

# **Sample Bidding Documents**

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## **Procurement of Non-Consultant Services**

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**The World Bank**

**December 2002**

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## Introduction

Procurement under projects financed by the International Bank for Reconstruction and Development (IBRD) and its affiliate, the International Development Association (IDA),<sup>1</sup> is carried out in accordance with policies and procedures laid down in the *Guidelines: Procurement under IBRD Loans and IDA Credits* (hereinafter called *Procurement Guidelines*). To help Borrowers to contract the performance of Non-Consultant Services (services that are not classified as Consultant Services) the Bank has designed these sample bidding documents to be used voluntarily on a trial basis. Non-Consultant Services will hereinafter be referred to simply as “Services”.

The Sample Bidding Documents in this publication have been prepared for use by Borrowers in the procurement of Services by International Competitive Bidding (ICB). These documents may also be adapted to National Competitive Bidding (NCB) with some changes generally necessary in the Instructions to Bidders and the Conditions of Contract.

These Sample Bidding Documents are intended as model lump sum types of Contract, which are the most common in Services contracting. Lump sum contracts are used in particular for Services which are well defined and are unlikely to change in quantity or specification, and where encountering difficult or unforeseen site conditions is unlikely.<sup>2</sup>

Care should be taken to check the relevance of the provisions of the standard documents against the requirements of the specific Services to be procured. The following directions should be observed when using the documents:

- (a) All the documents listed in the Table of Contents are normally required for the procurement of Services; however, they should be adapted as necessary to the circumstances of the particular Project.
- (b) Details to be provided by the Employer prior to release of the bidding documents are limited to the Invitation for Bids (Section I), Instructions to Bidders and Bidding Data (Section II), and Special Conditions of Contract (Section V), in addition to Sections VI, VII and VIII, which deal with Specifications (and/or Terms of Reference), Drawings, and Activity Schedule, respectively. **Specific details** should be furnished in the spaces indicated by italicized notes inside brackets. Those details not filled in by the Employer are the responsibility of the Bidder.
- (c) These Sample Bidding Documents are intended to serve on a repetitive basis in a Borrower’s country, once agreement between the Borrower and the World Bank has been reached. Modifications to address specific Project or Contract needs should be provided only in the Special Conditions of Contract as amendments to the Conditions of Contract. If modifications must be made to the bidding procedures, they can be presented in the Bidding Data.
- (d) The foot-notes and the notes inside boxes with single borders are not part of the text, but rather contain instructions for the user, as do the Preface and this Introduction section. **They**

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<sup>1</sup> IBRD and IDA are generally referred to as the World Bank. Since the procurement requirements for IBRD and IDA are identical, “World Bank” in this handbook refers to both **IBRD** and **IDA**, and “**loan**” refers to either an **IBRD loan** or an **IDA credit**. However, for the Invitation for Bids, the distinctions are retained.

<sup>2</sup> Lump sum contracts should be used for Services that can be defined in their full physical and qualitative characteristics before bids are called, or where the risks of substantial design or performance variations are minimal. In lump sum contracts, the concept of priced “activity schedules” has been introduced, to enable payments to be made as “activities” are completed. Payments can also be made on the basis of percentage completion of each activity.

**should not be incorporated in the bidding documents.** The cover should be modified as required to identify the bidding documents as to the names of the Project, Contract, and Employer, in addition to the date of issue.

- (e) The notes inside boxes with double borders should be retained in the issued bidding documents, since these notes provide important guidance to bidders.
- (f) The standard documents have been prepared for bidding where either prequalification or postqualification applies. The process of prequalification of bidders is not covered in these standard documents.

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## Section I. Invitation for Bids

### Notes on the Invitation for Bids

The Invitation for Bids (see *Procurement Guidelines*, para. 2.9) is normally issued as

- (a) an advertisement in at least one newspaper of national circulation in the Employer's country and in the official gazette, if any; and
- (b) a letter addressed to Service Providers who, following the publication of the General Procurement Notice, had expressed interest in bidding for the Services required. Borrowers are also strongly encouraged to transmit a copy of the advertisement to consular or diplomatic representatives of eligible countries with potential bidders.

Its purpose is to supply information to enable potential bidders to decide on their participation. Apart from the essential items listed in these Sample Bidding Documents, the Invitation for Bids should also indicate any important or unusual bid evaluation criteria (for example, the application of a margin of preference in bid evaluation).

The Invitation for Bids may be incorporated in the bidding documents merely for the record, or it may be omitted. In either event, the information contained in the Invitation for Bids should conform to the bidding documents, and in particular, to the relevant information in the Bidding Data and the Special Conditions of Contract.

## Invitation for Bids (IFB)

Date: *[of issue of invitation]* \_\_\_\_\_  
Contract Identification N<sup>o</sup>: \_\_\_\_\_  
World Bank Loan/Credit N<sup>o</sup>: \_\_\_\_\_  
World Bank Loan/Credit Name: \_\_\_\_\_

1. The *[name of Borrower]* has received<sup>3</sup> a loan from the International Bank for Reconstruction and Development<sup>4</sup> towards the cost of *[name of Project]* and intends to apply part of the funds to cover eligible payments under the Contract for *[name and identification number of Contract, same as the one indicated in the Special Conditions of Contract]*. Bidding is open to all bidders from eligible source countries as defined in the *Guidelines: Procurement under IBRD Loans and IDA Credits*<sup>5</sup>.
2. The *[name of Employer and statement of its relationship to the Borrower, if different from the Borrower]* invites sealed bids from eligible bidders for carrying out the *[brief description of the Services]*.
3. Bidding documents (and additional copies) may be purchased at *[name and address of office]* for a nonrefundable fee of *[amount in local currency]*, or its equivalent in a freely-convertible currency, for each set. Interested bidders may obtain further information at the same address.
4. Bids shall be valid for a period of *[days]* after Bid opening and must be accompanied by security of *[amount in local currency]* or its equivalent in a convertible currency, and shall be delivered to *[name and full address of receiving office]* on or before *[time and date of Bid closing]*, at which time they will be opened in the presence of the bidders who wish to attend.

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<sup>3</sup> Substitute “has applied for,” if appropriate.

<sup>4</sup> Substitute International Development Association (IDA) and “credit” for “loan” where a credit has been extended by (or requested from) IDA.

<sup>5</sup> Occasionally, contracts may be financed out of special funds that would further restrict eligibility to a particular group of member countries. When this is the case, it should be mentioned in this paragraph. Also indicate any margin of preference that may be granted as specified in the loan or credit arrangement and set forth in the bidding documents.

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## **Section II. Instructions to Bidders**

### **Notes on the Instructions to Bidders**

This section of the bidding documents should provide the information necessary for bidders to prepare responsive bids, in accordance with the requirements of the Employer. It should also give information on bid submission, opening and evaluation, and on the award of the Contract.

Matters governing the performance of the Service Provider, payments under the Contract, or matters affecting the risks, rights, and obligations of the parties under the Contract are not normally included in this Section, but rather under Section IV, Conditions of Contract, and/or Section V, Special Conditions of Contract. If duplication of a subject is inevitable in the different sections of the documents, care must be exercised to avoid contradiction between clauses dealing with the same matter.

These Instructions to Bidders will not be part of the Contract and will cease to have effect once the Contract is signed.

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## Instructions to Bidders

### A. General

- 1. Scope of Bid**
  - 1.1 The Employer, as defined in the Bidding Data, invites bids for the Services, as described in the Appendix A to the Contract. The name and identification number of the Contract is provided in the Bidding Data.
  - 1.2 The successful Bidder will be expected to complete the performance of the Services by the Intended Completion Date provided in the Bidding Data.
- 2. Source of Funds**
  - 2.1 The Borrower, as defined in the Bidding Data, intends to apply part of the funds of a loan from the World Bank, as defined in the Bidding Data, towards the cost of the Project, as defined in the Bidding Data, to cover eligible payments under the Contract for the Services. Payments by the World Bank will be made only at the request of the Borrower and upon approval by the World Bank in accordance with the Loan Agreement, and will be subject in all respects to the terms and conditions of that Agreement. Except as the World Bank may specifically otherwise agree, no party other than the Borrower shall derive any rights from the Loan Agreement or have any rights to the loan proceeds.
- 3. Eligible Bidders**
  - 3.1 This Invitation for Bids is open to all bidders from eligible countries as defined in the Procurement Guidelines. Any materials, equipment, and Services to be used in the performance of the Contract shall have their origin in eligible source countries.
  - 3.2 All bidders shall provide in Section III, Forms of Bid and Qualification Information, a statement that the Bidder (including all members of a joint venture and subcontractors) is not associated, nor has been associated in the past, directly or indirectly, with the consultant or any other entity that has prepared the design, specifications, and other documents for the Project or being proposed as Project Manager for the Contract. A firm that has been engaged by the Borrower to provide Consultant Services for the preparation or supervision of the Services, and any of its affiliates, shall not be eligible to bid.
  - 3.3 Government-owned enterprises in the Employer's country may only participate if they are legally and financially autonomous, operate under commercial law, and are not a dependent agency of the Employer.
  - 3.4 The loan agreement prohibits a withdrawal from the loan account for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import, to the knowledge of the Bank, is prohibited by a decision of the United Nations Security Council, taken under Chapter VII of the Charter of the United Nations.
  - 3.5 Bidders shall not be under a declaration of ineligibility for corrupt and fraudulent practices issued by the Bank in accordance with ITB clause 37.1.
- 4. Qualification of the Bidder**
  - 4.1 All bidders shall provide in Section III, Forms of Bid and Qualification Information, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.

- 4.2 All bidders shall include the following information and documents with their bids in Section III, unless otherwise stated in the Bidding Data:
- (a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the Bid to commit the Bidder;
  - (b) total monetary value of Services performed for each of the last five years;
  - (c) experience in Services of a similar nature and size for each of the last five years, and details of Services under way or contractually committed; and names and address of clients who may be contacted for further information on those contracts;
  - (d) list of major items of equipment proposed to carry out the Contract;
  - (e) qualifications and experience of key site management and technical personnel proposed for the Contract;
  - (f) reports on the financial standing of the Bidder, such as profit and loss statements and auditor's reports for the past five years;
  - (g) evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
  - (h) authority to the Employer to seek references from the Bidder's bankers;
  - (i) information regarding any litigation, current or during the last five years, in which the Bidder is involved, the parties concerned, and disputed amount; and
  - (j) proposals for subcontracting components of the Services amounting to more than 10 percent of the Contract Price.
- 4.3 Bids submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated in the Bidding Data:
- (a) the Bid shall include all the information listed in Sub-Clause 4.2 above for each joint venture partner;
  - (b) the Bid shall be signed so as to be legally binding on all partners;
  - (c) the Bid shall include a copy of the agreement entered into by the joint venture partners defining the division of assignments to each partner and establishing that all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms; alternatively, a Letter of Intent to execute a joint venture agreement in the event of a successful bid shall be signed by all partners and submitted with the bid, together with a copy of the proposed agreement;
  - (d) one of the partners shall be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and

- (e) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

4.4 To qualify for award of the Contract, bidders shall meet the following minimum qualifying criteria:

- (a) annual volume of Services of at least the amount specified in the Bidding Data;
- (b) experience as prime contractor in the provision of at least two service contracts of a nature and complexity equivalent to the Services over the last 5 years (to comply with this requirement, Services contracts cited should be at least 70 percent complete);
- (c) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed in the Bidding Data;
- (d) a Contract Manager with five years' experience in Services of an equivalent nature and volume, including no less than three years as Manager; and
- (e) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than the amount specified in the Bidding Data.

A consistent history of litigation or arbitration awards against the Applicant or any partner of a Joint Venture may result in disqualification.

4.5 The figures for each of the partners of a joint venture shall be added together to determine the Bidder's compliance with the minimum qualifying criteria of Sub-Clause 4.4(a), (b) and (e); however, for a joint venture to qualify the partner in charge must meet at least 40 percent of those minimum criteria for an individual Bidder and other partners at least 25% of the criteria. Failure to comply with this requirement will result in rejection of the joint venture's Bid. Subcontractors' experience and resources will not be taken into account in determining the Bidder's compliance with the qualifying criteria, unless otherwise stated in the Bidding Data.

4.6 To qualify for a package of contracts made up of this and other contracts for which bids are invited in the IFB to form a package will; so indicate in the bid together with any discounts offered for the award of more than one contract.

## **5. One Bid per Bidder**

5.1 Each Bidder shall submit only one Bid, either individually or as a partner in a joint venture. A Bidder who submits or participates in more than one Bid (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the proposals with the Bidder's participation to be disqualified.

## **6. Cost of Bidding**

6.1 The Bidder shall bear all costs associated with the preparation and submission of his Bid, and the Employer will in no case be responsible or liable for those costs.

## **7. Site Visit**

7.1 The Bidder, at the Bidder's own responsibility and risk, is encouraged to visit and examine the Site of required Services and its surroundings and obtain all information that may be necessary for preparing the Bid and entering into a

contract for the Services . The costs of visiting the Site shall be at the Bidder's own expense.

## **B. Bidding Documents**

### **8. Content of Bidding Documents**

8.1 The set of bidding documents comprises the documents listed in the table below and addenda issued in accordance with Clause 10:

Section	II	Instructions to Bidders
	III	Forms of Bid and Qualification Information
	IV	General Conditions of Contract
	V	Special Conditions of Contract
	VI	Performance Specifications and Drawings (if Applicable)
	VII	Activity Schedule
	VIII	Forms of Securities

8.2 The Bidder is expected to examine all instructions, forms, terms, and specifications in the bidding documents. Failure to furnish all information required by the bidding documents or to submit a bid not substantially responsive to the bidding documents in every respect will be at the Bidder's risk and may result in the rejection of its bid. Sections III, V, and VIII should be completed and returned with the Bid in the number of copies specified in the Bidding Data.

### **9. Clarification of Bidding Documents**

9.1 A prospective Bidder requiring any clarification of the bidding documents may notify the Employer in writing or by cable ("cable" includes telex and facsimile) at the Employer's address indicated in the invitation to bid. The Employer will respond to any request for clarification received earlier than 14 days prior to the deadline for submission of bids. Copies of the Employer's response will be forwarded to all purchasers of the bidding documents, including a description of the inquiry, but without identifying its source.

### **10. Amendment of Bidding Documents**

10.1 Before the deadline for submission of bids, the Employer may modify the bidding documents by issuing addenda.

10.2 Any addendum thus issued shall be part of the bidding documents and shall be communicated in writing or by cable to all purchasers of the bidding documents. Prospective bidders shall acknowledge receipt of each addendum by cable to the Employer.

10.3 To give prospective bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer shall extend, as necessary, the deadline for submission of bids, in accordance with Sub-Clause 20.2 below.

## **C. Preparation of Bids**

### **11. Language of Bid**

11.1 The bid prepared by the Bidder, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Purchaser, shall be written in the language specified in the Bidding Data. Supporting documents and printed literature furnished by the Bidder may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the Bidding Data, in which case, for

purposes of interpretation of the Bid, the translation shall govern.

## **12. Documents Comprising the Bid**

12.1 The Bid submitted by the Bidder shall comprise the following:

- (a) The Form of Bid (in the format indicated in Section III);
- (b) Bid Security;
- (c) Priced Activity Schedule;
- (d) Qualification Information Form and Documents;
- (e) Alternative offers where invited;

and any other materials required to be completed and submitted by bidders, as specified in the Bidding Data.

12.2 Bidders bidding for this contract together with other contracts stated in the IFB to form a package will so indicate in the bid together with any discounts offered for the award of more than one contract

## **13. Bid Prices**

13.1 The Contract shall be for the Services, as described in Appendix A to the contract and in the Specifications, Section VI, based on the priced Activity Schedule submitted by the Bidder.

13.2 The Bidder shall fill in rates and prices for all items of the Services described in the in Specifications (or Terms of Reference), Section VI and listed in the Activity Schedule, Section VIII. Items for which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the other rates and prices in the Activity Schedule.

13.3 All duties, taxes, and other levies payable by the Service Provider under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the total Bid price submitted by the Bidder.

13.4 If provided for in the Bidding Data, the rates and prices quoted by the Bidder shall be subject to adjustment during the performance of the Contract in accordance with and the provisions of Clause 6.6 of the General Conditions of Contract and/or Special Conditions of Contract. The Bidder shall submit with the Bid all the information required under the Special Conditions of Contract and of the General Conditions of Contract.

13.5 For the purpose of determining the remuneration due for additional Services, a breakdown of the lump-sum price shall be provided by the Bidder in the form of Appendices D and E to the Contract

## **14. Currencies of Bid and Payment**

14.1 The lump sum price shall be quoted by the Bidder separately in the following currencies:

(a) for those inputs to the Services which the Bidder expects to provide from within the Employer's country, the prices shall be quoted in the currency of the Employer's country, unless otherwise specified in the Bidding Data; and

(b) for those inputs to the Services which the Bidder expects to provide from outside the Employer's country, the prices shall be quoted in up to any three currencies of any member country of the Bank.

14.2 The rates of exchange to be used by the Bidder in arriving at the local currency equivalent and the amounts mentioned in para. 14.1 above shall be

the selling rates for similar transactions established by the authority specified in the Bidding Data prevailing on the date 28 days prior to the latest deadline for submission of bids.

- 14.3 Bidders shall indicate details of their expected foreign currency requirements in the Bid.
- 14.4 Bidders may be required by the Employer to justify their foreign currency requirements and to substantiate that the amounts included in Lump Sum and in the Special Conditions of Contract are reasonable and responsive to Sub-Clause 14.1.

## **15. Bid Validity**

- 15.1 Bids shall remain valid for the period specified in the Bidding Data.
- 15.2 In exceptional circumstances, the Employer may request that the bidders extend the period of validity for a specified additional period. The request and the bidders' responses shall be made in writing or by cable. A Bidder may refuse the request without forfeiting the Bid Security. A Bidder agreeing to the request will not be required or permitted to otherwise modify the Bid, but will be required to extend the validity of Bid Security for the period of the extension, and in compliance with Clause 16 in all respects.
- 15.3 In the case of contracts in which the Contract Price is fixed (not subject to price adjustment), if the period of bid validity is extended by more than 60 days, the amounts payable in local and foreign currency to the Bidder selected for award, shall be increased by applying to both the local and the foreign currency component of the payments, respectively, the factors specified in the request for extension, for the period of delay beyond 60 days after the expiry of the initial bid validity, up to the notification of award. Bid evaluation will be based on the Bid prices without taking the above correction into consideration.

## **16. Bid Security**

- 16.1 The Bidder shall furnish, as part of the Bid, a Bid Security in local currency or in a freely convertible currency, in the amount specified in the Bidding Data.
- 16.2 The bid security shall be denominated in the currency of the bid or in another freely convertible currency, shall be in accordance with the form of Bid Security included in Section IX or another form acceptable to the Employer, and shall be in one of the following forms:
- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the Purchaser's country or abroad, in the form provided in the bidding documents or another form acceptable to the Purchaser and valid for thirty (30) days beyond the validity of the bid; or
  - (b) a cashier's or certified check.
- 16.3 Any bid not accompanied by an acceptable Bid Security shall be rejected by the Employer. The Bid Security of a joint venture must define as "bidder" all joint venture partners and list them in the following manner: a joint venture consisting of "\_\_\_\_\_", "\_\_\_\_\_", and "\_\_\_\_\_".
- 16.4 The Bid Security of unsuccessful bidders will be returned within 28 days of the end of the Bid validity period specified in Sub-Clause 15.1.
- 16.5 The Bid Security of the successful Bidder will be discharged when the Bidder

has signed the Agreement and furnished the required Performance Security.

16.6 The Bid Security may be forfeited

- (a) if the Bidder withdraws the Bid after Bid opening during the period of Bid validity;
- (b) if the Bidder does not accept the correction of the Bid price, pursuant to Clause 27; or
- (c) in the case of a successful Bidder, if the Bidder fails within the specified time limit to
  - (i) sign the Contract; or
  - (ii) furnish the required Performance Security.

**17. Alternative Proposals by Bidders**

17.1 Bidders shall submit offers that comply with the requirements of the bidding documents, as indicated in the Specifications (or Terms of Reference) and Drawings, Sections VI and VII. Alternatives will not be considered, unless specifically allowed in the Bidding Data. If so allowed, Sub-Clause 17.2 shall govern.

17.2 If so allowed in the Bidding Data, bidders wishing to offer technical alternatives to the requirements of the bidding documents must also submit a Bid that complies with the requirements of the bidding documents, including the scope, basic technical data, graphical documents and specifications. In addition to submitting the basic Bid, the Bidder shall provide all information necessary for a complete evaluation of the alternative by the Employer, including calculations, technical specifications, breakdown of prices, proposed work methods and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Employer. Alternatives to the specified performance levels shall not be accepted.

**18. Format and Signing of Bid**

18.1 The Bidder shall prepare one original of the documents comprising the Bid as described in Clause 12 of these Instructions to Bidders, bound with the volume containing the Form of Bid, and clearly marked "ORIGINAL." In addition, the Bidder shall submit copies of the Bid, in the number specified in the Bidding Data, and clearly marked as "COPIES." In the event of discrepancy between them, the original shall prevail.

18.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Bidder, pursuant to Sub-Clauses 4.2(a) or 4.3(b), as the case may be. All pages of the Bid where entries or amendments have been made shall be initialed by the person or persons signing the Bid.

18.3 The Bid shall contain no alterations or additions, except those to comply with instructions issued by the Employer, or as necessary to correct errors made by the Bidder, in which case such corrections shall be initialed by the person or persons signing the Bid.

## D. Submission of Bids

### 19. Sealing and Marking of Bids

- 19.1 The Bidder shall seal the original and all copies of the Bid in two inner envelopes and one outer envelope, duly marking the inner envelopes as “ORIGINAL” and “COPIES”.
- 19.2 The inner and outer envelopes shall
- (a) be addressed to the Employer at the address provided in the Bidding Data;
  - (b) bear the name and identification number of the Contract as defined in the Bidding Data and Special Conditions of Contract; and
  - (c) provide a warning not to open before the specified time and date for Bid opening as defined in the Bidding Data.
- 19.3 In addition to the identification required in Sub-Clause 19.2, the inner envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared late, pursuant to Clause 21.
- 19.4 If the outer envelope is not sealed and marked as above, the Employer will assume no responsibility for the misplacement or premature opening of the Bid.

### 20. Deadline for Submission of Bids

- 20.1 Bids shall be delivered to the Employer at the address specified above no later than the time and date specified in the Bidding Data.
- 20.2 The Employer may extend the deadline for submission of bids by issuing an amendment in accordance with Clause 10, in which case all rights and obligations of the Employer and the bidders previously subject to the original deadline will then be subject to the new deadline.

### 21. Late Bids

- 21.1 Any Bid received by the Employer after the deadline prescribed in Clause 20 will be returned unopened to the Bidder.

### 22. Modification and Withdrawal of Bids

- 22.1 Bidders may modify or withdraw their bids by giving notice in writing before the deadline prescribed in Clause 20.
- 22.2 Each Bidder’s modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clauses 18 and 19, with the outer and inner envelopes additionally marked “MODIFICATION” or “WITHDRAWAL,” as appropriate.
- 22.3 No Bid may be modified after the deadline for submission of Bids.
- 22.4 Withdrawal of a Bid between the deadline for submission of bids and the expiration of the period of Bid validity specified in the Bidding Data or as extended pursuant to Sub-Clause 15.2 may result in the forfeiture of the Bid Security pursuant to Clause 16.
- 22.5 Bidders may only offer discounts to, or otherwise modify the prices of their bids by submitting Bid modifications in accordance with this clause, or included in the original Bid submission.

## **E. Bid Opening and Evaluation**

### **23. Bid Opening**

- 23.1 The Employer will open the bids, including modifications made pursuant to Clause 22, in the presence of the bidders' representatives who choose to attend at the time and in the place specified in the Bidding Data.
- 23.2 Envelopes marked "WITHDRAWAL" shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to Clause 22 shall not be opened.
- 23.3 The bidders' names, the Bid prices, the total amount of each Bid and of any alternative Bid (if alternatives have been requested or permitted), any discounts, Bid modifications and withdrawals, the presence or absence of Bid Security, and such other details as the Employer may consider appropriate, will be announced by the Employer at the opening. No bid shall be rejected at bid opening except for the late bids pursuant to clause 21; Bids, and modifications, sent pursuant to clause 22 that are not opened and read out at bid opening will not be considered for further evaluation regardless of the circumstances. Late and withdrawn bids will be returned unopened to the bidders.
- 23.4 The Employer will prepare minutes of the Bid opening, including the information disclosed to those present in accordance with Sub-Clause 23.3.

### **24. Process to Be Confidential**

- 24.1 Information relating to the examination, clarification, evaluation, and comparison of bids and recommendations for the award of a contract shall not be disclosed to bidders or any other persons not officially concerned with such process until the award to the successful Bidder is notified of the award. Any effort by a Bidder to influence the Employer's processing of bids or award decisions may result in the rejection of his Bid.
- 24.2 If, after notification of award, a bidder wishes to ascertain the grounds on which its bid was not selected, it should address its request to the Employer, who will provide written explanation. Any request for explanation from one bidder should relate only to its own bid; information about the bid of competitors will not be addressed.

### **25. Clarification of Bids**

- 25.1 To assist in the examination, evaluation, and comparison of bids, the Employer may, at the Employer's discretion, ask any Bidder for clarification of the Bidder's Bid, including breakdowns of the prices in the Activity Schedule, and other information that the Employer may require. The request for clarification and the response shall be in writing or by cable, telex, or facsimile, but no change in the price or substance of the Bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids in accordance with Clause 27.
- 25.2 Subject to clause 25.1, no bidder shall contact the employer on any matter relating to its bid from the time of the bid opening to the time the contract is awarded. If the Bidder wishes to bring additional information to the notice of the Employer, he should do so in writing.
- 25.3 Any effort by the Bidder to influence the Employer in the Employer's bid evaluation or contract award decisions may result in the rejection of the Bidder's bid.

- 26. Examination of Bids and Determination of Responsiveness**
- 26.1 Prior to the detailed evaluation of bids, the Employer will determine whether each Bid (a) meets the eligibility criteria defined in Clause 3; (b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the bidding documents.
- 26.2 A substantially responsive Bid is one which conforms to all the terms, conditions, and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the Services; (b) which limits in any substantial way, inconsistent with the bidding documents, the Employer's rights or the Bidder's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.
- 26.3 If a Bid is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.
- 27. Correction of Errors**
- 27.1 Bids determined to be substantially responsive will be checked by the Employer for any arithmetic errors. Arithmetical errors will be rectified by the Employer on the following basis: if there is a discrepancy between unit prices 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; if there is a discrepancy between the amounts in figures and in words, the amount in words will prevail.
- 27.2 The amount stated in the Bid will be adjusted by the Employer in accordance with the above procedure for the correction of errors and, with the concurrence of the Bidder, shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the Bid will be rejected, and the Bid Security may be forfeited in accordance with Sub-Clause 16.6(b).
- 28. Currency for Bid Evaluation**
- 28.1 To facilitate evaluation and comparison of Bids, the Employer will convert all bid prices expressed in the amounts in various currencies in which the bid price are payable to the currency of the Employer's country at the selling exchange rates prescribed in Sub-Clause 14.2.
- 29. Evaluation and Comparison of Bids**
- 29.1 The Employer will evaluate and compare only the bids determined to be substantially responsive in accordance with Clause 26.
- 29.2 In evaluating the bids, the Employer will determine for each Bid the evaluated Bid price by adjusting the Bid price as follows:
- (a) making any correction for errors pursuant to Clause 27;
  - (b) excluding provisional sums and the provision, if any, for contingencies in the Activity Schedule, but including Day work, when requested in the Specifications (or Terms of Reference) Section VI;
  - (c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with Clause 17; and
  - (d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with Sub-Clause 22.5.

- 29.3 The Employer reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors, which are in excess of the requirements of the bidding documents or otherwise result in unsolicited benefits for the Employer will not be taken into account in Bid evaluation.
- 29.4 The estimated effect of any price adjustment conditions under Clause 6.6 of the Conditions of Contract, during the period of implementation of the Contract, will not be taken into account in Bid evaluation.

**30. Preference for Domestic Bidders**

- 30.1 Domestic bidders shall not be eligible for any margin of preference in Bid evaluation.

**F. Award of Contract**

**31. Award Criteria**

- 31.1 Subject to Clause 32, the Employer will award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the bidding documents and who has offered the lowest evaluated Bid price, provided that such Bidder has been determined to be (a) eligible in accordance with the provisions of Clause 3, and (b) qualified in accordance with the provisions of Clause 4.
- 31.2 If, pursuant to Clause 12.2 this contract is being let on a “slice and package” basis, the lowest evaluated Bid Price will be determined when evaluating this contract in conjunction with other contracts to be awarded concurrently. Taking into account any discounts offered by the bidders for the award of more than one contract.

**32. Employer’s Right to Accept any Bid and to Reject any or all Bids**

- 32.1 Notwithstanding Clause 31, the Employer reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the Employer’s action.

**33. Notification of Award and Signing of Agreement**

- 33.1 The Bidder whose Bid has been accepted will be notified of the award by the Employer prior to expiration of the Bid validity period by cable, telex, or facsimile confirmed by registered letter from the Employer. This letter (hereinafter and in the Conditions of Contract called the “Letter of Acceptance”) will state the sum that the Employer will pay the Service provider in consideration of the execution, completion, and maintenance of the Services by the Service provider as prescribed by the Contract (hereinafter and in the Contract called the “Contract Price”).
- 33.2 The notification of award will constitute the formation of the Contract.
- 33.3 The Contract, in the form provided in the bidding documents, will incorporate all agreements between the Employer and the successful Bidder. It will be signed by the Employer and sent to the successful Bidder along with the Letter of Acceptance. Within 21 days of receipt of the Contract, the successful bidder shall sign the Contract and return it to the Employer, together with the required performance security pursuant to Clause 34.

- 33.4 Upon fulfillment of Sub-Clause 33.3, the Employer will promptly notify the unsuccessful bidders the name of the winning bidder and that their bid security will be returned as promptly as possible.
- 33.5 If, after notification of award, a bidder wishes to ascertain the grounds on which its bid was not selected, it should address its request to the Employer. The Employer will promptly respond in writing to the unsuccessful bidder.
- 34. Performance Security**
- 34.1 Within 21 days after receipt of the Letter of Acceptance, the successful Bidder shall deliver to the Employer a Performance Security in the amount and in the form (Bank Guarantee and/or Performance Bond) stipulated in the Bidding Data, denominated in the type and proportions of currencies in the Letter of Acceptance and in accordance with the General Conditions of Contract.
- 34.2 If the Performance Security is provided by the successful Bidder in the form of a Bank Guarantee, it shall be issued either (a) at the Bidder's option, by a bank located in the country of the Employer or a foreign bank through a correspondent bank located in the country of the Employer, or (b) with the agreement of the Employer directly by a foreign bank acceptable to the Employer.
- 34.3 If the Performance Security is to be provided by the successful Bidder in the form of a Bond, it shall be issued by a surety which the Bidder has determined to be acceptable to the Employer.
- 34.4 Failure of the successful Bidder to comply with the requirements of Sub-Clause 34.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Bid Security.
- 35. Advance Payment and Security**
- 35.1 The Employer will provide an Advance Payment on the Contract Price as stipulated in the Conditions of Contract, subject to the amount stated in the Bidding Data.
- 36. Adjudicator**
- 36.1 The Employer proposes the person named in the Bidding Data to be appointed as Adjudicator under the Contract, at an hourly fee specified in the Bidding Data, plus reimbursable expenses. If the Bidder disagrees with this proposal, the Bidder should so state in the Bid. If, in the Letter of Acceptance, the Employer has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Special Conditions of Contract at the request of either party.
- 37. Corrupt or Fraudulent Practices**
- 37.1 The Bank requires that Borrowers (including beneficiaries of Bank loans), as well as Bidders/Suppliers/Contractors under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Bank:
- (a) defines, for the purposes of this provision, the terms set forth below as follows:
    - (i) "corrupt practice" means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution; and
    - (ii) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower, and includes collusive practice

among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Borrower of the benefits of free and open competition;

- (b) will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
- (c) will 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 corrupt or fraudulent practices in competing for, or in executing, a Bank-financed contract.

37.2 Furthermore, Bidders shall be aware of the provision stated in Clauses 1.7 and 2.6.1 of the General Conditions of Contract.

## G. Bidding Data

This section should be filled out by the Employer before issuance of the bidding documents  
The insertions should correspond to the information provided in the Invitation for Bids

### Instructions to Bidders Clause Reference

- (1.1) The Employer is *[name of Employer and statement of relationship with the Borrower, if different from the Borrower ]*
- The name and identification number of the Contract is *[insert the same information included in 1.1 of the Special Conditions of Contract]*
- (1.2) The Intended Completion date is *[insert the same date included in 2.3 of the Special Conditions of Contract]*
- (2.1) The Borrower is *[name of Borrower and statement of relationship with the Employer, if different from the Borrower]*
- The “World Bank” means *[insert “International Bank for Reconstruction and Development (IBRD)” or “International Development Association (IDA),” as appropriate]*, and loan refers to an *[insert “IBRD loan” or “IDA credit,” as appropriate]* which, as of the date of issue of the bidding documents *[insert “has been solicited” or “has been approved,” as appropriate]* by the World Bank.
- The Project is *[name and summary description of the Project financed by the World Bank loan]*.
- The loan/credit number is *[insert number if available]*.
- (4.2) The information required from bidders in Sub-Clause 4.2 is modified as follows: *[list any additions or deletions to list in Sub-Clause 4.2; otherwise list “none”]*.
- (4.3) The qualification data required from bidders in Sub-Clause 4.3 are modified as follows: *[list any additions or deletions to list in Sub-Clause 4.3; otherwise list “none”]*.
- (4.4) The qualification criteria in Sub-Clause 4.4 are modified as follows: *[list any additions or deletions to list in Sub-Clause 4.4; otherwise list “none”]*.
- (4.4a) The minimum required annual volume of Services for the successful Bidder in any of the last ten years shall be *[insert figure in international trading currency, This amount is usually not less than 2.5 times the estimated annual cash flow for the Contract]*.
- (4.4b) The experience required to be demonstrated by the Bidder should include as a minimum the he has executed during the last 10 years the following:  
*[insert a list of activities required to show the compliance with 4.4(b) ]*
- (4.4c) The essential equipment to be made available for the Contract by the successful Bidder shall be *[insert equipment list]*.

- (4.4e) The minimum amount of liquid assets and/or credit facilities net of other contractual commitments of the successful Bidder shall be *[insert figure in international trading currency specified in Bidding Data]*.
- (8.2) and (18.1) The number of copies of the Bid to be completed and returned shall be *[insert number, usually two: more if essential]*.
- (13.4) The Contract *[specify “is” or “is not”]* subject to price adjustment in accordance with Clause 6.6 of the Conditions of Contract.
- (11.1) Language of the bid: *[insert “English” “French” or “Spanish”]*
- (14.1) Local inputs shall be quoted in *[ insert name of local currency or, at Employer’s option, any other currency ]*
- (14.2) The date of the exchange rate is *[insert date 28 days before Bid opening]*.  
The authority for establishing the rates of exchange shall be *[name, usually of the central bank in the Employer’s country]*.
- (15.1) The period of Bid validity shall be *[insert number The period should be a realistic time, usually not less than 45 days nor more than 105, allowing for bid evaluation, clarifications, and the World Bank’s “no objection” (where awards of Contract are subject to prior review). The time should be the same as that specified in the Invitation for Bids] days after the deadline for Bid submission specified in the Bidding Data.*
- (16.1) The amount of Bid Security shall be *[insert amount in local currency, as provided in the Invitation to Bid. An amount in local currency should be indicated, in preference to a percentage of the Bid price. It should not exceed the equivalent of 3 percent of the estimated Contract value] or an equivalent amount in a freely-convertible currency.*
- (17.0) Alternative proposals to the requirements of the bidding documents *[insert “will” or “will not,” as appropriate]* be permitted with respect to *[describe the alternatives to be permitted, or delete, as appropriate]*.
- (19.2) The Employer’s address for the purpose of Bid submission is *[insert the receiving address provided in the Invitation for Bids. The receiving address should be an office that is staffed during normal working hours by personnel authorized to certify time and date of receipt and assure safe-keeping until Bid opening. A post office address is not satisfactory]*.  
For identification of the bid the envelopes should indicate:  
Contract: *[ insert name of the Contract ]*  
Bid / Contract Number: *[ insert Bid or Contract number ]*
- (20.1) The deadline for submission of bids shall be *[insert time and date; the date should be the same and the time, in no event, earlier than that given in the Invitation for Bids, unless subsequently amended pursuant to Sub-Clause 20.2]*.
- (23.1) Bids will be opened at *[ insert time ]* of the day *[ insert date ]* at the following address *[ insert address ]*
- (34.0) The Performance Security acceptable to the Employer shall be the in the Standard Form of *[insert “Bank Guarantee” and/or “Performance Bond” A **Bank Guarantee***

can be conditional or unconditional (on demand). A **Performance Bond** is an undertaking by a bonding or insurance company (surety) to complete the Services required in the contract in the event of default by the Service Provider, or to pay the amount of the Bond to the Employer] and for an amount of [ insert amount and currency. An amount of 5 to 10 percent of the Contract Price is commonly specified for Performance Bank Guarantees. An amount of 30 percent of the Contract Price is commonly used internationally for Performance Bond type of security ].

- (35.1) The Advance Payment shall be of [insert percentage value. The percentage value should be adequate to minimize the needs of the Service Provider to borrow for the Contract and will depend on the type of Services to be provided. Recommended when the Services to be provided include field works or preparation of products (like data base) in addition to provision of man-power] percent of the Contract Price.
- (36.1) The Adjudicator proposed by the Employer is [insert name and address]. The hourly fee for this proposed Adjudicator shall be [insert amount and currency]. The biographical data of the proposed Adjudicator is as follows: [provide relevant information, such as education, experience, age, nationality, and present position; attach additional pages as necessary].

# Section III. Forms of Bid, Qualification Information, Letter of Acceptance, and Contract

## Service Provider's Bid

### Notes on Form of Service Provider's Bid

The Bidder shall fill in and submit this Bid form with the Bid. Additional details on the price should be inserted if the Bid is in various currencies. If the Bidder objects to the Adjudicator proposed by the Employer in the bidding documents, he should so state in his Bid, and present an alternative candidate, together with the candidate's daily fees and biographical data, in accordance with Clause 36 of the Instructions to Bidders.

[date]

To: [name and address of Employer]

Having examined the bidding documents including addendum, we offer to execute the [name and identification number of Contract] in accordance with the General Conditions of Contract, specifications, drawings and activity schedule accompanying this Bid for the Contract Price of [amount in numbers], [amount in words] [name of currency].

The Contract shall be paid in the following currencies:

Currency	Percentage payable in currency	Rate of exchange: one foreign equals [insert local]	Inputs for which foreign currency is required
(a)			
(b)			

The advance payment required is:

Amount	Currency
(a)	
(b)	

We accept the appointment of [name proposed in Bidding Data] as the Adjudicator.

[or]

We do not accept the appointment of [name proposed in Bidding Data] as the Adjudicator, and propose instead that [name] be appointed as Adjudicator, whose daily fees and biographical data are attached.

This Bid and your written acceptance of it shall constitute a binding Contract between us. We understand that you are not bound to accept the lowest or any Bid you receive.

We hereby confirm that this Bid complies with the Bid validity and Bid Security required by the bidding documents and specified in the Bidding Data.

Commissions or gratuities, if any, paid or to be paid by us to agents relating to this Bid, and to contract execution if we are awarded the contract, are listed below:

Name and address of agent	Amount and Currency	Purpose of Commission or gratuity
_____	_____	_____
_____	_____	_____
_____	_____	_____

(if none, state "none")

Authorized Signature: \_\_\_\_\_  
Name and Title of Signatory: \_\_\_\_\_  
Name of Bidder: \_\_\_\_\_  
Address: \_\_\_\_\_

## Qualification Information

### Notes on Form of Qualification Information

The information to be filled in by bidders in the following pages will be used for purposes of postqualification or for verification of prequalification as provided for in Clause 4 of the Instructions to Bidders. This information will not be incorporated in the Contract. Attach additional pages as necessary. Pertinent sections of attached documents should be translated into English. If used for prequalification verification, the Bidder should fill in updated information only.

- 1. Individual Bidders or Individual Members of Joint Ventures**
- 1.1 Constitution or legal status of Bidder: *[attach copy]*
- Place of registration: *[insert]*
- Principal place of business: *[insert]*
- Power of attorney of signatory of Bid: *[attach]*
- 1.2 Total annual volume of Services performed in five years, in the internationally traded currency specified in the Bidding Data: *[insert]*
- 1.3 Services performed as prime Service Provider on the provision of Services of a similar nature and volume over the last five years. The values should be indicated in the same currency used for Item 1.2 above. Also list details of work under way or committed, including expected completion date.

Project name and country	Name of employer and contact person	Type of Services provided and year of completion	Value of contract
(a)			
(b)			

- 1.4 Major items of Service Provider's Equipment proposed for carrying out the Services. List all information requested below. Refer also to Sub-Clause 4.3(c) of the Instructions to Bidders.

Item of equipment	Description, make, and age (years)	Condition (new, good, poor) and number available	Owned, leased (from whom?), or to be purchased (from whom?)
(a)			
(b)			

- 1.5 Qualifications and experience of key personnel proposed for administration and execution of the Contract. Attach biographical data. Refer also to Sub-Clause 4.3(e) of the Instructions to Bidders and Sub-Clause 9.1 of the Conditions of Contract.

Position	Name	Years of experience (general)	Years of experience in proposed position
(a)			
(b)			

- 1.6 Proposed subcontracts and firms involved. Refer to Clause 7 of Conditions of Contract.

Sections of the Services	Value of subcontract	Subcontractor (name and address)	Experience in providing similar Services
(a)			
(b)			

- 1.7 Financial reports for the last five years: balance sheets, profit and loss statements, auditors' reports, etc. List below and attach copies.
- 1.8 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of support documents. We certify/confirm that we comply with eligibility requirements as per ITB clause 3 of the bidding documents.
- 1.9 Name, address, and telephone, telex, and facsimile numbers of banks that may provide references if contacted by the Employer.
- 1.10 Information regarding any litigation, current or within the last five years, in which the Bidder is or has been involved.

Other party(ies)	Cause of dispute	Details of litigation award	Amount involved
(a)			
(b)			

- 1.11 Statement of compliance with the requirements of Sub-Clause 3.2 of the Instructions to Bidders.
- 1.12 Proposed Program (service work method and schedule). Descriptions, drawings, and charts, as necessary, to comply with the requirements of the bidding documents.

## 2. Joint Ventures

- 2.1 The information listed in 1.1 - 1.11 above shall be provided for each partner of the joint venture.

- 2.2 The information in 1.12 above shall be provided for the joint venture.
- 2.3 Attach the power of attorney of the signatory(ies) of the Bid authorizing signature of the Bid on behalf of the joint venture.
- 2.4 Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that
  - (a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
  - (b) one of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
  - (c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

**3. Additional Requirements**

- 3.1 Bidders should provide any additional information required in the Bidding Data and to fulfill the requirements of Sub-Clause 4.1 of the Instructions to Bidders, if applicable.

## Letter of Acceptance

*[letterhead paper of the Employer]*

### Notes on Standard Form of Letter of Acceptance

The Letter of Acceptance will be the basis for formation of the Contract as described in Clauses 33 and 34 of the Instructions to Bidders. This Standard Form of Letter of Acceptance should be filled in and sent to the successful Bidder only after evaluation of bids has been completed, subject to any review by the World Bank required under the Loan Agreement.

*[date]*

To: *[name and address of the Service provider]*

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

**Note:** Insert one of the 3 options for the second paragraph. The first option should be used if the Bidder has not objected the name proposed for Adjudicator. The second option if the Bidder has objected the proposed Adjudicator and proposed a mane for a substitute, who was accepted by the Employer. And the third option if the Bidder has objected the proposed Adjudicator and proposed a mane for a substitute, who was not accepted by the Employer.

We confirm that *[insert name proposed by Employer in the Bidding Data]*,

**or**

We accept that *[name proposed by bidder]* be appointed as the Adjudicator

**or**

We do not accept that *[name proposed by bidder]* be appointed as adjudicator, and by sending a copy of this letter of acceptance to *[insert the name of the Appointing Authority]*, we are hereby requesting *[name]*, the Appointing Authority, to appoint the Adjudicator in accordance with Clause 36.1 of the Instructions to Bidders

You are hereby instructed to proceed with the execution of the said contract for the provision of Services in accordance with the Contract documents.

Please return the attached Contract dully signed

Authorized Signature: \_\_\_\_\_  
 Name and Title of Signatory: \_\_\_\_\_  
 Name of Agency: \_\_\_\_\_

Attachment: Contract

## Form of Contract

*[letterhead paper of the Employer]*

### LUMP-SUM REMUNERATION

This CONTRACT (hereinafter called the "Contract") is made the *[day]* day of the month of *[month]*, *[year]*, between, on the one hand, *[name of Employer]* (hereinafter called the "Employer") and, on the other hand, *[name of Service Provider]* (hereinafter called the "Service Provider").

*[Note: In the text below text in brackets is optional; all notes should be deleted in final text. If the Service Provider consist of more than one entity, the above should be partially amended to read as follows: "...(hereinafter called the "Employer") and, on the other hand, a joint venture consisting of the following entities, each of which will be jointly and severally liable to the Employer for all the Service Providers' obligations under this Contract, namely, [name of Service Provider] and [name of Service Provider] (hereinafter called the "Service Provider").]*

#### WHEREAS

- (a) the Employer has requested the Service Provider to provide certain Services as defined in the General Conditions of Contract attached to this Contract (hereinafter called the "Services");
- (b) the Service Provider, having represented to the Employer that they have the required professional skills, and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract at a contract price of.....;
- (c) the Employer has received *[or has applied for]* a loan from the International Bank for Reconstruction and Development (hereinafter called the "Bank") *[or a credit from the International Development Association (hereinafter called the "Association")]* towards the cost of the Services and intends to apply a portion of the proceeds of this loan *[or credit]* to eligible payments under this Contract, it being understood (i) that payments by the Bank *[or Association]* will be made only at the request of the Employer and upon approval by the Bank *[or Association]*, (ii) that such payments will be subject, in all respects, to the terms and conditions of the agreement providing for the loan *[or credit]*, and (iii) that no party other than the Employer shall derive any rights from the agreement providing for the loan *[or credit]* or have any claim to the loan *[or credit]* proceeds;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:

- (a) The General Conditions of Contract;
- (b) The Special Conditions of Contract;
- (c) The Service Provider's Bid
- (d) The Priced Activity Schedule
- (e) The Specifications
- (f) The following Appendices: *[Note: If any of these Appendices are not used, the words "Not Used" should be inserted below next to the title of the Appendix and on the sheet attached hereto carrying the title of that Appendix.]*
  - Letter of acceptance
  - Notice to proceed
  - Service Provider's Bid

PERFORMANCE INCENTIVE COMPENSATION APPENDIX  
Appendix A: Description of the Services

- Appendix B: Schedule of Payments
- Appendix C: Key Personnel and Subcontractors
- Appendix D: Breakdown of Contract Price in Foreign Currency
- Appendix E: Breakdown of Contract Price in Local Currency
- Appendix F: Services and Facilities Provided by the Employer
- Appendix G: Performance Incentive Compensation

2. The mutual rights and obligations of the Employer and the Service Provider shall be as set forth in the Contract, in particular:
- (a) The Service Provider shall carry out the Services in accordance with the provisions of the Contract; and
  - (b) the Employer shall make payments to the Service Provider in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of *[name of Employer]*

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*[Authorized Representative]*

For and on behalf of *[name of Service Provider]*

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*[Authorized Representative]*

*[Note: If the Service Provider consist of more than one entity, all these entities should appear as signatories, e.g., in the following manner:]*

For and on behalf of each of the Members of the Service Provider

*[name of member]*

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*[Authorized Representative]*

*[name of member]*

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*[Authorized Representative]*

## Section IV. General Conditions of Contract

### Preface

1. This sample contract for the Provision of Services has been prepared by the World Bank for use by its borrowers and their implementing agencies (referred to hereafter as Employer) when they hire firms to provide Services paid on the basis of lump-sum remuneration.
2. Lump-sum contracts are used when definition of the tasks to be performed is clear and unambiguous, when the commercial risk taken by the Service Provider is minimal, and when therefore such Service Provider/s are prepared to perform the assignment for an agreed predetermined lump-sum price. Such price is arrived at on the basis of inputs—including rates—provided by the Service Provider. The Employer agrees to pay the Service Provider according to a schedule of payments linked to the delivery of certain outputs. A major advantage of the lump-sum contract is the simplicity of its administration, the Employer having only to be satisfied with the outputs without monitoring the staff inputs.
3. The Contract includes four parts: the Form of Contract, the General Conditions of Contract, the Special Conditions of Contract, and the Appendices. The Employer using this sample contract should not alter the General Conditions. Any adjustment to meet project features should be made only in the Special Conditions.

## Section IV. General Conditions of Contract

### 1. General Provisions

#### 1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- (a) The **Adjudicator** is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in Clauses \_\_\_ and \_\_\_ hereunder.
- (b) “Activity Schedule” is the priced and completed list of items of Services to be performed by the Service Provider forming part of his Bid;
- (c) “Bank” means the International Bank for Reconstruction and Development, Washington, D.C., U.S.A.;
- or**
- (c) “Association” means the International Development Association, Washington, D.C., U.S.A.;
- (d) “Completion Date” means the date of completion of the Services by the Service Provider as certified by the Employer
- (e) “Contract” means the Contract signed by the Parties, to which these General Conditions of Contract (GCC) are attached, together with all the documents listed in Clause 1 of such signed Contract;
- (f) “Contract Price” means the price to be paid for the performance of the Services, in accordance with Clause 6;
- (g) “Dayworks” means varied work inputs subject to payment on a time basis for the Service Provider’s employees and equipment, in addition to payments for associated materials and administration.
- (h) “Employer” means the party who employs the Service Provider
- (i) “Foreign Currency” means any currency other than the currency of the country of the Employer;
- (j) “GCC” means these General Conditions of Contract;
- (k) “Government” means the Government of the Employer’s country;
- (l) “Local Currency” means the currency of the country of the Employer;
- (m) “Member,” in case the Service Provider consist of a joint venture of more than one entity, means any of these entities; “Members” means all these entities, and “Member in Charge” means the entity specified in the SC to act on their behalf in exercising all the Service Provider’ rights and obligations towards the Employer under this Contract;
- (n) “Party” means the Employer or the Service Provider, as the case may be, and “Parties” means both of them;

- (o) “Personnel” means persons hired by the Service Provider or by any Subcontractor as employees and assigned to the performance of the Services or any part thereof;
- (p) “Service Provider” is a person or corporate body whose Bid to provide the Services has been accepted by the Employer;
- (q) “Service Provider’s Bid” means the completed bidding document submitted by the Service Provider to the Employer
- (r) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented;
- (s) “Specifications” means the specifications of the service included in the bidding document submitted by the Service Provider to the Employer
- (t) “Services” means the work to be performed by the Service Provider pursuant to this Contract, as described in Appendix A; and in the Specifications and Schedule of Activities included in the Service Provider’s Bid.
- (u) “Subcontractor” means any entity to which the Service Provider subcontracts any part of the Services in accordance with the provisions of Clauses 3.5 and 4.

**1.2 Applicable Law** The Contract shall be interpreted in accordance with the laws of the Employer’s country, unless otherwise specified in the Special Conditions of Contract (SCC).

**1.3 Language** This Contract has been executed in the language specified in the SCC, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

**1.4 Notices** Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telex, telegram, or facsimile to such Party at the address specified in the SCC.

**1.5 Location** The Services shall be performed at such locations as are specified in Appendix A, in the specifications and, where the location of a particular task is not so specified, at such locations, whether in the Government’s country or elsewhere, as the Employer may approve.

**1.6 Authorized Representatives** Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Employer or the Service Provider may be taken or executed by the officials specified in the SCC.

**1.7 Inspection and Audit by the Bank** The Service Provider shall permit the Bank to inspect its accounts and records relating to the performance of the Services and to have them audited by auditors appointed by the Bank, if so required by the Bank.

- 1.8 Taxes and Duties** The Service Provider, Subcontractors, and their Personnel shall pay such taxes, duties, fees, and other impositions as may be levied under the Applicable Law, the amount of which is deemed to have been included in the Contract Price.

## **2. Commencement, Completion, Modification, and Termination of Contract**

- 2.1 Effectiveness of Contract** This Contract shall come into effect on the date the Contract is signed by both parties or such other later date as may be stated in the SC.

### **2.2 Commencement of Services**

- 2.2.1 Program** Before commencement of the Services, the Service Provider shall submit to the Employer for approval a Program showing the general methods, arrangements, order and timing for all activities. The Services shall be carried out in accordance with the approved Program as updated.

- 2.2.2 Starting Date** The Service Provider shall start carrying out the Services thirty (30) days after the date the Contract becomes effective, or at such other date as may be specified in the SCC.

- 2.3 Intended Completion Date** Unless terminated earlier pursuant to Clause 2.6, the Service Provider shall complete the activities by the Intended Completion Date, as is specified in the SCC. If the Service Provider does not complete the activities by the Intended Completion Date, it shall be liable to pay liquidated damage as per Sub-Clause 3.8. In this case, the Completion Date will be the date of completion of all activities.

- 2.4 Modification** Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written agreement between the Parties and shall not be effective until the consent of the Bank or of the Association, as the case may be, has been obtained.

### **2.5 Force Majeure**

- 2.5.1 Definition** For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party and which makes a Party’s performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

- 2.5.2 No Breach of Contract** The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

- 2.5.3 Extension of Time** Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

### **2.5.4 Payments**

During the period of their inability to perform the Services as a result of an event of Force Majeure, the Service Provider shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period.

## **2.6 Termination**

### **2.6.1 By the Employer**

The Employer may terminate this Contract, by not less than thirty (30) days' written notice of termination to the Service Provider, to be given after the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause 2.6.1 and sixty (60) days' in the case of the event referred to in (g):

- (a) if the Service Providers do not remedy a failure in the performance of their obligations under the Contract, within thirty (30) days after being notified or within any further period as the Employer may have subsequently approved in writing;
- (b) if the Service Provider become insolvent or bankrupt;
- (c) if, as the result of Force Majeure, the Service Provider/s are unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (d) if the Service Provider/s, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this clause:

“corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the selection process or in contract execution.

“fraudulent practice” means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Borrower, and includes collusive practice among Service Provider (prior to or after submission of proposals) designed to establish prices at artificial non-competitive levels and to deprive the Borrower of the benefits of free and open competition.

- (e) if the Service Provider does not maintain a Performance Security in accordance with Clause 3.9;
- (f) if the Service Provider has delayed the completion of the Services by the number of days for which the maximum amount of liquidated damages can be paid in accordance with Sub-Clause 3.8.1 and the SCC.;
- (g) if the Employer, in its sole discretion, decides to terminate this Contract.

### **2.6.2 By the Service Provider**

The Service Provider may terminate this Contract, by not less than thirty (30) days' written notice to the Employer, such notice to be given after the occurrence of any of the events specified in paragraphs (a) and (b) of this Clause 2.6.2:

- (a) if the Employer fails to pay any monies due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to Clause 7 within forty-five (45) days after receiving written notice from the Service Provider that such payment is overdue; or
- (b) if, as the result of Force Majeure, the Service Providers are unable to perform a material portion of the Services for a period of not less than sixty (60) days.

### **2.6.3 Payment upon Termination**

Upon termination of this Contract pursuant to Clauses 2.6.1 or 2.6.2, the Employer shall make the following payments to the Service Provider:

- (a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;
- (b) except in the case of termination pursuant to paragraphs (a), (b), (d), (e), (f) of Clause 2.6.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel.

## **3. Obligations of the Service Provider**

### **3.1 General**

The Service Providers shall perform the Services in accordance with the Specifications and the Activity Schedule, and carry out their obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Service Providers shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the Employer, and shall at all times support and safeguard the Employer's legitimate interests in any dealings with Subcontractors or third parties.

[ Define here principle and modalities of Inspection]

### **3.2 Conflict of Interests**

#### **3.2.1 Service Provider Not to Benefit from Commissions and Discounts.**

The remuneration of the Service Providers pursuant to Clause 6 shall constitute the Service Providers' sole remuneration in connection with this Contract or the Services, and the Service Providers shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Service Providers shall use their best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them similarly shall not receive any such additional remuneration.

#### **3.2.2 Service Provider and Affiliates Not to be Otherwise Interested in Project**

The Service Providers agree that, during the term of this Contract and after its termination, the Service Providers and their affiliates, as well as any Subcontractor and any of its affiliates, shall be disqualified from providing goods, works, or Services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.

**3.2.3 Prohibition of Conflicting Activities**

Neither the Service Providers nor their Subcontractors nor the Personnel shall engage, either directly or indirectly, in any of the following activities:

- (a) during the term of this Contract, any business or professional activities in the Government's country which would conflict with the activities assigned to them under this Contract;
- (b) during the term of this Contract, neither the Service Provider nor their Subcontractors shall hire public employees in active duty or on any type of leave, to perform any activity under this Contract;
- (c) after the termination of this Contract, such other activities as may be specified in the SCC.

**3.3 Confidentiality**

The Service Providers, their Subcontractors, and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Employer's business or operations without the prior written consent of the Employer.

**3.4 Insurance to be Taken Out by the Service Providers**

The Service Providers (a) shall take out and maintain, and shall cause any Subcontractors to take out and maintain, at their (or the Subcontractors', as the case may be) own cost but on terms and conditions approved by the Employer, insurance against the risks, and for the coverage, as shall be specified in the SCC; and (b) at the Employer's request, shall provide evidence to the Employer showing that such insurance has been taken out and maintained and that the current premiums have been paid.

**3.5 Service Providers' Actions Requiring Employer's Prior Approval**

The Service Providers shall obtain the Employer's prior approval in writing before taking any of the following actions:

- (a) entering into a subcontract for the performance of any part of the Services,
- (b) appointing such members of the Personnel not listed by name in Appendix C ("Key Personnel and Subcontractors"),
- (c) changing the Program of activities; and
- (d) any other action that may be specified in the SCC.

**3.6 Reporting Obligations**

The Service Providers shall submit to the Employer the reports and documents specified in Appendix B in the form, in the numbers, and within the periods set forth in the said Appendix.

**3.7 Documents Prepared by the Service Providers to Be the Property of the Employer**

All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Service Providers in accordance with Clause 3.6 shall become and remain the property of the Employer, and the Service Providers shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Employer, together with a detailed inventory thereof. The Service Providers may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be specified in the SCC.

### **3.8 Liquidated Damages**

#### **3.8.1 Payments of Liquidated Damages**

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

#### **3.8.2 Correction for Overpayment**

If the Intended Completion Date is extended after liquidated damages have been paid, the Employer shall correct any overpayment of liquidated damages by the Service Provider by adjusting the next payment certificate. The Service Provider shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Clause 6.5

#### **3.8.3 Lack of performance penalty**

If the Service Provider has not corrected a Defect within the time specified in the Employer's notice, a penalty for Lack of performance will be paid by the Service Provider. The amount to be paid will be calculated as a percentage of the cost of having the Defect corrected, assessed as described in clause 7.2.

### **3.9 Performance Security**

The Service Provider shall provide the Performance Security to the Employer no later than the date specified in the Letter of acceptance. The Performance Security shall be issued in an amount and form and by a bank or surety acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The performance Security shall be valid until a date 28 days from the Completion Date of the Contract in case of a bank guarantee, and until one year from the Completion Date of the Contract in the case of a Performance Bond

## **4. Service Provider's Personnel**

### **4.1 Description of Personnel**

The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Service Provider's Key Personnel are described in Appendix C. The Key Personnel and Subcontractors listed by title as well as by name in Appendix C are hereby approved by the Employer.

### **4.2 Removal and/or Replacement of Personnel**

- (a) Except as the Employer may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Service Provider, it becomes necessary to replace any of the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.
- (b) If the Employer finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Service Provider shall, at the Employer's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Employer.
- (c) The Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

## 5. Obligations of the Employer

- 5.1 Assistance and Exemptions** The Employer shall use its best efforts to ensure that the Government shall provide the Service Provider such assistance and exemptions as specified in the SCC.
- 5.2 Change in the Applicable Law** If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Service Provider, then the remuneration and reimbursable expenses otherwise payable to the Service Provider under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in Clauses 6.2 (a) or (b), as the case may be.
- 5.3 Services and Facilities** The Employer shall make available to the Service Provider the Services and Facilities listed under Appendix F.

## 6. Payments to the Service Provider

- 6.1 Lump-Sum Remuneration** The Service Provider's remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all Subcontractors' costs, and all other costs incurred by the Service Providers in carrying out the Services described in Appendix A. Except as provided in Clause 5.2, the Contract Price may only be increased above the amounts stated in Clause 6.2 if the Parties have agreed to additional payments in accordance with Clauses 2.4 and 6.3 .
- 6.2 Contract Price** (a) The price payable in local currency is set forth in the SCC.  
(b) The price payable in foreign currency is set forth in the SCC.
- 6.3 Payment for Additional Services, and Performance Incentive Compensation** 6.3.1 For the purpose of determining the remuneration due for additional Services as may be agreed under Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D and E.  
6.3.2 *[OPTIONAL]*: The service provider shall be paid performance incentive compensation as set out in the Performance Incentive Compensation appendix.
- 6.4 Terms and Conditions of Payment** Payments will be made to the Service Provider and according to the payment schedule stated in the SCC. Unless otherwise stated in the SCC, the first payment shall be made against the provision by the Service Provider of a bank guarantee for the same amount, and shall be valid for the period stated in the SCC. Any other payment shall be made after the conditions listed in the SCC for such payment have been met, and the Service Provider have submitted an invoice to the Employer specifying the amount due.
- 6.5 Interest on Delayed Payments** If the Employer has delayed payments beyond fifteen (15) days after the due date stated in the SCC, interest shall be paid to the Service Provider for each day of delay at the rate stated in the SCC
- 6.6 Price Adjustment** 6.6.1 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the SCC. If so provided, the amounts certified in each payment certificate, after deducting for Advance Payment, shall be adjusted by applying the respective

price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

$$P_c = A_c + B_c \frac{Lmc}{Loc} + C_c \frac{Imc}{Ioc}$$

Where:

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

$A_c$ ,  $B_c$  and  $C_c$  are coefficients specified in the SCC, representing:  $A_c$  the nonadjustable portion;  $B_c$  the adjustable portion relative to labor costs and  $C_c$  the adjustable portion for other inputs, of the Contract Price payable in that specific currency "c"; and

$Lmc$  is the index prevailing at the first day of the month of the corresponding invoice date and  $Loc$  is the index prevailing 28 days before Bid opening for labor; both in the specific currency "c".

$Imc$  is the index prevailing at the first day of the month of the corresponding invoice date and  $Ioc$  is the index prevailing 28 days before Bid opening for other inputs payable; both in the specific currency "c".

If a price adjustment factor is applied to payments made in a currency other than the currency of the source of the index for a particular indexed input, a correction factor  $Z_o/Z_n$  will be applied to the respective component factor of  $p_n$  for the formula of the relevant currency.  $Z_o$  is the number of units of currency of the country of the index, equivalent to one unit of the currency payment on the date of the base index, and  $Z_n$  is the corresponding number of such currency units on the date of the current index.

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

## 6.7 Dayworks

6.7.1 If applicable, the Daywork rates in the Service Provider's Bid shall be used for small additional amounts of Services only when the Employer has given written instructions in advance for additional services to be paid in that way.

6.7.2 All work to be paid for as Dayworks shall be recorded by the Service Provider on forms approved by the Employer. Each completed form shall be verified and signed by the Employer representative as indicated in Clause 1.6 within two days of the Services being performed.

6.7.3 The Service Provider shall be paid for Dayworks subject to obtaining signed Dayworks forms as indicated in Sub-Clause 6.7.2

## 7. Quality Control

### 7.1 Identifying Defects

The Employer shall check the Service Provider's performance and notify him of any Defects that are found. Such checking shall not affect the Service Provider's responsibilities. The Employer may instruct the Service Provider to search for a Defect and to uncover and test any service that the Employer considers may have a

Defect. Defect liability period is as defined in Special Conditions of Contract.

## **7.2 Correction of Defects, and Lack of Performance Penalty**

- (a) The Employer shall give notice to the Service Provider of any Defects before the end of the Contract. The Defects liability period shall be extended for as long as Defects remain to be corrected..
- (b) Every time notice a Defect is given, the Service Provider shall correct the notified Defect within the length of time specified by the Employer's notice.
- (c) If the Service Provider has not corrected a Defect within the time specified in the Employer's notice, the Employer will assess the cost of having the Defect corrected, the Service Provider will pay this amount, and a Penalty for Lack of Performance calculated as described in clause 3.8 .

## **8. Settlement of Disputes**

### **8.1 Amicable Settlement**

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

### **8.2 Dispute Settlement**

8.2.1 If any dispute arises between the Employer and the Service Provider in connection with, or arising out of, the Contract or the provision of the Services, whether during carrying out the Services or after their completion, the matter shall be referred to the Adjudicator within 14 days of the notification of disagreement of one party to the other.

8.2.2 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.

8.2.3 The Adjudicator shall be paid by the hour at the rate specified in the Bidding Data and SCC, together with reimbursable expenses of the types specified in the SCC, and the cost shall be divided equally between the Employer and the Service Provider, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

8.2.4 The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place shown in the SCC.

8.2.5 Should the Adjudicator resign or die, or should the Employer and the Service Provider agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator will be jointly appointed by the Employer and the Service Provider. In case of disagreement between the Employer and the Service Provider, within 30 days, the Adjudicator shall be designated by the Appointing Authority designated in the SCC at the request of either party, within 14 days of receipt of such request.

8.3 In the event that the World Bank suspends the loan or Credit to the Employer, from which part of the payments to the Service Provider are being made:  
[a] The Employer is obligated to notify the Service Provider of such suspension within 7 days of having received the World Bank's suspension

notice.

[b] If the Service Provider has not received sums due to it upon the expiration of the 28 days for payment provided for in sub- Clause....., the Service Provider may immediately issue a 14 day termination notice.



## Section V. Special Conditions of Contract

Clauses in brackets are optional; all notes should be deleted in final text.

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1	The words “in the Government’s country” are amended to read “in <i>[name of country]</i> .”
1.1(a)	The Adjudicator is <i>[insert name]</i>
1.1(e)	The contract name is <i>[name of Contract]</i> .
1.1(h)	The Employer is <i>[insert name]</i>
1.1(m)	The Member in Charge is <i>[name of Member Leader of the Joint Venture]</i> .]
1.1(p)	The Service Provider is <i>[insert name]</i>
1.2	<p>The Applicable Law is: <i>[insert name of country]</i></p> <p><i>[ Note: Bank-financed contracts usually designate the law of the Employer’s country as the law governing the contract. However, if parties wish to designate the law of another country, the Bank will not object. In the former case, this Clause 1.1(a) should be deleted; in the latter case, the name of the respective country should be inserted in the blank, and the square brackets should be removed.]</i></p>
1.3	The language is <i>[specify English, French, or Spanish]</i> .
1.4	<p>The addresses are:</p> <p>Employer: _____</p> <p>Attention: _____</p> <p>Telex: _____</p> <p>Facsimile: _____</p> <p>Service Provider: _____</p> <p>Attention: _____</p> <p>Telex: _____</p> <p>Facsimile: _____</p>
1.6	<p>The Authorized Representatives are:</p> <p>For the Employer: _____</p> <p>For the Service Provider: _____</p>

- 2.1** The date on which this Contract shall come into effect is *[date]*.
- [ Note: The date may be specified by reference to conditions of effectiveness of the Contract, such as approval of the Contract by the Bank, effectiveness of Bank Loan/IDA Credit, receipt by Service Provider of advance payment and by Employer of bank guarantee (see Clause 6.4), etc.]*
- 2.2.2** The Starting Date for the commencement of Services is *[date]*.
- 2.3** The Intended Completion Date is *[date]*.
- 3.4** The risks and coverage by insurance shall be:
- (i) Third Party motor vehicle \_\_\_\_\_
  - (ii) Third Party liability \_\_\_\_\_
  - (iii) Employer's liability and workers' compensation \_\_\_\_\_
  - (iv) Professional liability \_\_\_\_\_
  - (v) Loss or damage to equipment and property \_\_\_\_\_
- 3.5(d)** *[ Note: Delete where not applicable ].*
- The other actions are \_\_\_\_\_.]
- 3.8** The liquidated damages rate is *[insert percentage of Contract price. Usually liquidated damages are set between 0.05 percent and 0.10 percent per day]* per day
- The maximum amount of liquidated damages for the whole contract is *[insert percentage of Contract price. Usually the total amount is not to exceed between 5 percent to 10 percent of the Contract Price]* percent of the final Contract Price.
- The percentage [ of the cost of having a Defect corrected ] to be used for the calculation of Lack of performance Penalty/(ies) is *[ insert percentage]*
- The Defects Liability Period is *[insert definition of/end date]*.
- 5.1** *[ Note: List here any assistance or exemptions that the Employer may provide under Clause 5.1. If there is no such assistance or exemptions, state "not applicable]."*
- 6.2(a)** The amount in local currency is *[insert amount and currency]*.
- 6.2(b)** The amount in foreign currency or currencies is *[insert amount and currency]*.
- 6.4** Payments shall be made according to the following schedule:
- [ Note: (a) the following installments are indicative only; (b) if the payment of foreign currency and of local currency does not follow the same schedule, add a separate schedule for payment in local currency; (c) "commencement date" may be replaced with "date of effectiveness;" and (d) if applicable, detail further the nature of the report evidencing performance, as may be required] .*

- Advance for Mobilization, Materials and Supplies: \_\_\_\_\_ percent of the Contract Price shall be paid on the commencement date against the submission of a bank guarantee for the same.
- Progress payments in accordance with the milestones established as follows, subject to certification by the Employer, that the Services have been rendered satisfactorily, pursuant to the performance indicators:
  - \_\_\_\_\_ (indicate milestone and/or percentage) \_\_\_\_\_
  - \_\_\_\_\_ (indicate milestone and/or percentage) \_\_\_\_\_ and
  - \_\_\_\_\_ (indicate milestone and/or percentage) \_\_\_\_\_

Should the certification not be provided, or refused in writing by the employer within one month of the date of the milestone, or of the date of receipt of the corresponding invoice, the certification will be deemed to have been provided, and the progress payment will be released at such date.

- The amortization of the Advance mentioned above shall commence when the progress payments have reached 25% of the contract price and be completed when the progress payments have reached 75%.
- The bank guarantee shall be released when the total payments reach fifty (75%) percent of the lump-sum amount.

*[ Note: This sample clause should be specifically drafted for each contract].*

- 6.5** Payment shall be made within *[number]* days of receipt of the invoice and the relevant documents specified in Clause 6.4, and within *[number]* days in the case of the final payment.

*[ Note: specify, e.g., “forty-five (45) days,” and, in the case of the last payment, “sixty (60) days.” ]*

The interest rate is *[rate]*.

- 6.6** Price adjustment is *[(applied) or {not to be applied}]* in accordance with Clause 6.6.

The coefficients for adjustment of prices are *[The sum of the two coefficients  $A_c$ ,  $B_c$  and  $C_c$  should be 1 (one) in the formula for each currency].:*

(a) For local currency:

$A_L$  is *[insert value]*

$B_L$  is *[insert value]*

$C_L$  is *[insert value]*

$L_{mc}$  and  $L_{oc}$  are the index for Labor from *{insert source of Labor index}*

$I_{mc}$  and  $I_{oc}$  are the index for *[insert input]* from *[insert source]*

(b) For foreign currency

$A_F$  is *[insert value]*

$B_F$  is *[insert value]*

$C_F$  is *[insert value]*

$L_{mc}$  and  $L_{oc}$  are the index for Labor from *{insert source of Labor index}*

$I_{mc}$  and  $I_{oc}$  are the index for *[insert input]* from *[insert source]*

- 8.2** The Adjudicator is *[insert name]*. Who will be paid a rate of *[insert amount and currency]* per hour of work. The following reimbursable expenses are recognized: *[list expenses]*

The arbitration procedures of [*name of Institution*] will be used

The designated Appointing Authority for a new Adjudicator is [*insert name of Authority*]

**Notes:**

*(1) If the Service Provider is a national of the Government's country, this provision should be modified and referred to the Government country's rules for settlement of disputes.*

*(2) For smaller contracts, the arbitration procedures are usually those of an institution from the Employer's country. For larger contracts, and contracts that are likely to be awarded to international contractors, it is recommended that the arbitration procedure of an international institution such as UNCITRAL (the United Nations Commission on International Trade Law), ICSID (the International Centre for Settlement of Investment Disputes) or the ICC (International Chamber of Commerce) be prescribed*

*(3) The Appointing Authority should preferably be an independent professional institution or an official of such an institution*

## Appendices

### Appendix A—Description of the Services

*Give detailed descriptions of the Services to be provided, dates for completion of various tasks, place of performance for different tasks, specific tasks to be approved by Employer, etc.*

### Appendix B—Schedule of Payments and Reporting Requirements

*List all milestones for payments and list the format, frequency, and contents of reports or products to be delivered; persons to receive them; dates of submission; etc. If no reports are to be submitted, state here “Not applicable.”*

### Appendix C—Key Personnel and Subcontractors

- List under:*
- C-1 Titles [and names, if already available], detailed job descriptions and minimum qualifications of foreign Personnel to be assigned to work in the Government’s country, and staff-months for each.*
  - C-2 Same as C-1 for Key foreign Personnel to be assigned to work outside the Government’s country.*
  - C-3 List of approved Subcontractors (if already available); same information with respect to their Personnel as in C-1 or C-2.*
  - C-4 Same information as C-1 for Key local Personnel.*

### Appendix D—Breakdown of Contract Price in Foreign Currency

*List here the elements of cost used to arrive at the breakdown of the lump-sum price—foreign currency portion:*

- 1. Rates for Equipment Usage or Rental or for Personnel (Key Personnel and other Personnel).*
- 2. Reimbursable expenditures.*

*This appendix will exclusively be used for determining remuneration for additional Services.*

### Appendix E—Breakdown of Contract Price in Local Currency

*List here the elements of cost used to arrive at the breakdown of the lump-sum price—local currency portion:*

- 1. Rates for Equipment Usage or Rental or for Personnel (Key Personnel and other Personnel).*
- 2. Reimbursable expenditures.*

*This appendix will exclusively be used for determining remuneration for additional Services.*

## **Appendix F—Services and Facilities Provided by the Employer**

## **Appendix G—Performance Incentive Compensation Appendix**

### **PERFORMANCE INCENTIVE COMPENSATION APPENDIX PROVISIONS**

#### **ARTICLE 1- GENERAL**

##### **1.1 Documents Comprising the Performance Incentive Compensation Appendix**

**The Performance Incentive Compensation Appendix** consists of:

- (a) the Performance Incentive Compensation Appendix Provisions;
- (b) Attachment #1 Incentive Compensation Calculation Procedure Notes; and
- (c) Attachment #2 Incentive Compensation Charts 1-[ ].

#### **ARTICLE 2- THE PERFORMANCE INCENTIVE COMPENSATION**

##### **2.1 Performance Incentive Compensation Limits**

(1) The Performance Incentive Compensation paid to the Service Provider shall not exceed the equivalent of \$[ ] U.S. over the term of the Contact.

(2) The actual amount paid to the service Provider as Performance Incentive Compensation shall be determined by the extent to which the Service Provider achieves the performance criteria set out in the Incentive Compensation Charts and by the application of the calculations set out in the Incentive Calculation Procedure Notes for the applicable Contact Year.

(3) If the Service Provider fails to meet the “Excellent” rating set out in the Incentive Compensation Chart, in any Contact Year, the Service Provider will be obliged to make up the shortfall in the subsequent Contact Year, as well as meet the performance targets for that Contract Year.

(4) Except as the Employer may, in its sole discretion, otherwise determine based on exceptional circumstances, if the Service Provider fails to attain the Maximum Annual Incentive Compensation in any Contract Year, the shortfall will not be available to the Service Provider in the subsequent Contact Years and the equivalent of \$[ ] U.S. per Contract Year maximum will not be increased.

(5) For the purpose of calculating the equivalency of \$[ ] U.S. and \$[ ] U.S. pursuant to Sections 2.1(1) and 2.1(2) of this Performance Incentive Compensation Appendix, the equivalency shall be calculated as of the date of payment of the Performance Incentive Compensation.

**ATTACHMENT # 1 – APPENDIX G  
INCENTIVE COMPENSATION CALCULATION PROCEDURE NOTES**

*[SAMPLE: This part is to be designed on a case by case approach]*

**PART A THE METHOD FOR CALCULATING PERFORMANCE INCENTIVE  
COMPENSATION IN EACH CONTRACT YEAR**

I. The Performance Incentive Compensation for each Contract Year shall be calculated as follows:

**Compensation = Composite Score x 0.2 x Maximum Annual Incentive Compensation**

Where:

- (I) The Maximum Annual Incentive Compensation is calculated as set out in Section 2.1 of the Performance Incentive Compensation Appendix Provisions; and
- (ii) The Composite Score is calculated in accordance with “Part B-The Method for Calculating the Composite Score” of these Incentive Compensation Calculation Procedure Notes.

**PART B THE METHOD FOR CALCULATING THE COMPOSITE SCORE**

1. The Composite Score for each Contract Year shall be as follows:

**Composite Score Total of All Weighted Scores for the Performance Criteria**

Where:

- (i) The Weighted Score for each Performance Criterion equals Criterion Weight x Criterion Value;
- (ii) The Criterion Value is measured from “Excellent” to “Poor” with corresponding values of 5 (for “Excellent” performance) to 1 (for “Poor” performance) as set out in the Incentive Compensation Charts and evaluated based on the performance of the Service Provider;
- (iii) The Criterion Value which the Operator receives for any Performance Criterion is based upon the technical standards set out in the Incentive Compensation Charts under the headings, “Excellent”, “Very Good”, “Good”, “Fair”, and “Poor” as compared against the Operator’s actual technical standards in each Contract Year; and
- (iv) If the Service Provider’s actual performance in a Contract Year,
  - (a) exceeds the technical standards for an “Excellent” Criterion Value, then the Criterion Value shall be 5;
  - (b) is less than the technical standards for a “Poor” Criterion Value, then the Criterion Value shall be zero; or
  - (c) is in between the technical standards for two Criterion Values, then the Criterion

Value shall be rounded down to the nearest whole number or 0.5 decimal point.

2. For the purpose of clarity, it is noted that there are only ten Criterion Values to be used as follows: 0,1, 1.5, 2, 2.5, 3, 3.5,4, 4.5 and 5.

3. Notwithstanding paragraphs 1 and 2 above, with respect to the Performance Criterion relating to institutional improvements in Attachment #2 The Incentive Compensation Charts 1-8,

- (a) if the Service Provider’s actual performance in a Contract Year is less than the technical standard for a “Fair” Criterion Value, then the Criterion Value shall be zero;
- (h) for the purpose of clarity, it is noted that there are only three Criterion Values to be used as follows: 0, 2 and 5; and
- (c) each of the documents or plans listed under the Performance Criterion shall be scored with the appropriate Criterion Value and a mean average score will be taken to calculate the Criterion Value for the Performance Criterion, which shall be rounded down to the nearest whole point or 0.5 decimal point.

4. For ease of reference, the following calculation represents the calculation of the Composite Score for a hypothetical Service Provider for four performance criteria in one Contact Year.

**Sample Incentive Compensation Chart**

Performance Criterion	Units	Weight	Criterion Values				
			Excellent	Very Good	Good	Fair	Poor
1.e.g. <b>Electricity use</b> [% reduction in kW.hr consumed from Base Year]		0.30	65	55	50	40	30
2. <b>[Criterion 2]</b>	[ ]	0.25	20	19	17	16	15
3. <b>[Criterion 3]</b>	[ ]	0.15	30	25	20	15	10
4. <b>[Criterion ~]</b>	[ ]	0.30	90	85	80	75	70

The following table demonstrates the procedure for the calculation of the “**Composite Score**”, if at the end of the year the achievements of the Service Provider are as follows:

1.	[e.g. Electricity use]	57
2.	[Criterion 2]	22
3.	[Criterion 3]	29
4.	[Criterion 4]	69

**CHART 1**  
**PERFORMANCE INCENTIVE OBLIGATIONS**  
**YEAR [1]**

**Services**

**Criterion Values**

Appendix	Performance Criterion	Units	Criteria	Excellent	Very Good	Good	Fair	Poor
<b>Reference</b>			<b>Weight</b>	<b>5</b>	<b>4</b>	<b>3</b>	<b>2</b>	
	[Development of Plans and Programs <sup>1</sup> ]	Quality and Timeliness	[0.45]	Completed on time with no need for revision to the substance of the document	Not applicable	Not applicable	Completed on time but requires revision to the substance of the document	Not applicable
	[Energy Management]	% reduction of kilowatt hours of electricity per unit produced from Base Year	[0.25]	4	3.5	3	2.5	2
	[Computerized Billing and Collection System]	number of days after the Starting Date until the computerized billing and collection system is in place	[0.30]	140	150	160	170	180

[Note: The chart is a sample only.]

(1) In respect of the Plans and Programs each plan or program listed in Section [•] shall be given a score of either 5 (Excellent), 2 (Fair) or (0) and the average score for all plans and programs shall be multiplied by the Criteria Weight. The average score shall be rounded to the nearest .5 decimal.

## Section VI. Performance Specifications and Drawings

( Describe Outputs and Performances, rather than Inputs, wherever possible )

### VI (a) Notes on Specifications

A set of precise and clear specifications is a prerequisite for bidders to respond realistically and competitively to the requirements of the Employer without qualifying or conditioning their bids. In the context of international competitive bidding, 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 workmanship, materials, and performance of the goods and Services to be procured. Only if this is done will the objectives of economy, efficiency, and fairness in procurement be realized, responsiveness of bids be ensured, and the subsequent task of Bid evaluation facilitated. The specifications should require that all goods and materials to be incorporated in the Services be new, unused, of the most recent or current models, and incorporate all recent improvements in design and materials unless provided otherwise in the Contract.

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 World Bank. Most specifications are normally written specially by the Employer or Project Manager to suit the Contract in hand. There is no standard set of 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 standardizing General Specifications for repetitive Services in recognized public sectors, such as education, health, sanitation, social and urban housing, roads, ports, railways, 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 the provision of Services, although not necessarily to be used in a particular Services Contract. Deletions or addenda should then adapt the General Specifications to the particular Services.

Care must be taken in drafting specifications to ensure that they are not restrictive. In the specification of standards for goods, materials, Services, and workmanship, recognized international standards should be used as much as possible. Where other particular standards are used, whether national standards of the Borrower's country or other standards, the specifications should state that goods, materials, Services and workmanship that meet other authoritative standards, and which ensure substantially equal or higher quality than the standards mentioned, will also be acceptable. The following clause may be inserted in the Special Conditions or 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 goods and materials to be furnished, and Services or 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 the Contract. Where such standards and codes are national, or relate to a particular country or region, other authoritative standards that ensure a substantially equal or higher quality than the standards and codes specified will be accepted subject to the Project Manager's prior review and written consent. Differences between the standards specified and the proposed alternative standards shall be fully described in writing by the Service Provider and submitted to the Project Manager at least 28 days prior to the date when the Service Provider desires the Project Manager's consent. In the event the Project Manager determines that such proposed deviations do not ensure substantially equal or higher quality, the Service Provider shall comply with the standards specified in the documents.

*These Notes for Preparing Specifications are intended only as information for the Employer or the person drafting the bidding documents. They should not be included in the final documents.*

**VI (b) Notes on Drawings**

*Insert here a list of Drawings. The actual Drawings, including performance diagrams or curves, etc. and site plans, geographical areas covered, should be attached to this section or annexed in a separate folder.*

## Section VII. Activity Schedule

### Notes on the Activity Schedule

#### Objectives

The objectives of the Activity Schedule are

- (a) to provide sufficient information on the quantities of Services to be performed to enable bids to be prepared efficiently and accurately; and
- (b) when a Contract has been entered into, to provide a priced Activity Schedule for use in the periodic valuation of Services executed.

In order to attain these objectives, Services should be itemized in the Activity Schedule in sufficient detail to distinguish between the different classes of services, or between Services 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 Activity Schedule should be as simple and brief as possible.

#### Daywork Schedule

A Daywork Schedule should be included only if the probability of unforeseen work, outside the items included in the Activity Schedule, is high. To facilitate checking by the Employer of the realism of rates quoted by the bidders, the Daywork Schedule should normally comprise the following:

- (a) A list of the various classes of Services, labor, materials, and Plant for which basic daywork rates or prices are to be inserted by the Bidder, together with a statement of the conditions under which the Service Provider will be paid for work executed on a daywork basis.
- (b) Nominal quantities for each item of Daywork, to be priced by each Bidder at Daywork rates as Bid. The rate to be entered by the Bidder against each basic Daywork item should include the Service Provider's profit, overheads, supervision, and other charges.

#### Provisional Sums

The estimated cost of specialized work to be carried out, or of special goods to be supplied, by other Service Providers (refer to Clause 8 of the Conditions of Contract) should be indicated in the relevant part of the Activity Schedule as a particular provisional sum with an appropriate brief description. A separate procurement procedure is normally carried out by the Employer to select such specialized Service Providers. To provide an element of competition among the bidders in respect of any facilities, amenities, attendance, etc., to be provided by the successful Bidder as prime Service Provider for the use and convenience of the specialist contractors, each related provisional sum should be followed by an item in the Activity Schedule inviting the Bidder to quote a sum for such amenities, facilities, attendance, etc.

*These Notes for Preparing an Activity Schedule are intended only as information for the Employer or the person drafting the bidding documents. They should not be included in the final documents.*



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## **Section VIII. Security Forms**

### **Notes on Forms of Securities**

Samples of acceptable forms of Bid, Performance, and Advance Payment Securities are annexed. Bidders should not complete the Performance and Advance Payment Security forms at this time. Only the successful Bidder will be required to provide Performance and Advance Payment Securities in accordance with one of the forms or in a similar form acceptable to the Employer.

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## Annex A Form: Bid Security (Bank Guarantee)

Whereas, *[name of Bidder and in the case of joint venture here should say--- a "joint venture" consisting of --(name of first firm)--, --(name of second firm) --,--(name of last firm) -- ]* (hereinafter called "the Bidder") has submitted his Bid dated *[date]* for the construction of *[name of Contract]* (hereinafter called "the Bid").

Know all people by these presents that We *[name of Bank]* of *[name of country]* having our registered office at *[address]* (hereinafter called "the Bank") are bound unto name of Employer] (hereinafter called "the Employer") in the sum of *[The Bidder should insert the amount of the Guarantee in words and figures denominated in the currency of the Employer's country or an equivalent amount in a freely convertible currency. This figure should be the same as shown in Clause 16.1 of the Instructions to Bidders]* for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors, and assigns by these presents.

Sealed with the Common Seal of the said Bank this *[day]* day of *[month]*, *[year]*.

The conditions of this obligation are:

- (1) If, after Bid opening, the Bidder withdraws his Bid during the period of Bid validity specified in the Form of Bid; or
- (2) If the Bidder having been notified of the acceptance of his Bid by the Employer during the period of Bid validity:
  - (a) fails or refuses to execute the Form of Agreement in accordance with the Instructions to Bidders, if required; or
  - (b) fails or refuses to furnish the Performance Security, in accordance with the Instruction to Bidders; or
  - (c) does not accept the correction of the Bid Price pursuant to Clause 27,

we undertake to pay to the Employer up to the above amount upon receipt of his first written demand, without the Employer's having to substantiate his demand, provided that in his demand the Employer will note that the amount claimed by him is due to him owing to the occurrence of one or any of the three conditions, specifying the occurred condition or conditions.

This Guarantee will remain in force up to and including the date [*Usually 28 days after the end of the validity period of the Bid.*] days after the deadline for submission of bids as such deadline is stated in the Instructions to Bidders or as it may be extended by the Employer, notice of which extension(s) to the Bank is hereby waived. Any demand in respect of this Guarantee should reach the Bank not later than the above date.

Date \_\_\_\_\_ Signature of the Bank \_\_\_\_\_

Witness \_\_\_\_\_ Seal \_\_\_\_\_

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*[signature, name, and address]*

## **Annex B Form (Alternative 1): Performance Bank Guarantee (Conditional)**

This form of Performance Guarantee is conditional in that the required conditions of default are not met until an agreement has been reached on the amount of damages payable, or until an award has been made under the applicable settlement of disputes procedures.

The triggering of this form of Performance Guarantee is conditional upon the Service Provider's "failing to execute the Contract or committing a breach of his obligations there under" and requires a statement by the Employer and/or the Project Manager to that effect, and an exercise of judgment by the Guarantor as to whether the required conditions of default have been fulfilled. Some forms of Guarantee contain further qualifying conditions, and are not triggered until an agreement has been reached on the amount of damages payable, or until an award has been made under the applicable settlement of disputes procedures. The construction industry favors this form of Guarantee over the Unconditional Guarantee whenever it is available. However, not all commercial banks (as Guarantors) are willing to issue Conditional Guarantees, and not all Employers are prepared to accept this form of Performance Security

This Agreement is made on the *[day]* day of *[month]*, *[year]* between *[name of Bank]* of *[address of Bank]* (hereinafter called "the Guarantor") of the one part and *[name of Employer]* of *[address of Employer]* (hereinafter called "the Employer") of the other part.

Whereas

(1) This Agreement is supplemental to a contract (hereinafter called the Contract) made between *[name of Service Provider]* of *[address of Service Provider]* (hereinafter called the Service Provider) of the one part and the Employer of the other part whereby the Service Provider agreed and undertook to execute the Services of *[name of Contract and brief description of the Services]* for the sum of *[amount in Contract currency]* being the Contract Price; and

(2) The Guarantor has agreed to guarantee the due performance of the Contract in the manner hereinafter appearing.

Now therefore the Guarantor hereby agrees with the Employer that upon receipt of

- (1) a written notice to the Guarantor from the Service Provider, or
- (2) a written notice to the Guarantor from the Adjudicator, or
- (3) a binding arbitration or Court award confirming that the amount of the Guarantee is payable to the Employer,

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the Guarantor will indemnify and pay the Employer the sum of *[amount of Guarantee]* *[amount in words]* such sum being payable in the types and proportions of currencies in which the Contract Price is payable, provided that the Employer or his authorized representative has notified the Guarantor to that effect and has made a claim against the Guarantor not later than the date of issue of the Defects Liability Certificate.

The Guarantor shall not be discharged or released from his Guarantee by an arrangement between the Service Provider and the Employer, with or without the consent of the Guarantor, or by any alteration in the obligations undertaken by the Service Provider, or by any forbearance on the part of the Service Provider, whether as to the payment, time, performance or otherwise, and any notice to the Guarantor of any such arrangement, alteration, or forbearance is hereby expressly waived.

Given under our hand on the date first mentioned above.

Signed by \_\_\_\_\_  
for and on behalf of the Guarantor in the presence of \_\_\_\_\_

Signed by \_\_\_\_\_  
for and on behalf of the Employer in the presence of \_\_\_\_\_

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## **Annex B Form (Alternative 2): Performance Bank Guarantee (Unconditional)**

The Unconditional (or “On-Demand”) Bank Guarantee has the merit of simplicity and of being universally known and accepted by commercial banks. The contracting community, however, strongly objects to this type of Security because the Guarantee can be called (or threatened to be called) by Employers without justification. Employers should recognize the contractual conditions governing nonperformance by the Service Provider and should normally act only on the advice of the Project Manager in calling a Performance Guarantee. Any unjustified calling of a Bank Guarantee, or unreasonable pressure exercised by an Employer, would be regarded by the World Bank as contrary to the spirit and basic principles of international procurement. This type of Guarantee is called a “Bond” in a number of countries; however, it should be distinguished from the U.S.-style “Performance Bond” as shown in Annex C.

To: *[name and address of Employer]*

Whereas *[name and address of Service Provider]* (hereinafter called “the Service Provider”) has undertaken, in pursuance of Contract No. *[number]* dated *[date]* to execute *[name of Contract and brief description of Services]* (hereinafter called “the Contract”);

And whereas it has been stipulated by you in the said Contract that the Service Provider shall furnish you with a Bank Guarantee by a recognized bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

And whereas we have agreed to give the Service Provider such a Bank Guarantee;

Now therefore we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Service Provider, up to a total of *[amount of Guarantee]* *[amount in words]*, such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of *[amount of Guarantee]* as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Service Provider before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Services to be performed there under or of any of the Contract documents which may be made between you and the Service Provider shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

This Guarantee shall be valid until a date 28 days from the date of issue of the Certificate of Completion.

Signature and seal of the Guarantor \_\_\_\_\_

Name of Bank \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_

## Annex B Form (Alternative 3): Performance Bond

This form of Bond corresponds to the U.S. practice, and should not be interpreted in the context of a “Bond” as known in other countries. As with the Conditional Bank Guarantee, the wording of some bonds may be such that an award under legal proceedings is needed to trigger action by the Surety.

By this Bond, *[name and address of Service Provider]* as Principal (hereinafter called “the Service Provider”) and *[name, legal title, and address of surety, bonding company, or insurance company]* as Surety (hereinafter called “the Surety”), are held and firmly bound unto *[name and address of Employer]* as Obligee (hereinafter called “the Employer”) in the amount of *[amount of Bond]* *[amount of Bond in words]* for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Service Provider and the Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas the Service Provider has entered into a Contract with the Employer dated the *[day]* day of *[month]*, *[year]* for *[name of Contract]* in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

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

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

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

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

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

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In testimony whereof, the Service Provider has hereunto set its hand and affixed its seal, and the Surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its legal representative, this *[day]* day of *[month]*, *[year]*.

Signed by \_\_\_\_\_  
on behalf of *[name of Service Provider]* in the capacity of \_\_\_\_\_  
In the presence of \_\_\_\_\_  
Date \_\_\_\_\_

Signed by \_\_\_\_\_  
on behalf of *[name of Service Provider]* in the capacity of \_\_\_\_\_  
In the presence of \_\_\_\_\_  
Date \_\_\_\_\_

## Annex C Form: Bank Guarantee for Advance Payment

To: *[name and address of Employer]*

*[name of Contract]*

Gentlemen:

In accordance with the provisions of the Conditions of Contract, Clause 51 (“Advance Payment”) of the above-mentioned Contract, *[name and address of Service Provider]* (hereinafter called “the Service Provider”) shall deposit with *[name of Employer]* a Bank Guarantee to guarantee his proper and faithful performance under the said Clause of the Contract in an amount of *[amount of Guarantee]* *[amount in words]*

We, the *[Bank or Financial Institution]*, as instructed by the Service Provider, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to *[name of Employer]* on his first demand without whatsoever right of objection on our part and without his first claim to the Service Provider, in the amount not exceeding *[amount of Guarantee]* *[amount in words]*

We further agree that no change or addition to or other modification of the terms of the Contract or of Services to be performed there under or of any of the Contract documents which may be made between *[name of Employer]* and the Service Provider, shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

This Guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until *[name of Employer]* receives full repayment of the same amount from the Service Provider.

Yours truly,

Signature and seal: \_\_\_\_\_

Name of Bank/Financial Institution: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_