the Employer to justify, to the Employer's satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the prices shown in the appropriate form(s) of Section 4, in which case a detailed breakdown of the foreign currency requirements shall be provided by Bidders.
- 16. Documents Comprising the Technical Proposal**
- 16.1 The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule, environmental, health and safety (EHS) management plan commensurate with the proposed scope of works, EHS Code of Conduct, and any other information as stipulated in Section 4 (Bidding Forms), in sufficient detail to demonstrate the adequacy of the Bidders' proposal to meet the work requirements and the completion time.
- 17. Documents Establishing the Qualifications of the Bidder**
- 17.1 To establish its qualifications to perform the Contract in accordance with Section 3 (Evaluation and Qualification Criteria) the Bidder shall provide the information requested in the corresponding information sheets included in Section 4 (Bidding Forms).

- 17.2 Domestic Bidders, individually or in Joint Ventures, applying for eligibility for domestic preference shall supply all information required to satisfy the criteria for eligibility as described in ITB 33.
- 18. Period of Validity of Bids**
- 18.1 Bids shall remain valid for the bid validity period specified in the BDS. The bid validity period starts from the date fixed for the bid submission deadline date prescribed by the Employer in accordance with ITB 22.1. A bid valid for a shorter period shall be rejected by the Employer as nonresponsive.
- 18.2 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 19, it shall also be extended 28 days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its Bid.
- 19. Bid Security/Bid-Securing Declaration**
- 19.1 Unless otherwise specified in the BDS, 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. In the case of a bid security, the amount and currency shall be as specified in the BDS.
- 19.2 If a Bid-Securing Declaration is required pursuant to ITB 19.1, it shall use the form included in Section 4 (Bidding Forms). The Employer will declare a Bidder ineligible to be awarded a Contract for a specified period of time, as indicated in the BDS, if the Bid-Securing Declaration is executed
- 19.3 If a bid security is specified pursuant to ITB 19.1, the bid security shall be, at the Bidder's option, in any of the following forms:
- (a) an unconditional bank guarantee (hard copy of the bank guarantee or in the form of SWIFT message MT760), or
  - (b) an irrevocable letter of credit, or
  - (c) a cashier's or certified check.
- all from a reputable source from an eligible country as described in Section 5 (Eligible Countries). In the case of a bank guarantee, the bid security shall be submitted either using the Bid Security Form included in Section 4 (Bidding Forms) or another form acceptable to the Employer. The form must include the complete name of the Bidder. The bid security shall be valid for 28 days beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 18.2.
- 19.4 Unless otherwise specified in the BDS, any Bid not accompanied by a substantially compliant bid security or Bid-Securing Declaration, if one is required in accordance with ITB 19.1, shall be rejected by the Employer as nonresponsive.

- 19.5 If a bid security is specified pursuant to ITB 19.1, the bid security of unsuccessful Bidders shall be returned promptly upon the successful Bidder's furnishing of the performance security pursuant to ITB 44.
- 19.6 If a bid security is specified pursuant to ITB 19.1, the bid security of the successful Bidder shall be returned promptly once the successful Bidder has signed the Contract and furnished the required performance security.
- 19.7 The bid security may be forfeited or the Bid-Securing Declaration executed, if
- (a) notwithstanding ITB 24.3, a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid, except as provided in ITB 18.2; or
  - (b) the successful Bidder fails to
    - (i) sign the Contract in accordance with ITB 43;
    - (ii) furnish a performance security in accordance with ITB 44;
    - (iii) accept arithmetical corrections in accordance with ITB 31; or
    - (iv) furnish a domestic preference security, if applicable, in accordance with ITB 44.3.
- 19.8 If the bid security is required as per ITB 19.1, the bid security of a Joint Venture shall be in the name of the Joint Venture that submits the Bid. If the Joint Venture has not been legally constituted at the time of bidding, the bid security shall be in the name of any or all of the Joint Venture partners. If the Bid-Securing Declaration is required as per ITB 19.1, the Bid-Securing Declaration of a Joint Venture shall be in the name of the Joint Venture that submits the Bid. If the Joint Venture has not been legally constituted at the time of bidding, the Bid-Securing Declaration shall be in the names of all future partners as named in the letter of intent mentioned in ITB 4.1.

## **20. Format and Signing of Bid**

- 20.1 The Bidder shall prepare one original set of the documents comprising the Bid as described in ITB 11 and clearly mark it "ORIGINAL." Alternative Bids, if permitted in accordance with ITB 13, shall be clearly marked "ALTERNATIVE." In addition, the Bidder shall submit copies of the Bid in the number specified in the BDS, and clearly mark each of them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.
- 20.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the BDS and shall be attached to the Bid. The name and position held by each person signing the authorization must be typed or printed below the signature. If a Bidder submits a deficient authorization, the Bid shall not be rejected in the first instance. The Employer shall request the Bidder to submit an acceptable authorization within the number of days as specified in the BDS. Failure to provide an acceptable authorization within the period stated in the Employer's request shall cause the rejection of the Bid. If either the Letter of Bid or the Bid-Securing Declaration (if applicable) is not signed, the Bid shall be rejected.

- 20.3 Any amendments such as interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.

## **Submission and Opening of Bids**

### **21. Sealing and Marking of Bids**

- 21.1 Bidders shall submit their Bids as specified in the BDS. Procedures for submission, sealing, and marking are as follows:

- (a) Bidders submitting Bids by mail or by hand shall enclose the original and each copy of the Bid, including alternative Bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as "ORIGINAL," "ALTERNATIVE," and "COPY." These envelopes containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITB 21.2 and ITB 21.3.
- (b) Bidders submitting Bids electronically shall follow the electronic bid submission procedures specified in the BDS.

- 21.2 The inner and outer envelopes shall

- (a) bear the name and address of the Bidder;
- (b) be addressed to the Employer as provided in BDS 22.1;
- (c) bear the specific identification of this bidding process indicated in BDS 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.

- 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, Substitution, and**

- 24.1 A Bidder may withdraw, substitute, or modify its Bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 20.2 (except for withdrawal notices, which do not

## **Modification of Bids**

require copies). The corresponding substitution or modification of the Bid must accompany the respective written notice. All notices must be

(a) prepared and submitted in accordance with ITB 20 and ITB 21 (except for withdrawal notices, which 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 or any extension thereof.

## **25. Bid Opening**

25.1 The Employer shall open the Bids in public at the address, on the date, and time specified in the BDS in the presence of Bidders' designated representatives and anyone who choose to attend. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 21.1, shall be as specified in the BDS.

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

25.3 All other envelopes shall be opened one at a time, reading out the name of the Bidder; the Bid Price(s), including any discounts and alternative bids and indicating whether there is a modification; the presence of a bid security or Bid-Securing Declaration, if required; and any other details as the Employer may consider appropriate. Only discounts and alternative offers read out at bid opening shall be considered for evaluation. Unless otherwise specified in the BDS, all pages of the Letter of Bid and Schedules are to be initialed by at least three representatives of the Employer attending the bid opening. No Bid shall be rejected at bid opening except for late Bids, in accordance with ITB 23.1.

25.4 The Employer shall prepare a record of the bid opening that shall include, as a minimum, the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per contract if

applicable, including any discounts and alternative offers; and the presence or absence of a bid security or a Bid-Securing Declaration, if one was required. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders who submitted Bids on time, and posted online when electronic bidding is permitted.

## **Evaluation and Comparison of Bids**

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| <b>26. Confidentiality</b>                         | <p>26.1 Information relating to the examination, evaluation, comparison, and postqualification of Bids and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with such process until the publication of Contract award.</p> <p>26.2 Any attempt by a Bidder to influence the Employer in the evaluation of the Bids or Contract award decisions may result in the rejection of its Bid.</p> <p>26.3 Notwithstanding ITB 26.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the bidding process, it may do so in writing.</p>   |
| <b>27. Clarification of Bids</b>                   | <p>27.1 To assist in the examination, evaluation, and comparison of the bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its Bid. 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 31.</p> <p>27.2 If a Bidder does not provide clarifications of its Bid by the date and time set in the Employer's request for clarification, its Bid may be rejected.</p> |
| <b>28. Deviations, Reservations, and Omissions</b> | <p>28.1 During the evaluation of Bids, the following definitions apply:</p> <p style="margin-left: 40px;">(a) "Deviation" is a departure from the requirements specified in the Bidding Document;</p> <p style="margin-left: 40px;">(b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and</p> <p style="margin-left: 40px;">(c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Document.</p>  |
| <b>29. Determination of Responsiveness</b>         | <p>29.1 The Employer's determination of a Bid's responsiveness is to be based on the contents of the Bid itself, as defined in ITB 11.</p>  |

- 29.2 A substantially responsive Bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,
- (a) if accepted, would:
    - (i) affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or
    - (ii) limit in any substantial way, inconsistent with the Bidding Document, the Employer's rights or the Bidder's obligations under the proposed Contract; or
  - (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Bids.
- 29.3 The Employer shall examine the technical aspects of the Bid submitted in accordance with ITB 16, Technical Proposal, in particular, to confirm that all requirements of Section 6 (Employer's Requirements) have been met without any material deviation, reservation, or omission.
- 29.4 If a Bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
- 30. Nonmaterial Nonconformities**
- 30.1 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.
- 30.2 Provided that a Bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the Bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.
- 30.3 Provided that a Bid is substantially responsive, the Employer shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price may be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component. The adjustment shall be made using the methods indicated in Section 3 (Evaluation and Qualification Criteria).
- 31. Correction of Arithmetical Errors**
- 31.1 Provided that the Bid is substantially responsive, the Employer shall correct arithmetical errors on the following basis:
- (a) Only for admeasurement contracts, if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected.

- (b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected.
  - (c) If there is a discrepancy between the bid price in the Summary of Bill of Quantities and the bid amount in item (c) of the Letter of Bid, the bid price in the Summary of Bill of Quantities will prevail and the bid amount in item (c) of the Letter of Bid will be corrected.
  - (d) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a), (b) and (c) above.
- 31.2 If the Bidder that submitted the lowest evaluated bid does not accept the correction of errors, its bid shall be disqualified and its bid security may be forfeited or its Bid-Securing Declaration executed.
- 32. **Conversion to Single Currency**
  - 32.1 For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted into a single currency as specified in the BDS.
- 33. **Domestic Preference**
  - 33.1 Unless otherwise specified in the BDS, domestic preference shall not apply.
- 34. **Subcontractors**
  - 34.1 Unless otherwise stated in the BDS, the Employer does not intend for the contractor to execute any specific elements of the Works through nominated Subcontractors.
  - 34.2 If Subcontractors are proposed for any of the key activities listed in Section 3 (Evaluation and Qualification) Criteria 2.4.2, they shall be considered as "Specialist Subcontractors" and shall meet qualification requirements for the relevant key activities.
- 35. **Evaluation and Comparison of Bids**
  - 35.1 The Employer shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.
  - 35.2 To evaluate a Bid, the Employer shall consider the following:
    - (a) the bid price, excluding Provisional Sums and the provision, if any, for contingencies in the Summary Bill of Quantities for admeasurement contracts, or Schedule of Prices for lump sum contracts, but including Daywork items, where priced competitively;
    - (b) price adjustment for correction of arithmetic errors in accordance with ITB 31.1;
    - (c) price adjustment due to discounts offered in accordance with ITB 14.4;
    - (d) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 32;
    - (e) adjustment for nonmaterial nonconformities in accordance with ITB 30.3;
    - (f) assessment whether the bid is abnormally low in accordance with ITB 36; and
    - (g) application of all the evaluation factors indicated in Section 3 (Evaluation and Qualification Criteria).

- 35.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.
- 35.4 If this Bidding Document allows Bidders to quote separate prices for different contracts, and to award multiple contracts to a single Bidder, the methodology to determine the lowest evaluated price of the contract combinations, including any discounts offered in the Letter of Bid, is specified in Section 3 (Evaluation and Qualification Criteria).
- 35.5 The Employer shall compare all substantially responsive Bids to determine the lowest evaluated Bid, in accordance with ITB 35.2.
- 36. Abnormally Low Bids**
- 36.1 An abnormally low bid is one where the bid price, in combination with other elements of the bid, appears to be so low that it raises concerns as to the capability of the Bidder to perform the contract for the offered bid price.
- 36.2 When the offered bid price appears to be abnormally low, the Employer shall undertake a three-step review process as follows:
- (a) identify abnormally low costs and unit rates by comparing them with the engineer's estimates, other substantially responsive bids, or recently awarded similar contracts;
  - (b) clarify and analyze the bidder's resource inputs and pricing, including overheads, contingencies and profit margins; and
  - (c) decide whether to accept or reject the bid.
- 36.3 With regard to ITB 36.2 (b) above, the Employer will seek a written explanation from the bidder of the reasons for the offered bid price, including a detailed analysis of costs and unit prices, by reference to the scope, proposed methodology, schedule, and allocation of risks and responsibilities. This may also include information regarding the economy of the manufacturing process; the services to be provided, or the construction method to be used; the technical solutions to be adopted; and any exceptionally favorable conditions available to the bidder for the works, equipment or services proposed.
- 36.4 After examining the explanation given and the detailed price analyses presented by the bidder, the Employer may:
- (a) accept the bid, if the evidence provided satisfactorily accounts for the low bid price and costs, in which case the bid is not considered abnormally low;
  - (b) accept the bid, but 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. The amount of the performance security shall generally be not more than 20% of the contract price; or
  - (c) reject the bid if the evidence provided does not satisfactorily account for the low bid price, and make a similar determination for the next ranked bid, if required.

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| <b>37. Unbalanced or Front-Loaded Bids</b>                                   | <p>37.1 If the Bid, which results in the lowest evaluated Bid Price, is seriously unbalanced or front-loaded in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed, as well as the pricing and sources of materials, equipment and labor.</p> <p>37.2 After the evaluation of the information and detailed price analyses presented by the Bidder, the Employer may as appropriate:</p> <ul style="list-style-type: none"> <li>(a) accept the Bid; or</li> <li>(b) accept the Bid, but require that the total 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 subject to ITB 44.2; or</li> <li>(c) reject the Bid and make a similar determination for the next ranked bid.</li> </ul>  |
| <b>38. Qualification of the Bidder</b>                                       | <p>38.1 The Employer shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive Bid meets the qualifying criteria specified in Section 3 (Evaluation and Qualification Criteria).</p> <p>38.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 17.1. Unless permitted in the BDS, the determination shall not take into consideration the qualifications of other firms such as the Bidder's subsidiaries, parent entities, or affiliates.</p> <p>38.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. The Employer reserves the right to reject the bid of any bidder found to be in circumstances described in GCC 73.2(c). 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.</p> |
| <b>39. Employer's Right to Accept Any Bid, and to Reject Any or All Bids</b> | <p>39.1 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.</p>   |
| <b>40. Notice of Intention for Award of Contract</b>                         | <p>40.1 If Standstill provisions apply as specified in the BDS, the standstill period shall be defined in the BDS to specify the duration subsequent to notification of intention for award of contract (before making the actual contract award) within which any unsuccessful bidder can challenge the proposed award.</p>   |

## **Award of Contract**

- 41. Award Criteria**                      41.1 The Employer shall award the Contract to the Bidder whose offer has been determined in line with ITB 35 to ITB 37 above, to be the lowest evaluated Bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.
- 42. Notification of Award**
- 42.1 Prior to the expiration of the period of bid validity and upon expiry of the standstill period specified in ITB 40.1, or upon satisfactory resolution of a complaint filed within standstill period, if applicable, the Employer shall transmit the Notification of Award through issuance of Letter of Acceptance using the form included in Section 9 (Contract Forms) to the successful Bidder, in writing, that its Bid has been accepted. At the same time, the Employer shall also notify all other Bidders of the results of the bidding.
- 42.2 Unless standstill period applies, upon notification of award through issuance of Letter of Acceptance, unsuccessful Bidders may request in writing to the Employer for a debriefing seeking explanations on the grounds on which their Bids were not selected. The Employer shall promptly respond in writing and/or in a debriefing meeting to any unsuccessful Bidder who, after publication of contract award, requests a debriefing.
- 42.3 Until a formal contract is prepared and executed, the notification of award through issuance of Letter of Acceptance shall constitute a binding Contract.
- 42.4 Within 2 weeks of the award of contract or expiry of the standstill period, where such period applies, or, if a complaint has been filed within the standstill period, upon receipt of ADB's confirmation of satisfactory resolution of the complaint, the borrower shall publish in an English language newspaper or widely known and freely accessible website the results identifying the bid and lot or package numbers, as applicable and the following information:
- (a) name of each Bidder who submitted a Bid;
  - (b) bid prices as read out at bid opening;
  - (c) name and evaluated prices of each Bid that was evaluated;
  - (d) name of Bidders whose bids were rejected and the reasons for their rejection; and
  - (e) name of the winning Bidder, and the price it offered, as well as the duration and summary scope of the contract awarded.
- 43. Signing of Contract**
- 43.1 Promptly after notification, the Employer shall send the successful Bidder the Contract Agreement.
- 43.2 Within 28 days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Employer.

**44. Performance Security**

- 44.1 Within 28 days of the receipt of notification of award through issuance of Letter of Acceptance from the Employer, the successful Bidder shall furnish the performance security in accordance with the Conditions of Contract, subject to ITB 36 and ITB 37, using for that purpose the Performance Security Form included in Section 9 (Contract Forms), or another form acceptable to the Employer. If the bank issuing performance security is located outside the Employer's country, it shall be counter-guaranteed or encashable by a bank in the Employer's country.
- 44.2 Failure of the successful Bidder to submit the abovementioned performance security or to sign the Contract Agreement shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security or execution of the Bid-Securing Declaration. In that event, the Employer may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.
- 44.3 The above provision shall also apply to the furnishing of a domestic preference security, if so required.

**45. Bidding-Related Complaints**

- 45.1 The procedures for dealing with Bidding-Related Complaints arising out of this bidding process are specified in the BDS.

## Section 2: Bid Data Sheet

This Section consists of provisions that are specific to each procurement and supplement the information or requirements included in Section 1 (Instructions to Bidders).

### A. General

ITB 1.1	The number of the Invitation for Bids (IFB) is: CW301/A
ITB 1.1	The Employer is: Technical Education and Skills Development Authority
ITB 1.1	<p>The name of the bidding process is: Design and Build of the TESDA Innovation Center with Rehabilitation Works, RTIC-Tacloban Leyte</p> <p>The identification number of the bidding process is: CW301/A</p> <p>The number and identification of lots comprising this bidding process is: Not Applicable</p>
ITB 2.1	The Borrower is: Government of the Philippines
ITB 2.1	The name of the Project is: 4268-PHI: Supporting Innovation in the Philippine Technical and Vocational Education and Training System Project

### B. Contents of Bidding Documents

ITB 7.1	<p>For <b><u>clarification purposes</u></b> only, the Employer's address is:</p> <p>Chief Administrative Officer, Procurement Division, Administrative Service</p> <p>TESDA Administration Building</p> <p>East Service Road, South Luzon Expressway (SLEX)</p> <p>Fort Bonifacio, Taguig City 1630</p> <p>Email - bacsecretariat_siptvets@tesda.gov.ph</p> <p>Requests for clarification should be received by the Employer no later than: 10 days of bid submission</p>
ITB 7.4	<p>A Pre-Bid meeting will take place.</p> <p>Date: 08 March 2024</p> <p>Time: 1:00 PM</p> <p>Place: TESDA Administration Building</p> <p>East Service Road, South Luzon Expressway (SLEX)</p>

	Fort Bonifacio, Taguig City 1630 A site visit conducted by the Employer will not be organized.
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### C. Preparation of Bids

ITB 9	A complete set of Bidding Documents may be acquired by interested Bidders beginning 28 February 2024 from the given address and website(s) and upon payment of the applicable fee for the Bidding Documents in the amount of Fifty Thousand Pesos (Php 50,000.00).
ITB 10.1	The language of the Bid is: English
ITB 11.1 (b)	In accordance with ITB 12 and ITB 14, the following schedules shall be submitted with the bid, including the priced Bill of Quantities for admeasurement contracts and Activity Schedule for lump sum contracts: Activity Schedule.
ITB 11.1 (h)	The Bidder shall submit with its Bid the following additional documents: Activity Schedule.
ITB 12.1	The units and rates in figures entered into the Activity Schedule should be typewritten or if written by hand, must be in print form. Activity Schedule not presented accordingly may be considered nonresponsive.
ITB 13.1	Alternative bids <u>shall not be</u> permitted.
ITB 13.2	Alternative times for completion <u>shall not be</u> permitted.
ITB 13.4	Alternative technical solutions shall be permitted for the following parts of the Works: <u>None</u>
ITB 14.5	The prices quoted by the Bidder <u>shall not be</u> subject to adjustment during the performance of the Contract.
ITB 15.1	The prices shall be quoted by the bidder and shall be paid in: <u>Philippine peso (PHP).</u>
ITB 18.1	The bid validity period shall be 120 days.
ITB 19.1	The Bidder shall furnish a bid security in the amount of <b>PHP 2.6 Million.</b>
ITB 19.4	No further instruction.
ITB 20.1	In addition to the original Bid, the number of copies is: One

<b>ITB 20.2</b>	<p>The written confirmation of authorization to sign on behalf of the Bidder shall consist of:</p> <p>An organizational document, board resolution or its equivalent, or power of attorney specifying the representative's authority to sign the Bid on behalf of, and to legally bind, the Bidder. If the Bidder is an intended or an existing Joint Venture, the power of attorney should be signed by all partners and specify the authority of the named representative of the Joint Venture to sign on behalf of, and legally bind, the intended or existing Joint Venture. If the Joint Venture has not yet been formed, also include evidence from all proposed Joint Venture partners of their intent to enter into a Joint Venture in the event of a contract award in accordance with ITB 11.2.</p>
<b>ITB 20.2</b>	The Bidder shall submit an acceptable authorization within <u>7</u> days.

#### **D. Submission and Opening of Bids**

<b>ITB 21.1</b>	<p>Bidders shall submit their Bids by courier or by hand at the following address-</p> <p>MS. ARCADIA CRESELDA P. BALINAS  Chief Administrative Officer, Procurement Division, Administrative Service  TESDA Administration Building  East Service Road, South Luzon Expressway (SLEX)  Fort Bonifacio, Taguig City 1630</p>
<b>ITB 21.1 (b)</b>	Electronic bidding submission procedures shall be: <u>Not Applicable</u>
<b>ITB 22.1</b>	<p>For <b><u>bid submission purposes</u></b> only, the Employer's address is:</p> <p>MS. ARCADIA CRESELDA P. BALINAS  Chief Administrative Officer, Procurement Division, Administrative Service  TESDA Administration Building  East Service Road, South Luzon Expressway (SLEX)  Fort Bonifacio, Taguig City 1630</p> <p><b>The deadline for bid submission is:</b>  08 April 2024, 10:00 AM (PST)</p>
<b>ITB 25.1</b>	<p>The bid opening shall take place at:</p> <p>TESDA Administration Building  East Service Road, South Luzon Expressway (SLEX)  Fort Bonifacio, Taguig City 1630  08 April 2024, 11:00 AM (PST)</p>

<b>ITB 25.1</b>	Electronic bid opening procedure shall be as follows: Not Applicable
<b>ITB 25.3</b>	The Letter of Bid and Schedules shall be initialed by three (3) representatives of the Employer attending the Bid opening.

## E. Evaluation and Comparison of Bids

<b>ITB 32.1</b>	Not applicable.
<b>ITB 33.1</b>	Domestic preference <u>Shall Not</u> apply.
<b>ITB 34.1</b>	The Employer does not intend for the contractor to execute any specific elements of the Works through nominated subcontractors.
<b>ITB 38.2</b>	The qualifications of other firms such as the Bidder's subsidiaries, parent entities, or affiliates shall not be permitted.
<b>ITB 40.1</b>	Standstill provisions shall not apply.

## F. Award of Contract

<b>ITB 45.1</b>	<p>The procedures for Bidding-Related Complaints are referenced in the Procurement Regulations for ADB Borrowers (Appendix 7). The Bidder should submit its complaint following these procedures, in writing, to:</p> <p><b>For the attention:</b></p> <p>MS. ARCADIA CRESELDA P. BALINAS</p> <p>Chief Administrative Officer, Procurement Division, Administrative Service</p> <p>Employer: Technical Education and Skills Development Authority</p> <p>TESDA Administration Building</p> <p>East Service Road, South Luzon Expressway (SLEX)</p> <p>Fort Bonifacio, Taguig City 1630</p> <p>Email - bacsecretariat_siptvets@tesda.gov.ph</p>
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# Section 3: Evaluation and Qualification Criteria

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# 1. Evaluation

In addition to the criteria listed in ITB 35.2 (a)–(f), other relevant factors are as follows:

## 1.1 Adequacy of Technical Proposal

Evaluation of the Bidder's Technical Proposal will include an assessment of the Bidder's technical capacity to successfully implement the contract considering its proposed site organization, method statement, mobilization, and construction schedule (to be described by the Bidder in sufficient detail to demonstrate the adequacy of its work methods, scheduling, and material sourcing) including the extent to which they are presented in a consistent manner and comply with requirements stipulated in Section 6 (Employer's Requirements) without material deviation, reservation, or omission.

Noncompliance with equipment and personnel requirements described in Section 6 (Employer's Requirements) shall not normally be a ground for bid rejection, and such noncompliance will be subject to clarification during bid evaluation and rectification prior to contract award.

## 1.2 Completion Time

An alternative Completion Time shall not be permitted

## 1.3 Technical Alternatives

Technical alternatives shall not be permitted

## 1.4 Specialist Subcontractors

Only the specific experience of Specialist Subcontractors for key activities specified in criterion 2.4.2 Construction Experience in Key Activities will be considered. The experience of Specialist Subcontractors in contracts of similar size and nature, and their financial resources shall not be added to those of the Bidder for purposes of qualification of the Bidder.

## 1.5 Quantifiable Nonconformities and Omissions

Subject to ITB 14.2 and ITB 35.2, the evaluated cost of quantifiable nonconformities including omissions, is determined as follows:

Pursuant to ITB 30.3, the cost of all quantifiable nonmaterial nonconformities shall be evaluated, including omissions in Daywork where competitively priced but excluding omission of prices in the Bill of Quantities. The Employer will make its own assessment of the cost of any nonmaterial nonconformities and omissions for the purpose of ensuring fair comparison of bids.

**1.6 Domestic Preference**

A margin of preference shall not be allowed.

**1.7 Other Criteria**

**1.7.1 Environmental, Health and Safety Management Plan (EHSMP)**

Any bid not accompanied by the EHSMP may be rejected by the Employer as nonresponsive. If a Bidder submits a EHSMP that is not commensurate with the risks and impacts of the proposed works and activities in the bidding document, the Employer shall issue a request for clarification to request for further information from the Bidder. The Bidder must submit the requested information within 3 working days of receiving such a request. Failure to provide a satisfactory response to the request for further information within the prescribed period of receiving such a request may cause the rejection of the Bid.

**1.7.2 Sustainable Procurement**

Not Applicable

**1.7.3 Life Cycle costs (for Financial Evaluation)**

Not Applicable

**1.8 Multiple Contracts**

Not Applicable

## 2. Qualification

### 2.1 Eligibility

Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	

#### 2.1.1 Nationality

Nationality in accordance with ITB 4.2.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Forms ELI – 1; ELI – 2 with attachments
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#### 2.1.2 Conflict of Interest

No conflicts of interest in accordance with ITB 4.3.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Letter of Bid
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#### 2.1.3 ADB Eligibility

Not having been declared ineligible by ADB, as described in ITB 4.4.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Letter of Bid
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#### 2.1.4 Government-Owned Enterprise

Bidder required to meet conditions of ITB 4.5.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Forms ELI - 1, ELI - 2 with attachments
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#### 2.1.5 United Nations Eligibility

Not having been excluded by an act of compliance with a United Nations Security Council resolution in accordance with ITB 4.8.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Letter of Bid
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## 2.2 Historical Contract Nonperformance

### 2.2.1 History of Nonperforming Contracts

Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Nonperformance of a contract <sup>a</sup> did not occur as a result of contractor default since 1 January 2020	Must meet requirement	Must meet requirement	Must meet requirement <sup>b</sup>	Not Applicable	Form CON-1

<sup>a</sup> Nonperformance, as decided by the Employer, shall include all contracts where (a) nonperformance was not challenged by the contractor, including through referral to the dispute resolution mechanism under the respective contract, and (b) contracts that were so challenged but fully settled against the contractor. Nonperformance shall not include contracts where Employers decision was overruled by the dispute resolution mechanism. Nonperformance must be based on all information on fully settled disputes or litigation, i.e. dispute or litigation that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the Bidder have been exhausted.

<sup>b</sup> This requirement also applies to contracts executed by the Bidder as Joint Venture partner.

### 2.2.2 Suspension Based on Execution of Bid-Securing Declaration

Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Not under suspension based on execution of a Bid-Securing Declaration pursuant to ITB 4.6.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Letter of Bid

### 2.2.1 Pending Litigation and Arbitration

2.2.3 Pending litigation and arbitration criterion shall not apply.

### 2.2.4 Declaration: Environmental, Health and Safety Past Performance

Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Declare any contracts that have been suspended or terminated and/or performance security called by an employer for reasons related to the non-compliance of any environmental, health and safety contractual obligations in the past five years.	Must make the declaration. If the bidder proposes Specialist Sub-contractor/s to meet EQC 2.4.2, those Specialist Sub-contractor/s must also make the declaration	Not applicable	Each partner must make the declaration. If the bidder proposes Specialist Sub-contractor/s to meet EQC 2.4.2, those Specialist Sub-contractor/s must also make the declaration	Not applicable	Form CON-2

## 2.3 Financial Situation

### 2.3.1 Historical Financial Performance

Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Submission of audited financial statements or, if not required by the law of the Bidder's country, other financial statements acceptable to the Employer, for the last 3 financial years to demonstrate the current soundness of the Bidder's financial position. As a minimum, the Bidder's net worth for the last year, calculated as the difference between total assets and total liabilities should be positive.	Must meet requirement	Not applicable	Must meet requirement	Not applicable	Form FIN - 1 with attachments

### 2.3.2 Average Annual Construction Turnover

Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Minimum average annual construction turnover of <b>PHP 176 million</b> , calculated as total certified payments received for contracts in progress or completed, within the last 3 financial years.	Must meet requirement	Must meet requirement	Must meet 25% of the requirement	Must meet 40% of the requirement	Form FIN - 2

### 2.3.3 Financial Resources

If the bid evaluation process and the decision for the award of the Contract takes more than 1 year from the date of bid submission, Bidders may be asked to resubmit their current contract commitments and latest information on financial resources supported by latest audited accounts or audited financial statements, or if not required by the law of the Bidder's country, other financial statements acceptable to the Employer, and the Bidders' financial capacity, will be reassessed on this basis.

Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
For Single Entities The Bidder must demonstrate that its financial resources defined in FIN - 3, less its financial obligations for its current contract commitments defined in FIN - 4, meet or exceed the total requirement for the Subject Contract of <b>PHP 22 million</b> .	Must meet requirement	Not applicable	Not applicable	Not applicable	Form FIN – 3 and Form FIN – 4
For Joint Ventures (1) One partner must demonstrate that its financial resources defined in FIN - 3, less its financial obligations for its own current contract commitments defined in FIN - 4, meet or exceed its required share of 40% from the total requirement for the Subject Contract.  AND	Not applicable	Not applicable	Not applicable	Must meet requirement	Form FIN – 3 and Form FIN – 4
(2) Each partner must demonstrate that its financial resources defined in FIN - 3, less its financial obligations for its own current contract commitments defined in FIN - 4, meet or exceed its required share of 25% from the total requirement for the Subject Contract.  AND	Not applicable	Not applicable	Must meet requirement	Not applicable	Form FIN – 3 and Form FIN – 4
(3) The Joint Venture must demonstrate that the combined financial resources of all partners defined in FIN - 3, less all the partners' total financial obligations for the current contract commitments defined in FIN - 4, meet or exceed the total requirement for the Subject Contract of <b>PHP 22 million</b>	Not applicable	Must meet requirement	Not applicable	Not applicable	Form FIN – 3 and Form FIN – 4

## 2.4 Construction Experience

### 2.4.1 Contracts of Similar Size and Nature

Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
<p>1. Participation as a contractor, Joint Venture partner, or Subcontractor, in at least one contract that has been satisfactorily and substantially completed within the last 5 years and that is similar to the proposed works, where the value of the Bidder's participation exceeds <b>PHP 106 Million</b>. The similarity of the Bidder's participation shall be based on Section 6 of the bidding document.</p> <p>Or</p> <p>2. Participation as a contractor, Joint Venture partner, or Subcontractor, in at least two contract that has been satisfactorily and substantially completed within the last 5 years and that is similar to the proposed works, where the value of the Bidder's participation exceeds <b>PHP 66 Million</b>. The similarity of the Bidder's participation shall be based on Section 6 of the bidding document.</p>	Must meet requirement	Not applicable	Not applicable	Must meet requirement	Form EXP - 1

### 2.4.2 Construction Experience in Key Activities

2.4.2 (a) Must be complied with by the Bidder. In case of a Joint Venture Bidder, the Bidder or at least one of the partners must meet the requirement in the key activity. For contracts under which the Bidder participated as a Joint Venture partner, only the Bidder's designated scope of works under the contracts shall be considered to meet this requirement.

**Table A**

Requirement	Single Entity	Joint Venture	Submission Requirements
For the above or other contracts executed during the period stipulated in 2.4.1, a minimum construction experience in the following key activities:	Must meet requirement	Must meet requirement	Form EXP – 2
Designing, Construction and Commissioning of a single project in a timeline of maximum 3 Years:  Construction Area: 2,000 Sqm (Whole Project Construction Area may be considered)			
Experience in at least one of Designing, Construction and Commissioning of building have obtained Green Building Certification			
Must have an active accreditation and certification from the Philippine Contractors Accreditation Board (PCAB) as qualified DESIGN AND BUILD CONTRACTOR with at least PCAB License Category “AA”, Size Range Large “A”			

### 2.4.3 Specific Experience in Managing Environmental, Health and Safety Aspects

Requirement	Single Entity or Its Specialist Subcontractors	Joint Venture or Its Specialist Subcontractors	Submission Requirements
For the contracts in 2.4.1 and 2.4.2 above and/or any other contracts [substantially completed and under implementation] as prime contractor, Joint Venture partner, or Subcontractor between 1st January 2020 and Bid submission deadline, experience in managing EHS risks and impacts in the following aspects:  Specific experience requirements to manage EHS aspects	Must meet requirements	One member must meet requirements  Or  All members must meet requirements	Form EXP – 3

## 2.5 Organizational Environmental, Health and Safety System

### 2.5.1 Environmental, Health and Safety Certification

Requirement	Single Entity or Its Specialist Subcontractors	Joint Venture or Its Specialist Subcontractors	Submission Requirements
Availability of a valid ISO certification or internationally recognized equivalent (equivalency to be demonstrated by the Bidder), and applicable to the worksite: ISO 14001 or equivalent	Must meet requirements	One member must meet requirements  Or  All members must meet requirements	Form EXP – 4

### 2.5.2 Environmental, Health and Safety Documentation

Requirement	Single Entity or Its Specialist Subcontractors	Joint Venture or Its Specialist Subcontractors	Submission Requirements
Availability of in-house policies and procedures for EHS management:  Existence of well defined EHS policy to comply with the local and national laws.	Must meet requirements	One member must meet requirements  Or  All members must meet requirements	Form EXP – 5

### 2.5.3 Environmental, Health and Safety Dedicated Personnel

Requirement	Single Entity or Its Specialist Subcontractors	Joint Venture or Its Specialist Subcontractors	Submission Requirements
Availability of in-house personnel dedicated to EHS issues	Must meet requirements	One member must meet requirements  Or  All members must meet requirements	Form EXP – 6

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# Letter of Bid

**-Note-**

The Bidder must accomplish the Letter of Bid on its letterhead clearly showing the Bidder's complete name and address. ....

Date: .....

OCB No.: .....

Invitation for Bid No.: .....

To: *[insert complete name of the Employer]*

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB) Clause 8.
- (b) We acknowledge that we have read and understand ADB's Anticorruption Policy (1998) and Integrity Principles and Guidelines (2015), both as amended from time to time.
- (c) We offer to execute in conformity with the Bidding Documents the following Works: *[insert narrative]*
- (d) The total price of our Bid, excluding any discounts offered in item (d) below is:

*[amount of foreign currency in words], [amount in figures], and [amount of local currency in words], [amount in figures]*

*The total bid price from the Summary of Bill of Quantities for admeasurement contracts or Activity Schedule for lump sum contracts should be entered by the Bidder inside this box. Absence of the total bid price in the Letter of Bid may result in the rejection of the bid.*

- (e) The discounts offered and the methodology for their application are as follows: *[insert discounts and methodology for their application if any]*
- (f) Our bid shall be valid for a period of *[insert bid validity period as specified in ITB 18.1 of the BDS]* days starts from the date fixed for the bid submission deadline in accordance with ITB 22.1, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
- (g) If our bid is accepted, we commit to obtain a performance security in accordance with the Bidding Document.
- (h) Our firm, including any Subcontractors or Suppliers for any part of the Contract, have nationalities from eligible countries in accordance with ITB 4.2.
- (i) We, our directors, key officers, key personnel, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers for any part of the contract, do not have any conflict of interest in accordance with ITB 4.3.

If there is any conflict of interest, please state details:

- (i) Parties involved in the conflict of interest: \_\_\_\_\_
- (ii) Details about the conflict of interest: \_\_\_\_\_

- (j) We are not participating, as a Bidder, either individually or as partner in a Joint Venture, in more than one Bid in this bidding process in accordance with ITB 4.3(e), other than alternative offers submitted in accordance with ITB 13.
- (k) Our firm, Joint Venture partners, our respective direct and indirect shareholders, directors, key officers, key personnel, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers for any part of the contract, are not subject to, or not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the Asian Development Bank or a debarment imposed by the Asian Development Bank in accordance with the Agreement for Mutual Enforcement of Debarment Decisions between the Asian Development Bank and other development banks.<sup>2</sup>
- (l) Our firm, Joint Venture partners, our respective direct and indirect shareholders, directors, key officers, key personnel, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers for any part of the contract, are not under ongoing investigation and/or sanctions proceedings by the Asian Development Bank or any multilateral development bank.

If under ongoing investigation and/or sanction proceedings by the Asian Development Bank or any multilateral development bank, please state details:

- (i) Name of the multilateral development bank: \_\_\_\_\_
- (ii) Reason for the ongoing investigation/allegations: \_\_\_\_\_

- (m) Our firm, Joint Venture partners, our respective direct and indirect shareholders, directors, key officers, key personnel, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers for any part of the Contract, are not temporarily suspended, debarred, declared ineligible, or subject to any national and/or international sanctions by any country, any international organization, any multilateral development bank and other donor agency.

If so temporarily suspended, debarred, declared ineligible, or subject to any national and/or international sanctions by any country, any international organization, any multilateral development bank and other donor agency, please state details (as applicable to each Joint Venture partner, their respective direct or indirect shareholders, directors, key officers, key personnel, associate, parent company, affiliate, subsidiaries, Subcontractors, consultants, subconsultants, manufacturers, service providers and/or Suppliers):

- (i) Name of Institution: \_\_\_\_\_
- (ii) Period of the temporary suspension, debarment, ineligibility, or national or international sanction [start and end date]: \_\_\_\_\_
- (iii) Reason for the temporary suspension, debarment, ineligibility, or national or international sanction: \_\_\_\_\_

- (n) Our firm, Joint Venture partners, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers, Suppliers, key officers, directors and key personnel have never been charged or convicted with any criminal offense (including felonies but excluding misdemeanors) or infractions

<sup>2</sup> These institutions include African Development Bank, European Bank for Reconstruction and Development (EBRD), Inter-American Development Bank (IADB), and the World Bank Group. According to paragraph 9 of the Agreement, other international financial institutions may join upon the consent of all Participating Institutions and signature of a Letter of Adherence by the international financial institution substantially in the form provided (Annex B to the Agreement). Upon adherence, such international financial institution shall become a Participating Institution for purposes of the Agreement. Bidders are advised to check [www.adb.org/integrity](http://www.adb.org/integrity) for updates.

and/or violations of ordinance; nor charged or found liable in any civil or administrative proceedings in the last 10 years; or undergoing investigation for such, or subject to any criminal, civil or administrative orders, monitorship or enforcement actions.

If so charged, convicted/found liable, under ongoing investigation, or subject to orders, monitorship or enforcement actions, please state details:

- (i) Nature of the offense, violation, proceedings, investigation, and/or monitorship or enforcement actions: \_\_\_\_\_
- (ii) Court, area of jurisdiction and/or the enforcement agency: \_\_\_\_\_
- (iii) Resolution [i.e. *dismissed; settled; or convicted/duration of penalty*]: \_\_\_\_\_
- (iv) Other relevant details [*please specify*]: \_\_\_\_\_

- (o) Our firm, Joint Venture partners, our respective direct and indirect shareholders, directors, key officers, key personnel, associates, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers, can make and receive electronic fund transfer payments through the international banking system or otherwise discharge the Employer's obligation upon initiation of wire transfer.

If unable to make or receive funds through the international banking system or otherwise discharge the Employer's obligation upon initiation of wire transfer, please state the details:

- (i) Nature of the restriction: \_\_\_\_\_
- (ii) Jurisdiction of the restriction: \_\_\_\_\_
- (iii) Other relevant details: \_\_\_\_\_

- (p) Our firm, Joint Venture partners, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers, key officers, directors and key personnel are not from a country which is prohibited to export goods or services to, or receive any payments from the Employer's country and/or are not prohibited to receive payments for particular goods or services by the Employer's country 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.
- (q) We understand that it is our obligation to notify the Employer of any changes in connection with the matters described in paragraphs (i), (k), (l), (m), (n), (o), (p) and (t) of this Letter of Bid.
- (r) [We are not a government-owned enterprise] / [We are a government-owned enterprise but meet the requirements of ITB 4.5].<sup>3</sup>
- (s) We have not been suspended nor declared ineligible by the Employer based on execution of a Bid-Securing Declaration in accordance with ITB 4.6.
- (t) We have paid, or intend to pay, either directly or indirectly, the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract:<sup>4</sup>

Name of Recipient	Address	Reason	Amount
.....	.....	.....	.....
.....	.....	.....	.....

- (u) We understand that this Bid, together with your written acceptance thereof included in your notification of award through the issuance of Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed.

<sup>3</sup> Use one of the two options as appropriate.

<sup>4</sup> If none has been paid or is to be paid, indicate "None".

- (v) We understand that you are not bound to accept the lowest evaluated Bid or any other Bid that you may receive.
- (w) At any time following submission of our Bid, we shall permit, and shall cause our Joint Venture partners, directors, key officers, key personnel, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers for any part of the contract to permit ADB or its representative to inspect our site, assets, accounts and records and other documents relating to the bid submission and to have them audited by auditors appointed by ADB. We understand that failure of this obligation may constitute obstructive practice that may result in debarment and/or contract termination.
- (x) Regardless of whether the contract will be awarded to us, we shall preserve all accounts, records and other documents related to bid submission for at least 3 years from the date of submission of the bid or the period prescribed in applicable law, whichever is longer.
- (y) If we are awarded the contract, we shall preserve all accounts, records and other documents related to the procurement and execution of the contract for at least 5 years after completing the works contemplated in the relevant contracts or the period prescribed in applicable law, whichever is longer.
- (z) If our Bid is accepted, we commit to mobilizing key equipment and personnel in accordance with the requirements set forth in Section 6 (Employer's Requirements) and our technical proposal, or as otherwise agreed with the Employer.
- (aa) We certify on behalf of the Bidder, that the information provided in the bid has been fully reviewed, given in good faith, and to the best of our knowledge is true and complete. We understand that it is our obligation to inform the Employer of any changes to the information as and when it becomes known to us. We understand that any misrepresentation that knowingly or recklessly misleads, or attempts to mislead may lead to the automatic rejection of the Bid or cancellation of the contract, if awarded, and may result in remedial actions, in accordance with ADB's Anticorruption Policy (1998, as amended to date) and Integrity Principles and Guidelines (2015, as amended from time to time).

Name .....

In the capacity of .....

Signed

.....  
 .....

Duly authorized to sign the Bid for and on behalf of .....

Date

.....  
 .....

# Schedules

## Schedule of Payment Currencies

For .....insert name of Section of the Works .....

Separate tables may be required if the various sections of the Works (or of the Bill of Quantities) will have substantially different foreign and local currency requirements. In such a case, the Employer should prepare separate tables for each Section of the Works.

	A	B	C	D
Name of Payment Currency	Amount of Currency	Rate of Exchange to Local Currency	Local Currency Equivalent $C = A \times B$	Percentage of Net Bid Price (NBP) $\frac{100 \times C}{NBP}$
Local Currency		1.00		
Foreign Currency #1				
Foreign Currency #2				
Foreign Currency #3				
Net Bid Price				100.00
Provisional Sums Expressed in Local Currency		1.00		
BID PRICE				

## Table(s) of Adjustment Data

Table A - Local Currency Payment

To be entered by the Employer				
Index Code	Index Description	Source of Index	Base Value and Date	Bidder's Proposed Weighting (coefficient)
L: Labor	Nonadjustable	—	—	a: _____
E: Equipment				b: _____
M1: Material 1				c: _____
M2: Material 2				d: _____
...etc...				e: _____
Total				1.00

To be entered by the Bidder.  
(Employer may prescribed the range. of weighing)

Table B - Foreign Currency Payment

Name of Currency: [Insert name of currency. If the Bidder wishes to quote in more than one foreign currency, this table should be repeated for each foreign currency such as #1, #2, and #3.]

To be entered by the Bidder				
Index Code	Index Description	Source of Index	Base Value and Date	Bidder's Proposed Weighting (coefficient)
L: Labor	Nonadjustable	—	—	a: _____
E: Equipment				b: _____
M1: Material 1				c: _____
M2: Material 2				d: _____
...etc...				e: _____
Total				1.00

To be entered by the Bidder.  
(Employer may prescribed the range. of weighing)

- "Base Date" means the date 28 days prior to the deadline for submission of bids.
- For a given currency, the "Source of Index" should be issued or published within the country to which the currency relates.
- Tables of Adjustment Data shall only be included if prices are to be quoted as adjustable prices in accordance with ITB 14.5.

# Activity Schedule

## [Schedules of Prices – Lump Sum Contract]

The Employer has indicated below the list of major activities comprising the works consistent with the description of works, drawings and specifications in Section 6 (Employer's Requirements). Each work has been described in sufficient details to provide a clear guidance to Bidders with respect to the type of works, their scope and complexity and compliance with the required standards.

Bidders are required to enter the prices against each work item on a lump sum basis. Work items against which no lump sum price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by other work items against which the lump sum prices were entered. The sum of prices entered against each work item will represent the total bid price.

The whole cost of complying with the provisions of the Contract shall be included in the Items provided in the Activity Schedule, and where no Items are provided, the cost shall be deemed to be distributed among the Amounts for the related Items of Work. It should be noted that the cost of work shall include compliance with the Environmental Management Plan (EMP), as well as the Environmental Monitoring Plan for all items of works including related provisions mentioned elsewhere in the contract and mainly consist of jobs as details below –

- i. Detailed survey of site of work and to make detailed contour plan, cross section of site including clearances of site from all hindrances for the purpose of surveying work. The survey sheet to be get approved from the employer.
- ii. Preparation of concept drawings along with 3 D presentation of project as per scope of work mentioned in the bid document for approval from the client department and user department. The proposed type of construction for the building of this project is pre-engineered type structures consists of RCC Sub-base/sub structure with super-structure construction having structural steel/MS Tubular/ MS Hollow section members in main structure components and LGSF member construction in partition wall, roof truss, floor base, etc having RCC slab on each floor.
- iii. Check the feasibility of concept drawings at site dully get approved from the employer.
- iv. Preparation of detailed working drawings including all trade coordination drawings showing details specification of all material along with 3 D Presentation on the basis of approved concept drawings for execution of work to get approved from the Employer, client department and finally from local body concerned of the area. The detailed working drawings shall elaborate all provisions such as internal furniture layout, temporary barricading along with safety signages, approach road including pedestrian paths, car parking, water drainage system, road marking and signages, site development, structural member detail, walls, floors, roof, water supply & sanitary installation, fix furniture such as internal almirahs/ cup-boards/wardrobes, kitchen cabinets etc, rain water harvesting system & recharge wells including tanks of required capacity, external main water supply lines, sewerage lines, septic tank, overhead and underground tanks of required capacity, minimum 1 number borewells, boundary wall, landscaping of complete campus along with vegetation, plantation and providing sitting benches etc, solar water heater and solar panels, transformer including supply of power, HT and LT panels, caballing, DG sets, external lighting, fire detection/fire alarm, fire-fighting system including water tanks of required capacity, air conditioning in selected areas, CCTV, LAN and networking, Online time lapse camera with internet based live monitoring during entire project duration, audio visual & sound reinforcement system along with all other Miscellaneous Items required for the successful completion of project.
- v. Soil Investigation of site of work by boring method by drilling bores as approved by the employer and report to be get approved from any Indian Institute of Technology and final approval from the employer.

- vi. Detailed structural design, drawings along with soft copy of calculations on the basis of approved working drawings to be get approved from any Indian Institute of Technology and final approval from the employer.
- vii. Temporary barricading of site on all its boundary as per approved working drawings before starting of construction of work in such a manner that client approved advertisements can be displayed.
- viii. Fix signages and to adopt all safety measures at site of work before start of execution and during the execution of work till completion of project.
- ix. Execution of point as per approved Architectural working drawings and structural drawings and scope of work mentioned in the bid document to the entire satisfaction of employer.
- x. Approval of work from the employer, client department after completion of work.
- xi. Submission of project closure dossier including as Built Drawings of each and every component of work, Operation and Maintenance Manuals, Quality Records etc. after completion of work. This condition will be essential for releasing the performance security.

The following table mentions broad scope stages of the work; however, these can be further broken down by the project manager for certification of payments due to the contractor.

Heads and Sub Heads	Item of Work	Area (sq.m)	Rate in Rs. Per sqm	Cost in Philippine peso (PHP)
	<b>Innovation Center &amp; Rehabilitation works</b>	<b>2,122.60</b>		
	<b>Amount in words</b>			

**Signature of the Bidder**

### Stage wise percentage of Payment

The contractor is bound to carry out each and every component of the project as depicted in the bidding document however he will quote lump-sum rate in per sq. meter of built-up area of the structures to be constructed in the project. The quoted rates shall include internal furniture layout, temporary barricading along with safety signages, approach road including pedestrian paths, car parking, water drainage system, road marking and signages, site development, structural member detail, walls, floors, roof, water supply & sanitary installation, fix furniture etc, rain water harvesting system & recharge wells including tanks of required capacity, external main water supply lines, sewerage lines, septic tank, overhead and underground tanks of required capacity, minimum 1 number borewells, boundary wall, landscaping of complete campus along with vegetation, plantation and providing sitting benches etc, solar water heater and solar panels, transformer including supply of power, HT and LT panels, caballing, DG sets, external lighting, fire detection/fire alarm, fire-fighting system including water tanks of required capacity, air conditioning in selected areas,, CCTV, LAN and networking, Online time lapse camera with internet based live monitoring during entire project duration, audio visual & sound reinforcement system along with all other Miscellaneous Items required for the successful completion of project according to section 6 and nothing shall be paid extra for any activity mentioned in the bidding document. The contractor should consider all the factors in his financial bid in a manner that work is completed in stipulated period of 18 months.

The payment schedule shall remain as under: -

Sr. No.	Activity	Percentage of Payment	Remarks
1.	Advance Payment / Mobilization ( <b>Notice to Proceed</b> )	15.0%	<p>The Procuring Entity shall, upon a written request of the contractor which shall be submitted as a contract document, make an advance payment to the contractor in an amount <b>not exceeding fifteen percent (15%)</b> of the total contract price, to be made in lump sum or, at the most two, installments according to a <b>schedule specified in the PCC.</b></p> <p>The advance payment shall be made only upon the submission to and acceptance by the Procuring Entity of an irrevocable standby letter of credit of equivalent value from a commercial bank, a bank guarantee or a surety bond callable upon demand, issued by a surety or insurance company duly licensed by the Insurance Commission and confirmed by the Procuring Entity.</p> <p>The advance payment shall be repaid by the Contractor by an amount equal to the percentage of the total contract price used for the advance payment.</p> <p>The contractor may reduce his standby letter of credit or guarantee instrument by the amounts refunded by the Monthly Certificates in the advance payment.</p>

Sr. No.	Activity	Percentage of Payment	Remarks
			The Procuring Entity will provide an Advance Payment on the Contract Price as stipulated in the Conditions of Contract, subject to the maximum amount stated in SCC.
2.	Final Approval of Building Permit Plans or Issuance of Permit to Construct:	5% of total project cost	This includes the approved Detailed Architectural and Engineering Design (DAED) Construction Plans, Specifications, Estimate (Bill of Quantities, Materials, DUPA), Technical Specifications, Surveys from Employer and Local Building Official. The working drawings for detailing of component of building shall be issued by the concerned architect with the progress of work as defined in baseline program.
3.	Work completed up to plinth level and preparation for utilities, site preparation of areas for rehabilitation/ renovation.	7.50% of total cost	
4.	Structural and utilities completed up to Ground Floor and Mezzanine	10.0% of total cost	
5.	Structural and utilities completed up to Second Floor and/or mezzanine, with utilities	15.0% of total cost	
6.	Structural and utilities Completed up to 3 <sup>rd</sup> Floor or Roof/ Deck, including water tightness	15.0 % of total cost	
7.	Completion of partitions, architectural finishes, initial testing and commission, energization.	7.50% of total project cost	

Sr. No.	Activity	Percentage of Payment	Remarks
8.	Final energization of utilities, final testing and commissioning for	7.50% of total project cost	
9.	Site development, site access, plan, completion of areas for rehabilitation/ renovation	7.50% of total project cost	
10	Completion of project to the satisfaction of Engineer-in-Charge and Authorized committee	10% of total project cost	
	<b>Total</b>	<b>100%</b>	

# Bid Security

## Bank Guarantee

[Bank's name, and address of issuing branch or office]<sup>5</sup>

**Beneficiary:** ..... [name and address of the Employer] .....

**Date:** .....

**Bid Security No.:** .....

We have been informed that [name of the bidder] (hereinafter called "the Bidder") has submitted to you its bid dated [please specify] (hereinafter called "the Bid") for the execution of [ name of contract] under Invitation for Bids No. [please specify] ("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 words] [amount in figures] 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 Letter of Bid; or
- (b) does not accept the correction of errors in accordance with the Instructions to Bidders (hereinafter "the ITB"); or
- (c) 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, or (iii) fails or refuses to furnish the domestic preference security, if required.

This guarantee will expire (a) if the Bidder is the successful Bidder, upon our receipt of copies of the Contract Agreement 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) 28 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 indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revisions, ICC Publication No. 758.<sup>6</sup>

[Authorized signature(s) and bank's seal (where appropriate)]

<sup>5</sup> All italicized text is for use in preparing this form and shall be deleted from the final document.

<sup>6</sup> Or the employer may use "Uniform Rules for Demand Guarantees (URDG) ICC Publication No. 458" as appropriate.

# 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 the 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 the number of years as indicated in ITB 19.2 of the BDS]* starting on the date that we receive a notification from the Employer, 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) do not accept the correction of errors in accordance with the Instruction to Bidders (hereinafter "the ITB"); or
- (c) 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; (ii) fail or refuse to furnish the Performance Security, in accordance with the ITB; or (iii) fail or refuse to furnish the Domestic Preference Security, if required.

We understand that 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) 28 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 the Bidder]*

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Corporate Seal *[where appropriate]*

# AFFILIATE COMPANY GUARANTEE

Name of Contract/Contract No.:

Name and address of Employer: \_\_\_\_\_  
[together with successors and assigns].

We have been informed that [(name of Contractor)] (hereinafter called the "Contractor") is submitting an offer for the above-referenced Contract in response to your invitation, and that the conditions of your invitation require its offer to be supported by an affiliate company guarantee.

In consideration of you, the Employer, awarding the Contract to the Contractor, we [(name of affiliated company)] irrevocably and unconditionally guarantee to you, as a primary obligation, that (i) throughout the duration of the Contract, we will make available to the Contractor our financial, technical capacity, expertise and resources required for the Contractor's satisfactory performance of the Contract; and (ii) we are fully committed, along with the Contractor, to ensuring a satisfactory performance of the Contract.

If the Contractor fails to so perform its obligations and liabilities and comply with the Contract, we will indemnify the Employer against and from all damages, losses and expenses (including legal fees and expenses) which arise from any such failure for which the Contractor is liable to the Employer under the Contract.

This guarantee shall come into full force and effect when the Contract comes into full force and effect. If the Contract does not come into full force and effect within a year of the date of this guarantee, or if you demonstrate that you do not intend to enter into the Contract with the Contractor, this guarantee shall be void and ineffective. This guarantee shall continue in full force and effect until all the Contractor's obligations and liabilities under the Contract have been discharged, when this guarantee shall expire and shall be returned to us, and our liability hereunder shall be discharged absolutely.

This guarantee shall apply and be supplemental to the Contract as amended or varied by the Employer and the Contractor from time to time. We hereby authorize them to agree on any such amendment or variation, the due performance of which and compliance with which by the Contractor are likewise guaranteed hereunder. Our obligations and liabilities under this guarantee shall not be discharged by any allowance of time or other indulgence whatsoever by the Employer to the Contractor, or by any variation or suspension of the works to be executed under the Contract, or by any amendments to the Contract or to the constitution of the Contractor or the Employer, or by any other matters, whether with or without our knowledge or consent.

This guarantee shall be governed by the law of the same country (or other jurisdiction) that governs the Contract and any dispute under this guarantee shall be finally settled under the [Rules or Arbitration provided in the Contract]. We confirm that the benefit of this guarantee may be assigned subject only to the provisions for assignment of the Contract.

Signed by:.....	Signed by: .....
(signature)	(signature)
.....	.....
(name)	(name)
.....	.....
(position in parent/subsidiary company)	(position in parent/subsidiary company)

Date:.....

If permitted in accordance with ITB 38.2 of the BDS, the Bidder shall provide the Affiliate Company Guarantee Form filled out and signed by each subsidiary, parent entity, or affiliate that the Bidder submits for consideration of the Employer in determining its qualifications.

# Technical Proposal

## Personnel

### Form PER – 1: Proposed Personnel

Bidder should provide the details of the proposed personnel and their experience record in the relevant Information Forms below for each candidate:

1.	Title of position
	Name
2.	Title of position
	Name
3.	Title of position
	Name
4.	Title of position
	Name
5.	Title of position
	Name
etc.	Title of position
	Name

 All titles of positions will be as listed in Section 6 (Employer's Requirements).

## Form PER – 2: Resume of Proposed Personnel

The Bidder shall provide all the information requested below. Use one form for each position.

Position		
Personnel information	Full Legal Name	Date of birth
	Known as	Place of Birth
	Nationality	Citizenship
	Type of Government ID	ID number
	Attach a copy of ID to this form	
	Professional qualifications	
Present employment	Name of employer	
	Address of employer	
	Telephone	Contact (manager / personnel officer)
	Fax	E-mail
	Job title	Years with present employer

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

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

## Equipment

### Form EQU: Equipment

The Bidder shall provide adequate information and details to demonstrate clearly that it has the capability to meet the equipment requirements indicated in Section 6 (Employer's Requirements), using the Forms below. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Bidder.

<b>Type of Equipment</b>	
<b>Equipment Information</b>	Name of manufacturer
	Model and power rating
	Capacity
	Year of manufacture
<b>Current Status</b>	Current location
	Details of current commitments
<b>Source</b>	Indicate source of the equipment
	<input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured

Omit the following information for equipment owned by the Bidder.

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

## **Site Organization**

## **Method Statement**

## **Mobilization Schedule**

Please reflect the no-objection request and approval step for Site Specific Environmental, Health and Safety Management Plan as per Contract Conditions in the Mobilization Schedule.

## **Construction Schedule**

The construction schedule shall include the following key milestones:

## **Environmental, Health and Safety Management Plan (EHSMP)**

The Bidder shall submit an outline Environmental, Health and Safety Management Plan (EHSMP) commensurate with the risks and impacts of the proposed works and activities. These strategies and plans shall describe in detail the actions, materials, equipment, management processes etc. that will be implemented by the Contractor, and its subcontractors.

In developing these strategies and plans, the Bidder shall have regard to the EHS provisions of the contract and EHS risks including those as may be more fully described in Section 6 (Employer's Requirements).

## Environmental, Health and Safety Code of Conduct

### Environmental, Health and Safety Code of Conduct for Contractor's Personnel Form

#### **Note to Bidder**

*The minimum content of the EHS Code of Conduct form as set out by the Employer shall not be substantially modified. However, the Bidder may add requirements as appropriate, including to take into account Contract-specific issues/risks.*

*The Bidder shall initial and submit the EHS Code of Conduct form as part of its bid.*

### **ENVIRONMENTAL, HEALTH AND SAFETY CODE OF CONDUCT FOR CONTRACTOR'S PERSONNEL**

We are the Contractor, [enter name of Contractor]. We have signed a contract with [enter name of Employer] for [enter description of the Works]. These Works will be carried out at [enter the Site and other locations where the Works will be carried out]. Our contract requires us to implement measures to address environmental, health and safety risks related to the Works.

This EHS Code of Conduct is part of our measures to deal with environmental, health and safety risks related to the Works. It applies to all our staff, labourers and other employees at the Works Site or other places where the Works are being carried out. It also applies to the personnel of each subcontractor and any other personnel assisting us in the execution of the Works. All such persons are referred to as "**Contractor's Personnel**" and are subject to this EHS Code of Conduct.

This EHS Code of Conduct identifies the behavior that we require from all Contractor's Personnel.

Our workplace is an environment where unsafe, offensive, abusive or violent behavior will not be tolerated and where all persons should feel comfortable raising issues or concerns without fear of retaliation.

#### **REQUIRED CONDUCT**

Contractor's Personnel shall:

1. carry out his/her duties competently and diligently;
2. comply with this EHS Code of Conduct and all applicable laws, regulations and other requirements, including requirements to protect the health, safety and well-being of other Contractor's Personnel and any other person;
3. maintain a safe working environment including by:
  - (a) ensuring that workplaces, machinery, equipment and processes under each person's control are safe and without risk to health;
  - (b) wearing required personal protective equipment;
  - (c) using appropriate measures relating to chemical, physical and biological substances and agents; and
  - (d) following applicable emergency operating procedures.
4. report work situations that he/she believes are not safe or healthy and remove himself/herself from a work situation which he/she reasonably believes presents an imminent and serious danger to his/her life or health;
5. treat other people with respect, and not discriminate against specific groups such as women, people with disabilities, migrant workers or children;

6. report violations of this EHS Code of Conduct; and
7. not retaliate against any person who reports violations of this EHS Code of Conduct, whether to us or the Employer, or who makes use of the grievance mechanism for Contractor's Personnel or the project's Grievance Redress Mechanism.

## RAISING CONCERNS

If any person observes behavior that he/she believes may represent a violation of this EHS Code of Conduct, or that otherwise concerns him/her, he/she should raise the issue promptly. This can be done by call [ ] to reach the Contractor's hotline *(if any)* and leave a message.

The person's identity will be kept confidential, unless reporting of allegations is mandated by the country law. Anonymous complaints or allegations may also be submitted and will be given all due and appropriate consideration. We take seriously all reports of possible misconduct and will investigate and take appropriate action. We will provide warm referrals to service providers that may help support the person who experienced the alleged incident, as appropriate.



## CONSEQUENCES OF VIOLATING THE ENVIRONMENTAL, HEALTH AND SAFETY CODE OF CONDUCT

Any violation of this EHS Code of Conduct by Contractor's Personnel may result in serious consequences, up to and including termination and possible referral to legal authorities.

FOR CONTRACTOR'S PERSONNEL:

I have received a copy of this EHS Code of Conduct written in a language that I comprehend. I understand that if I have any questions about this EHS Code of Conduct, I can contact *[enter name of Contractor's contact person(s) with relevant experience]* requesting an explanation.

Name of Contractor's Personnel: *[insert name]*

Signature: \_\_\_\_\_

Date: *[day month year]*: \_\_\_\_\_

Countersignature of authorized representative of the Contractor:

Signature: \_\_\_\_\_

Date: *[day month year]*: \_\_\_\_\_

## **Bidder's Qualification**

To establish its qualifications to perform the contract in accordance with Section 3 (Evaluation and Qualification Criteria) the Bidder shall provide the following information requested in the corresponding Information Sheets.

Form ELI – 1: Bidder's Information Sheet

Bidder's Information			
		Information of the Bidder	If the Bidder is a subsidiary or branch, information of any parent company/companies
Names	Full legal name(s)		
	Full trading name(s) (if any)		
Addresses	Registered address(es)		
	Trading address(es)		
	Postal address(es) (if different from trading address)		
Type of organization			
Country of constitution/incorporation/registration			
Year of constitution/incorporation/registration			
Corporate or registration number			
In case of a Joint Venture, legal name of each partner			
Bidder's authorized representative (name, address, telephone number(s), fax number(s), e-mail address)			
<p>Attached are copies of the following documents.</p> <ol style="list-style-type: none"> <li>1) In case of a single entity, articles of incorporation or constitution and company incorporation/registration of the legal entity named above, in accordance with ITB 4.1 and ITB 4.2.</li> <li>2) Authorization to represent the firm or Joint Venture named above, in accordance with ITB 20.2.</li> <li>3) In case of a Joint Venture, a letter of intent to form a Joint Venture or Joint Venture agreement, in accordance with ITB 4.1.</li> <li>4) In case of a government-owned enterprise, any additional documents not covered under 1 above required to comply with ITB 4.5.</li> </ol>			

## Form ELI - 2: Joint Venture Information Sheet

Each partner of the Joint Venture and Specialist Subcontractor must fill out this form separately.

Joint Venture / Specialist Subcontractor Information			
Bidder's legal name			
		Information of Joint Venture Partner or Specialist Subcontractor	If any Joint Venture Partner or Specialist Subcontractor is a subsidiary or branch, information of any parent company/companies
Names	Full legal name(s)		
	Full trading name(s) (if any)		
Addresses	Registered address(es)		
	Trading address (es)		
	Postal address (es) (if different from trading address)		
Type of organization			
Country of constitution/incorporation/registration			
Year of constitution/incorporation/registration			
Corporate or registration number			
<b>Joint Venture Partner's or Specialist Subcontractor's authorized representative information</b> (name, address, telephone number(s), fax number(s), e-mail address)			
<b>A. Attached are copies of the following documents.</b> 1) Articles of incorporation or constitution and company incorporation/registration of the legal entity named above, in accordance with ITB 4.1 and ITB 4.2. 2) Authorization to represent the firm named above, in accordance with ITB 20.2. 3) In the case of a government-owned enterprise, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB 4.5.			

**Form CON - 1: Historical Contract Nonperformance**

Each Bidder must fill out this form in accordance with Criteria 2.2.1 and 2.2.3 of Section 3 (Evaluation and Qualification Criteria) to describe any history of nonperforming contracts and pending litigation or arbitration formally commenced against it.

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner's name:

Joint Venture Partner: \_\_\_\_\_

**Choose one of the following:**

- ☐ No nonperforming contracts.
- ☐ Below is a description of nonperforming contracts involving the Bidder (or each Joint Venture partner if Bidder is a Joint Venture).

Year	Description	Amount of Nonperformed Portion of Contract (\$ equivalent)	Total Contract Amount (\$ equivalent)
[insert year]	Contract Identification: [indicate complete contract name/ number, and any other identification] Name of Employer: [insert full name] Address of Employer: [insert street/city/country] Reason(s) for nonperformance: [indicate main reason(s)]	[insert amount]	[insert amount]

**Choose one of the following:**

- ☐ No pending litigation, arbitration or any other material events impacting the net worth and/or liquidity of the bidder.
- ☐ Below is a description of all pending litigation, arbitration involving the Bidder or any other material events impacting the net worth and/or liquidity of the bidder (or each Joint Venture partner if Bidder is a Joint Venture).

Year	Matter in Dispute	Value of Pending Claim in \$ Equivalent	Value of Pending Claim as a Percentage of Net Worth
[insert year]	Contract Identification, as applicable: [indicate complete contract name/ number, and any other identification] Name of Employer, parties involved in the material events impacting the net worth and/or liquidity of the bidder: [insert full name] Address of Employer, parties involved in the material events impacting the net worth and/or liquidity of the bidder: [insert street/city/country] Matter of Dispute: [indicate full description of dispute] Party who initiated the dispute: [indicate "Employer" or "Contractor"] Status: [indicate status of dispute]	[insert amount]	[insert amount]

Table 2 of this form shall only be included if Criterion 2.2.3 of Section 3 (Evaluation and Qualification Criteria) is applicable.

## Form CON – 2: EHS Performance Declaration

Each Bidder must fill out this form in accordance with Criterion 2.2.4 of Section 3 (Evaluation and Qualification Criteria).

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner's name:

Joint Venture Partner: \_\_\_\_\_

In case of a Specialist Subcontractors, each Specialist Subcontractor must fill out this form and provide the Specialist Subcontractor's name:

Specialist Subcontractor: \_\_\_\_\_

<p>.. <b>No suspension or termination of contract:</b> An employer has not suspended or terminated a contract and/or called the performance security for a contract for reasons related to Environmental or Health and Safety performance since the date specified in Section 3 (Evaluation and Qualification Criteria), Criterion 2.5.</p> <p>.. <b>Declaration of suspension or termination of contract:</b> The following contract(s) has/have been suspended or terminated and/or Performance Security called by an employer(s) for reasons related to Environmental or Health and Safety performance since the date specified in Section 3 (Evaluation and Qualification Criteria), Criterion 2.5. Details are described below:</p> <p>.. <b>Declaration of request for replacement of Key Environment, Health and Safety Personnel:</b> The following contract(s) has/have experienced a request by the Employer to replace Environmental, Health and Safety Personnel for reasons related to Environmental or Health and Safety performance since the date specified in Section 3 (Evaluation and Qualification Criteria), Criterion 2.5. Details are described below:</p> <p>.. <b>Declaration of past fatality resulted from EHS issues on site:</b> The following contract(s) has/have experienced a fatality resulted from EHS issues on site since the date specified in Section 3 (Evaluation and Qualification Criteria), Criterion 2.5. Details are described below:</p>			
Year	Suspended or terminated portion of contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and US\$ equivalent)
[insert year]	[insert amount and percentage]	Contract Identification: [indicate complete contract name/ number, and any other identification] Name of Employer: [insert full name] Address of Employer: [insert street/city/country] Reason(s) for suspension or termination: [indicate main reason(s) e.g. discharge over environmental limit, workers did not have required health and safety permits to undertake high risk work, work carried out was not adhered to approved construction methodology and quality control plan]	[insert amount]
[insert year]	[insert amount and percentage]	Contract Identification: [indicate complete contract name/ number, and any other identification] Name of Employer: [insert full name]	[insert amount]

	Address of Employer: <i>[insert street/city/country]</i> Reason(s) for suspension or termination: <i>[indicate main reason(s)]</i>	
...	<i>[list all applicable contracts]</i>	...
<b>Performance Security called by an employer(s) for reasons related to EHS performance</b>		
<b>Year</b>	<b>Contract Identification</b>	<b>Total Contract Amount (current value, currency, exchange rate and US\$ equivalent)</b>
<i>[insert year]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Reason(s) for suspension or termination: <i>[indicate main reason(s) e.g. discharge over environmental limit, workers did not have required health and safety permits to undertake high risk work, work carried out was not adhered to approved construction methodology and quality control plan]</i>	<i>[insert amount]</i>
<b>Key EHS personnel replacement requested by the Employer for reasons related to EHS performance</b>		
<b>Year</b>	<b>Contract Identification and Reasons</b>	<b>Personnel replacement action and results</b>
<i>[insert year]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Reason(s) for requesting for replacement: <i>[indicate main reason(s)]</i>	<i>[insert description]</i>
<b>Fatality due to EHS issues on Site</b>		
<b>Year</b>	<b>Contract Identification</b>	<b>Follow-on actions taken by the contractor</b>
<i>[insert year]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Description of fatality event: Causation:	<i>[insert description]</i>

## Form FIN - 1: Historical Financial Performance

Each Bidder must fill out this form.

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner's name:

Joint Venture Partner: \_\_\_\_\_

Year 1:	Year 2:	Year ____:
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### Information from Balance Sheet

Total Assets (TA)			
Total Liabilities (TL)			
Net Worth = TA – TL			
Current Assets (CA)			
Current Liabilities (CL)			
Working Capital = CA - CL			

Most Recent Working Capital		To be obtained for most recent year and carried forward to FIN - 3 Line 1; in case of Joint Ventures, to the corresponding Joint Venture Partner's FIN - 3.
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### Information from Income Statement

Total Revenues			
Profits Before Taxes			
Profits After Taxes			

- ☐ Attached are copies of financial statements (balance sheets including all related notes, and income statements) for the last \_\_\_\_ years, as indicated above, complying with the following conditions.
- Unless otherwise required by Section 3 of the Bidding Document, all such documents reflect the standalone financial situation of the legal entity or entities comprising the Bidder and not the Bidder's parent companies, subsidiaries, or affiliates.
  - Historical financial statements must be audited by a certified accountant.
  - Historical financial statements must be complete, including all notes to the financial statements.
  - Historical financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

## Form FIN - 2: Average Annual Construction Turnover

Each Bidder must fill out this form.

The information supplied should be the Annual Turnover of the Bidder or each partner of a Joint Venture for the total certified payments received from the clients for contracts in progress or completed, converted to US dollars at the rate of exchange at the end of the period reported.

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner's name:

Joint Venture Partner: \_\_\_\_\_

Year	Amount Currency	Exchange Rate	PHP Million

Average Annual Construction Turnover

### Form FIN – 3: Availability of Financial Resources

Bidder must demonstrate sufficient financial resources, usually comprising of Working Capital supplemented by credit line statements or overdraft facilities and others to meet the Bidder's financial requirements for

- (a) its current contract commitments, and
- (b) the subject contract.

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner's name:

Joint Venture Partner: \_\_\_\_\_

No.	Source of financing	Amount (PHP Million)
1	Working Capital (to be taken from FIN - 1)	
2	Credit Line <sup>a</sup>	
3	Other Financial Resources	
	Total Available Financial Resources	

<sup>a</sup> To be substantiated by a letter from the bank issuing the line of credit.

**Form FIN- 4: Financial Resources Requirement**

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

☐ In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner's name:

Joint Venture Partner: \_\_\_\_\_

No.	Name of Contract	Employer's Contact (Address, Tel, Fax)	Contract Completion Date	Outstanding Contract Value (X) <sup>a</sup>	Remaining Contract Period in months (Y) <sup>b</sup>	Monthly Financial Resources Requirement (X / Y)
1						
2						
3						
4						
Total Monthly Financial Requirements for Current Contract Commitments						PHP Million

<sup>a</sup> Remaining outstanding contract values to be calculated from 28 days prior to the bid submission deadline

<sup>b</sup> Remaining contract period to be calculated from 28 days prior to bid submission deadline.

**Form FIN - 5: Self-Assessment Tool for Bidder's Compliance to Financial Resources (Criterion 2.3.3 of Section 3)**

This form requires the same information submitted in Forms FIN - 3 and FIN - 4. All conditions of "Available Financial Resources Net of CCC  $\geq$  Requirement for the Subject Contract" must be satisfied to qualify.

**Form FIN - 5A: For Single Entities**

For Single Entities: (A)	Total Available Financial Resources from FIN - 3 (B)	Total Monthly Financial Requirement for Current Contract Commitments (CCC) from FIN - 4 (C)	Available Financial Resources Net of CCC $D = (B - C)$	Requirement for the Subject Contract (E)	Results: Yes or No [D must be greater than or equal to E] (F)
_____ (Name of Bidder)				.....	

**Form FIN - 5B: For Joint Ventures**

For Joint Ventures: (A)	Total Available Financial Resources from FIN - 3 (B)	Total Monthly Financial Requirement for Current Contract Commitments (CCC) from FIN - 4 (C)	Available Financial Resources Net of CCC $D = (B - C)$	Requirement for the Subject Contract (E)	Results: Yes or No [D must be greater than or equal to E] (F)
One Partner:					
_____ (Name of Partner)				.....	
Each Partner:					
_____ (Name of Partner 1)				.....	
_____ (Name of Partner 2)				.....	
_____ (Name of Partner 3)				.....	
All partners combined	$\Sigma D =$ Sum of available financial resources net of current contract commitments for all partners		$\Sigma D =$ _____	.....	

**- Note -**

Form FIN - 5 is made available for use by the bidder as a self-assessment tool, and by the Employer as an evaluation work sheet, to determine compliance with the financial resources requirement as stated in 2.3.3. Failure to submit Form FIN - 5 by the Bidder shall not lead to bid rejection.

**Form EXP – 1: Contracts of Similar Size and Nature**

Fill up one (1) form per contract. Each contract shall be supported by documents such as Signed Contract Agreement or Certificate of Completion of the Works.

The exchange rate to be used to calculate the value of the contract for conversion to a specific currency shall be the selling rate of the Borrower's Central bank on the date of the contract.

Contract No . . . . . of . . . . .		Contract Identification	
Award Date		Completion Date	
Total Contract Amount	PHP Million		
If partner in a Joint Venture or Subcontractor, specify participation of total contract amount	Percent of Total	Amount	
Employer's Name Address Telephone/Fax Number E-mail			

**Form EXP - 2: Construction Experience in Key Activities**

Fill up one (1) form per contract. Each contract shall be supported by documents such as Signed Contract Agreement or Certificate of Completion of the Works.

Each Bidder must fill out this form.

If complied by Specialist Subcontractor, each Specialist Subcontractor must fill out this form and provide the Specialist Subcontractor's name:

Specialist Subcontractor: \_\_\_\_\_

<b>Contract No . . . . . of . . . . .</b>			<b>Contract Identification</b>		
<b>Award Date</b>			<b>Completion Date</b>		
<b>Total Contract Amount</b>		<b>PHP Million</b>			
<b>If partner in a Joint Venture or Subcontractor, specify participation of total contract amount</b>		<b>Percent of Total</b>		<b>Amount</b>	
<b>Employer's Name Address Telephone Number Fax Number E-mail</b>					

### Form EXP – 3: Specific Experience in Managing Environmental, Health and Safety Aspects

Fill out one form per contract.

Each Bidder must fill out this form.

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner's name:

Joint Venture Partner: \_\_\_\_\_

1. Key Requirement no 1 in accordance with Criterion 2.4.3 of Section 3:

<b>Contract Identification</b>				
<b>Award date</b>				
<b>Completion date</b>				
<b>Role in Contract</b>	<b>Prime Contractor</b> ..	<b>Member in JV</b> ..	<b>Management Contractor</b> ..	<b>Subcontractor</b> ..
<b>Total Contract Amount</b>			<b>US\$</b>	
<b>Details of relevant experience</b>				

2. Key Requirement no 2 in accordance with Criterion 2.4.3 of Section 3: \_\_\_\_\_

3. Key Requirement no 3 in accordance with Criterion 2.4.3 of Section 3: \_\_\_\_\_

#### Form EXP – 4: Environmental, Health and Safety Certification

Please provide the following information:

Availability of the following valid ISO certification or internationally-recognized equivalent (equivalency to be demonstrated by the Bidder), and applicable to the worksite:

*[Select the required certifications from below<sup>a</sup>]*

- Quality management certificate ISO 9001
- Environmental management certificate ISO 14001
- Health and Safety management certificate ISO 45001

<sup>a</sup> *Depending on the environmental, health and safety issues of the worksite and the type of competition planned (national or international), the list of required certifications may be restricted to those corresponding to the main issue of the worksite management, or removed altogether.*

#### Form EXP – 5: Environmental, Health and Safety Documentation

Please provide the following information:

Availability of in-house policies and procedures acceptable to the Employer for EHS management:

1. Existence of an Ethics Charter.
2. Existence of a system for monitoring compliance with EHS commitments for the Bidder's Subcontractors and all its partners.
3. Existence of official company procedures for the management of the following relevant points:

*[Select 3-5 that apply for the worksite from below options- as per Section 2]*

- EHS resources and facilities and EHS monitoring system;
- Project Areas management information (base camps, quarries, burrow pits, storage areas);
- Health and Safety on worksites policy and related guidance;
- Local recruitment and EHS trainings of local staff/subcontractors/local partners;
- Community stakeholder engagement practice;
- Traffic management practice;
- Hazardous products management practice;
- Waste management practice;
- Protection of water resources;
- Biodiversity protection practices;
- Site rehabilitation and revegetation practice;
- Local cultural heritage protection practice;
- Erosion and sedimentation practices;
- Control of infectious and communicable diseases (HIV/AIDS, malaria, COVID-19 etc)

### **Form EXP – 6: Environmental, Health and Safety Dedicated Personnel**

Please provide CV {Form PER-2] of the in-house personnel of the main contractor/Joint Venture partners for the EHS positions specified in Section 6 (Employer's Requirements):

- Environmental Specialist
- Health and Safety Specialist

## Section 5: Eligible Countries

This section contains the list of eligible countries.

1. Afghanistan
2. Armenia
3. Australia
4. Austria
5. Azerbaijan
6. Bangladesh
7. Belgium
8. Bhutan
9. Brunei Darussalam
10. Cambodia
11. Canada
12. People's Republic of China
13. Cook Islands
14. Denmark
15. Fiji
16. Finland
17. France
18. Georgia
19. Germany
20. Hong Kong, China
21. India
22. Indonesia
23. Ireland
24. Italy
25. Japan
26. Kazakhstan
27. Kiribati
28. Republic of Korea
29. Kyrgyz Republic
30. Lao PDR
31. Luxembourg
32. Malaysia

33. Maldives
34. Marshall Islands
35. Federated States of Micronesia
36. Mongolia
37. Myanmar
38. Nauru
39. Nepal
40. Netherlands
41. New Zealand
42. Niue
43. Norway
44. Pakistan
45. Palau
46. Papua New Guinea
47. Philippines
48. Portugal
49. Samoa
50. Singapore
51. Solomon Islands
52. Spain
53. Sri Lanka
54. Sweden
55. Switzerland
56. Taipei, China
57. Tajikistan
58. Thailand
59. Timor-Leste
60. Tonga
61. Türkiye
62. Turkmenistan
63. Tuvalu
64. United Kingdom
65. United States
66. Uzbekistan
67. Vanuatu
68. Viet Nam

# Section 7: General Conditions of Contract

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## A. General

### 1. Definitions

1.1 Boldface type is used to identify defined terms.

- (a) The **Accepted Contract Amount** means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.
- (b) The **Activity Schedule** is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works in a lump sum contract. It includes a lump sum price for each activity, which is used for valuations and for assessing the effects of Variations and Compensation Events.
- (c) The **Adjudicator** is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in GCC 29.1 [Appointment of Adjudicator] hereunder.
- (d) **Bank** means the financing institutions named in the **Particular Conditions of Contract (PCC)**.
- (e) **Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Bid.
- (f) **Compensation Events** are those defined in GCC 51.1 [Compensation Events] hereunder.
- (g) The **Completion Date** is the date of completion of the Works as certified by the Project Manager, in accordance with GCC 69.1 [Completion].
- (h) The **Contract** is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in GCC 2.3 below.
- (i) The **Contractor** is the party whose Bid to carry out the Works has been accepted by the Employer.
- (j) The **Contractor's Bid** is the completed bidding document submitted by the Contractor to the Employer.
- (k) The **Contract Price** is the Accepted Contract Amount stated in the Letter of Acceptance and thereafter as adjusted in accordance with the Contract.
- (l) **Days** are calendar days; months are calendar months.
- (m) **Dayworks** are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.
- (n) A **Defect** is any part of the Works not completed in accordance with the Contract.
- (o) The **Defects Liability Certificate** is the certificate issued by the Project Manager upon correction of defects by the Contractor.
- (p) The **Defects Liability Period** is the period calculated from the Completion Date where the Contractor remains responsible for remedying defects.

- (q) **Drawings** include calculations and other information provided or approved by the Project Manager for the execution of the Contract.
- (r) The **Employer** is the party who employs the Contractor to carry out the Works, as specified in the **PCC**.
- (s) **Equipment** is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
- (t) **Force Majeure** means an exceptional event or circumstance: which is beyond a Party's control; which such Party could not reasonably have provided against before entering into the Contract; which, having arisen, such Party could not reasonably have avoided or overcome; and, which is not substantially attributable to the other Party.
- (u) **In writing or written** means hand-written, type-written, printed, or electronically made, and resulting in a permanent record.
- (v) The **Initial Contract Price** is the Contract Price listed in the Employer's Letter of Acceptance.
- (w) The **Intended Completion Date** is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the **PCC**. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.
- (x) **Letter of Acceptance** means the formal acceptance by the Employer of the Bid and denotes the formation of the Contract at the date of acceptance.
- (y) **Materials** are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- (z) **Party** means the Employer or the Contractor, as the context requires.
- (aa) **PCC** means Particular Conditions of Contract.
- (bb) **Plant** is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
- (cc) The **Project Manager** is the person named in the **PCC** (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.
- (dd) **Retention Money** means the aggregate of all monies retained by the Employer pursuant to GCC 55.1 [Retention].
- (ee) **Schedules** means the document(s) entitled schedules, completed by the Contractor and submitted with the Letter of Bid, as included in the Contract. Such document may include the Bill of Quantities, data, lists, and schedules of rates and/or prices.
- (ff) The **Site** is the area defined as such in the **PCC**.

- (gg) **Site Investigation Reports** are those that were included in the bidding documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.
- (hh) **Specification** means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.
- (ii) The **Start Date** is given in the **PCC**. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.
- (jj) A **Subcontractor** is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.
- (kk) **Temporary Works** are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
- (ll) A **Variation** is an instruction given by the Project Manager which varies the Works.
- (mm) The **Works** are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as defined in the **PCC**.

## 2. Interpretation

- 2.1 In interpreting these GCC, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager shall provide instructions clarifying queries about these GCC.
- 2.2 If sectional completion is specified in the **PCC**, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
- 2.3 The documents forming the Contract shall be interpreted in the following order of priority:
  - (a) Contract Agreement,
  - (b) Letter of Acceptance,
  - (c) Letter of Bid,
  - (d) Particular Conditions of Contract,
  - (e) the List of Eligible Countries that was specified in Section 5 of the bidding document,
  - (f) General Conditions of Contract,
  - (g) Specifications,
  - (h) Drawings,
  - (i) Completed Activity Schedules or Bill of Quantities, and
  - (j) any other document listed in the **PCC** as forming part of the Contract.

- |  |   |
|--|---|
| <b>3. Language and Law</b>             | <p>3.1 The language of the Contract and the law governing the Contract are stated in the <b>PCC</b>.</p> <p>3.2 Throughout the execution of the Contract, the Contractor shall comply with the import of goods and services prohibitions in the Employer's country when</p> <p style="padding-left: 40px;">(a) 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, or any payments to, a particular country, person, or entity. Where the Borrower's country prohibits payments to a particular firm or for particular goods by such an act of compliance, that firm may be excluded.</p>   |
| <b>4. Contract Agreement</b>           | <p>4.1 The Parties shall enter into a Contract Agreement within 28 days after the Contractor receives the Letter of Acceptance, unless the Particular Conditions establish otherwise. The Contract Agreement shall be based upon the attached Contract forms in Section 8. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Employer.</p>   |
| <b>5. Assignment</b>                   | <p>5.1 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</p> <p style="padding-left: 40px;">(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</p> <p style="padding-left: 40px;">(b) may, as security in favor of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.</p>  |
| <b>6. Care and Supply of Documents</b> | <p>6.1 The Specification and Drawings shall be in the custody and care of the Employer. Unless otherwise stated in the Contract, two copies of the Contract and of each subsequent Drawing shall be supplied to the Contractor, who may make or request further copies at the cost of the Contractor.</p> <p>6.2 Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until taken over by the Employer. Unless otherwise stated in the Contract, the Contractor shall supply to the Engineer six copies of each of the Contractor's Documents.</p> <p>6.3 The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Specification, the Contractor's Documents (if any), the Drawings and Variations and other communications given under the Contract. The Employer's Personnel shall have the right of access to all these documents at all reasonable times.</p> <p>6.4 If a Party becomes aware of an error or defect in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.</p> |
| <b>7. Confidential Details</b>         | <p>7.1 The Contractor's and the Employer's Personnel shall disclose all such confidential and other information as may be reasonably required in order to verify the Contractor's compliance with the Contract and allow its proper implementation.</p>   |

- 7.2 Each of them shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any particulars of the Works prepared by the other Party without the previous agreement of the other Party. However, the Contractor shall be permitted to disclose any publicly available information, or information otherwise required to establish his qualifications to compete for other projects.
- 7.3 Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this Clause.
- 8. Compliance with Laws**
- 8.1 The Contractor shall, in performing the Contract, comply with applicable Laws.
- 8.2 Unless otherwise stated in the Particular Conditions,
- (a) the Employer shall acquire and pay for all permits, approvals, and/or licenses from all local, state, or national government authorities or public service undertakings in the [Employer's Country or country where the Site is located] which (i) such authorities or undertakings require the Employer to obtain in the Employer's name, and (ii) are necessary for the execution of the Contract, including those required for the performance by both the Contractor and the Employer of their respective obligations under the Contract;
- (b) the Contractor shall acquire and pay for all permits, approvals, and/or licenses from all local, state, or national government authorities or public service undertakings in the [Employer's Country or country where the Site is located] which such authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals, and/or licenses that are not the responsibility of the Employer under Subclause 8.2(a) hereof and that are necessary for the performance of the Contract. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties, and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to Subclause 8.1 hereof.
- 9. Joint and Several Liability**
- 9.1 If the Contractor is a Joint Venture of two or more persons, all such persons shall be jointly and severally liable to the Employer for the fulfillment of the provisions of the Contract, and shall designate one of such persons to act as a leader with authority to bind the Joint Venture. The composition or the constitution of the Joint Venture shall not be altered without the prior consent of the Employer.

<b>10. Project Manager's Decisions</b>	10.1 Except where otherwise specifically stated, the Project Manager shall decide contractual matters between the Employer and the Contractor in the role representing the Employer.
<b>11. Delegation</b>	11.1 The Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.
<b>12. Communications</b>	12.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.
<b>13. Subcontracting</b>	13.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.
<b>14. Other Contractors</b>	14.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as referred to in the PCC. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.
<b>15. Personnel and Equipment</b>	<p>15.1 The Contractor shall employ the key personnel and use the equipment identified in its Bid to carry out the functions stated in the Schedule or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.</p> <p>15.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within 7 days and has no further connection with the work in the Contract.</p> <p>15.3 Should any employee of the Contractor be determined, based on reasonable evidence, to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the execution of the Works, then that employee shall be removed in accordance with Clause 15.2 above.</p>
<b>16. Employer's and Contractor's Risks</b>	16.1 The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.
<b>17. Employer's Risks</b>	<p>17.1 From the Start Date until the Defects Liability Certificate has been issued, the following are Employer's risks:</p> <ul style="list-style-type: none"> <li>(a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to <ul style="list-style-type: none"> <li>(i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works, or</li> </ul> </li> </ul>

- (ii) negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.
  - (b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in the Employer's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.
- 17.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer's risk except loss or damage due to
- (a) a Defect which existed on the Completion Date,
  - (b) an event occurring before the Completion Date, which was not itself an Employer's risk, or
  - (c) the activities of the Contractor on the Site after the Completion Date.
- 18. Contractor's Risks**
- 18.1 From the Starting Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer's risks, are Contractor's risks.
- 19. Insurance**
- 19.1 The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles stated in the **PCC** for the following events, which are due to the Contractor's risks:
- (a) loss of or damage to the Works, Plant, and Materials;
  - (b) loss of or damage to Equipment;
  - (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
  - (d) personal injury or death.
- 19.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.
- 19.3 If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance, which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.
- 19.4 Alterations to the terms of an insurance shall not be made without the approval of the Project Manager.
- 19.5 Both parties shall comply with any conditions of the insurance policies.

<b>20. Site Investigation Reports</b>	20.1 The Contractor, in preparing the Bid, shall rely on any Site Investigation Reports referred to in the <b>PCC</b> , supplemented by any information available to the Contractor.
<b>21. Contractor to Construct the Works</b>	21.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.
<b>22. The Works to Be Completed by the Intended Completion Date</b>	22.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.
<b>23. Designs by Contractor and Approval by the Project Manager</b>	<p>23.1 The Contractor shall carry out design to the extent specified in the <b>PCC</b>. The Contractor shall promptly submit to the Employer all designs prepared by him. Within 14 days of receipt, the Employer shall notify any comments. The Contractor shall not construct any element of the permanent work designed by him within 14 days after the design has been submitted to the Employer or where the design for that element has been rejected. Design that has been rejected shall be promptly amended and resubmitted. The Contractor shall resubmit all designs commented on, taking these comments into account as necessary.</p> <p>23.2 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings..</p> <p>23.3 The Contractor shall be responsible for design of Temporary Works.</p> <p>23.4 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.</p> <p>23.5 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.</p> <p>23.6 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.</p>
<b>24. Safety</b>	24.1 The Contractor shall be responsible for the safety of all activities on the Site.
<b>25. Discoveries</b>	25.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.
<b>26. Possession of the Site</b>	26.1 The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the <b>PCC</b> , the Employer shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.
<b>27. Access to the Site</b>	27.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place

where work in connection with the Contract is being carried out or is intended to be carried out.

**28. Instructions, Inspections, and Audits**

- 28.1 The Contractor shall carry out all instructions of the Project Manager, which comply with the applicable laws where the Site is located.
- 28.2 The Contractor shall keep, and shall make all reasonable efforts to cause its Subcontractors and subconsultants to keep accurate and systematic accounts and records in respect of the Works in such form and details as will clearly identify relevant time changes and costs.
- 28.3 The Contractor shall permit ADB or its representative to inspect the Contractor's site, assets, accounts, records, and other documents relating to the submission of bids and contract performance and to have them audited by auditors appointed by ADB. The Contractor shall maintain all documents and records related to the bid submission and execution of the Contract for at least 5 years after completing the works contemplated in the relevant contracts or the period prescribed in applicable law, whichever is longer. The Contractor shall provide any documents necessary for the investigation of allegations of corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations and require its employees or agents with knowledge of the Contract to respond to questions from ADB.
- 28.4 ADB's right to inspect the Site and/or the Contractor's accounts and records relating to the performance of the Contract stated in Sub-Clause 28.3 and 74.2 (e) shall survive termination and/ or expiration of this Contract.

**29. Appointment of the Adjudicator**

- 29.1 The Adjudicator shall be appointed jointly by the Employer and the Contractor, at the time of the Employer's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Employer does not agree on the appointment of the Adjudicator, the Employer will request the Appointing Authority designated in the PCC, to appoint the Adjudicator within 14 days of receipt of such request.
- 29.2 Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority at the request of either party, within 14 days of receipt of such request.

**30. Procedure for Disputes**

- 30.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision.
- 30.2 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.
- 30.3 The Adjudicator shall be paid by the hour at the rate specified in the PCC, together with reimbursable expenses of the types specified in the PCC, and the cost shall be divided equally between the Employer and the

Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision shall be final and binding.

- 30.4 The arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and in the place specified in the **PCC**.

## **B. Staff and Labor**

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| <b>31. Forced Labor</b>                            | 31.1 The Contractor shall not employ forced labor, which consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty. This covers any kind of involuntary or compulsory labor, such as indentured labor, bonded labor, or similar labor-contracting arrangements.  |
| <b>32. Child Labor</b>                             | 32.1 The Contractor shall not employ children in a manner that is economically exploitative, or is likely to be hazardous, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. Where national laws have provisions for employment of minors, the Contractor shall follow those laws applicable to the Contractor. Children below the age of 18 years shall not be employed in dangerous work.  |
| <b>33. Workers' Organizations</b>                  | 33.1 In countries where national law recognizes workers' rights to form and to join workers' organizations of their choosing without interference and to bargain collectively, the Contractor shall comply with national law. Where national law substantially restricts workers' organizations, the Contractor shall enable alternative means for the Contractor's Personnel to express their grievances and protect their rights regarding working conditions and terms of employment. In either case described above, and where national law is silent, the Contractor shall not discourage the Contractor's Personnel from forming or joining workers' organizations of their choosing or from bargaining collectively, and shall not discriminate or retaliate against the Contractor's Personnel who participate, or seek to participate, in such organizations and bargain collectively. The Contractor shall engage with such workers representatives. Worker organizations are expected to fairly represent the workers in the workforce. |
| <b>34. Nondiscrimination and Equal Opportunity</b> | 34.1 The Contractor shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment relationship on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline. In countries where national law provides for non-discrimination in employment, the Contractor shall comply with national law. When national laws are silent on nondiscrimination in employment, the Contractor shall meet this Subclause's requirements. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination.                             |

## C. Time Control

### 35. Program

- 35.1 Within the time stated in the **PCC**, after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works. In the case of a lump sum contract, the activities in the Program shall be consistent with those in the Activity Schedule.
- 35.2 An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.
- 35.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period stated in the **PCC**. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount stated in the **PCC** from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted. In the case of a lump sum contract, the Contractor shall provide an updated Activity Schedule within 14 days of being instructed to by the Project Manager.
- 35.4 The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.

### 36. Extension of the Intended Completion Date

- 36.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.
- 36.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

### 37. Acceleration

- 37.1 When the Employer wants the Contractor to finish before the Intended Completion Date, the Project Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Employer and the Contractor.
- 37.2 If the Contractor's priced proposals for an acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation.

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| <b>38. Delays Ordered by the Project Manager</b> | 38.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.  |
| <b>39. Management Meetings</b>                   | <p>39.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.</p> <p>39.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.</p>  |
| <b>40. Early Warning</b>                         | <p>40.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.</p> <p>40.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.</p> |

#### **D. Quality Control**

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| <b>41. Identifying Defects</b>   | 41.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.  |
| <b>42. Tests</b>                 | 42.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.  |
| <b>43. Correction of Defects</b> | <p>43.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the <b>PCC</b>. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.</p> <p>43.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.</p> |

- 44. Uncorrected Defects**      44.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.

#### **E. Cost Control**

- 45. Contract Price**      45.1 In the case of an admeasurement contract, the Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities is used to calculate the Contract Price. The Contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.
- 45.2 In the case of a lump sum contract, the Activity Schedule shall contain the priced activities for the Works to be performed by the Contractor. The Activity Schedule is used to monitor and control the performance of activities on which basis the Contractor will be paid. If payment for Materials on Site shall be made separately, the Contractor shall show delivery of Materials to the Site separately on the Activity Schedule.
- 46. Changes in the Contract Price**      46.1 In the case of an admeasurement contract:
- (a) If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25%, provided the change exceeds 1% of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change.
  - (b) The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15%, except with the prior approval of the Employer.
  - (c) If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.
- 46.2 In the case of a lump sum contract, the Activity Schedule shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor's own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule.
- 47. Variations**      47.1 All Variations shall be included in updated Programs, and, in the case of a lump sum contract, also in the Activity Schedule, produced by the Contractor.
- 47.2 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.
- 47.3 If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.

- 47.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.
- 47.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
- 47.6 In the case of an admeasurement contract, if the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in GCC 46.1 [Changes in the Contract Price] or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.
- 48. Cash Flow Forecasts**
- 48.1 When the Program, or, in the case of a lump sum contract, the Activity Schedule, is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.
- 49. Payment Certificates**
- 49.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- 49.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.
- 49.3 The value of work executed shall be determined by the Project Manager.
- 49.4 The value of work executed shall comprise,
- (a) in the case of an admeasurement contract, the value of the quantities of work in the Bill of Quantities that have been completed; or
  - (b) in the case of a lump sum contract, the value of work executed shall comprise the value of completed activities in the Activity Schedule.
- 49.5 The value of work executed shall include the valuation of Variations and Compensation Events.
- 49.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.
- 50. Payments**
- 50.1 Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate. If

the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made.

50.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.

50.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.

50.4 Items of the Works for which no rate or price has been entered in shall not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

#### **51. Compensation Events**

51.1 The following shall be Compensation Events:

- (a) The Employer does not give access to a part of the Site by the Site Possession Date pursuant to GCC 26.1 [Possession of the Site].
- (b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
- (c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
- (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
- (e) The Project Manager unreasonably does not approve a subcontract to be let.
- (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to Bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
- (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
- (h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- (i) The advance payment is delayed.
- (j) The effects on the Contractor of any of the Employer's Risks.

(k) The Project Manager unreasonably delays issuing a Certificate of Completion.

51.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

51.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager shall assume that the Contractor shall react competently and promptly to the event.

51.4 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor's not having given early warning or not having cooperated with the Project Manager.

## 52. Tax

52.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC 54.1 [Price Adjustment].

## 53. Currencies

53.1 Where payments are made in currencies other than the currency of the Employer's country specified in the PCC, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's Bid.

## 54. Price Adjustment

54.1 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the PCC. If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

$$P_c = A_c + B_c \text{ Imc/loc}$$

where:

$P_c$  is the adjustment factor for the portion of the Contract Price payable in a specific currency "c."

$A_c$  and  $B_c$  are coefficients<sup>7</sup> specified in the **PCC**, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency "c;" and

$I_{mc}$  is a consolidated index prevailing at the end of the month being invoiced and  $I_{oc}$  is the same consolidated index prevailing 28 days before Bid opening for inputs payable; both in the specific currency "c."

54.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

## **55. Retention**

55.1 The Employer shall retain from each payment due to the Contractor the proportion stated in the **PCC** until Completion of the whole of the Works.

55.2 Upon the issue of a Certificate of Completion of the Works by the Project Manager, in accordance with GCC 69.1 [Completion], half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected. The Contractor may substitute retention money with an "on demand" bank guarantee.

## **56. Liquidated Damages**

56.1 The Contractor shall pay liquidated damages to the Employer at the rate per day stated in the **PCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the **PCC**. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

56.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC 50.1 [Payments].

## **57. Bonus**

57.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day stated in the **PCC** for each day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete.

## **58. Advance Payment**

58.1 The Employer shall make advance payment to the Contractor of the amounts stated in the **PCC** by the date stated in the **PCC**, against provision by the Contractor of an unconditional bank guarantee in a form and by a bank acceptable to the Employer in amounts and currencies

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<sup>7</sup> The sum of the two coefficients  $A_c$  and  $B_c$  should be 1 (one) in the formula for each currency. Normally, both coefficients shall be the same in the formulas for all currencies, since coefficient A, for the nonadjustable portion of the payments, is a very approximate figure (usually 0.10 ~ 0.20) to take account of fixed cost elements or other nonadjustable components. The sum of the adjustments for each currency is added to the Contract Price.

equal to the advance payment. The guarantee shall remain effective until the advance payment has been repaid, but the amount of the guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest shall not be charged on the advance payment.

58.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.

58.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

#### **59. Securities**

59.1 The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount specified in the **PCC**, by a bank acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 days from the date of issue of the Certificate of Completion in the case of a bank guarantee.

#### **60. Dayworks**

60.1 If applicable, the Dayworks rates in the Contractor's Bid shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.

60.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within 2 days of the work being done.

60.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

#### **61. Cost of Repairs**

61.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

### **F. Force Majeure**

#### **62. Definition of Force Majeure**

62.1 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.

62.2 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:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- (b) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war;
- (c) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel;
- (d) 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
- (e) natural catastrophes such as earthquake, hurricane, typhoon, or volcanic activity.

**63. Notice of Force Majeure**

63.1 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.

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

63.3 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.

**64. Duty to Minimize Delay**

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

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

**65. Consequences of Force Majeure**

65.1 If the Contractor is prevented from performing its substantial obligations under the Contract by Force Majeure of which notice has been given under GCC Subclause 63 [Notice of Force Majeure], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to GCC Subclause 30.1 [Procedure for Disputes] to

- (a) an extension of time for any such delay, if completion is or will be delayed, under GCC Subclause 36 [Extension of the Intended Completion Date]; and
- (b) if the event or circumstance is of the kind described in subparagraphs (a) to (d) of GCC Subclause 62.2 [Definition of Force Majeure] and, in the case of subparagraphs (b) to (d), occurs in the Country, payment of any such Cost, including the costs of rectifying or replacing the Works and/or Goods damaged or destroyed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in GCC Subclause 19 [Insurance].

65.2 After receiving this notice, the Project Manager shall proceed in accordance with GCC Subclause 10 [Project Manager's Decisions] to agree or determine these matters.

**66. Force Majeure Affecting Subcontractor**

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

**67. Optional Termination, Payment and Release**

67.1 If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under GCC Subclause 63 [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 GCC Subclause 73.5 [Termination].

67.2 Upon such termination, the Project Manager shall determine the value of the work done and issue a Payment Certificate, which shall include

- (a) the amounts payable for any work carried out for which a price is stated in the Contract;
- (b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;
- (c) other Costs or liabilities which in the circumstances were reasonably and necessarily incurred by the Contractor in the expectation of completing the Works;
- (d) the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and
- (e) the Cost of repatriation of the Contractor's staff and labor employed wholly in connection with the Works at the date of termination.

- 68. Release from Performance**
- 68.1 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 GCC Subclause 67 [Optional Termination, Payment and Release] if the Contract had been terminated under GCC Subclause 67.

## **G. Finishing the Contract**

- 69. Completion**
- 69.1 The Contractor shall request the Project Manager to issue a certificate of Completion of the Works, and the Project Manager shall do so upon deciding that the work is completed.
- 70. Taking Over**
- 70.1 The Employer shall take over the Site and the Works within 7 days of the Project Manager's issuing a certificate of Completion.
- 71. Final Account**
- 71.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.
- 72. Operating and Maintenance Manuals**
- 72.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the **PCC**.
- 72.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the **PCC** pursuant to GCC 72.1, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount stated in the **PCC** from payments due to the Contractor.
- 73. Termination**
- 73.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 73.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:

- (a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;
- (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;
- (c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 84 days of the date of the Project Manager's certificate;
- (e) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
- (f) the Project Manager gives two consecutive Notices to update the Program and accelerate the works to ensure compliance with GCC Subclause 22.1 [The Works to Be Completed by the Intended Completion Date] and the Contractor fails to update the Program and demonstrate acceleration of the works within a reasonable period of time determined by the Project Manager;
- (g) the Contractor does not maintain a Security, which is required;
- (h) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the PCC; and
- (i) if the Contractor, in the judgment of the Employer has engaged in integrity violations in competing for or in executing the Contract, pursuant to GCC 74.1 [Fraud and Corruption].

73.3 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under GCC 73.2 above, the Project Manager shall decide whether the breach is fundamental or not.

73.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.

73.5 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

#### 74. Fraud and Corruption

74.1 If the Employer determines, based on reasonable evidence, that the Contractor has engaged in corrupt, fraudulent, collusive or coercive practices, or other integrity violations, including the failure to disclose any required information which constitutes a fraudulent practice, in competing for or in executing the Contract, then the Employer may, after giving 14 days notice to the Contractor, terminate the Contract and expel him from the Site, and the provisions of Clause 73 {Termination} shall apply as if such termination had been made under Sub-Clause 73.2 (i).

74.2 ADB requires Borrowers (including beneficiaries of ADB-financed activity) and their personnel, as well as firms and individuals participating

in an ADB-financed activity, including but not limited to, Bidders, Suppliers, Contractors, agents, subcontractors, subconsultants, service providers, subsuppliers, manufacturers (including their respective officers, directors, employees and personnel) under ADB-financed contracts to observe the highest standard of ethics during the procurement and execution of such contracts in accordance with ADB's Anticorruption Policy (1998, as amended from time to time). In pursuance of this policy, the ADB

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
  - (viii) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
  - (ix) "fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
  - (x) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
  - (xi) "collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
  - (xii) "abuse" means theft, waste, or improper use of assets related to ADB-related activity, either committed intentionally or through reckless disregard;
  - (xiii) "conflict of interest" means any situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations; and
  - (xiv) "integrity violation" is any act, as defined under ADB's Integrity Principles and Guidelines (2015, as amended from time to time), which violates ADB's Anticorruption Policy, including (i) to (vi) above and the following: obstructive practice, violations of ADB sanctions, retaliation against whistleblowers or witnesses, and other violations of ADB's Anticorruption Policy, including failure to adhere to the highest ethical standard.
- (f) will reject a proposal for award if it determines that the Bidder recommended for award or any of its officers, directors, employees, personnel, subconsultants, subcontractors, service providers, suppliers or manufacturers has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations in competing for the Contract;

- (g) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of ADB-financing engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation, including by failing to inform ADB in a timely manner at the time they knew of the integrity violations;
- (h) will impose remedial actions on a firm or an individual, at any time, in accordance with ADB's Anticorruption Policy and Integrity Principles and Guidelines, including declaring ineligible, either indefinitely or for a stated period of time, to participate<sup>8</sup> in ADB-financed, -administered, or -supported activities or to benefit from an ADB-financed, -administered, or -supported contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations; and
- (i) will have the right to require that a provision be included in bidding documents and in contracts financed, administered, or supported by ADB, requiring Bidders, suppliers and contractors, consultants, manufacturers, service providers and other third parties engaged or involved in ADB-related activities, and their respective officers, directors, employees and personnel, to permit ADB or its representative to inspect the site and their assets, accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by ADB.

74.3 All Bidders, consultants, contractors, suppliers, manufacturers, service providers, and other third parties engaged or involved in ADB-related activities and their respective officers, directors, employees and personnel are obliged to cooperate fully in any investigation when requested by ADB to do so. As determined on a case by case basis by ADB, such cooperation includes, but is not limited to, the following:

- (a) being available to be interviewed and replying fully and truthfully to all questions asked;
- (b) providing ADB with any items requested that are within the party's control including, but not limited to, documents and other physical objects;
- (c) upon written request by ADB, authorizing other related entities to release directly to ADB such information that is specifically and materially related, directly or indirectly, to the said entities or issues which are the subject of the investigation;
- (d) cooperating with all reasonable requests to search or physically inspect their person and/or work areas, including files, electronic

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<sup>8</sup> Whether as a Contractor, Subcontractor, Consultant, Manufacturer or Supplier, or Service Provider; or in any other capacity (different names are used depending on the particular Bidding Document).

databases, and personal property used on ADB activities, or that utilizes ADB's Information and Communications Technology (ICT) resources or systems (including mobile phones, personal electronic devices, and electronic storage devices such as external disk drives);

(e) cooperating in any testing requested by ADB, including but not limited to, fingerprint identification, handwriting analysis, and physical examination and analysis; and

(f) preserving and protecting confidentiality of all information discussed with, and as required by, ADB.

74.4 All Bidders, consultants, contractors and suppliers shall require their officers, directors, employees, personnel, agents to ensure that, in its contracts with its subconsultants, Subcontractors and other third parties engaged or involved in ADB-related activities, such subconsultants, Subcontractors and other third parties similarly are obliged to cooperate fully in any investigation when requested by ADB to do so.

74.5 The Contractor undertakes that no fees, gratuities, rebates, gifts, commissions or other payments, other than those shown in the bid, have been given or received in connection with the procurement process or in the contract execution.<sup>9</sup>

**75. Payment upon Termination**

75.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the **PCC**. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.

75.2 If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.

**76. Property**

76.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor's default.

**77. Release from Performance**

77.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out

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<sup>9</sup> The undertaking also applies during the period of performance of the contract

before receiving it and for any work carried out afterward to which a commitment was made.

**78. Suspension of ADB Loan or Credit**

- 78.1 In the event that ADB suspends the Loan or Credit to the Employer, from which part of the payments to the Contractor are being made,
- (a) the Employer is obligated to notify the Contractor, with copy to the Project Manager, of such suspension within 7 days of having received ADB's suspension notice.
  - (b) if the Contractor has not received sums due it within the 28 days for payment provided for in GCC 50.1 [Payments], the Contractor may immediately issue a 14-day termination notice.

**79. Eligibility**

- 79.1 The Contractor shall have the nationality of an eligible country as specified in Section 5 (Eligible Countries) of the bidding document. The Contractor shall be deemed to have the nationality of a country if the Contractor 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 including related services.
- 79.2 The materials, equipment, and services to be supplied under the Contract shall have their origin in eligible source countries as specified in Section 5 (Eligible Countries) of the bidding document and all expenditures under the Contract will be limited to such materials, equipment, and services. At the Employer's request, the Contractor may be required to provide evidence of the origin of materials, equipment, and services.
- 79.3 For purposes of GCC 79.2, "origin" means the place where the materials and equipment are mined, grown, produced, or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that differs substantially in its basic characteristics or in purpose or utility from its components.

## Section 8: Particular Conditions of Contract

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

<b>A. General</b>	
<b>GCC 1.1 (d)</b>	The financing institution is Asian Development Bank
<b>GCC 1.1 (r)</b>	The Employer is Technical Education and Skills Development Authority (TESDA) TESDA Administration Building East Service Road, South Luzon Expressway (SLEX) Fort Bonifacio, Taguig City 1630
<b>GCC 1.1 (w)</b>	The Intended Completion Date for the whole of the Works shall be – 18 months from the date of Notice to Proceed
<b>GCC 1.1 (cc)</b>	The Project Manager is –Project Unit head- Engineering Unit, Project Management Unit, Technical Education and Skills Development Authority (TESDA) The Project Manager may either be an in-house Personnel or a contraction supervision consultant specially engaged for the contract
<b>GCC 1.1 (ff)</b>	The Site is located at RTC- Region VIII – San Gerardo Subdivision, Brgy. Abucay, Tacloban City, Visayas and is defined section 6.
<b>GCC 1.1 (ii)</b>	The Start Date shall be the date of receipt of the Notice to Proceed. The bidder will be required to provide bank guarantee (7 days) to provide irrevocable bank guarantee.
<b>GCC 1.1 (mm)</b>	The Works consist of Design and Build of the TESDA Innovation Center with Rehabilitation Works, RTIC-Tacloban Leyte.
<b>GCC 2.2</b>	Sectional Completions are: Not Applicable; However, contractor should adhere to the milestones as mentioned in the Section 6 of this contract document.
<b>GCC 2.3 (j)</b>	The following documents also form part of the Contract: Environmental Management Plan Initial Environmental Examination (IEE); Site-Specific Health and Safety Management Plan (SSEHSMP)

<b>GCC 3.1</b>	<p>The language of the contract is English</p> <p>The law that applies to the Contract is the law of Philippines</p>
<b>GCC 8.2 (b)</b>	<p>The Contractor shall acquire and pay for all permits, approvals, and/or licenses from all local, state, or national government authorities or public service undertakings in the Philippines including the required documents under the following conditions:</p> <p>If Locally Contractor;</p> <p>Business Permits, Philippine Contractors Accreditation Board (PCAB) Category "AA", BIR Registration, and other permits prescribed by the Philippine Laws</p> <p>If Internationally Contractor:</p> <p>Business Permits, Special PCAB License, BIR Registration, and other permits prescribed by the Philippine Laws</p>
<b>GCC 11.1</b>	The Project Manager <u>may</u> delegate any of his duties and responsibilities.
<b>GCC 14.1</b>	Schedule of other contractors: Not Applicable
<b>GCC 19.1</b>	<p>The minimum insurance amounts and deductibles shall be:</p> <ul style="list-style-type: none"> <li>(a) for loss or damage to the Works, Plant and Materials: 100% of the accepted contract amount (No deductible for insurance of the Works and Goods)</li> <li>(b) for loss or damage to Equipment: PHP 2.0 million.</li> <li>(c) for loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract PHP 5.0 million and unlimited number of occurrences.</li> <li>(d) for personal injury or death: <ul style="list-style-type: none"> <li>(i) of the Contractor's employees: As per governing law of Philippines but not less than PHP 1.0 million and unlimited number of occurrences.</li> <li>(ii) of other people: As per governing law of Philippines but not less than PHP 1.0 million and unlimited number of occurrences.</li> </ul> </li> </ul>
<b>GCC 20.1</b>	Site Investigation Reports are: Geotechnical investigation reports and Topographic survey reports.
<b>GCC 23.1</b>	The following shall be designed by the Contractor: Entire work scope is on design and build basis. The detailed scope / procedure is mentioned in section 6. Contractor shall adhere to the design process and design all the work elements in his scope as per Section 6.
<b>GCC 24.2</b>	The Contractor is responsible for providing site workers with safe and healthy working conditions and establish an operating system to prevent accidents, injuries, and disease. This includes the establishment of preventive and emergency preparedness and response measures to avoid, and where avoidance is not possible, to minimize, adverse impacts and risks of the construction site work to the health and safety of local communities

	<p>Within 28 days from the date of the Letter of Acceptance, the Contractor shall submit a detailed Site Specific Environmental, Health and Safety Management Plan (SSEHSMP) for the Project Manager's no objection showing how it intends to comply with environmental, health and safety laws and regulations and other specific requirements prescribed in the Contract, addressing all the monitoring and mitigation measures set forth in the Initial Environmental Examination (IEE) and the Environmental Management Plan ("EMP") of the project as well as related Supplementary Information attached in Section 6- Employer's Requirements. Work shall not commence on the Site until the no objection of SSEHSMP has been obtained from the Project Manager. Such confirmation of no objection by the Project Manager shall not relieve the Contractor of any of his obligations or responsibilities under the Contract.</p> <p>The Contractor is required to provide all personnel on site including Employer's Personnel and visitors with personal protective equipment, including protection for feet (safety boots), head, eyes, ears (safety helmets) and hands, etc., in accordance with the Contractor's SSEHSMP. The Contractor should ensure that his Subcontractors comply with the SSEHSMP and provide all such necessary equipment to their personnel.</p> <p>The Contractor shall (a) establish an operational system for managing environmental, health and safety impacts, (b) comply with the approved SSEHSMP and any corrective or preventative actions set out in safeguards monitoring reports that the Employer will prepare from time to time to monitor the implementation of the project EMP through the SSEHSMP, (c) allocate the budget required to ensure that such measures, requirements and actions are carried out, (d) submit semi-annual reports on the compliance of such measures to the Project Manager and the Employer.</p> <p>Where unanticipated health and safety hazards, or environmental risks or impacts become apparent during the Contract, the Contractor is required to update the SSEHSMP to outline the potential impacts to site works and associated mitigation measures for the Project Manager's approval.</p> <p>In the event of a significant injury involving medical treatment or hospitalization and fatal accident the Contractor shall notify the Project Manager immediately by verbal communication and submit a formal report as soon as practicable after its occurrence. For all accidents, whether fatal or not, the Contractor shall also notify the appropriate local authorities in accordance with the Laws of the Country.</p>
<b>GCC 26.1</b>	<p>The Site Possession Date(s) shall be: Same as the Notice to Proceed.</p> <p>Site Address- RTC- Region VIII – San Gerardo Subdivision, Brgy. Abucay, Tacloban City, Visayas.</p>
<b>GCC 29.1</b>	Appointing Authority for the Adjudicator: Construction Industry Arbitration Commission
<b>GCC 30.3</b>	<p>The Adjudicator shall be paid by the hour at the rate of: PHP 10,000 per work day</p> <p>The reimbursable expenses are: Travel Expenses</p>
<b>GCC 30.4</b>	Institution whose arbitration procedures shall be used:

	<p><b>(a) Contracts with foreign contractors:</b></p> <p>International arbitration shall be conducted in accordance with the rules of [Insert here the preferred international arbitration rules. If no rules have been specified, then Rules of the Singapore International Arbitration Centre (SIAC) shall apply].</p> <p>Arbitration shall be administered by [Insert institution here. If no institution has been specified, then SIAC shall be the institution to administer the arbitration].</p> <p>The place of arbitration shall be: the place of the institution administering the arbitration.</p> <p><b>Contracts with domestic contractors:</b></p> <p>Arbitration shall be conducted in accordance with the laws of the Employer's country.</p>
<b>GCC 34.2</b>	<p><b>Respectful Work Environment</b></p> <p>The Contractor shall ensure that its employees and Subcontractors observe the highest ethical standards and refrain from any form of bullying, discrimination, misconduct and harassment, including sexual harassment and shall, at all times, behave in a manner that creates an environment free of unethical behavior, bullying, misconduct and harassment, including sexual harassment. The Contractor shall take appropriate action against any employees or Subcontractors, including suspension or termination of employment or sub-contract, if any form of unethical or inappropriate behavior is identified.</p> <p>The Contractor shall conduct training programs for its employees and Subcontractors to raise awareness on and prevent any form of bullying, discrimination, misconduct and harassment including sexual harassment, and to promote a respectful work environment. The Contractor shall keep an up to date record of its employees and Subcontractors who have attended and completed such training programs and provide such records to the Employer or the Project Manager at their first written request.</p>

<b>C. Time Control</b>	
<b>GCC 35.1</b>	The Contractor shall submit for approval a Program for the Works within fourteen (14) days from the date of the Letter of Acceptance.
<b>GCC 35.3</b>	<p>The period between Program updates is 45 days.</p> <p>The amount to be withheld for late submission of an updated Program is Five percent (5%) of the next payment certificate.</p>
<b>D. Quality Control</b>	
<b>GCC 43.1</b>	The Defects Liability Period is: 365 days.

<b>E. Cost Control</b>	
<b>GCC 53.1</b>	The currency of the Employer's country is: Philippine peso
<b>GCC 54.1</b>	The Contract is not subject to price adjustment in accordance with GCC Clause 54, and the following information regarding coefficients does not apply.
<b>GCC 55.1</b>	The proportion of payments retained is: 5%
<b>GCC 56.1</b>	The liquidated damages for the whole of the Works are 0.1% per day. The maximum amount of liquidated damages for the whole of the Works is 10% of the final Contract Price.
<b>GCC 57.1</b>	Not Applicable
<b>GCC 58.1</b>	The advance payment or mobilization fund not exceeding Fifteen Percent (15%) of the contract amount shall be paid upon receipt of the corresponding unconditional Bank Guarantee.
<b>GCC 58.3</b>	Repayment of the Advance Payments shall be: 15% from each payment certificate.
<b>GCC 59.1</b>	The Performance Security amount is 5% of the contract price. If the institution issuing the performance security is located outside the country of the Employer, it shall be counter-guaranteed or encashable by a bank in the Employer's country.
<b>G. Finishing the Contract</b>	
<b>GCC 72.1</b>	The date by which operating and maintenance manuals are required is <i>30 Calendar days from the date of Certificate of Completion.</i> The date by which "as built" drawings are required is - <i>At the time of handing over. In addition, contract shall provide all important information required to successfully maintain the building.</i>
<b>GCC 72.2</b>	The amount to be withheld for failing to produce "as built" drawings and/or operating and maintenance manuals by the date required in GCC 72.1 is <i>one hundred percent (100%) of the total retention money available.</i>
<b>GCC 73.2 (h)</b>	The maximum number of days is: 100 days
<b>GCC 75.1</b>	The percentage to apply to the value of the work not completed, representing the Employer's additional cost for completing the Works, is five percent (5%) of the corresponding certified Progress Payment.

### Special Provisions

(a) GCC 22: Kindly add the following as Sub-Clause 22.2:

"The Contractor shall adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction."

(b) GCC 24: Please add the following as Sub-Clause 24.2:

"The Contractor shall disseminate or engage appropriate service providers to disseminate information on the risks of sexually transmitted diseases, including HIV/AIDS, to its employees and to members of the local communities surrounding the project area, particularly women."

(c) GCC 27: Kindly add the following as Sub-Clause 27.2:

"The Contractor shall comply with (i) the measures and requirements relevant to the Contractor which are set forth in the Initial Environmental Examination (IEE), Initial Environmental Examination (IEE), Indigenous Peoples Plan (IPP) (to the extent it concerns impacts on affected people during construction); and (ii) any corrective or preventive actions set out in Safeguards Monitoring Reports.

The Contractor shall allocate a budget for all such environmental and social measures."

(d) GCC 32: Kindly replace paragraph 32.1 with the following:

"The Contractor shall not employ any child to perform any work, including work that is economically exploitative, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. Where national laws have provisions for employment of minors, the Contractor shall follow those laws applicable to the Contractor. Persons below the age of 18 years shall not be employed in dangerous work. "Child" means a child below the statutory minimum age of [insert statutory minimum age under applicable national law] specified under the laws of the Philippines."

(e) GCC 40: Kindly add the following as Sub-Clause 40.3:

"The Contractor shall provide the Employer with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the respective IEE, the EMP and the IPP."

(f) GCC 69: Please add a new Sub-Clause GCC 69.2 as follows:

"The Contractor shall fully reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of the construction."

(g) PCC 80: Please add the following Sub-Clause in Section 8:

"The Contractor shall comply with all applicable laws and regulations relating to environment, health and safety.

The Contractor shall (a) establish an operational system for managing environmental impacts, (b) carry out all measures and requirements set forth in the IEE and the EMP, (c) allocate the budget required to ensure that such measures are carried out, and (d) comply with any corrective or preventative actions set out in Safeguards Monitoring Report."

(h) PCC 81: Please add the following Sub-Clause in Section 8:

"The Contractor shall comply with the Employer's applicable labor law and regulations and incorporate applicable workplace occupational safety norms.

The Contractor shall comply with the relevant provisions with measures set forth in the Gender Action Plan (GAP), attached hereto as Appendix [ ]."

(i) PCC 82: Please add the following Sub-Clause in Section 8:

"The Contractor shall provide the Employer with semiannual reports of its activities, including each of its obligations under Sub-Clauses 22, 24, 31, 32, 33, 34, 40.3, 69.2, 80, 81, and 82."

## Section 9: Contract Forms

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# Notice of Intention for Award of Contract

[on letterhead paper of the Employer]

[date of notification]

To: [name of the Bidder]

Attention: [insert name of the Bidder's authorized representative]

Address: [insert address of the Bidder's authorized representative]

Telephone/Fax numbers: [insert telephone/fax numbers of the Bidder's authorized representative]

E-mail Address: [insert e-mail address of the Bidder's authorized representative]

This is to notify you of our intention to award the contract [insert name of the contract and identification number, as given in the Bid Data Sheet]. You have [insert number of days as specified in ITB 40.1 of the BDS] days from the date of this notification to (i) request for a debriefing in relation to the evaluation of your Bid; and/or (ii) submit a bidding-related complaint in relation to the intention for award of contract, in accordance with the procedures specified in ITB 45.1.

The summary of the evaluation are as follows:

## 1. List of Bidders

Name of Bidder	Bid Price as Read Out at Opening	Evaluated Bid Price

## 2. Reason/s Why Your Bid Was Unsuccessful

.....  
.....  
.....  
.....

### 3. The Successful Bidder

Name of Bidder:	
Address:	
Accepted Contract Amount:	
Duration of Contract:	
Scope of the Contract Awarded:	
Amount Performance Security Required:	

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Agency: .....

# Letter of Acceptance

[on letterhead paper of the Employer]

[date]

To: [Name and address of the contractor]

Subject: Contract No. [please specify]

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 Bid Data Sheet] for the Accepted Contract Amount of the equivalent of [amount in words and figures and 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 and any additional security required as a result of the evaluation of your bid, using for that purpose the Performance Security Form included in Section 9 (Contract Forms) of the Bidding Document.

[Choose one of the following statements:]

We accept that [insert the name of adjudicator proposed by the Bidder] be appointed as the Adjudicator.

[or]

We do not accept that [insert the name of the adjudicator proposed by the Bidder] be appointed as the Adjudicator, and by sending a copy of this Letter of Acceptance to [insert name of the appointing authority], the Appointing Authority, we are hereby requesting such Authority to appoint the Adjudicator in accordance with GCC 29.1.

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Agency: .....

Attachment: Contract Agreement

# Contract Agreement

THIS AGREEMENT made the [date] day of [month], [year], between [name of the Employer] (hereinafter "the Employer"), of the one part, and [name of the contractor] (hereinafter "the Contractor"), of the other part:

WHEREAS the Employer desires that the Works known as [name of the contract] should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein,

The Employer and the Contractor agree as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
  - (a) Letter of Acceptance,
  - (b) Letter of Bid,
  - (c) Addenda Nos. [insert addenda number if any]<sup>10</sup>
  - (d) Particular Conditions of Contract,
  - (e) List of Eligible Countries that was specified in Section 5 of the bidding document,
  - (f) General Conditions of Contract,
  - (g) Specifications,
  - (h) Drawings,
  - (i) Completed Activity Schedules or Bill of Quantities, and
  - (j) Environmental Management Plan
  - (k) Initial Environmental Examination (IEE);
  - (l) Site-Specific Health and Safety Management Plan (SSEHSMP)
  - (m) any other documents shall be added here.<sup>11</sup>
3. In consideration of the payments to be made by the Employer to the Contractor as indicated in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

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<sup>10</sup> Information contained in the addenda and or addendum should preferably be included in the contract documents to avoid potential ambiguities during contract implementation. If however, unavoidable priority should be decided depending on the nature of information provided in the addenda/addendum.

<sup>11</sup> Tables of Adjustment Data may be added if the contract provides for price adjustment (see GCC 54.1).

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

Signed by .....  
by.....  
for and on behalf of the Employer

Signed  
for and on behalf the Contractor

in the presence of:

in the presence of:

Witness, Name, Signature, Address, Date

Witness, Name, Signature, Address, Date

# Performance Security

[Bank's name, and address of issuing branch or office]

Beneficiary: ..... [Name and address of the Employer] .....

Date: .....

Performance Guarantee No.: .....

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

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Contractor, we [name of the bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [name of the currency and amount in words]<sup>12</sup> [amount in figures] such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the [date] day of [month], [year]<sup>13</sup>, 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 (URDG) 2010 Revisions, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.<sup>14</sup>

.....  
[Signature(s) and seal of bank (where appropriate)]

-- Note to Bidder --

*If the bank issuing performance security is located outside the Employer's country, it shall be counter-guaranteed or encashable by a bank in the Employer's country.*

<sup>12</sup> The guarantor shall insert an amount representing the percentage of the contract price specified in the contract and denominated either in the currency(ies) of the contract or in any freely convertible currency acceptable to the Employer. If the bank issuing the performance security is located outside the country of the employer, it shall have a correspondent financial institution located in the country of the Employer.

<sup>13</sup> Insert the date 28 days after the defect liability period. 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 [6 months][1 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."

<sup>14</sup> Or the employer may use "Uniform Rules for Demand Guarantees (URDG), ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded" as appropriate.

# Advance Payment Security

[Bank's name, and address of issuing branch or office]

Beneficiary: .....[Name and address of the Employer] .....

Date: .....

Advance Payment Guarantee No.: .....

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

Furthermore, we understand that, according to the Conditions of the Contract, an advance payment in the sum [name of the currency and amount in words]<sup>15</sup> [amount in figures] is to be made against an advance payment guarantee.

At the request of the Contractor, we [name of the bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [name of the currency and amount in words]<sup>16</sup> [amount in figures] 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:

- (a) used the advance payment for purposes other than the costs of mobilization and cash flow support in respect of the Works; or
- (b) has failed to repay the advance payment when it has become due and payable in accordance with the conditions of the Contract, specifying the amount payable by the Contractor.

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 [contractor's account number] at [name and address of the 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, upon our receipt of a copy of the interim payment certificate indicating that eighty percent (80%) of the Contract Price has been certified for payment, or on the [date] day of [month], [year]<sup>17</sup>, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revisions, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.<sup>18</sup>

.....  
[Signature(s) and seal of bank (where appropriate)]

*If the bank issuing advance payment security is located outside the Employer's country, it shall be counter-guaranteed or encashable by a bank in the Employer's country.*

<sup>15</sup> The guarantor shall insert an amount representing the amount of the advance payment denominated either in the currency(ies) of the advance payment as specified in the Contract, or in any freely convertible currency acceptable to the Employer.

<sup>16</sup> Footnote 1.

<sup>17</sup> Insert the expected expiration date of the time for completion. The Employer should note that in the event of an extension of the time for completion of the contract, the Employer would need to request an extension of this guarantee from the guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [6 months] [1 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."

<sup>18</sup> Or the employer may use "Uniform Rules for Demand Guarantees (URDG), ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded" as appropriate.