

Standard Tender Documents

Procurement of Works User Guide

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European Bank
for Reconstruction and Development

PREFACE

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

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

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

When completing the documents, the Clients or their procurement consultants should further consider that as part of its commitment to sustainable development, the EBRD promotes the application of best practice regarding environmental and social matters as stipulated in the EBRD's Environmental and Social Policy and its Performance Requirements. The requirements regarding environmental and social matters, including labour and working conditions, are further detailed in the legal documentation for specific projects and shall be reflected in the completed documents.

The following guidelines should be observed:

- (a) Specific details, such as the "name of the Employer", "address for tender submission" etc. should be entered where indicated.
- (b) Boxed guidance notes and provisions in italics font contain instructions and guidance which the drafter should follow. They are not part of the text, and should not be included in the final document.
- (c) When submitting tender documents to the Bank for review, clients should state whether these Standard Tender Documents & User's Guide have been used. If so, the client should:
 - i. inform which contract form has been used i.e. the FIDIC-MDB Harmonised Edition of the Conditions of Contract for Construction, March 2006, or the FIDIC Conditions of Contract for Construction, 1st edition 1999;
 - ii. confirm that the Instructions to Tenderers and the General Conditions of Contract have been used without change;
 - iii. highlight any proposed changes to the following:
 - Letter of Tender
 - Form of Tender Security
 - Manufacturer's Authorisation
 - Letter of Acceptance
 - Contract Agreement
 - Performance Security
 - Bank Guarantee for Advanced Payment;

Guidance Notes on using these documents, which appear at the beginning of each volume are for the use of the drafter and must not be included in the tender documents to be issued to potential tenderers.

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

PART 1 – TENDERING PROCEDURES

Section I: Instructions to Tenderers (ITT)

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

Section II: Tender Data Sheet (TDS)

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

Section III: Evaluation and Qualification Criteria

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

Section IV: Tender Forms

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

Section V: Eligible Countries

This Section includes information regarding eligible countries.

PART 2 – REQUIREMENTS

Section VI: This section contains the Specification, the Drawings, and Supplementary information that describe the works to be procured.

PART 3 – CONDITIONS OF CONTRACT AND CONTRACT FORMS

Section VII: General Conditions (GCC)

These Standard Tender Documents have been designed for use with the FIDIC Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer, 1st edition, 1999. Due to the FIDIC copyrights, these FIDIC Conditions of Contract are not included in these Tender Documents and contain instructions on how these Conditions can be acquired.

Section VIII: Particular Conditions of Contract (PCC)

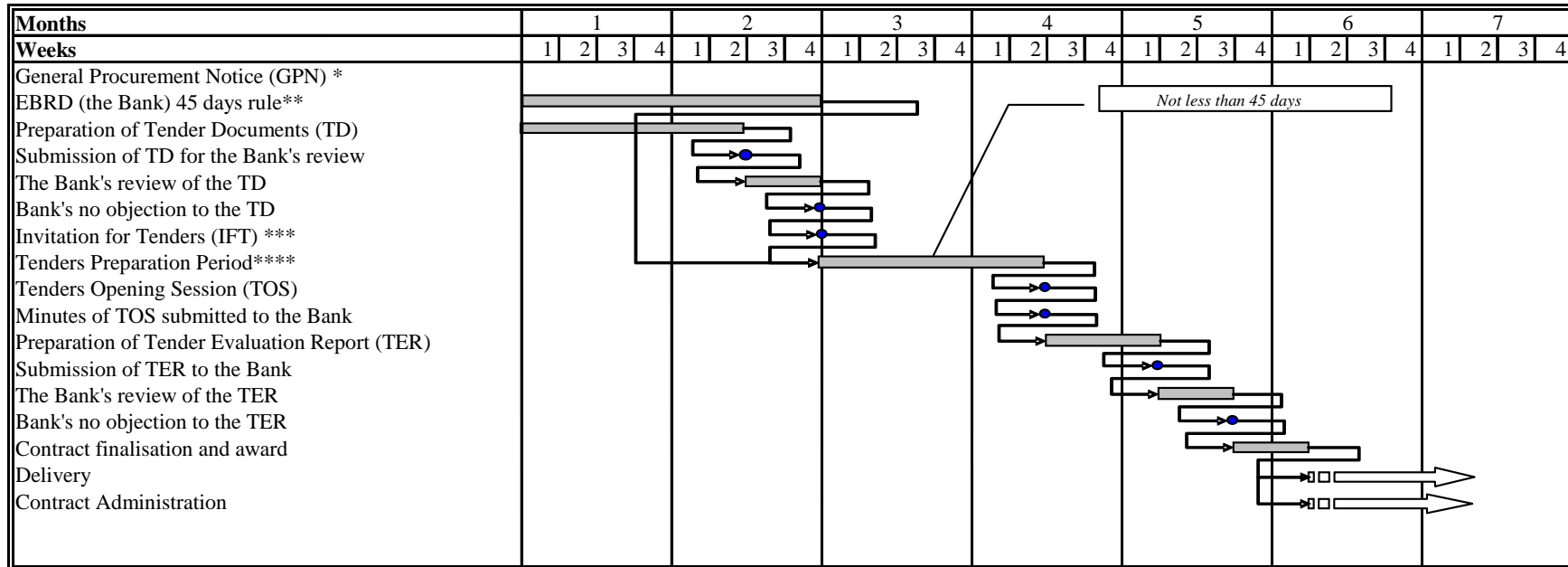
This section consists of Part A, Particular Conditions of Contract. The contents of this Section modify or supplement the General Conditions and shall be prepared by the Employer.

Section IX: Annex to the PCC - Contract Forms

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

ESSENTIAL STEPS OF THE OPEN TENDERING PROCESS

The Instruction to Tenderers included in these Standard Tender Documents is designed for a single stage tendering process with or without prequalification. The following flow chart reflects the essential steps of such tendering process.



Notes:

- * GPN is to be published on EBRD website, the Employer's own website and official government procurement portal in the Employer's country
- ** This period of time is required to enable potential tenderers to express their interest in execution of the works that are advertised in GPN
- *** Advertisement of particular Tendering Exercise on EBRD's website as well as the Employer's own website, and official government procurement portal in the Employer's country
- **** Period shall not be less than 45 days required to enable tenderers to prepare tenders. This period shall be longer for large and complex works i.e. 60-120 days

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

The Invitation for Tenders must be published not earlier than 45 calendar days after the publication of the General Procurement Notice on the Bank's website "Procurement" (www.ebrd.com) as well as the Employer's own procurement website and official government procurement portal in the Employer's country. Where practical, the Invitation for Tenders shall also be published in a newspaper with wide circulation in the Employer's country or in official gazettes or international trade publications, as appropriate. The notice should also be sent to potential contractors that have responded to the General Procurement Notice and to local representatives of potential foreign contractors e.g. commercial attaché of the embassies accredited in the Employer's country. Employers should maintain a register of all potential tenderers, who have purchased the tender documents, and make it available to interested parties. The Bank shall also arrange for publication in the United Nations Development Business and in the Official Journal of the European Union.

Although the Invitation for Tenders does not form part of the tender documents, it shall be submitted to the Bank as part thereof for review and no objection. The information in the Invitation for Tenders must be consistent with, and reflect the information provided by, the tender documents. Apart from the essential items listed in the Standard Tender Documents, the Invitation for Tenders should also indicate any important tender evaluation criteria and/or qualification requirements (for example, a requirement for a minimum level of experience in execution of the works of the nature and complexity similar to the works for which the Invitation for Tenders is issued).

INVITATION FOR TENDERS

... [country]

... [project title]

INVITATION FOR TENDERS

... [works to be procured]

This Invitation for Tenders follows the General Procurement Notice for this project which was published on the EBRD website, Procurement Notices (www.ebrd.com) on **[state the date of publication]**.

[Name of Employer], hereinafter referred to as "the Employer", intends using part of the proceeds of a loan from the European Bank for Reconstruction and Development (the Bank) towards the cost of **[insert name of the Project]**.

The Employer now invites sealed tenders from contractors for the following contract[s] to be funded from part of the proceeds of the loan:

- **.... [For each contract include a concise description of the works for each contract, as may be applicable. State size and principal quantities. Provide locations, estimated duration, and advise if any contracts are to be performed concurrently or otherwise separately.]**

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

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

Only firms and joint ventures that have been pre-qualified for the proposed contract(s) are invited to submit a tender.

Where a prequalification process has been conducted prior to the tendering process, tendering shall be open only to pre-qualified tenderers.

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

To be qualified for the award of a contract, tenderers must satisfy the following minimum criteria:

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

Where no prequalification process has been conducted prior to the tendering process, the Invitation for Tenders shall specify the minimum post-qualification criteria that shall be applied by the Employer.

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

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

[Give instructions for payment by bank transfer or the like and requirements for submitting Bank receipt of payment to the Employer].

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

All tenders must be accompanied by a tender security of ***[state currency and amount deemed appropriate by the Employer. This should be consistent with paragraph 19.1 of the Instructions to Tenderers (ITT)]*** or its equivalent in a convertible currency.

Delete the above if no tender security is required.

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

The date for submission of tenders shall be not less than 45 days after the date of publication of the Invitation for Tenders or the availability of the tender documents, whichever is the latest. A period of 60 days is normal and preferable. A longer period would be appropriate for complex or large contracts and for tenders requiring a pre-tender meeting or site visit.

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

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

[**Contact name**]
[**Employer**]
[**Address**]
[**Tel:**]
[**Fax:**]

Date: _____

Tender Document for Procurement of Works

Procurement of:

Issued on:

Tender No:

Employer:

Country:

Tender Document

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PART 1 – Tendering Procedures

Section I. Instruction to Tenderers

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Section I: Instruction to Tenderers

A. General

- 1. Scope of Tender**
 - 1.1 The Employer indicated in Section II, Tender Data Sheet (herein after referred to as "TDS") issues this Tender Document for the procurement of Goods and related services or Works or Plant and Installation Services, as specified in Section VI, Requirements. The name, identification, and number of lots are provided in the TDS.
 - 1.2 Unless otherwise stated, throughout this Tender Document definitions and interpretations shall be as prescribed in Section VII, General Conditions of Contract.
- 2. Source of Funds**
 - 2.1 The Borrower or Recipient (hereinafter called "Borrower") indicated in the TDS has applied for or received financing (hereinafter called "funds") from the European Bank for Reconstruction and Development (hereinafter called the "Bank") toward the cost of the project named in the TDS. The Borrower intends to apply a portion of the funds to eligible payments under the contract(s) for which this Tender Document is issued.
 - 2.2 Payments by the Bank will be made only at the request of the Borrower and upon approval by the Bank in accordance with the terms and conditions of the financing agreement between the Borrower and the Bank (hereinafter called the "Loan Agreement"), and will be subject in all respects to the terms and conditions of that Loan Agreement. No party other than the Borrower shall derive any rights from the Loan Agreement or have any claim to the funds.
- 3. Prohibited Practices**
 - 3.1 The Bank requires that Borrowers (including beneficiaries of Bank loans), as well as tenderers, suppliers, contractors, subcontractors, concessionaires and consultants under Bank financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Bank:
 - (a) defines, for the purposes of this provision, the terms set forth below as Prohibited Practices:
 - (i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, of 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; and
 - (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;
 - (b) will reject a proposal for award if it determines that the supplier, contractor, concessionaire or consultant recommended for award has engaged in prohibited practices in competing for the contract in question;

- (c) will cancel the portion of the Bank financing allocated to a contract for goods, works, services or concessions if it at any time determines that prohibited practices were engaged in by representatives of the Borrower or of a beneficiary of the Bank financing during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to remedy the situation;
 - (d) may declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed contract if it at any time determines that the firm has engaged in prohibited practices in competing for, or in executing, a Bank-financed contract;
 - (e) reserves the right, where a Borrower or a firm has been found by a judicial process or by the enforcement mechanism of another international organisation to have engaged in prohibited practices
 - (i) to cancel all or part of the Bank financing for such Borrower; and
 - (ii) to declare that such a firm is ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed contract; and
 - f) will have the right to require that, in contracts financed by the Bank, a provision be included requiring suppliers, contractors, concessionaires and consultants to permit the Bank to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the Bank.
- 3.2 Furthermore, tenderers shall be aware of the provisions stated in Sections VII and III, General and Particular Conditions of Contract the case may be.

4. Eligible Tenderers

- 4.1 A tenderer may be a natural person, private entity, government-owned entity—subject to Instructions to Tenderers hereinafter referred to as “ITT” 4.5—or any combination of such entities in the form of a joint venture, consortium, or association joint venture, consortium, or association (JVCA). In the case of a JVCA:
- (a) unless otherwise specified in the TDS, all partners shall be jointly and severally liable; and
 - (b) the JVCA shall nominate a Representative who shall have the authority to conduct all businesses for and on behalf of any and all the partners of the JVCA during the Tender process and, in the event the JVCA is awarded the Contract, during contract execution.
- 4.2 A tenderer, and all parties constituting the tenderer, shall have the nationality of an eligible country, in accordance with Section V, Eligible Countries. A tenderer shall be deemed to have the nationality of a country if the tenderer is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including Related Services.
- 4.3 A tenderer shall not have a conflict of interest. All tenderers found to have a conflict of interest shall be disqualified. A tenderer may be considered to have a conflict of interest with one or more parties in

this Tendering process, if:

- (a) they have controlling partners in common; or
 - (b) they receive or have received any direct or indirect subsidy from any of them; or
 - (c) they have the same legal representative for purposes of this Tender; or
 - (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the tender of another tenderer, or influence the decisions of the Employer regarding this tendering process; or
 - (e) a tenderer participates in more than one tender in this Tender process. Participation by a tenderer in more than one Tender will result in the disqualification of all Tenders in which it is involved. However, this does not limit the inclusion of the same subcontractor, not otherwise participating as a tenderer, in more than one tender; or
 - (f) a tenderer, its affiliates or parent organisation has participated in the feasibility or design stages of a project, that tenderer, its affiliates or parent organisation shall not be eligible to participate in a tender for contracts involving the supply of goods, works or services, including architectural or engineering services, for the project, unless it can be demonstrated that such participation would not constitute a conflict of interest. Such determination must be made prior to the submission of a tender or
 - (g) a tenderer participated as a consultant in the preparation of Section VI, Requirements that are the subject of the tender or
 - (h) a tenderer or any of its affiliates has been hired, or is proposed to be hired, by the Employer or the Borrower for the supervision of the contract.
- 4.4 A tenderer shall be disqualified if the tenderer, an affiliate of the tenderer, a party constituting the tenderer or an affiliate of a party constituting the tenderer, is under a declaration of ineligibility by the Bank in accordance with ITT 3, at the date of the deadline for Tender submission or thereafter,.
- 4.5 No affiliate of the Employer shall be eligible to tender or participate in a tender in any capacity whatsoever unless it can be demonstrated that there is not a significant degree of common ownership, influence or control amongst the affiliate and the Employer or the Borrower.
- 4.6 Tenderers shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.
- 4.7 Firms shall be excluded if:
- (a) as a matter of law or official regulation, the Borrower's country prohibits commercial relations with that country, provided that the Bank is satisfied that such exclusion does not preclude effective competition; or
 - (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any import of Goods from that country or any payments to persons or entities in that country.

- 4.8 In case a prequalification process has been conducted prior to the Tendering process, this Tender is open only to pre-qualified tenders.
- 5. Eligible Goods and Related Services**
- 5.1 All goods and services to be supplied under the Contract and financed by the Bank, shall have as their country of origin an eligible country of the Bank as listed in Section V, Eligible Countries.
- 5.2 For purposes of this paragraph, the term goods includes commodities, raw material, machinery, equipment, and industrial plants; and related services includes services such as insurance, transportation, installation, commissioning, training, and initial maintenance.
- 5.3 The term “country of origin” means the country where the Goods have been mined, grown, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its imported components.
- 5.4 The nationality of the firm that produces, assembles, distributes, or sells the Goods shall not determine their origin.

B. Contents of Tender Document

- 6. Sections of Tender Document**
- 6.1 The Tender Document consist of Parts 1, 2, and 3, which include all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITT 8.
- PART 1 Tendering Procedures**
- Section I. Instruction to Tenderers (ITT)
 - Section II. Tender Data Sheet (TDS)
 - Section III. Evaluation and Qualification Criteria
 - Section IV. Tender Forms
 - Section V. Eligible Countries
- PART 2 Requirements**
- Section VI. Requirements
- PART 3 Contract**
- Section VII. General Conditions of Contract (GCC)
 - Section VIII. Particular Conditions of Contract (PCC)
 - Section IX. Contract Forms
- 6.2 The Invitation for Tenders issued by the Employer is not part of the Tender Document.
- 6.3 The tenderer shall obtain the Tender Document from the source stated by the Employer in the Invitation for Tenders; otherwise the Employer is not responsible for the completeness of the Tender Document.
- 6.4 The tenderer is expected to examine all instructions, forms, terms, and specifications in the Tender Document. Failure to furnish all information or documentation required by the Tender Document may result in the rejection of the Tender.
- 7. Clarification of Tender Document, Site**
- 7.1 A prospective tenderer requiring any clarification of the Tender Document shall contact the Employer in writing at the Employer address indicated in the TDS or raise his enquiries during the pre-

Visit, Pre-Tender Meeting

Tender meeting if provided for in accordance with ITT 7.4. The Employer will respond to any request for clarification, provided that such request is received prior to the deadline for submission of Tenders, within the number of days specified in the TDS. The Employer's response shall be in writing with copies to all tenderers who have acquired the Tender Document in accordance with ITT 6.3, including a description of the inquiry but without identifying its source. Should the Employer deem it necessary to amend the Tender Document as a result of a request for clarification, it shall do so following the procedure under ITT 8 and ITT 22.2.

- 7.2 Where applicable, the tenderer is advised to visit and examine the project site and obtain for itself on its own responsibility all information that may be necessary for preparing the Tender and entering into a contract for the provision of the Requirements. The costs of visiting the site shall be at the tenderer's own expense.
- 7.3 Pursuant to ITT 7.2, where the tenderer and any of its personnel or agents have been granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, the tenderer, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the visit.
- 7.4 The tenderer's designated representative is invited to attend a pre-Tender meeting, if provided for in the TDS. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage. If so provided for in the TDS, the Employer will organise a site visit.
- 7.5 The tenderer is requested, as far as possible, to submit any questions in writing, to reach the Employer not later than one week before the meeting.
- 7.6 Minutes of the pre-Tender meeting, including the text of the questions raised without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all tenderers who have acquired the Tender Document in accordance with ITT 6.3. Any modification to the Tender Document that may become necessary as a result of the pre-Tender meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to ITT 8 and not through the minutes of the pre-Tender meeting.
- 7.7 Non-attendance at the pre-Tender meeting will not be a cause for disqualification of a tenderer.

8. Amendment of Tender Document

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

C. Preparation of Tenders

- 9. Cost of Tendering** 9.1 The tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Employer shall not be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.
- 10. Language of Tender** 10.1 The Tender, as well as all correspondence and documents relating to the Tender exchanged by the tenderer and the Employer, shall be written in the language specified in the TDS. Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate translation of the relevant passages in that language, in which case, for purposes of interpretation of the Tender, such translation shall govern.
- 11. Documents Comprising the Tender** 11.1 The Tender shall comprise the following:
- (a) letter of Tender;
 - (b) completed Schedules as provided in Section IV, Tender Forms;
 - (c) tender Security, in accordance with ITT 19;
 - (d) at the tenderer's option, alternative proposals, if permissible, in accordance with ITT 13;
 - (e) written confirmation authorizing the signatory of the Tender to commit the tenderer, in accordance with ITT 20.2;
 - (f) documentary evidence establishing the eligibility of the Goods and Services offered by the tenderer, in accordance with ITT 17.1;
 - (g) documentary evidence establishing the tenderer's qualifications in accordance with the requirements of Section III, Evaluation and Qualification Criteria, using the relevant forms furnished in Section IV, Tender Forms;
 - (h) documentary evidence as specified in the TDS, establishing the conformity of the Technical Proposal offered by the tenderer with the Tender Document, using the relevant forms furnished in Section IV, Tender Forms;
 - (i) in the case of a Tender submitted by a JVCA, JVCA agreement indicating at least the parts of the Requirements to be executed by the respective partners and
 - (j) any other document required in the TDS.
- 12. Letter of Tender and Price Schedules** 12.1 The tenderer shall submit the Letter of Tender using the form furnished in Section IV, Tender Forms. This form must be completed without any alterations to its format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.
- 13. Alternative Tenders** 13.1 Unless otherwise indicated in the TDS, alternative proposals shall not be considered. If alternative proposals are permitted, their method of evaluation shall be as stipulated in Section III, Evaluation and Qualification Criteria.

- 13.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the TDS, as will the method of evaluating different times for completion.
- 13.3 Except as provided under ITT 13.4 below, tenderers wishing to offer technical alternatives to the requirements of the Tender Document must first price the Employer's requirements as described in the Tender 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 tenderer conforming to the basic technical requirements shall be considered by the Employer.
- 13.4 When specified in the TDS, tenderers are permitted to submit alternative technical solutions for specified parts of the requirements, and such parts shall be identified in the TDS, as will the method for their evaluation, and described in Section VI, Requirements.
- 14. Tender Prices and Discounts**
- 14.1 The prices and discounts quoted by the tenderer in the Letter of Tender and in the Price Schedules shall conform to the requirements specified in ITT 14.2.
- 14.2 Unless otherwise provided in the TDS and the Contract, the prices quoted by the tenderer shall be fixed.
- 14.3 The price to be quoted in the Letter of Tender, in accordance with ITT 12.1, shall be the total price of the Tender, excluding any discounts offered.
- 14.4 The tenderer shall quote any unconditional discounts and the methodology for their application in the Letter of Tender, in accordance with ITT 14.1.
- 14.5 Unless otherwise provided in the TDS and the Contract, the rates and prices quoted by the tenderer are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract. In such a case, the tenderer shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data and the Employer may require the tenderer to justify its proposed indices and weightings.
- 14.6 If so indicated in ITT 1.1, Tenders are being invited for individual lots (contracts) or for any combination of lots (packages). Tenderers wishing to offer any price reduction for the award of more than one contract shall specify in their Tender 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 ITT 14.4, provided the Tenders for all lots (contracts) are submitted and opened at the same time.
- 14.7 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of Tenders, shall be included in the rates and prices and the total Tender Price submitted by the tenderer.
- 15. Currencies of Tender**
- 15.1 The currency(ies) of the Tender and the currency(ies) for payment shall be as specified in the TDS.
- 16. Documents Establishing the Qualifications of the Tenderer**
- 16.1 To establish its qualifications to perform the Contract in accordance with Section III, Evaluation and Qualification Criteria, the tenderer shall provide the information requested in Section IV, Tender Forms.

- 16.2 If so required in the TDS, a tenderer shall submit the Manufacturer's Authorisation, using the form included in Section IV, Tender Forms where the tenderer does not manufacture or produce the Goods it offers to supply.
- 16.3 If so required in the TDS, a tenderer shall submit evidence that it will be represented by an Agent in the country, equipped and able to carry out the Supplier's maintenance, repair and spare parts-stocking obligations prescribed in the Conditions of Contract and Requirements, where a tenderer does not conduct business within the Employer's Country.
- 17. Documents Establishing the Eligibility of Goods and Related Services**
- 17.1 To establish the eligibility of the Goods and Services in accordance with ITT 5, tenderers shall complete the forms, included in Section IV, Tender Forms.
- 18. Period of Validity of Tenders**
- 18.1 Tenders shall remain valid for the period specified in the TDS after the Tender submission deadline date prescribed by the Employer. A Tender valid for a shorter period shall be rejected by the Employer as non responsive.
- 18.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Employer may request tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a tender security is requested in accordance with ITT 19, the tenderer granting the request shall also extend the tender security for twenty-eight (28) days beyond the deadline of the extended validity period. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request shall not be required or permitted to modify its Tender, except as provided in ITT 18.3.
- 18.3 In the case of fixed price contracts, if the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial Tender validity, the Contract price shall be adjusted as specified in the request for extension. Tender evaluation shall be based on the Tender Price without taking into consideration the above adjustment.
- 19. Tender Security**
- 19.1 The tenderer shall furnish as part of its Tender, the original of a tender security using the form included in Section IV, Tender Forms. The tender security amount and currency shall be as specified in the TDS.
- 19.2 If a tender security is specified pursuant to ITT 19.1, the tender security shall be a demand guarantee in any of the following forms at the tenderer's option:
- (a) an unconditional guarantee issued by a bank;
 - (b) an irrevocable letter of credit; or
 - (c) a cashier's or certified check
- from a reputable source. In the case of a bank guarantee, the tender security shall be submitted either using the tender security form included in Section IV, Tender Forms or in another substantially similar format approved by the Employer prior to Tender submission. In either case, the form must include the complete name of the tenderer. The tender security shall be valid for twenty-eight days (28) beyond the original validity period of the Tender, or beyond any period of extension if requested under ITT 18.2.
- 19.3 If a tender security is specified pursuant to ITT 19.1, any Tender not

accompanied by a substantially responsive tender security shall be rejected by the Employer as non responsive.

19.4 If a tender security is specified pursuant to ITT 19.1, the tender security of unsuccessful tenderers shall be returned as promptly as possible upon the successful tenderer's furnishing of the performance security pursuant to ITT 37.

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

19.6 The tender security may be forfeited:

- (a) if a tenderer withdraws its Tender during the period of Tender validity specified by the tenderer in the Letter of Tender or
- (b) if the successful tenderer fails to:
 - (i) sign the Contract in accordance with ITT 36; or
 - (ii) furnish a performance security in accordance with ITT 37.

19.7 The tender security of a JVCA shall be in the name of the JVCA that submits the Tender.

20. Format and Signing of Tender

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

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

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

- (a) Unless not required in accordance with ITT 4.1 (a), be signed so as to be legally binding on all partners and
- (b) Include the Representative's authorisation referred to in ITT 4.1 (b), consisting of a power of attorney signed by those legally authorised to sign on behalf of the JVCA.

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

D. Submission and Opening of Tenders

21. Submission, Sealing and Marking of Tenders

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

- (a) Tenderers submitting Tenders by mail or by hand shall enclose

the original and copies of the Tender in separate sealed envelopes. If so permitted in accordance with ITT 13 alternative proposals, and copies thereof, shall also be placed in separate envelopes. The envelopes shall be duly marked as "ORIGINAL," "ALTERNATIVE," "ORIGINAL COPY," and "ALTERNATIVE COPY" These envelopes shall then be enclosed in one single package. The rest of the procedure shall be in accordance with ITT 21.2 and 21.3.

- (b) Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures specified in the TDS.

21.2 The inner and outer envelopes shall:

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

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

22. Deadline for Submission of Tenders

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

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

23. Late Tenders

23.1 The Employer shall not consider any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT 22. Any Tender received by the Employer after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the tenderer.

24. Withdrawal, Substitution, and Modification of Tenders

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

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

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

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

Tender or any extension thereof.

- 25. Tender Opening**
- 25.1 The Employer shall conduct the Tender opening in public, in the presence of tenderers` designated representatives and anyone who choose to attend, and at the address, date and time specified in the TDS. Any specific electronic Tender opening procedures required if electronic Tendering is permitted in accordance with ITT 21.1, shall be as specified in the TDS.
- 25.2 First, envelopes marked "Withdrawal" shall be opened and read out and the envelope with the corresponding Tender shall not be opened, but returned to the tenderer. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorisation to request the withdrawal and is read out at Tender opening. Next, envelopes marked "Substitution" shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorisation to request the substitution and is read out at Tender opening. Envelopes marked "Modification" shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorisation to request the modification and is read out at Tender opening. Only Tenders that are opened and read out at Tender opening shall be considered further.
- 25.3 The Employer shall open all other envelopes one at a time and read out: the name of the tenderer, the Tender Price(s), any discounts and their application methodology, alternative Tenders, the presence or absence of a tender security; and any other details as the Employer may consider appropriate. Only discounts and alternative Tenders read out at Tender opening shall be considered for evaluation. No Tender shall be rejected at Tender opening except for late Tenders, in accordance with ITT 23.1.
- 25.4 The Employer shall prepare a record of the Tender opening that shall include, as a minimum: the name of the tenderer and whether there is a withdrawal, substitution, or modification; the Tender Price, per lot if applicable, including any discounts and alternative proposals; and the presence or absence of a tender security. The tenderers' representatives who are present shall be requested to sign the record. The omission of a tenderer's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all tenderers who submitted Tenders in time, and posted online when electronic Tendering is permitted.

E. Examination of Tenders

- 26. Confidentiality**
- 26.1 Information relating to the evaluation of Tenders shall not be disclosed to tenderers or any other persons not officially concerned with such process until information on Contract award is communicated to all tenderers.
- 26.2 Any attempt by a tenderer to influence improperly the Employer in the evaluation of the Tenders or Contract award decisions may result in the rejection of its Tender.
- 26.3 Notwithstanding ITT 26.1, from the time of Tender opening to the time of Contract award, if any tenderer wishes to contact the Employer on any matter related to the tendering process, it should do so in writing.

- 27. Clarification of Tenders**
- 27.1 To assist in the examination, evaluation, and comparison of the Tenders and qualification of the tenderers, the Employer may, at its discretion, ask any tenderer for a clarification of its Tender, allowing a reasonable time for response. Any clarification submitted by a tenderer that is not in response to a request by the 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 Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Tenders, in accordance with ITT 29.
- 27.2 If a tenderer does not provide clarifications of its Tender by the date and time set in the Employer's request for clarification, its Tender may be rejected.
- 28. Determination of Responsiveness**
- 28.1 The Employer's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT 11.
- 28.2 A substantially responsive Tender is one that meets the requirements of the Tender Document without material deviation, reservation, or omission.
- (a) "Deviation" is a departure from the requirements specified in the Tender Document;
- (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Tender Document; and
- (c) "Omission" is the failure to submit part or all of the information or documentation required in the Tender Document.
- 28.3 A material deviation, reservation, or omission is one that,
- (a) if accepted, would:
- (i) affect in any substantial way the scope, quality, or performance of the Requirements as specified in Section VI; or
- (ii) limit in any substantial way, inconsistent with the Tender Document, the Employer's rights or the tenderer's obligations under the proposed Contract; or
- (b) if rectified, would unfairly affect the competitive position of other tenderers presenting substantially responsive Tenders.
- 28.4 The Employer shall examine the technical aspects of the Tender in particular, to confirm that all requirements of Section VI have been met without any material deviation, reservation, or omission.
- 28.5 If a Tender is not substantially responsive to the requirements of the Tender Document, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
- 28.6 Provided that a Tender is substantially responsive, the Employer may waive any quantifiable nonconformity in the Tender that do not constitute a material deviation, reservation or omission.

F. Tender Evaluation and Comparison

- 29. Evaluation of Tenders and**
- 29.1 The Employer shall use the criteria and methodologies indicated in Section III. Evaluation and Qualification Criteria. No other evaluation

- criteria or methodologies shall be permitted.
- Correction of Arithmetical Errors**
- 29.2 Provided that the Tender is substantially responsive, the Employer shall correct arithmetical errors as indicated in Section III. Evaluation and Qualification Criteria.
- 29.3 If a tenderer does not accept the correction of errors, its Tender shall be declared non-responsive and its tender security shall be forfeited.
- 30. Conversion to Single Currency**
- 30.1 For evaluation and comparison purposes, the currency(ies) of the Tender shall be converted into a single currency as specified in Section III. Evaluation and Qualification Criteria.
- 31. Tender Adjustments**
- 31.1 For the evaluation and comparison purposes the Employer shall adjust the Tender prices using the criteria and methodology specified in Section III. Evaluation and Qualification Criteria.
- 31.2 If in the opinion of the Employer the Tender which results in the lowest Evaluated Tender Price, is seriously unbalanced or front loaded or substantially below the Employer's estimates, the Employer may require the tenderer 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 methods and schedule proposed. After evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the Employer may require that the amount of the performance security be increased at the expense of the tenderer to a level sufficient to protect the Employer against financial loss in the event of default of the successful tenderer under the Contract.
- 32. Qualification of the Tenderer**
- 32.1 The Employer shall determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated and substantially responsive Tender meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.
- 32.2 The determination shall be based upon an examination of the documentary evidence of the tenderer's qualifications submitted by the tenderer, pursuant to ITT 16.
- 32.3 An affirmative determination shall be a prerequisite for award of the Contract to the tenderer. A negative determination shall result in disqualification of the Tender, in which event the Employer shall proceed to the next lowest evaluated Tender to make a similar determination of that tenderer's qualifications to perform satisfactorily.
- 32.4 The capabilities of the manufacturers and subcontractors proposed in its Tender to be used by the lowest evaluated tenderer for identified major items of the Requirements will also be evaluated for acceptability in accordance with the criteria and methodologies defined in Section III, Evaluation and Qualification Criteria. Their participation should be confirmed with a letter of intent between the parties, as needed. Should a manufacturer or subcontractor be determined to be unacceptable, the Tender will not be rejected, but the tenderer will be required to substitute an acceptable manufacturer or subcontractor without any change to the Tender price.
- 33. Employer's Right to Accept Any Tender, and to Reject Any or**
- 33.1 The Employer reserves the right to accept or reject any tender, and to annul the Tendering process and reject all Tenders at any time prior to contract award, without thereby incurring any liability to tenderers. In case of annulment, all Tenders submitted and specifically, Tender securities, shall be promptly returned to the

All Tenders tenderers.

G. Award of Contract

- 34. Award Criteria** 34.1 The Employer shall award the Contract to the tenderer whose offer has been determined to be the lowest evaluated Tender and is substantially responsive to the Tender Document, provided further that the tenderer is determined to be qualified to perform the Contract satisfactorily.
- 35. Notification of Award** 35.1 Prior to the expiration of the period of Tender validity, the Employer shall notify the successful tenderer, in writing, that its Tender has been accepted.
- 35.2 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.
- 35.3 At the same time, the Employer shall also notify all other tenderers of the results of the Tendering, and shall publish in the Bank's website the results identifying the Tender and lot numbers and the following information: (i) name of each tenderer who submitted a Tender; (ii) Tender prices as read out at Tender opening; (iii) name and evaluated prices of each Tender that was evaluated; (iv) name of tenderers whose Tenders were rejected; and (v) name of the winning tenderer, and the price it offered, as well as the duration and summary scope of the contract awarded. After publication of the award, unsuccessful tenderers may request in writing to the Employer for a debriefing seeking explanations on the grounds on which their Tenders were not selected. The Employer shall promptly respond in writing to any unsuccessful tenderer who, after Publication of contract award, requests a debriefing.
- 36. Signing of Contract** 36.1 Promptly upon notification, the Employer shall send the successful tenderer the Contract Agreement.
- 36.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful tenderer shall sign, date, and return it to the Employer.
- 36.3 Upon the successful tenderer's furnishing of the signed Contract Agreement and Performance Security pursuant to ITT 37, the Employer will discharge its tender security, pursuant to ITT 19.
- 37. Performance Security** 37.1 Within twenty-eight (28) days of the receipt of notification of award from the Employer, the successful tenderer shall furnish the performance security in accordance with the conditions of contract, subject to ITT 31.2, using for that purpose the Performance Security Form included in Section IX, Annex to the Particular Conditions - Contract Forms, or another form acceptable to the Employer. If the performance security furnished by the successful tenderer is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful tenderer to be acceptable to the Employer. A foreign institution providing a bond shall have a correspondent financial institution located in the Employer's Country.
- 37.2 Failure of the successful tenderer to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security. In that event the Employer may award the Contract to the next lowest evaluated tenderer whose offer is substantially responsive and is determined by the Employer to be qualified to

perform the Contract satisfactorily.

Section II: Tender Data Sheet

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

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

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

Boxed guidance notes and provisions in italics font are illustrative provisions containing instructions and guidance which the drafter should follow. They are not part of the text, and should not be included in the final tender document. All reference numbers provided in this Section shall be construed as reference numbers in Section I, Instruction to Tenderers (ITT). Provisions entitled "EXAMPLE" in this Section are optional and may be revised, supplemented and included in the final tender document at the Employer's discretion.

A. Introduction

1. Scope of Tender

1.1 The Employer is: *[specify the name of the Employer]*

1.1 The name of the Tender process is: *[insert complete name]*

The identification number of the Tender process is: *[insert identification number]*

The number and identification of contracts for which the tender documents are issued: *[insert the number of contracts]*

2. Source of Funds

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

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

4. Eligible Tenderers

4.8 EXAMPLE:

The formation of a joint venture, consortium, or association (JVCA) after prequalification, and any change in a pre-qualified JVCA, will be subject to the written approval of the Employer prior to the deadline for submission of tenders. Such approval may be denied if (i) partners withdraw from the JVCA and the remaining partners do not meet the qualifying requirements; (ii) the level of participation by partners or the structure of the JVCA is substantially changed; (iii) the new JVCA is not qualified; (iv) in the opinion of the Employer, a substantial reduction in competition may result; or (v) request for a change in the prequalification status of the Tenderer is received by the Employer after the date 28 days prior to the deadline for tender's submission.

The Employer will notify any changes in the list of pre-qualified Tenderers prior to the tenders' opening.

B. Tender Document

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

7.1 For clarification purposes only, the Employer's address is:

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

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

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

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

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

Country: *[insert name of country]*

Facsimile number: *[insert phone number, with country and city codes]*

Electronic mail address: *[insert email address, if applicable]*

The deadline for clarification requests would normally be set at the date no later than 28 days prior to the deadline for submission of Tenders

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

7.4 ***Pre-tender meeting and site meeting, if any, would normally take place at least 28 days prior to the deadline for tenders submission and coincide with the deadline for clarification requests specified in ITT 7.1 above.***

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

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

Date: *[insert date, if applicable]*

Time: *[insert time, if applicable]*

Place: *[insert place, if applicable]*

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

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

Date: *[insert date, if applicable]*

Time: *[insert time, if applicable]*

Place: *[insert place, if applicable]*

C. Preparation of Tenders

10. Language of Tender

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

"Sovereign operations" are Bank-financed public sector operations which are extended to, or guaranteed by, a recipient member country of the Bank. In the interest of open competition as well as economy and efficiency, the Bank requires that the

tender documents also be prepared in the English language, which shall be specified in the tender documents as the governing language. In addition, further sets of the tender documentation may be prepared in the local language, in order to assist local firms in tendering.

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

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

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

11. Documents Comprising the Tender

11.1 The Tender shall comprise the following:

- (a) Letter of Tender and Appendix to Tender;
- (b) Completed Schedule of Prices / Bill of Quantities as provided in Section IV, Tender Forms

(h) **Employers often require tenderers to submit supplementary information, which would normally be used to assess the Tenderer’s understanding of the complexity of the Works and ultimately the Tenderer’s capability to perform the Contract satisfactorily. Such supplementary information may include:**

- **description of the construction arrangements and method statements;**
- **equipment and personnel which the tenderer proposes to adopt for the execution of the Works;**
- **proposed subcontractors;**
- **other information**

If the supplementary information forms part of the Tender then a possibility arises that any inability of the Tenderer to execute the Works in accordance with the information provided therein e.g. method statement, equipment, etc, could give rise to a claim by the Tenderer for a variation. Employers may therefore wish to clarify their intention and the status of the supplementary information in the relation to the Tender and state that if the information shall merely accompany, the Tenderer’s Tender or otherwise form part thereof.

EXAMPLE:

Completed Schedule of Supplementary Information.

Schedule of Supplementary Information shall accompany, but not form part, of the Tender and is required to be submitted in sufficient detail to demonstrate the Tenderer’s capability to perform the Contract. Schedule of Supplementary Information shall be submitted using the forms provided in Section IV, Tender Forms, and include the following information:

- a) Attachment 1 - Preliminary Programme
 - i) Site organisation and Method statement;
 - ii) Mobilisation and Construction Schedules;

- iii) Contractor's Equipment; and
 - iv) Contractor's Personnel.
- b) Attachment 2 - Financial Information
- i) Financial Resources; and
 - ii) Name and address of the bank, which will provide the Performance and Advance Payment Securities.
- c) Attachment 3 - Other Information
- i) List of Proposed Subcontractors;
 - ii) Current commitments/works in progress; and
 - iii) Name (s) and address (s) the insurer (s) and its/their principal terms for the insurances required under the Contract.

13. Alternative Tenders

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

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

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

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

13.3 ***Where the Employer intends to permit alternative tenders and, in particular, technical/design alternatives, the Employer shall take into account the implications associated with the approval of the alternative design in accordance with the law governing the Contract. There is therefore a risk that the construction permit for the alternative design can either be denied or delayed by the local authorities and thereby frustrate the execution of the contract if it is awarded based on the alternative design and may lead to substantial time and cost overruns .***

In addition to the information listed in ITT 13.3, the Tenderer must also provide its estimated time schedule that would demonstrate the Tenderer's ability to complete the Works within the Time for Completion, taking into account the time that may be required to obtain the necessary approvals of the Alternative Technical solutions in accordance with the law governing the contract.

13.4 ***If the Employer permits the Contractor to design any part of the Permanent Works, the Employer must ensure that the Contract provides an appropriate statement to this effect and specifies the following:***

- ***the parts of the Permanent Works that may be designed by the Contractor;***
- ***the Employer's requirements applicable to the Permanent Works that may be designed by the Contractor; and***
- ***the procedures relating to the approval of the Contractor's design by the Employer, including:***
 - ***permissions, if any, to be obtained by the Employer;***

- ***the documents to be submitted by the Contractor to the Engineer for approval, as may be required by the Employer in accordance with the law governing the Contract; and***
- ***Third parties, if any, to be involved in the design approval and the relevant responsibilities of the parties to the contract***

Alternative technical solutions shall be permitted for the following parts of the Works: [***specify parts of the Works***]

If alternative technical solutions are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria

14. Tender Prices and Discounts

14.2 &
14.5

Price adjustment is mandatory for contracts which provide for time of completion exceeding 18 months. It would be difficult, if not impossible, for any experienced contractor to foresee the price escalation and/or undertake appropriate measures to hedge the risk associated therewith during a period in excess of 18 months. Thus, absence of price escalation arrangements for contracts with the time of completion in excess of 18 months may result in the receipt of “gambling” prices from the Tenderers. This may either result in uncompetitive tender prices, which would be inclusive of substantial contingencies and/or claims for compensation after the contract award in the event if the Tenderer’s rates transpire to be insufficient for the execution of the Works.

The prices quoted by the Tenderer shall be: [***insert “subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract.” or “fixed during the performance of the Contract”***]

15. Currencies of Tender

Option A - The currency of the Tender and the currency for payment shall be a single currency

15.1 EXAMPLE for Option A:

The prices shall be quoted by the Tenderer entirely in [***specify the currency of the tender***]. All payments under the Contract shall be made in the currency of the Tender.

15.2 If the Contract Price is subject to adjustment during the performance of the Contract, in cases where the currency index stated in the Appendix to Tender is not relevant to the currency in which the Contract Price is payable, each index shall be converted into to relevant currency of payment in accordance with the Contract

Option B - The currency of the Tender shall be the local currency and payments are to be made in more than one currency

15.1 EXAMPLE for Option B:

The prices shall be quoted by the Tenderer entirely in **the Local Currency**.

A Tenderer expecting to incur expenditures in other currency for inputs to the Works, supplied from outside the Employer's country (referred to as "the Foreign currency requirement") shall indicate its expected Foreign currency requirements (excluding provisional sums) in the Appendix to Tender in the manner and detail indicated therein.

The Foreign currency requirements can be quoted in **[specify the currency or currencies in which the Foreign currency requirements can be quoted by the Tenderer]**

- 15.2** The rates of exchange to be used by the Tenderer in arriving at the local currency equivalent and the percentage(s) mentioned in ITT 15.1 above shall be the selling rates for similar transactions established by the central Bank of Employer's country prevailing on the date twenty-eight (28) days prior to the deadline for submission of tenders. These rates shall be listed by the Tenderer in the Appendix to Tender and shall apply for calculating the payments of the successful Tenderer's Foreign currency requirements under the Contract. If the Tenderer uses other rates of exchange, the provision of ITT 30 shall apply for the purpose of the tenders' evaluation. However, payments under the Contract will be computed, using the rates of exchange quoted in the tender.
- 15.3** A Tenderer may be required by the Employer to clarify its Foreign and Local currency requirements and to substantiate that the amounts included in the prices, and shown in the Appendix to Tender, are reasonable and responsive to ITT 15.1, in which case a detailed breakdown of its foreign currency requirements shall be provided by the Tenderer.
- 15.4** If the Contract Price is subject to adjustment during the performance of the Contract, in cases where the currency index stated in the Appendix to Tender is not relevant to the currency or currencies in which the Contract Price is payable, each index shall be converted into to relevant currency of payment in accordance with the Contract.

16. Documents Establishing the Qualifications of the Tenderer**16.2 EXAMPLE:**

Manufacturer's Authorisation shall be required for the following items: **[specify the items of plant and equipment for which the Employer requires Manufacturer's Authorisation form]**

16.4 EXAMPLE:

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

The Employer shall consider the experience and qualification of the Tenderers only on their sole merits.

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

16.4 EXAMPLE:

If a Tenderer wishes to claim the experience and capability of its parent company for the purposes of meeting the minimum qualification requirements, the Tenderer shall submit with

its tender an irrevocable guarantee from its parent company. The format of the parent company guarantee shall be approved by the Employer prior to tender submission and shall specify, as minimum:

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

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

18. Period of Validity of Tenders

- 18.1 ***Insert the number of days deemed appropriate by the Employer. The period should be sufficient to permit completion of evaluation and comparison of tenders, review of the evaluation report by the Bank (if so required), obtaining of all necessary approvals, and notification of the award. Normally, the validity period should be 90 days. For major and complex contracts, the validity period should be longer. A realistic period should be specified in order to avoid the need for extensions.***

The Tender validity period shall be ***[insert the number of days deemed appropriate]*** days.

19. Tender Security

- 19.1 ***Insert the amount deemed appropriate by the Employer. The amount shall be expressed as a fixed amount. Tender security will be normally in the range of 2-5 per cent of the estimated cost of the Works.***

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

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

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

EXAMPLE:

The tender security of a JVCA can be in the name of a partner of the JVCA on condition that the tender security clearly specifies the names of all partners of the JVCA and states that the

Security is submitted for and on behalf of the JVCA.

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

20. Format and Signing of Tender

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

20.2 The written confirmation of authorisation to sign the Tenderer shall consist of: Power of Attorney, duly authorised by a Notary Public, indicating that the person(s) signing the tender have the authority to sign the tender and the tender is thus binding upon the Tenderer

21. Submission, Sealing and Marking of Tenders

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

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

D. Submission and Opening of Tenders

22. Deadline for Submission of Tenders

22.1 For **Tender submission purposes** only, the Employer's address is :

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

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

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

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

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

Country: ***[insert name of country]***

The deadline for Tender submission is:

Date: ***[insert the date]***

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

25. Tender Opening

25.1 The Tender opening shall take place at:

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

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

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

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

Country: ***[insert name of country]***

The date for tenders opening must be the same as for tender submission specified under ITT 22.1 above. The time specified for tender opening should be the same as for the deadline for tenders submission or promptly thereafter.

Date: ***[insert the date]***

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

Section III: Evaluation and Qualification Criteria

Boxed guidance notes and provisions in italics font are illustrative provisions containing instructions and guidance which the drafter should follow. They are not part of the text, and should not be included in the final tender document. All reference numbers provided in this Section shall be construed as reference numbers in Section I, Instruction to Tenderers. Provisions entitled "EXAMPLE" in this Section are optional and may be included in the final tender document at the Employer's discretion.

This Section contains all the criteria that the Employer shall use to evaluate Tenders and qualify Tenderers. In accordance with ITT 29.1 and ITT 32.1, no other factors, methods or criteria shall be used. The Tenderer shall provide all the information requested in the forms included in Section IV, Tender Forms.

Evaluation Criteria and Methodology

13 Alternative Tenders

13.1 Alternative Technical Proposals

If the Employer permits the Contractor to design any part of the Permanent Works, the Employer shall take note of the square boxed recommendations and guidance provided in the TDS with reference to ITT 13.4.

There are two options the Employer may apply to consider alternative tenders design proposals:

- a) each on its own merits; or***
- b) only for the Tenderer determined as having submitted the lowest evaluated substantially responsive tender.***

The following to be used when technical alternatives are accepted, when option (b) is applied.

EXAMPLE:

Tenderers wishing to offer technical alternatives to the technical requirements of the tender documents must first price the Employer's Requirements as provided in Part 2, Section VI, of the tender documents and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including, as appropriate, drawings, design calculations, Technical Specifications, breakdown of prices, and other relevant details. Only the technical alternatives, if any, of the lowest evaluated responsive Tenderer shall be considered by the Employer.

The following to be used when technical alternatives are accepted, when option (a) is applied.

EXAMPLE:

Tenderers wishing to offer technical alternatives to the requirements of the tender documents must first price the Employer's Requirements as provided in Part 2, Section VI, of the tender documents and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including, as appropriate, drawings, design calculations, Technical Specifications, breakdown of prices, and other relevant details. Technical alternatives which comply with the Employer's requirements for parts of the Works permitted by the Employer to be designed by the Contractor shall be considered by the Employer on their own merits.

13.2 **Alternative Time for Completion****EXAMPLE:**

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

Evaluation methodology and criteria for Alternative Times for Completion shall be specified with reference to ITT 31.1

The following to be used when alternative Times for Completion are not permitted.

EXAMPLE:

The Employer requires the Works covered under these tender documents to be completed within the Time for Completion specified in the Contract. Tenderers offering completion beyond this time will be rejected as non-responsive. Equally, no benefits will be given for early completion.

The following to be used when alternative Times for Completion are permitted.

The "adjustment" rate for the evaluation of earlier or later completion of the works shall be the same or less than the rate of delay damages for later completion of the works specified under Sub-clause 8.7 of the Contract. The adjustment would normally be limited up to a maximum of 10 per cent of the Tenderer's tender. The adjustment can be either a percentage of the tender price or a fixed amount, denominated in the currency used for the comparison of tenders.

EXAMPLE:

The Employer requires the Works covered under these tender documents to be completed within the Time for Completion specified in the Contract. An "adjustment" will be calculated for each Tenderer offering completion of the Works beyond the Time for Completion (base) stated in the Contract at (___) per cent of the Tenderer's price for the Works, exclusive of the Provisional Sums, for each week of delay beyond the base and such adjustment will be added to the Tenderer's Tender price for the evaluation purposes up to a maximum of (___) per cent of the Tenderer's tender. No credit will be given for early completion.

14. **Discounts**

The Employer will adjust the Tender Price, using the methodology prescribed by the Tenderer in its Letter of Tender. Only those discounts will be taken into account for the tender evaluation purposes that are read out during the Tenders Opening in

accordance with ITT Para 25.3.

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

28. Determination of Responsiveness

28.7 Nonmaterial Deviations

Nonmaterial deviations (commercial and technical) in the tender will not constitute cause for rejection but shall be reflected in the evaluation wherever practicable and appropriate. The cost of all nonmaterial quantifiable deviations will be added or deducted to or from the tender price as may be appropriate. A reasonable estimate of the cost will be made by the Employer, taking into consideration the corresponding quotations of other responsive Tenderers or other appropriate market prices. Such costs will be at the Employer's sole discretion. A Tenderer will not be requested or permitted to offer a price adjustment for rectifying such nonmaterial deviations.

Deviations and other factors that are in excess of the requirements of the tender documents or otherwise result in unsolicited benefits for the Employer shall not be taken into account in tender evaluation.

29. Correction of Mathematical Errors

29.2 Correction of Mathematical Errors

- (a) Where there are errors between the total of the amounts given under the column for the price breakdown and the amount given under the Total Price, the former shall prevail and the latter will be corrected accordingly
- (b) If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the 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;
- (c) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- (d) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

30. Conversion to a Single Currency

30.1 Conversion to a Single Currency

Tenders will be evaluated as quoted in the currency of the tender specified in ITT 15.1.

If tenders are permitted to indicate their Foreign currency requirements and if a Tenderer has used different exchange rates from those prescribed in ITT 15.2, for the purposes of the tender evaluation, the tender will be first converted into the amounts payable in different currencies, using the rates quoted in the tender, and then reconverted to the currency of the tender using the exchange rates prescribed in ITT

15.2.

31. Tender Adjustments

31.1 The adjustment shall be made using the following methodology:

EXAMPLE :

The adjustment shall be made using the following methodology:

In evaluating the tenders, the Employer will determine for each tender the evaluated tender price by adjusting the tender price as follows:

- (a) making any correction for errors pursuant to ITT Para 29.2 and Section III. Evaluation and Qualification Criteria Clause 30.2
- (b) excluding provisional sums and the provision, if any, for contingencies in the Price Schedules, but including Dayworks, where priced competitively;
- (c) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with ITT Para 14; and
- (d) making an appropriate adjustment for any other acceptable variations, deviations in accordance with ITT 28.7 and Section III. Evaluation and Qualification Criteria Clause 28.7

32. Qualification of the Tenderer

32.1 **Post-qualification**

Insert additional provision:

The Employer will determine to its satisfaction whether the Tenderer selected as having submitted the lowest evaluated responsive tender meets the qualifying criteria specified herein and on the basis of the Letter of Tender and any supplementary information submitted has demonstrated that it is capable of performing the contract satisfactorily.

34. Award Criteria

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

Subject to ITT 33, the Employer will award the contract(s) to the Tenderer(s) whose tender(s) has been determined to be substantially responsive and the combination of these tender prices which, including any discounts offered, yield the lowest total evaluated price, provided further that the Tenderers are determined to be qualified to perform the contract satisfactorily.

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

Option I - Qualification (Following Prequalification)

Table 2.1 Pre-qualified Tenderers shall update the relevant information used for prequalification to confirm that they continue to comply with the qualification criteria and verify that the information previously provided is still valid and correct. A Tenderer shall be disqualified if it no longer meets the qualification requirements at the time of contract award.

Table 2.2 Financial Resources

The Tenderer shall complete Attachment 2, Financial Information, provided in Section IV, Tender Forms, and demonstrate that the Tenderer continues to have access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet:

(i) the following cash-flow requirement: _____ and

(ii) the overall cash flow requirements for this contract and its current works commitment.

Table 2.3 Personnel

The Tenderer must demonstrate that it has the personnel for the key positions that meet the following requirements:

No.	Position	Total Work Similar Experience (years)	In Similar Works Experience (years)

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

Table 2.4 Equipment

The Tenderer must demonstrate that it has the key equipment listed hereafter:

No.	Equipment Type and Characteristics	Minimum Number required

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

Option II - Qualification (Without Prequalification)

Boxed guidance notes and provisions in italics font are illustrative provisions containing instructions and guidance which the drafter should follow. They are not part of the text, and should not be included in the final tender document. All reference numbers tables provided in this Section shall be construed as reference numbers tables provided below this Section. When the invitation for tenders is issued for more than one contract i.e. the Works tendered on a "slice and package" basis, the Employer shall specify appropriate capacity criteria for all specific contracts/"slices", any combination of contacts/"slices, and for the whole "package". Tenderers should be classified in accordance with their capacity in respect of the number of contracts/"slices" they can be contracted.

To be qualified for contract award in accordance with ITT 34, the Tenderer must demonstrate to the Employer that it substantially satisfies the requirements regarding eligibility, experience, personnel, equipment, financial position and litigation history, specified below:

Table 2.1 Eligibility

Tenderers shall meet the eligibility requirements set forth in ITT Para 4 and Table 2.1, Eligibility below.

Table 2.2 Historical non-performance

A consistent history of historical non-performance and/or litigation awards against the Tenderer or any partner of a joint venture may result in rejection of the tender.

Table 2.3 Financial Situation

2.3.1 Historical financial performance

The audited balance sheets for the last ***[specify number of years]*** years shall be submitted and must demonstrate the soundness of the Tenderer's financial position, showing long-term profitability. Where necessary, the Employer will make inquiries with the Tenderer's bankers.

Firms owned by individuals and partnerships may not be required to maintain audited balance sheets by the laws of their countries of origin. In such cases, the audit requirement may be relaxed by the Employer.

Audited balance sheets are usually required for five years, but this period may be less in special country circumstances.

2.3.2 Average Annual Turnover

The Tenderer shall have an average annual turnover as prime contractor (defined as billing for works in progress and completed) over the last ***[specify number of years]*** *

years of not less than EURO[*specify amount*]** equivalent

- * *This period is normally five years, but may be less if special circumstances warrant it.*
- ** *Usually not less than 2.5 times the estimated annual cash flow in the proposed contract (based on a straight-line projection). The coefficient may be smaller for very large or very small contracts, but not less than 1.5.*

2.3.3 Financial Resources

The Tenderer shall complete Attachment 2, Financial Information, provided in Section IV, Tender Forms, and demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means sufficient to meet the construction cash flow for the contract for a period of 4 (four) months, estimated as not less than EURO [*specify amount*] *equivalent, taking into account the applicant's commitments for other contracts.

- * *The Employer should calculate an estimated amount cash flow requirements based on a number of months, which shall be determined taking into account the total time needed by the Employer to pay a contractor's invoice, allowing for (a) the time of construction, from the beginning of the month invoiced; (b) the time needed by the engineer to issue the monthly certificate; (c) the time needed by the Employer to pay the certified amount, and (d) a contingency period of one to two months to allow for unforeseen delays. (One month contingency is adequate when the total of (a) + (b) + (c) is three months or less). The assessment should be based on a straight-line projection of the estimated cash flow requirement, neglecting the effect of any advance payments and retention monies.*

Table 2.4 Experience

2.4.1 Experience

The Tenderer shall demonstrate that it has successful experience as prime contractor in the execution of at least three projects of a nature and complexity comparable to the proposed contract within the last [*specify number of years*] *years; in addition, the following specific experience: [*specify required experience*] **

- * *This period is normally five years, but may be less providing that special circumstances warrant it.*
- ** *Indicate an annual production rate for the key construction activity (or activities) in the proposed contract e.g., "one million m³ of rock placed in rockfill dams in one year". The annual rate should be a percentage (say 80 percent) of the expected peak rate of construction for the key activity (or activities) in the contract or works.*

Table 2.5 Personnel

The Tenderer shall provide suitably qualified personnel to fill the following positions. For

each position the Tenderer will supply information (in table 2.5) on a first choice candidate and an alternate, each of whom should meet the experience requirements specified below:

No.	Position	Total Work Similar Experience (years)	In Similar Works Experience (years)

List only key management and specialist positions. Do not include all principals or head office personnel who are not key to the Project, and other non-specialist personnel. In the event if the proposed contract provides for a part of the Works to be designed by the Contractor, particular criteria should be specified for the design personnel that may be proposed by the Tenderer.

Table 2.6 Equipment

The tenderer shall own, or have assured access to (through hire, lease, purchase agreement, availability of manufacturing equipment, or other means), the following key items of equipment in full working order, and must demonstrate that, based on known commitments, they will be available for use in the proposed contract. The Tenderer may also list alternative equipment which he would propose to use for the contract, together with an explanation of the proposal.

No.	Equipment Type and Characteristics	Minimum Number required

Insert a list of the key equipment needs based on specific items or performance criteria, as appropriate. The items listed shall be limited to major items of equipment, which shall be critical for satisfactory performance of the contract, and which may not readily be available for purchase, hire, or lease in the Employer's country within a reasonable timeframe.

2. QUALIFICATION TABLES

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

Factor	2.2 HISTORICAL CONTRACT NON-PERFORMANCE					
Sub-Factor	Criteria					Documentation Required
	Requirement	Tenderer				
		Single Entity	Joint Venture, Consortium or Association			
2.2.1 History of non-performing contracts	Non-performance of a contract did not occur within the last _____ () years prior to the deadline for tenders submission, based on all information on fully settled disputes or litigation. A fully settled dispute or litigation is one that has been resolved in accordance with the Dispute Resolution Mechanism under the respective contract, and where all appeal instances available to the Tenderer have been exhausted.		Must meet requirement by itself or as partner to past or existing JVCA	N / A	Must meet requirement by itself or as partner to past or existing JVCA	N / A
2.2.2 Pending Litigation	All pending litigation shall in total not represent more than _____ percent (____%) of the Tenderer's net worth and shall be treated as resolved against the Tenderer.	Must meet requirement by itself or as partner to past or existing JVCA	N / A	Must meet requirement by itself or as partner to past or existing JVCA	N / A	Form CON – 2

Factor	2.3 FINANCIAL SITUATION					
Sub-factor	Criteria					Documentation required
	Requirement	Tenderer				
		Single Entity	Joint Venture, Consortium, Association			
All partners combined			Each Partner	At least one partner		
2.3.1 Historical Financial Performance	<i>Submission of audited balance sheets or if not required by the law of the Tenderer's country, other financial statements acceptable to the Employer, for the last [insert number] [] years to demonstrate the current soundness of the Tenderers financial position and its prospective long term profitability.</i> (a) (criterion 1) (b) (criterion 2)	<i>Must meet requirement</i>	<i>N / A</i>	<i>Must meet requirement</i>	<i>N / A</i>	<i>Form FIN – 1 with attachments</i>

<p>2.3.2. Average Annual Turnover</p>	<p>Minimum average annual turnover of _____, calculated as total certified payments received for contracts in progress or completed, within the last _____ () years</p>	<p>Must meet requirement</p>	<p>Must meet requirement</p>	<p>Must meet _____ percent (____%) of the requirement</p>	<p>Must meet _____ percent (____%) of the requirement</p>	<p>Form FIN –2</p>
<p>2.3.3. Financial Resources</p>	<p>The Tenderer must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet: i) the following cash-flow requirement: and ii) the overall cash flow requirements for this contract and its current commitments.</p>	<p>Must meet requirement</p>	<p>Must meet requirement</p>	<p>Must meet _____ percent (____%) of the requirement</p>	<p>Must meet _____ percent (____%) of the requirement</p>	<p>Form FIN –3 Form FIN – 4</p>

Factor	2.4 EXPERIENCE					
Sub-Factor	Criteria					Documentation Required
	Requirement	Tenderer				
		Single Entity	Joint Venture, Consortium or Association		At least one partner	
All partners combined	Each partner					
1.1 2.4.1 General Experience	<i>Experience under contracts in the role of contractor or management contractor for the last _____ [_____] years prior to the tender submission deadline, and with activity in at least nine (9) months in each year.</i>	<i>Must meet requirement</i>	N / A	<i>Must meet requirement</i>	N / A	<i>Form EXP-4.1</i>
2.4.2 Specific Experience	<i>(a) Participation as contractor or management contractor in at least _____ (____) contracts within the last _____ (____) years , each with a value of at least _____ (____), that have been successfully and substantially completed and that are similar to the proposed Works. The similarity shall be based on the physical size, complexity, methods/technology or other characteristics as described in Section VI, Employer's Requirements.</i>	<i>Must meet requirement</i>	<i>Must meet requirements for all characteristics</i>	N / A	N / A	<i>Form EXP 2.4.2(a)</i>

Factor	2.4 EXPERIENCE					
Sub-Factor	Criteria					Documentation Required
	Requirement	Tenderer				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
1.2 2.4.2 Specific Experience	<i>b) For the above or other contracts executed during the period stipulated in 2.4.2(a) above, a minimum experience in the following key activities: A. ...</i>	<i>Must meet requirements</i>	<i>Must meet requirements</i>	<i>N / A</i>	<i>N / A</i>	<i>Form EXP-2.4.2(b)</i>

Section IV: Tender Forms

Table of Forms

Letter of Tender

Appendix to Tender

Schedules of Prices / Bill of Quantities

Form of Tender Security

Schedule of Supplementary Information

Letter of Tender

The Tenderer must prepare the Letter of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and address.

Date: _____
 Tendering No.: _____
 Invitation for Tender No.: _____

To:

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Tender Documents, including Addenda issued in accordance with Instruction to Tenderers (ITT) Paragraph 8;
- (b) We offer to execute in conformity with the Tender Documents the following Works:
_____;
- (c) The total price of our Tender, excluding any discounts offered in item (d) below is:
_____;
- (d) The discounts offered and the methodology for their application are:
_____;
- (e) Our Tender shall be valid for a period of _____ [*insert validity period as specified in ITT 18.1.*] days from the date fixed for the Tender submission deadline in accordance with the Tender Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) We acknowledge that the Appendix forms part of this Letter of Tender.
- (g) If our Tender is accepted, we commit to obtain a performance security in accordance with the Tender Document;
- (h) Our firm, including any subcontractors or suppliers for any part of the Contract, have nationalities from eligible countries;
- (i) We, including any subcontractors or suppliers for any part of the contract, do not have any conflict of interest in accordance with ITT 4.3;
- (j) We are not participating, as a Tenderer or as a subcontractor, in more than one Tender in this Tendering process in accordance with ITT 4.3, other than alternative offers submitted in accordance with ITT 13;
- (k) Our firm, its affiliates or subsidiaries and the Subcontractors or Suppliers or affiliates of the Subcontractors or Suppliers, for any part of the contract, have not been declared ineligible by the Bank, under the Employer's country laws or official regulations or by an act of compliance with a decision of the United Nations Security Council;
- (l) We are not a government owned entity / We are a government owned entity but meet the requirements of ITT 4.5;¹
- (m) We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering process or execution of the Contract:²

¹ ***Use one of the two options as appropriate.***

Name of Recipient	Address	Reason	Amount
.....

- (n) We understand that this Tender, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- (o) We understand that you are not bound to accept the lowest evaluated Tender or any other Tender that you may receive; and
- (p) If awarded the contract, the person named below shall act as Contractor's Representative:

.....

Name:

In the capacity of:

Signed:

Duly authorised to sign
the Tender for and on
behalf of:

Date:

² *If none has been paid or is to be paid, indicate "none".*

Appendix to Tender

With the exception of those requirements for which the Employer's requirements have been inserted, the following information must be completed before the tender is submitted.

All reference Clauses and Sub-clauses provided in the Appendix to Letter of Tender shall be construed as reference Clauses and Sub-clauses in Section VII, General Conditions of Contract.

Conditions	Sub-Clause	Data
Employer's name and address	1.1.2.2 & 1.3	
Contractor's name and address	1.1.2.3 & 1.3	
Engineer's name and address	1.1.2.4 & 1.3	
Bank's name	1.1.2.11	European Bank for Reconstruction and Development
Borrower's name	1.1.2.12	
Time for Completion	1.1.3.3	_____days <i>If Sections of the Works are to be completed within different Time for Completion, refer to Table: Summary of Sections below</i>
Defects Notification Period	1.1.3.7	365 days.
Sections	1.1.5.6	<i>If Sections of the Works are to be used, refer to Table: Summary of Sections below</i>
Electronic transmission systems	1.3	Not allowed
Governing Law	1.4	
Ruling language	1.4	
Language for communications	1.4	
Time for access to the Site	2.1	_____days after Commencement Date

Engineer's Duties and Authority	3.1(b)(ii)	Variations resulting in an increase of the Accepted Contract Amount in excess of ____% shall require approval of the Employer.
Performance Security	4.2	The performance security will be in the form of a demand guarantee in the amount(s) of [insert related figure(s)] percent of the Accepted Contract Amount and in the same currency(ies) of the Accepted Contract Amount.
Normal working hours	6.5	
Delay damages for the Works	8.7 & 14.15(b)	_____ % of the Contract Price per day. <i>If Sections of the Works are to be completed within different Time for Completion, refer to Table: Summary of Sections below</i>
Maximum amount of delay damages	8.7	_____ % of the final Contract Price.
<i>If there are Provisional Sums:</i> Percentage adjustment of Provisional Sums	13.5.(b)(ii)	_____ %
<i>If Sub-Clause 13.8 applies:</i> Adjustments for Changes in Cost	13.8	

Schedule of Adjustment Data

Table A - Local Currency

Index Code	Index Description	Source of Index *	Base Value and Date	Tenderer's Local Currency Amount	Tenderer's Proposed Weighting
	Nonadjustable	—	—	—	A: _____ B: _____ C: _____ D: _____ E: _____
Total					1.00

Table B - Foreign Currency

Name of Currency: _____

If the Tenderer wishes to quote in more than one foreign currency, this table should be repeated for each foreign currency.

Index Code	Index Description	Source of Index	Base Value and Date	Tenderer's Currency in Type/Amount	Equivalent in Foreign Currency	Tenderer's Proposed Weighting
	Nonadjustable	—	—	—		A: ____ B: ____ C: ____ D: ____ E: ____
Total						1.00

Total advance payment	14.2	___% Percentage of the Accepted Contract Amount payable in the currencies and proportions in which the Accepted Contract Amount is payable
Number and timing of instalments	14.2	
Currencies and proportions	14.2	The advance payment shall be paid in the currency or currencies and proportions in which the Accepted Contract Amount is payable to the Contractor according to Sub-clause 14.15. _____ % in _____
Start repayment of Advance payment	14.2 (a)	<u>When payments reach ___% of the Accepted Contract Amount less Provisional Sums</u>
Repayment amortization rate of advance payment	14.2(b)	_____ %
Percentage of Retention	14.3	_____ %
Limit of Retention Money	14.3	_____ % of the Accepted Contract Amount
<i>If Sub-Clause 14.5 applies:</i> Plant and Materials	14.5(b)	Plant and Materials for payment when shipped en route to the Site _____ [list].
	14.5(c)	Plant and Materials for payment when delivered to the Site _____ [list].
Minimum Amount of Interim Payment Certificates	14.6	[insert fixed amount or percentage of the Accepted Contract Amount which shall be consistent with the minimum amount of loan drawdown specified in the Loan agreement]

Option A - The currency of the Tender and the currency for payment shall be a single currency

Currency/Currencies of Payment 14.15 The Contract Price shall be paid in [*specify the currency of payment*]

Option B - The currency of the Tender shall be the local currency and payments to be made in more the one currency

Currency/Currencies of Payment 14.15

Summary of Payment Currencies

[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. The Contractor should insert the names of each Section of the Works.]

Name of payment currency	A Amount of currency	B Rate of exchange (local currency per unit of foreign)	C Local currency equivalent $C = A \times B$	D Percentage of Net Tender Price (NTP) $\frac{100 \times C}{NTP}$
Local currency _____		1.00		
Foreign currency #1 _____				
Foreign currency #2 _____				
Net Tender Price				100.00
Provisional sums expressed in local currency	[To be entered by the Employer]		[To be entered by the Employer]	
TENDER PRICE				

Periods for submission of insurance: 18.1 [Insert period for submission of evidence of insurance and policy. Period may be from 14 days to 28 days.]

a. evidence of insurance. _____ days

b. relevant policies _____ days

Maximum amount of deductibles for insurance of the Employer's risks	18.2(d)	<i>[Insert maximum amount of deductibles]</i>
Minimum amount of third party insurance	18.3	<i>[Insert amount of third party insurance]</i>
The DAB shall be:	20.2	<i>Either: ___ One sole member/adjudicator Or: ___ a DAB of three members</i>
The DAB shall be comprised of	20.2	<i>Either: One sole Member Or: Three Members</i>
Appointment (if not agreed) to be made by	20.3	<i>[Insert name of the appointing entity or official]</i>
Rules of arbitration	20.6(a)	<i>[Insert rules of arbitration if different from those of the International Chamber of Commerce and UNCITRAL]</i>

If there are Sections of the Works

Definition of Sections

<i>Description</i> <i>(Sub-clause 1.1.5.6.)</i>	<i>Time for Completion</i> <i>(Sub-clause 1.1.3.3.)</i>	<i>Delay Damages</i> <i>(Sub-clause 8.7.)</i>
--	--	--

Schedules of Prices / Bill of Quantities

These notes for preparing a Bill of Quantities are intended only as information for the Employer or the person drafting the tender documents. They should not be included in the final documents.

Objectives

The objectives of the Bill of Quantities are:

- (a) to provide sufficient information on the quantities of works to be performed to enable tenders to be prepared efficiently and accurately; and*
- (b) when a contract has been entered into, to provide a priced Bill of Quantities for use in the periodic valuation of works executed.*

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

Content

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

- (a) Preamble;*
- (b) Work Items (grouped into parts);*
- (c) Daywork Schedule (if necessary);*
- (d) Provisional Quantities and Sums; and*
- (d) Summary*

Preamble

The preamble should indicate the inclusiveness of the unit prices and should state the methods of measurement which have been adopted in the preparation of the Bill of Quantities and which are to be used for the measurement of any part of the works.

Many national standard reference guides have been prepared on the subject. One such guide is the Standard Method of Measurement of the UK Institution of Civil Engineers.

Rock

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

Work items

The items in the Bill of Quantities should be grouped into sections to distinguish between those parts of the works which by nature, location, access, timing, or any other special characteristics may give rise to different methods of construction, or phasing of the works, or considerations of cost. General items common to all parts of the works may be grouped as a separate section in the Bill of Quantities. When a family of price adjustment formulae are used, they should relate to appropriate sections in the Bill of Quantities.

Pricing

The pricing of the Bill of Quantities must be consistent with the pricing and currency provisions in the rest of the document (e.g. Instructions to Tenderers, Tender Data, and Conditions of Contract). There are two common methods of setting up a Bill of Quantities. In the first, rates and prices are entered in the common currency of the tender (specified in the Tender Data) only, with tenderers stating separately their proportionate requirements for local and foreign currencies. In the second method, rates and prices are broken down for each item into local and foreign currency components. The first method is administratively more convenient and is more commonly used in works contracts.

Quantities

Quantities should be computed net from the drawings, unless directed otherwise in the contract, and no allowance should be made for bulking, shrinkage, or waste. Quantities should be rounded up or down where appropriate and spurious accuracy should be avoided.

Units of measurement

The metric system is recommended for use, unless other national units are mandatory in the country of the Employer.

Ground and excavation levels

The commencing surface should be identified in the description of each item for work involving excavation, boring, or driving, for which the commencing surface is not also the original surface. The excavated surface should be identified in the description of each item for work involving excavation for which the excavated surface is not also the final surface. The depths of work should be measured from the commencing surface to the excavated surface, as defined.

Daywork Schedule

A Daywork Schedule should be included if the probability of unforeseen work, outside the items included in the Bill of Quantities, is relatively high. To facilitate checking by the Employer of the realism of rates quoted by the tenderers, the Daywork Schedule should normally comprise:

- (a) a list of the various classes of labour, materials, and construction plant for which basic daywork rates or prices are to be inserted by the tenderer, together with a statement of the conditions under which the contractor will be paid for work executed on a daywork basis; and*
- (b) a percentage to be entered by the tenderer against each basic daywork subtotal amount for labour, materials, and plant representing the contractor's profit, overheads, supervision, and other charges.*

A "Daywork Schedule" is commonly found in Contracts where the likely incidence of unforeseen work cannot be covered by definitive descriptions and approximate quantities in the Bill of Quantities. The preferred alternative is to value the additional work in accordance with the Conditions of Contract. A Daywork Schedule normally has the disadvantage of not being competitive among tenderers, who may therefore load the rates assigned to some or all the items. If a Daywork Schedule is to be included at all in the tender documents, it is preferable to include nominal quantities against the items most likely to be used, and to carry the sum of the extended amounts forward into the Tender Summary in order to make the basic Schedule of Daywork Rates competitive.

The total amount assigned to such competitive Daywork is normally three to five (3–5) per cent of the estimated base Contract Price, and is regarded as a Provisional Sum for contingencies to be expended under the direction and at the discretion of the Engineer. A

limitation on quantity should not apply, and the unit rate quoted should be invariable whatever quantities of work are ordered.

Provisional Quantities and Sums

Provision for quantity contingencies in any particular item or class of work with a high expectation of quantity overrun should be made by entering specific "Provisional Quantities" or "Provisional Items" in the Bill of Quantities for the item or class of work in question, and not by increasing the quantities for that item or class of work beyond those of the work normally expected to be required. To the extent not covered above, a general provision for physical contingencies (quantity overruns) can be made by including a "Provisional Sum" in the Summary of the Bill of Quantities. Similarly, a contingency allowance for possible price increases should be provided as a "Provisional Sum" in the Summary of the Bill of Quantities. The amount assigned to such Provisional Sums should be based on a realistic estimate of the likely increases. The use of these Provisional Sums should be monitored very closely, and where the total value of such Provisional Sums exceeds fifteen (15) per cent of the estimated base Contract Price, an audit of these Sums should be carried out when an amount representing fifteen (15) per cent of the base Contract has been expended under Provisional Sums.

The estimated cost of specialised work to be carried out, or of special goods to be supplied, by a nominated subcontractor (reference Clause 59 or Part I) should be indicated in the relevant part of the Bill of Quantities as a particular Provisional Sum with an appropriate brief description. A separate tender procedure is normally carried out by the Employer to select the specialists, who are then nominated as subcontractors to the main or prime contractor. To provide an element of competition among the main tenderers (or prime contractors) in respect of any facilities, amenities, attendance, etc., to be provided by the successful tenderer as prime contractor for use and convenience of the specialist or nominated subcontractor, each related Provisional Sum should be followed by an item in the Bill of Quantities inviting a percentage (to be quoted by the main tenderer) payable on the actual expenditure of the Provisional Sum.

Summary

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

FORM OF TENDER SECURITY

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

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

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

Date: _____

TENDER GUARANTEE No.: _____

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

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

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

- (a) has withdrawn its Tender during the period of Tender validity specified by the Tenderer in the Letter of Tender; or
- (b) having been notified of the acceptance of its Tender by the Employer during the period of Tender validity, (i) fails or refuses to execute the Contract Form, if required, or (ii) fails or refuses to furnish the performance security, in accordance with the Tender Document .

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

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

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758.

[signature(s)]

Authorised for: *[name of issuing bank]*

SCHEDULE OF SUPPLEMENTARY INFORMATION

We acknowledge that this Schedule of Supplementary Information accompanies, but not forms part, of our Tender. Any information provided herein shall be subject to adjustment in accordance with the Contract. Schedule of Supplementary Information consist of the following information:

a) Attachment 1 - Preliminary Programme

- i) Site organisation and Method statement;
- ii) Mobilisation and Construction Schedules;
- iii) Contractor's Equipment; and
- iv) Contractor's Personnel.

b) Attachment 2 - Tenderers' Qualifications

- Option I - Tenderers' Qualifications Without Prequalification
- Option II - Tenderers' Qualifications Following Prequalification

c) Attachment 3 - Other Information

- i) List of Proposed Subcontractors;
- ii) Name (s) and address (s) the insurer (s) and its/their principal terms for the insurances required under the Contract; and
- iii) Name and address of the bank, which will provide the Performance and Advance Payment Securities.

ATTACHMENT 1 - PRELIMINARY PROGRAMME

SITE ORGANISATION AND METHOD STATEMENT

The Tenderer shall provide general description of the arrangements and method statement which the Tenderer intends to adopt for the execution of the Works. The Tenderer's arrangements and method statement should demonstrate their adequacy for satisfactory execution of the Works in conformity with the Tender Documents.

MOBILISATION AND CONSTRUCTION SCHEDULES

The Tenderer shall provide information and/or schedule showing the order in which the Tenderer intends to carry out the Works including the anticipated timing of each stage of the performance of the Contract including but not limited to:

- a) mobilisation of the Contractor's Plant and Equipment;
- b) execution of each key construction activity including anticipated construction rates and estimated timing for commencement and completion;
- c) details relating to the sources of the key materials, estimated transportation distances for the materials;
- d) other information as the Tenderer deems relevant or appropriate.

CONTRACTOR'S EQUIPMENT

The Tenderer shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III (Evaluation and Qualification Criteria). A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Tenderer. The Tenderer shall provide all the information requested below, to the extent possible. Fields with asterisk (*) shall be used for evaluation.

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

The following information shall be provided only for equipment not owned by the Tenderer.

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

CONTRACTOR'S PERSONNEL

Proposed Personnel

Tenderers should provide the names of suitably qualified personnel to meet the specified requirements for each of the positions listed in Section 3 (Evaluation and Qualification Criteria). The data on their experience should be supplied using the Form below for each candidate.

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

Resume of Proposed Personnel

The Tenderer shall provide all the information requested below for each of the personnel listed the schedule of the Contractor's Personnel. Fields with asterix (*) shall be used for evaluation.

Position*		
Personnel information	Name *	Date of birth
	Professional qualifications	
Present employment	Name of Employer	
	Address of Employer	
	Telephone	Contact (manager / personnel officer)
	Fax	E-mail
	Job title	Years with present <i>Employer</i>

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*

LIST OF PROPOSED SUBCONTRACTORS

Where the Tenderer proposes to use a named subcontractor (s) for the execution of any part of the Works, the Tenderer shall provide the following information for each proposed subcontractor:

- name, head office address; place of incorporation / registration; year of incorporation / registration and contact details;
- brief description and the estimated value of the part of the Works, which is intended to be subcontracted;
- description of the capability and resources of the named subcontractor (s) to perform the proposed part of the Works including:
 - (a) experience and past performance on the execution of similar works;
 - (b) capabilities with respect to personnel, equipment, and construction; and
 - (c) financial position
- appropriate justification of the need for the use of the proposed subcontractor for the execution of the Works

ATTACHMENT 2 – TENDERERS QUALIFICATIONS

OPTION I - TENDERERS QUALIFICATION FOLLOWING PREQUALIFICATION

The Tenderer shall update the information given during the corresponding prequalification exercise to demonstrate that he continues to meet the criteria used at the time of prequalification.

For this purpose, the Tenderer shall use the relevant forms included in this Section.

Form ELI - 1: Tenderer Information Sheet

1.2.1.1.1 Tenderer Information	
Tenderer's legal name	
In case of JVCA, legal name of each partner	
Tenderer's country of constitution	
Tenderer's year of constitution	
Tenderer's legal address in country of constitution	
Tenderer's authorized representative (name, address, telephone numbers, fax numbers, e-mail address)	
<p>Attached are copies of the following original documents.</p> <p><input type="checkbox"/> 1. In case of single entity, articles of incorporation or constitution of the legal entity named above, in accordance with ITT 4.1 and 4.2.</p> <p><input type="checkbox"/> 2. Authorization to represent the firm or JVCA named in above, in accordance with ITT 20.2.</p> <p><input type="checkbox"/> 3. In case of JVCA, letter of intent to form JVCA or JVCA agreement, in accordance with ITT 4.1.</p> <p><input type="checkbox"/> 4. In case of a government-owned entity, any additional documents not covered under 1 above required to comply with ITT 4.5.</p>	

Form ELI - 2: JVCA Information Sheet

Each member of a JVCA must fill in this form

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

Form CON – 2: Historical Contract Non-Performance

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

Tenderer's Legal Name: _____

Date: _____

Joint Venture Party Legal Name: _____

Tender Ref. and title: _____

Page _____ of _____ pages

Non-Performing Contracts in accordance with Section III, Qualification Criteria and Requirements			
<input type="checkbox"/> Contract non-performance did not occur during the ____ years specified in Section III, Qualification Criteria and Requirements, Sub-Factor 2.1.			
<input type="checkbox"/> Contract(s) not performed during the ____ years specified in Section III, Qualification Criteria and Requirements, requirement 2.1			
Year	Non performed portion of contract	Contract Identification	Total Contract Amount (current value, EURO equivalent)
		Contract Identification: Name of Employer: Address of Employer: Reason(s) for non performance:	
Pending Litigation, in accordance with Section III, Qualification Criteria and Requirements			
<input type="checkbox"/> No pending litigation in accordance with Section III, Qualification Criteria and Requirements, Sub-Factor 2.2.			
<input type="checkbox"/> Pending litigation in accordance with Section III, Qualification Criteria and Requirements, Sub-Factor 2.2 as indicated below.			
Year	Outcome as Percentage of Total Assets	Contract Identification	Total Contract Amount (current value, EURO equivalent)
		Contract Identification: Name of Employer:] Address of Employer: Matter in dispute:	

Form FIN-1: Financial Situation

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

Financial Data for Previous 3 Years [EURO Equivalent]		
Year 1:	Year 2:	Year 3:

Information from Balance Sheet

Total Assets			
Total Liabilities			
Net Worth			
Current Assets			
Current Liabilities			

Information from Income Statement

Total Revenues			
Profits Before Taxes			
Profits After Taxes			
<input type="checkbox"/> Attached are copies of financial statements (balance sheets including all related notes, and income statements) for the last three years, as indicated above, complying with the following conditions. <ul style="list-style-type: none"> • All such documents reflect the financial situation of the Tenderer or partner to a JVCA, and not sister or parent companies. • Historic financial statements must be audited by a certified accountant. • Historic financial statements must be complete, including all notes to the financial statements. • Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted). 			

Form FIN-2: Average Annual Construction Turnover

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

Annual Turnover Data for the Last 3 Years (Construction only)			
Year	Amount Currency	Exchange Rate	EURO Equivalent
Average Annual Construction Turnover			

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

Form FIN-3: Financial Resources

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

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

Form FIN-4: Current Contract Commitments / Works in Progress

Tenderers and each partner to a JVCA 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.

Name of contract	Employer, contact address/tel/fax	Value of outstanding work (current EURO equivalent)	Estimated completion date	Average monthly invoicing over last six months (EURO/month)
1.				
2.				
3.				
4.				
5.				
etc.				

OPTION II - TENDERERS QUALIFICATION WITHOUT PREQUALIFICATION

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

Form ELI – 1: Tenderer's Information Sheet

1.2.1.1.3 Tenderer's Information	
Tenderer's legal name	
In case of JVCA, legal name of each partner	
Tenderer's country of constitution	
Tenderer's year of constitution	
Tenderer's legal address in country of constitution	
Tenderer's authorized representative (name, address, telephone numbers, fax numbers, e-mail address)	
<p>Attached are copies of the following original documents.</p> <p><input type="checkbox"/> 1. In case of single entity, articles of incorporation or constitution of the legal entity named above, in accordance with ITT 4.1 and 4.2.</p> <p><input type="checkbox"/> 2. Authorization to represent the firm or JVCA named in above, in accordance with ITT 20.2.</p> <p><input type="checkbox"/> 3. In case of JVCA, letter of intent to form JVCA or JVCA agreement, in accordance with ITT 4.1.</p> <p><input type="checkbox"/> 4. In case of a government-owned entity, any additional documents not covered under 1 above required to comply with ITT 4.5.</p>	

Form ELI – 2: JVCA Information Sheet

Each member of a JVCA must fill in this form

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

Form CON – 2: Historical Contract Non-Performance

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

Tenderer's Legal Name: _____

Date: _____

Joint Venture Party Legal Name: _____

Tender Ref. and title: _____

Page _____ of _____ pages

Non-Performing Contracts in accordance with Section III, Qualification Criteria and Requirements			
<input type="checkbox"/> Contract non-performance did not occur during the ____ years specified in Section III, Qualification Criteria and Requirements, Sub-Factor 2.1.			
<input type="checkbox"/> Contract(s) not performed during the ____ years specified in Section III, Qualification Criteria and Requirements, requirement 2.1			
Year	Non performed portion of contract	Contract Identification	Total Contract Amount (current value, EURO equivalent)
		Contract Identification: Name of Employer: Address of Employer: Reason(s) for non performance:	
Pending Litigation, in accordance with Section III, Qualification Criteria and Requirements			
<input type="checkbox"/> No pending litigation in accordance with Section III, Qualification Criteria and Requirements, Sub-Factor 2.2.			
<input type="checkbox"/> Pending litigation in accordance with Section III, Qualification Criteria and Requirements, Sub-Factor 2.2 as indicated below.			
Year	Outcome as Percentage of Total Assets	Contract Identification	Total Contract Amount (current value, EURO equivalent)
		Contract Identification: Name of Employer:] Address of Employer: Matter in dispute:	

Form FIN – 1: Financial Situation

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

Financial Data for Previous 3 Years [EURO Equivalent]		
Year 1:	Year 2:	Year 3:

Information from Balance Sheet

Total Assets			
Total Liabilities			
Net Worth			
Current Assets			
Current Liabilities			

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 three years, as indicated above, complying with the following conditions.
- All such documents reflect the financial situation of the Tenderer or partner to a JVCA, and not sister or parent companies.
 - Historic financial statements must be audited by a certified accountant.
 - Historic financial statements must be complete, including all notes to the financial statements.
 - Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

Form FIN – 2: Average Annual Construction Turnover

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

Annual Turnover Data for the Last 3 Years (Construction only)			
Year	Amount Currency	Exchange Rate	EURO Equivalent
Average Annual Construction Turnover			

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

Form FIN – 3: Financial Resources

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

Financial Resources		
No.	Source of financing	Amount (EURO equivalent)
1		
2		
3		

Form FIN – 4: Current Contract Commitments / Works in Progress

Tenderers and each partner to a JVCA 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.

Current Contract Commitments					
o.	Name of Contract	Employer's Contact Address, Tel, Fax	Value of Outstanding Work [Current EURO Equivalent]	Estimated Completion Date	Average Monthly Invoicing Over Last Six Months [EURO/month]
1					
2					
3					
4					
5					

Form EXP – 1: General Construction Experience

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

General Construction Experience				
Starting Month Year	Ending Month Year	Years	Contract Identification and Name Name and Address of Employer Brief Description of the Works Executed by the Tenderer	Role of Tenderer

Form EXP – 2(a): Specific Construction Experience

Fill up one (1) form per contract.

Contract of Similar Size and Nature			
Contract No of	Contract Identification		
Award Date		Completion Date	
Role in Contract	Contractor	Management Contractor	Subcontractor
Total Contract Amount	EURO		
If partner in a JVCA or subcontractor, specify participation of total contract amount	Percent of Total	Amount	
Employer's Name Address Telephone/Fax Number E-mail			
Description of the similarity in accordance with Criteria 2.4.2(a) of Section III			

Form EXP – 2(b): Specific Construction Experience in Key Activities

Fill up one (1) form per contract

Contract with Similar Key Activities			
Contract No of	Contract Identification		
Award Date		Completion Date	
Role in Contract	<input type="checkbox"/> Contractor	<input type="checkbox"/> Management Contractor	<input type="checkbox"/> Subcontractor
Total Contract Amount	EURO		
If partner in a JVCA or subcontractor, specify participation of total contract amount	Percent of Total	Amount	
Employer's Name Address Telephone Number Fax Number E-mail			
Description of the key activities in accordance with Criteria 2.4.2(b) of Section III			

ATTACHMENT 3 – OTHER INFORMATION

DETAILS OF PROPOSED INSURER (S)

The Tenderer shall provide name (s) and address (s) the insurer (s) and its/their principal terms for the insurances required under the Contract

DETAILS OF PROPOSED BANK ISSUING PERFORMANCE AND ADVANCE PAYMENT SECURITIES

The Tenderer shall provide the name and the address of the issuing bank, which will provide the Performance and Advance Payment Securities. The Tenderer shall also provide information about the current credit rating of the issuing bank by Moodys or Standard & Poors or other rating agencies.

Section V: Eligible Countries

The Bank permits firms and individuals from all countries to offer goods, works and services for Bank-financed projects regardless of whether the country is a member of the Bank.

Consistent with international law, the proceeds of the Bank's loans, equity investment or guarantees shall not be used for payment to persons or entities or for any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations. Persons or entities, or suppliers offering goods and services, covered by such prohibition shall therefore not be eligible for the award of Bank-financed contracts.

PART 2 – REQUIREMENTS

Section VI: Requirements

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Specification

Notes for preparing specifications

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

Precise and clear specifications are a prerequisite for tenderers to respond realistically and competitively to the requirements of the Employer without qualifying or conditioning their tenders. In the context of open tendering, the specifications must be drafted to permit the widest possible competition and, at the same time, present a clear statement of the required standards of materials, plant, other supplies, and workmanship to be provided. Only if this is done will the objectives of economy, efficiency, and equality in procurement be realised, responsiveness of tenders be ensured, and the subsequent task of tender evaluation facilitated. The specifications should require that all materials, plant, and other supplies to be incorporated in the works are new, unused, of the most recent or current models, and incorporate all recent improvements in design and materials unless provided otherwise in the contract. The specifications should set out any specific requirements for the works as set out in legal permits or legal documentation with the EBRD, where the Employer's compliance with applicable laws and/or legal agreements with the EBRD are dependent upon the performance of third parties and, in particular, the Contractor and its sub-contractors. Such specific requirements include, but are not limited to, environmental and social management and mitigation provisions directly associated with the works as set out in the EBRD Performance Requirements as well as in the Environmental and Social Action Plan agreed between the Employer and the EBRD as part of the legal agreements. A clause setting out the scope of the works is often included at the beginning of the specifications, and it is customary to give a list of the drawings. Where the contractor is responsible for the design of any part of the permanent works, the extent of his obligations must be stated.

Samples of specifications from previous similar projects in the same country are useful in this respect. The use of metric units is encouraged by the Bank. Most specifications are normally written specially by the Employer or Engineer to suit the contract works in hand. There are no standard specifications for universal application in all sectors in all countries, but there are established principles and practices which are reflected in these documents.

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

Care must be taken in drafting specifications to ensure that they are not restrictive. In the specification of standards for materials, plant, other supplies, and workmanship, recognised international standards should be used as much as possible. Where other particular standards are used, whether national standards of the Employer's country or other standards, the specifications should state that materials, plant, other supplies, and workmanship meeting other authoritative standards, and which ensure substantially equal performance to the standards mentioned, will also be acceptable. The following clause may be inserted in the Conditions of Particular Application or the specifications.

Sample clause: Equivalency of standards and codes

Wherever reference is made in the contract to specific standards and codes to be met by the materials, plant, and other supplies to be furnished, and work performed or tested, the provisions of the latest current edition or revision of the relevant standards and codes in

effect shall apply, unless otherwise expressly stated in these documents. Where such standards and codes are national, or relate to a particular country or region, other authoritative standards which ensure a substantially equal or higher performance than the standards and codes specified will be accepted subject to the Engineer's prior review and written approval. Differences between the standards specified and the proposed alternative standards must be fully described in writing by the contractor and submitted to the Engineer at least twenty-eight (28) days prior to the date when the contractor desires the Engineer's approval. In the event the engineer determines that such proposed deviations do not ensure substantially equal performance, the contractor shall comply with the standards specified in the documents.

Alternative technical proposals

The Employer should decide whether technical solutions to specified parts of the works are to be permitted. Alternatives are appropriate in cases where obvious (and potentially less costly) alternatives are possible to the technical solutions indicated in the tender documents for certain elements of the works, taking into consideration the comparative specialised advantage of potential tenderers. For example:

- ***pile foundations (proprietary methods and different material)***
- ***bridge foundations (open well, caissons, piles, etc.)***
- ***columns, beams, decking (reinforced concrete, prestressed concrete, steel, etc.)***
- ***proprietary methods for post-tensioning concrete***
- ***lining of canals***
- ***pipeline materials, coating, jointing***
- ***road surfacing (asphalt, concrete, etc.)***
- ***transmission tower design and erection***
- ***street lighting***
- ***offshore foundations***
- ***offshore trestle spans.***

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

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

In more complex cases, a "turnkey" or "design-and-construct" approach may be more appropriate, in which case a two-stage tender process is recommended in conformity with other Bank standard tender documents.

Drawings

These notes for preparing drawings are intended only as information for the Employer or the persons preparing the tender documents. They should not be included in the final document.

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

A simplified map showing the location of the Site in relation to the local geography, including major roads, posts, airports, and railroads, is helpful.

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

Supplementary Information

This section shall be drafted in conjunction with ITT 11.1 (h). Employer must clearly specify the information that shall form part of the tender and will eventually become contractual documents and the information that shall accompany, but not form part, of the tenderer's tender. Employers should consult relevant notes and example provisions provided in the Tender Data Sheet.

PART 3

**CONDITIONS OF CONTRACT
AND
CONTRACT FORMS**

Guidance for Section VII: General Conditions of Contract (GCC)

These Standard Tender Documents have been designed for use with:

**THE FIDIC CONDITIONS OF CONTRACT FOR CONSTRUCTION
FOR BUILDING AND ENGINEERING WORKS DESIGNED BY THE EMPLOYER**

1st edition 1999

The “FIDIC” stands for the International Federation of Consulting Engineers (Fédération Internationale des Ingénieurs-Conseils). While these tender documents have been prepared with great care, taking into account international procurement and contracting experience, the Bank does not assume any responsibility that the contract form, including example provisions and guidance notes, contained in these Standard Tender Documents are suitable, adequate and complete in respect of any particular project. Parties wishing to use the above contract form are advised to seek their own legal counsel for drafting conditions of contract which would reflect the specifics of the particular project.

Although these tender documents have been designed to accommodate the FIDIC Conditions of Contract for Construction, the choice of the contact form shall not be construed as being mandatory for the use under the Bank funded project. According to the EBRD Procurement Policies and Rules, wherever appropriate, standard forms of contract incorporating generally accepted international conditions should be used. The use of standard contract forms for building and civil works will ensure comprehensive cover, general acceptability of its provisions, savings in cost and time in tender preparation and review, and a solid background of legal case histories. The following Conditions of Contract would be generally acceptable to the Bank though shall be subject to the Bank’s no objection as part of its review of the project procurement plan:

- **The FIDIC-MDB Harmonised Edition of the Conditions of Contract for Construction, March 2006**

The Bank has entered into a licence agreement with the FIDIC. According to the terms of the license agreement, it gives entities involved in the development, tendering and implementation of EBRD-financed projects free access to the FIDIC-MDB Harmonised General Conditions of Contract for Construction through the FIDIC and the Bank official Web Sites. Although the Bank supports the use of the FIDIC-MDB Harmonised General Conditions of Contract for Construction, this form of contract is not mandatory for Bank financed projects.

- **Other Forms of Contract**

- Any of the contract forms prepared by the International Federation of Consulting Engineers (Fédération Internationale des Ingénieurs-Conseils, or FIDIC)

Any other internationally recognised form of contract e.g. the Conditions of Contract for Smaller Contracts in the World Bank’s Standard tender Bidding Documents - Procurement of Works, Smaller Contracts, January 1995; New Engineering Contract prepared by the Institute of Civil Engineers, UK

Section VII: General Conditions of Contract (GCC)

[name of Employer]

[name of contract]

The Conditions of Contract, Part A: General Conditions shall be those forming Section VII of the “Conditions of Contract for Construction” 1st edition 1999 prepared by the *Fédération Internationale des Ingénieurs-Conseils* (FIDIC). These Conditions are subject to the variations and additions set out in Section VIII hereof entitled “Part B: Particular Conditions of Contract” (PCC)

Add the following text if the tender documents, as issued, do not include a copy:

Copies of the FIDIC Conditions of Contract can be obtained from:

FIDIC Secretariat
P.O. Box 86
1000 Lausanne 12
Switzerland
Facsimile: 41 21 653 5432
Telephone: 41 21 653 5003

And the FIDIC official web site

WWW.FIDIC.ORG

Guidance for Section VIII.

Particular Conditions of Contract (PCC)

The Employer should use the Guidance for the Preparation of the Particular Conditions provided as part of the “Conditions of Contract for Construction” 1st edition 1999 prepared by the Fédération Internationale des Ingénieurs-Conseils (FIDIC). In addition, the following clauses are intended for use by the Employer in preparing the Particular Conditions of Contract (PCC). Use them to complement or replace the Particular Conditions published by FIDIC. They are not a complete standard set of PCC provisions; country- or Project-specific provisions for the PCC must also be prepared in each case.

The provisions of the PCC complement the General Conditions of Contract (GCC), specifying contractual requirements linked to the special circumstances of the country, the Employer, the Engineer, the sector, the overall project, and the contract Works. In preparing the PCC, check that you have incorporated essential information to complete the provisions of the PCC and amended and/or supplemented the provisions of the GCC as required or recommended by the Bank or as necessitated by the circumstances of the specific Works. Whoever drafts the PCC should be thoroughly familiar with the provisions of the GCC and with any specific requirements of the Contract. Legal advice is recommended when amending provisions or drafting new ones. Note that the PCC provisions take precedence over those in the GCC.

Section VIII: Particular Conditions of Contract (PCC)

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

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

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

1. General Provisions

1.1 Definitions

1.1.2 Parties and Persons

- 1.1.2.11 “Bank” means the financing institution (if any) named in the Appendix To Tender
- 1.1.2.12 “Borrower” means the person (if any) named as the borrower in the Appendix To Tender
- 1.1.6.10 “Notice of Dissatisfaction” means the notice given by either Party to the other under Sub-Clause 20.4 [Obtaining Dispute Adjudication Board’s Decision] indicating its dissatisfaction and intention to commence arbitration.

1.2 Interpretation

Add the words (optional):

In these Conditions, provisions including the expression "Cost plus profit" require this profit to be one-twentieth (5%) of this Cost.

1.12 Confidential Details

Replace Sub-clause (optional):

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.

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.

According to the Bank's Procurement Policies and Rules, the Bank will have the right to require that, in contracts financed by the Bank, a provision be included requiring suppliers, contractors, concessionaires and consultants to permit the Bank to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the Bank.

Add the following Sub-clause (Mandatory):

1.15 Inspections and Audit by the Bank

The Contractor shall permit the Bank and/or persons appointed by the Bank to inspect the Site and/or the Contractor's accounts and records relating to the performance of the Contract and to have such accounts and records audited by auditors appointed by the Bank if required by the Bank.

2 The Employer

2.4 Employer's Financial Arrangements

Add the words (Mandatory):

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

3 The Engineer

3.1 Engineer's Duties and Authority

Add the words (Mandatory):

- (d) any act by the Engineer in response to a Contractor's request except as otherwise expressly specified shall be notified in writing to the Contractor within 28 days of receipt

The following provisions shall apply:

The Engineer shall obtain the specific approval of the Employer before taking action under the following Sub-Clauses of these Conditions:

- (a) Sub-Clause 4.12: Agreeing or determining an extension of time and/or additional cost.
- (b) Sub-Clause 13.1: Instructing a Variation, except;
 - (i) in an emergency situation as determined by the Engineer, or
 - (ii) if such a Variation would increase the Accepted Contract Amount by not more than any percentage specified in the Appendix To Tender
- (c) Sub-Clause 13.3: Approving a proposal for Variation submitted by the Contractor in accordance with Sub Clause 13.1 or 13.2.
- (d) Sub-Clause 13.4: Specifying the amount payable in each of the applicable currencies

Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties and responsibility under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of the Employer, with any such instruction of the Engineer. The Engineer shall determine an addition to the Contract Price, in respect of such instruction, in accordance with Clause 13 and shall notify the Contractor accordingly, with a copy to the Employer.

3.4 Replacement of the Engineer

Replace Sub-clause (optional):

If the Employer intends to replace the Engineer, the Employer shall, not less than 21 days before the intended date of replacement, give notice to the Contractor of the name, address and relevant experience of the intended replacement Engineer. If the Contractor considers the intended replacement Engineer to be unsuitable, he has the right to raise objection against him by notice to the Employer, with supporting particulars, and the Employer shall give full and fair consideration to this objection.

4 The Contractor

4.2 Performance Security

Add the words (mandatory):

The Performance Security shall be issued by a reputable bank or financial institution selected by the Contractor, and shall be in the form annexed to the Particular Conditions, as stipulated by the Employer in the Contract Data, or in another form approved by

Add the words (optional):

Without limitation to the provisions of the rest of this Sub-Clause, whenever the Engineer determines an addition or a reduction to the Contract Price as a result of a change in cost and/or legislation or as a result of a Variation, amounting to more than 25 percent of the portion of the Contract Price payable in a specific currency, the Contractor shall at the Engineer's request promptly increase, or may decrease, as the case may be, the value of the Performance Security in that currency by an equal percentage.

4.3 Contractor's Representative

Add the words (optional):

If the Contractor's Representative's delegates are not fluent in the said language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Engineer.

4.4 Subcontractors

Add the words (optional):

The Contractor shall ensure that the requirements imposed on the Contractor by Sub-Clause 1.12 [Confidential Details] apply equally to each Subcontractor. Where practicable, the Contractor shall give fair and reasonable opportunity for contractors from the Country to be appointed as Subcontractors.

6 Staff and Labour

The legal agreements between the Employer and the EBRD covenant the Employer to comply with and implement the EBRD's Environmental and Social Performance Requirement 2 as well as any specific requirements set out in the Environmental and Social Action Plan included in the legal agreements related to Labour and Working Conditions. It is the Employer's responsibility to ensure that third parties and non-employee workers engaged by the Employer either directly or through contractors or other intermediaries to perform the works meet these requirements. The specific wordings for PCCs below are provided as guidance to the Employer to ensure that the Contract will require the Contractor to perform the contract Works in compliance with these EBRD-specific requirements. The additional wordings below that are "mandatory", are required to supplement national law and GCC so as to meet EBRD-specific requirements. The additional wordings below that are "optional" are requirements that are presumed to be covered by national law and GCC, but which are recommended to be included in the Contract so as to facilitate the Employer's monitoring and supervision of the Contractor's compliance with the EBRD-specific requirements, and thereby, the Employer's reporting to the EBRD to demonstrate its compliance with the EBRD-specific requirements and legal covenants.

6.1 Engagement of Staff and Labour

Add the words (mandatory):

The Contractor shall document and communicate to all workers their working conditions and terms of employment, including their entitlement to wages, hours of work, overtime arrangements and overtime compensation, and any benefits (such as leave for illness, maternity / paternity or holiday).

The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labour with appropriate qualifications and experience from sources within the Country.

6.2 Rates of Wages and Conditions of Labour

Add the words (mandatory)

Where the Contractor is party to a collective agreement or is otherwise bound by it, the Contractor shall comply with its terms and conditions.

Deductions from wages for disciplinary measures shall not be permitted nor shall any deductions from wages not provided for by national law be permitted without the expressed permission of the worker concerned. Deductions must never lead to an employee receiving less than the applicable minimum wage.

All workers shall be provided with clearly understandable verbal and written information about the conditions in respect of wages before they enter employment and of the particulars of their wages for the pay period concerned each time that they are paid. Wages shall be paid in legal tender in full, on time and directly to the workers concerned. The Contractor shall maintain records of all payments and deductions made.

Add the words: (optional)

The Contractor shall inform the Contractor's Personnel about their liability to pay personal income taxes in the Country in respect of such of their salaries, wages, allowances and any benefits as are subject to tax under the Laws of the Country for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.

6.4 Labour Laws

Add the words: (mandatory)

The Contractor shall ensure that obligations to staff and labour under labour, health and safety and social security laws and regulations arising from the employment relationship shall not be avoided through the use of labour-only contracting arrangements.

6.5 Working Hours

Add the words: (optional)

Hours of work shall comply with applicable laws, collective agreements, and industry standards. Overtime shall be voluntary wherever possible, shall not be demanded on a regular basis and shall always be compensated at a premium rate.

6.6 Facilities for Staff and Labour

Add the words: (mandatory)

Where the Contractor provides living accommodation for workers, the accommodation shall be appropriate for its location and be clean, safe and, at a minimum, meet the basic needs of workers. The accommodation shall comply with national legislation and, where possible, follow international good practice as set out in the IFC / EBRD Public Guidance

The Contractor shall ensure that workers' freedom of movement to and from the accommodation is not unduly restricted.

6.7 Health and Safety

Add the words: (mandatory)

The Contractor shall provide the Employer with a written Health and Safety Policy and a project-specific Health and Safety Plan before the commencement of work. The Plan shall include details of the Contractor's OHS management system, including the Contractor's plans to manage and monitor the health and safety risks associated with all construction work under its control. The Plan shall be made available to the lenders prior to the start of Construction.

Every contractor shall plan, manage and monitor construction work carried out by him or under his control in a way which ensures that, so far as is reasonably practicable, it is carried out without risks to health and safety.

The Contractor shall ensure that a safe and healthy working environment is provided and that best occupational health and safety practice is promoted. The Contractor shall take steps to prevent accidents, injury and disease arising in the course of work by identifying and controlling risks to workers, as far as is reasonably practicable. The Contractor shall ensure that all staff, labourers and persons entitled to be on site receive the necessary supervision, information, instruction and training to do their jobs safely. Where appropriate, the Contractor shall provide appropriate equipment to minimise health and safety risks and enforce its use. The Contractor shall put in place arrangements for emergency prevention, preparedness and response.

Add the words (optional):

The Contractor shall develop and maintain throughout the execution of the Contract preventative measures relating to worker health concerns, including providing inoculations or other preventative treatments for disease that are either global in nature or endemic in the project area. The Contractor shall undertake appropriate measures to reduce the risk of transfer of STDs and HIV/AIDS among the Contractor's Personnel and the local community including providing condoms and information for raising awareness among employees of sexually transmitted disease and HIV/AIDS.

6.8 Contractor's Superintendence

Add the words: (mandatory) :

The Contractor shall ensure that a grievance mechanism is available to all workers and their organisations to use without fear of intimidation or retaliation. The Contractor will ensure that employees are informed about the grievance mechanism and that this is part of the training for new employees and information is posted in relevant areas in the construction camp. The Contractor shall ensure that the grievance mechanism involves an appropriate level of management and addresses concerns promptly, using an understandable and transparent process that provides feedback to those concerned without any retribution.

Add the following provisions 6.12 through to 6.24 (optional):

6.12 Foreign Personnel

The Contractor may bring in to the Country any foreign personnel who are necessary for the execution of the Works to the extent allowed by the applicable Laws. The Contractor shall ensure that these personnel are provided with the required residence visas and work permits. The Employer will, if requested by the Contractor, use his best endeavours in a timely and expeditious manner to assist the Contractor in obtaining any local, state, and national or government permission required for bringing in the Contractor's personnel.

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

6.13 Supply of Foodstuffs

The Contractor shall arrange for the provision of a sufficient supply of suitable, culturally appropriate food as may be stated in the Specification at reasonable prices for the Contractor's Personnel for the purposes of or in connection with the Contract.

6.14 Supply of Water

The Contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor's Personnel.

6.15 Measures against Insect and Pest Nuisance

The Contractor shall at all times take the necessary precautions to protect the Contractor's Personnel employed on the Site from insect and pest nuisance, and to reduce the danger to their health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.

6.16 Alcoholic Liquor or Drugs

The Contractor shall not, otherwise than in accordance with the Laws of the Country, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift, barter or disposal thereof by Contractor's Personnel.

6.17 Arms and Ammunition

The Contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so.

6.18 Festivals and Religious Customs

The Contractor shall respect the Country's recognized festivals, days of rest and religious or other customs.

6.19 Funeral Arrangements

The Contractor shall be responsible, to the extent required by local regulations, for making any funeral arrangements for any of his local employees who may die while engaged upon the Works.

6.20 Forced Labour

The Contractor shall not employ forced labour, which consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty, and includes any kind of involuntary or compulsory labour, such as involuntary prison labour, indentured labour, bonded labour or similar labour contracting arrangements.

6.21 Child Labour

The Contractor shall not employ children in a manner that is economically exploitative, or is likely to be hazardous, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. Where the relevant labour laws of the Country have provisions for employment of minors, the Contractor shall follow those laws applicable to the Contractor. The Contractor shall put in place a procedure to verify the ages of young workers. Children below the age of 18 years shall not be employed in dangerous work.

6.22 Employment Records of Workers

The Contractor shall keep complete and accurate records of the employment of labour at the Site. The records shall include the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarized on a monthly basis and submitted to the Engineer, and these records shall be available for inspection by the Bank's auditors during normal working hours. These records shall be included in the details to be submitted by the Contractor under Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment].

6.23 Workers' Organisations

In countries where the relevant labour laws recognize workers' rights to form and to join workers' organisations of their choosing without interference and to bargain collectively, the Contractor shall comply with such laws. Where the relevant labour laws substantially restrict workers' organisations, the Contractor shall enable alternative means for the Contractor's Personnel to express their grievances and

protect their rights regarding working conditions and terms of employment. In either case described above, and where the relevant labour laws are silent, the Contractor shall not discourage the Contractor's Personnel from forming or joining workers' organisations of their choosing or from bargaining collectively, and shall not discriminate or retaliate against the Contractor's Personnel who participate, or seek to participate, in such organisations and bargain collectively. The Contractor shall engage with such workers' representatives. Workers' organisations are expected to fairly represent the workers in the workforce. The Contractor shall ensure that workers' representatives have access to all workplaces necessary to enable them to carry out their representative functions.

6.24 Non-Discrimination and Equal Opportunity

The Contractor shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment relationship on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline. The Contractor shall ensure equal remuneration for men and women for work of equal value. In countries where the relevant labour laws provide for non-discrimination in employment, the Contractor shall comply with such laws. When the relevant labour laws are silent on non-discrimination in employment, the Contractor shall meet this Sub-Clause's requirements. Special measures of protection or assistance to remedy past discrimination or promote local employment opportunities or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination.

8 Commencement, Delays and Suspension

8.1 Commencement of Works

Replace Sub-clause (optional):

Except as otherwise specified in the Particular Conditions of Contract, the Commencement Date shall be the date at which the following precedent conditions have all been fulfilled and the Engineer's notification recording the agreement of both Parties on such fulfilment and instructing to commence the Works is received by the Contractor:

- a) signature of the Contract Agreement by both Parties, and if required, approval of the Contract by relevant authorities in the Country;
- b) delivery to the Contractor of reasonable evidence of the Employer's Financial arrangements (under Sub-Clause 2.4 [Employer's Financial Arrangements]);
- c) possession of the Site given to the Contractor together with such permission(s) under (a) of Sub-Clause 1.13 [Compliance with Laws] as required for the commencement of the Works;
- d) receipt by the Contractor of the Advance Payment under Sub-Clause 14.2 [Advance Payment] provided that the corresponding bank guarantee has been delivered by the Contractor; and

If the above said Engineer's instruction is not received by the Contractor within 180 days from his receipt of the Letter of Acceptance, the Contractor shall be entitled to terminate the Contract under Sub-Clause 16.2 [Termination by Contractor]

The Contractor shall commence the execution of the Works as soon as is reasonably practicable after the Commencement Date, and shall then proceed with the Works with due expedition and without delay.

13 Variations and Adjustments

13.7 Adjustments for Changes in Legislation

Add the words (optional):

Notwithstanding the foregoing, the Contractor shall not be entitled to an extension of time if the relevant delay has already been taken into account in the determination of a previous extension of time and such Cost shall not be separately paid if the same shall already have been taken into account in the indexing of any inputs to the table of adjustment data in accordance with the provisions of Sub-Clause 13.8 [Adjustments for Changes in Cost].

14 Contract Price and Payment

14.2 Advance Payment

Add the words (mandatory):

The advance payment guarantee shall be issued by a reputable bank or financial institution selected by the Contractor and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer.

14.7 Payment

Replace Sub-clauses (optional):

- (b) the amount certified in each Interim Payment Certificate within 56 days after the Engineer receives the Statement and supporting documents or, at a time when the Bank's loan or credit (from which part of the payments to the Contractor is being made) is suspended, the amount shown on any statement submitted by the Contractor within 14 days after such statement is submitted, any discrepancy being rectified in the next payment to the Contractor; and
- (c) the amount certified in the Final Payment Certificate within 56 days after the Employer receives this Payment Certificate or, at a time when the Bank's loan or credit (from which part of the payments to the Contractor is being made) is suspended, the undisputed amount shown in the Final Statement within 56 days after the date of notification of the suspension in accordance with Sub-Clause 16.2.

Replace Sub-clauses (mandatory):

The Contractor shall notify to the Employer, prior to any payment under the Contract, details of the bank account (s) nominated by the Contractor for payments for the currency or currencies specified in the Contract. All payments of the amounts due to the Contractor shall be made into the bank account (s) thus nominated by the Contractor.

14.9 Payment of Retention Money

Add the words (optional):

When the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment by the Engineer, the Contractor shall be entitled to substitute a guarantee, in the form annexed to these Particular Conditions or in another form approved by the Employer and provided by an entity approved by the Employer and issued by a reputable bank or financial institution selected by the Contractor, for the second half of the Retention Money. The Contractor shall ensure that the guarantee is in the amounts and currencies of the

second half of the Retention Money and is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects, as specified for the Performance Security in Sub-Clause 4.2. On receipt by the Employer of the required guarantee, the Engineer shall certify and the Employer shall pay the second half of the Retention Money. The release of the second half of the Retention Money against a guarantee shall then be in lieu of the release under the second paragraph of this Sub-Clause. The Employer shall return the guarantee to the Contractor within 21 days after receiving a copy of the Performance Certificate.

If the Performance Security required under Sub-Clause 4.2 is in the form of a demand guarantee, and the amount guaranteed under it when the Taking-Over Certificate is issued is more than half of the Retention Money, then the Retention Money guarantee will not be required. If the amount guaranteed under the Performance Security when the Taking-Over Certificate is issued is less than half of the Retention Money, the Retention Money guarantee will only be required for the difference between half of the Retention Money and the amount guaranteed under the Performance Security.

14.15 Currencies of Payment

Option A - *The currency of the Contract and the currency for payment shall be a single currency*

Replace Sub-clause:

14.15 Sub-clause 14.15 is inapplicable. The Contract Price shall be paid in *[insert the named currency of payment]*

Option B - *The currency of the Contract shall be the local currency and payments to be made in more the one currency*

Add the words:

14.15 The Contract Price is expressed in Local Currency. The Contract Price shall be paid in the currencies stated in the Appendix to Tender.

15 Termination by Employer

The Bank requires that clients (including beneficiaries of Bank-financed operations), as well as tenderers, suppliers, contractors, subcontractors, concessionaires and consultants under Bank-financed contracts, observe the highest standard of transparency and integrity during the procurement, execution and implementation of such contracts. Any occurrence, or suspected occurrence, of a Prohibited Practice in the procurement, award or implementation of a Bank-financed contract in the context of a Bank Project shall be dealt with in accordance with the provisions of the Bank's Enforcement Policy and Procedures.

Add the following Sub-clause (Mandatory):

15.6 Prohibited Practices

If the Employer determines, based on reasonable evidence, that the Contractor has engaged in prohibited practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days notice to the Contractor, terminate the Contract and expel him from the Site, and the provisions of Clause 15 shall apply as

if such termination had been made under Sub-Clause 15.2.

Should any employee or subcontractor of the Contractor be determined, based on reasonable evidence, to have engaged in a prohibited practice during the execution of the work then that employee shall be removed in accordance with Sub-Clause 6.9 [Contractor's Personnel].

For the purpose of this Sub-Clause, the terms set forth below are defined as prohibited practices:

- (a) "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.
- (b) "collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.
- (c) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.
- (d) "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.

16 Suspension and Termination by Contractor

Add the following Sub-clauses (optional):

16.2 Termination by Contractor

- (h) In the event the Bank suspends the loan or credit from which part or whole of the payments to the Contractor are being made, if the Contractor has not received the sums due to him upon expiration of the 14 days referred to in Sub-Clause 14.7 [Payment] for payments under Interim Payment certificates, the Contractor may, without prejudice to the Contractor's entitlement to financing charges under Sub-Clause 14.8 [Delayed Payment], take one of the following actions, namely (i) suspend work or reduce the rate of work under Sub-Clause 16.1 above, or (ii) terminate under the Contract by giving notice to the Employer, with a copy to the Engineer, such termination to take effect 14 days after the giving of the notice, or
- (i) the Contractor does not receive the Engineer's instruction recording the agreement of both Parties on the fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1 [Commencement of Works].

17 Risk and Responsibility

Add the following Sub-clauses (optional):

17.7 Use of Employer's Accommodation/Facilities

The Contractor shall take full responsibility for the care of the Employer provided accommodation and facilities, if any, as detailed in the Specification, from the respective dates of hand-over to the Contractor until cessation of occupation (where hand-over or cessation of occupation may take place after the date stated in the Taking-Over Certificate for the Works).

If any loss or damage happens to any of the above items while the Contractor is responsible for their care arising from any cause whatsoever other than those for which the Employer is liable, the Contractor shall, at his own cost, rectify the loss or damage to the satisfaction of the Engineer.

20.5 Amicable Settlement

Replace Sub-clause (optional):

Where a Notice of Dissatisfaction has been given under Sub-Clause 20.4 above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a Notice of Dissatisfaction in accordance with Sub-Clause 20.4 above should move to commence arbitration after the fifty-sixth day from the day on which a Notice of Dissatisfaction was given, even if no attempt at an amicable settlement has been made.

20.6 Arbitration

Replace Sub-clause (optional):

Any dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 20.5 above and in respect of which the DAB's decision (if any) has not become final and binding shall be finally settled by arbitration. Arbitration shall be conducted as follows:

- (a) if the Contract is with foreign contractors, international arbitration (i) with proceedings administered by the arbitration institution designated in the Appendix to Tender, and conducted under the rules of arbitration of such institution; or, if so specified in the Appendix to Tender, (ii) international arbitration in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or (iii) if neither an arbitration institution nor UNCITRAL arbitration rules be specified in the Appendix to Tender, with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by one or more arbitrators appointed in accordance with said arbitration rules.

The place of arbitration shall be the neutral location specified in the Appendix to Tender, and the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [Law and Language]

- (b) if the Contract is with domestic contractors, arbitration with proceedings conducted in accordance with the laws of the Employer's country.

The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, and any decision of the DAB, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Engineer from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

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

Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Engineer and the DAB shall not be altered by reason of any arbitration being conducted during the progress of the Works.

Section IX: Annex to the PCC – Contract Forms

This Section contains Contract Forms which, once completed, will constitute part of the Contract. The forms for Contract Agreement, Performance Security and Advance Payment Security and Retention Money Security, when required, shall only be completed by the successful Tenderer, after contract award

LETTER OF ACCEPTANCE

[on letterhead paper of the Employer]

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

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

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

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

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

Authorised Signature:
Name and Title of Signatory:
Name of Agency:
Attachment: Contract Agreement

CONTRACT AGREEMENT

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

BETWEEN

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

and

(2) [*insert name of the Contractor, a corporation incorporated under the laws of [insert: country of Contractor]*] and having its principal place of business at [*insert: address of Contractor*] (hereinafter called “the Contractor”).

WHEREAS the Employer invited tenders for the execution of the Works, described as [*insert brief description of the Works*] and has accepted a Tender by the Contractor for the execution and completion of these Works and the remedying of any defects therein, and the Employer agrees to pay the Contractor the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.

2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.

- (a) the Letter of Acceptance
- (b) the Tender
- (c) the Addenda No.s [*insert addenda numbers if any*].
- (d) the Particular Conditions
- (e) the General Conditions
- (f) the Specification
- (g) the Drawings; and
- (h) the completed Schedules,

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.

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

Signed by: _____

Signed by: _____

For and on behalf of the Employer in the presence of _____

for and on behalf the Contractor in the presence of _____

Witness: _____

Witness: _____

Name: _____

Name: _____

Address: _____

Address: _____

Date: _____

Date: _____

PERFORMANCE SECURITY

[The bank, as requested by the successful Tenderer, shall fill in this form in accordance with the instructions indicated. All italicized text is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.]

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

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

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

Beneficiary: *[insert complete name of Employer]*

PERFORMANCE GUARANTEE No.: *[insert Performance Guarantee number]*

We have been informed that *[insert complete name of the Contractor (hereinafter called "the Contractor")]* has entered into Contract No. *[insert number]* dated *[insert day and month]*, *[insert year]* with you, for the [*execution and completion of [description of the Works]*] and the remedying of any defects therein (hereinafter called "the Contract").

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

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

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

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

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

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

ADVANCE PAYMENT SECURITY

[The bank, as requested by the successful Tenderer, shall fill in this form in accordance with the instructions indicated. All italicized text is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.]

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

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

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

Beneficiary: *[insert complete name of Employer]*

ADVANCE PAYMENT GUARANTEE No.: *[insert 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 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 figures¹ and words]* 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 figures and words]*. upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than [... *performing his obligations under the Contract or the costs of mobilisation in respect of the Works*].

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 (80) percent of the Contract Price has been certified for payment, or on the *[insert number]* day of *[insert month]* *[insert year]*.², whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758.

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

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

² *Insert the expected expiration date of the Time for Completion. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [insert number of months], 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."*

RETENTION MONEY SECURITY

[The bank, as requested by the successful Tenderer, shall fill in this form in accordance with the instructions indicated. All italicized text is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.]

Date: *[insert date (as day, month, and year)]*
Tendering Process Reference: *[insert no. and title of tendering process]*

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

Beneficiary: *[insert complete name of Employer]*

RETENTION MONEY GUARANTEE No.: _____

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

Furthermore, we understand that, according to the conditions of the Contract, when the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment, payment of *[insert the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security]* is to be made against a Retention Money guarantee.

At the request of the Contractor, we _____ *[name of Bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ *[amount in figures]* (_____ *[amount in words]*¹) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract.

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

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

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758.

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

¹ *The Guarantor shall insert an amount representing the amount of the second half of the Retention Money or, if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security and denominated either in the currency(ies) of the second half of the Retention Money as specified in the Contract, or in a freely convertible currency acceptable to the Employer.*