STANDARD BIDDING DOCUMENT

**PROCUREMENT OF WORKS**

**Revised Based on the Review of Asian Development Bank in February 2020**

**For Use in Procurement Only under National Competitive Bidding Method in ADB-Financed Projects governed by the 2015 Procurement Guidelines**

Ministry of Finance, Mongolia

Ulaanbaatar

**Foreword**

This Standard Bidding Document for Procurement of Works which has been prepared by the Ministry of Finance in 2006 with the latest update in 2012 in order to implement the Public Procurement Law of Mongolia (hereinafter referred as to “the law”) and revised by the Asian Development Bank (ADB) in December 2010, June 2016, October 2017 and February 2020 shall be used only for the projects financed by ADB under the method of national competitive bidding.

The Employer shall use these Standard Bidding Documents with minimum changes as necessary to address project specific conditions. Any such changes shall be introduced only through Bid Data Sheet (BDS), or through Particular Conditions of Contract. The following directives shall be sought:

1. Bidding documents shall be prepared in accordance with the Standard bidding documents for Procurement of Works, by addressing the project specific conditions.
2. The Employer shall fill the *italicized bracket*s with appropriate datasuch as words, sentences, quantities, percentage, and currency when preparing the Bidding documents. Fields for Bidders shall not be filled by the Employer.
3. Footnotes and notes in each section of the Standard bidding documents are intended to support and instruct those who prepare Bidding documents. These shall be excluded when preparing the Bidding documents.
4. Notes in double rectangular brackets shall remain in the Bidding documents as these are intended for Bidders.
5. If duplication of a subject is inevitable in the different sections of the documents, the Employer should exercise care to avoid contradiction or conflict between clauses dealing with the same topic.

Those wishing to submit comments or questions on these Standard bidding documents or to obtain additional information on procurement of works are encouraged to contact:

Legal Department

Ministry of Finance

Phone: 267416; 267648,264587, 260206

Homepage: [www.tender.gov.mn](http://www.tender.gov.mn)

**BIDDING DOCUMENT**

**Procurement of Works**

**Employer:**

**Project No. and Name:**

**Bidding No.:**

**Issued on:**

**Table of Contents**

**PART 1 – Bidding Procedures**

**Section 1. Instructions to Bidders (ITB)**

This Section provides information to help Bidders prepare their bids. Information is also provided on the submission, opening, and evaluation of bids and on the award of Contracts. The Section 1 contains provisions that are to be used without modification.

**Section 2. Bid Data Sheet (BDS)**

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

**Section 3. Evaluation and Qualification Criteria**

This Section contains the criteria and qualifications to determine the lowest evaluated bid.

**Section 4. Bidding Forms**

This Section includes the forms which are to be completed by the Bidder and submitted as a part of Bid.

**Section 5. Eligible Countries**

This Section contains the list of eligible countries.

**PART 2 – Works Requirements**

**Section 6. Specifications and Other Requirements**

This Section contains the Specifications, the Drawings, Supplementary Information that describe the Works to be procured, the Personnel Requirements, and the Equipment Requirements.

**PART 3 – Conditions of Contract and Contract Forms**

**Section 7. General Conditions of Contract (GCC)**

This Section contains standard provisions to be applied in all contracts of the Employer to procure works and related materials, equipment and services. The text of the clauses in the GCC shall not be modified.

**Section 8. Particular Conditions of Contract (PCC)**

This section contains specific terms and conditions of the Contract. Contents of this Section supplement the GCC.

**Section 9. Contract Forms**

This Section contains forms which, once completed, will form part of the Contract. After completion and signing of this contract form the successful bidder is authorized to fulfill the work and its requirements stated in the GCC and PCC and in the bid prepared by the Instructions to Bidders. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful Bidder after contract award.

Note: Titles and headings of parts and sections of the Standard Bidding Document are used for the purpose to provide guidance on how to prepare bidding documents for a specific procurement of works and related services, and thus do not convey any mandatory regulation.

**Annex: Invitation for Bids**

Form of Invitation for Bids is enclosed to this Standard Bidding Document as a sample. The Invitation for Bids is not a part of the Bidding Documents and therefore shall not be included in the Bidding Document to be issued by the Employer.

**Section 1 - Instructions to Bidders**

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| This Section of the bidding document provides the information necessary for bidders to prepare responsive bids in accordance with the requirements of the Employer. It also gives information on bid submission, opening, and evaluation, and on the award of the Contract. The Employer must comply with the instructions to bidders while organizes the bidding process.  Matter governing the performance of the Contractor under the Contract, payments under the Contract, or matters affecting the risks, rights, or obligations of the parties under the Contract, are not included in this Section, but rather in Section 7, General Conditions of the Contract, and/or Section 8, Particular Conditions of the Contract.  The Instructions to Bidders will not be a part of the Contract. |

**Section 1 - Instructions to Bidders**

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| **Section 1 - Instructions to Bidders** | | | | | | |
|  | | | | **A. General** | | |
| 1. Scope of Bid | | | | * 1. The Employer, as indicated in the Bid Data Sheet (BDS), issues this Bidding Document for the procurement of the Works as specified in Section 6 (Specifications and Other Requirements). The name and identification of this bidding are provided in the BDS. | | |
|  | | | | 1.2 The successful Bidder will be expected to complete Works by Intended Completion Date specified in the BDS. | | |
|  | | | | 1.3 Bidding may contain one lot, unless otherwise specified in the BDS. If the bidding comprises of several lots, bidders are allowed to submit bids in one or more than one lots.   * 1. Throughout this Bidding Document:   (a) the term “in writing” means communicated in written form and delivered against receipt;  (b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and  (c) “day” means calendar day. | | |
| 2. Source of Funds | | | | 2.1 The Borrower or Recipient (hereafter called “Borrower”) indicated in the BDS has received financing (hereafter called “funds”) from the Asian Development Bank (hereafter called “ADB”) and other source of the funds specified in the BDS toward the cost of the project named in the BDS. | | |
| 3. Fraud and Corruption | | | | 3.1 Civil servants, bidders, and contractors shall observe the highest standard of ethics during the procurement and execution of contracts. | | |
|  | | | | 3.2 Civil servants, bidders and contractors shall inform to the law enforcement organizations and the relevant officials if there is evidence that either participant has engaged in corrupt, fraudulent, or collusive or coercive practices in competing for the Contract against the stipulations set forth in the Anti-Corruption Law, Criminal Code, Law of Competition and Public Procurement Law of Mongolia. | | |
|  | | | | 3.3 ADB’s Anti-corruption Policy requires borrowers (including beneficiaries of ADB-financed activity), as well as bidders, suppliers, and contractors under ADB-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the ADB:   * + 1. defines, for the purposes of this provision, the terms set forth below as follows:        1. “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;        2. “fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid anobligation;        3. “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;        4. “collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;        5. “integrity violation” means any act, as defined under ADB’s Integrity Principles and Guidelines, which violates ADB’s Anticorruption Policy including corrupt, fraudulent, coercive, or collusive practice, abuse, and obstructive practice; and   (vi) “obstructive practice” means (a) deliberately destroying, falsifying, altering or concealing of evidence material to an ADB investigation; (b) making false statements to investigators in order to materially impede an ADB investigation; (c) failing to comply with requests to provide information, documents or records in connection with an OAI investigation; (d) threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (e) materially impeding ADB’s contractual rights of audit or access to information.   * + 1. will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices or other integrity violations in competing for the Contract;     2. will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the borrower or of a beneficiary of ADB-financing engaged in corrupt, fraudulent, collusive, coercive or obstructive practices or other integrity violations during the procurement or the execution of that contract, without the borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation;     3. will sanction impose remedial actions on a firm or an individual, at any time, in accordance with ADB’s Anticorruption Policy and Integrity Principles and Guidelines (both as amended from time to time), including declaring ineligible, either indefinitely or for a stated period of time, to participate in ADB-financed, or administered or supported activities or to benefit from an ADB-financed, administered or supported contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices or other integrity violation ; and     4. will have the right to require that a provision be included in bidding documents and in contracts financed by ADB, requiring bidders, suppliers and contractors to permit ADB or its representative to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by ADB. | | |
| 4. Eligible Bidders | | | | 4.1 A Bidder, and all parties constituting the Bidder, shall have the nationality of an eligible member country of ADB in accordance with the Section 5 (Eligible Countries). A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, or incorporated, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related services.  4.2 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to be in a conflict of interest with one or more parties in this bidding process if including but not limited to:   * + 1. they have controlling shareholders in common; or     2. it receives or has received any direct or indirect subsidy from any of them; or     3. they have the same legal representative for purposes of this Bid; or     4. they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or     5. a Bidder participates in more than one bid in this bidding process, either individually or as a partner in a joint venture, except for alternative offers permitted under ITB Clause 14 of the Bidding Document. This will result in the disqualification of all Bids in which it is involved. However, this does not limit the participation of a Bidder as a Subcontractor in another bid or in more than one bid; or     6. a Bidder or any of its affiliated entity participated as a consultant in the preparation of the design or specifications of the works that are the subject of the Bid; or     7. a Bidder was affiliated with a firm or entity that has been hired (or is proposed to be hired) by the Employer or Borrower as Engineer for the Contract.   4.3 A firm shall not be eligible to participate in any procurement activities under an ADB-financed or ADB-supported project while under sanction by ADB pursuant to its Anticorruption Policy (see ITB 3), whether such sanction was directly imposed by ADB, or imposed by ADB pursuant to the Agreement for Mutual Enforcement of Debarment Decisions. A bid from a sanctioned or cross-debarred firm will be rejected.  4.4 Government-owned enterprises in the Employer’s country shall be eligible only if they can establish that they (i) are legally and financially autonomous, (ii) operate under the principles of commercial law, and (iii) are not dependent agencies of the Employer.  4.5 Bidders shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.  4.6 Firms shall be excluded if by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower’s country prohibits any import of goods or contracting of works or services from that country or any payments to persons or entities in that country. | | |
|  | | | | * 1. A Bidder (including joint venture) shall be deemed ineligible if:   4.7.1 It is insolvent, in receivership, colluded with its creditors to escape bankruptcy, or is suspended of its business operations, or is in analogous situations described above pursuant to the laws of its country of origin/incorporation;  4.7.2 has not fulfilled its tax, duty and other payment obligations pursuant to the laws of Mongolia or of its country of origin/incorporation;  4.7.3 has been proven by the court or competent authorities that it severely violated or failed to execute its contractual obligations, or had professional misconduct while engaging in procurement in the last 3 years;  4.7.4 it (including its subcontractor) has common interest with the body who is proposed to be hired by the Employer to supervise the contract execution or to provide consulting services;   * + 1. two or more bidders are represented by the same legal representative when participatingin this bidding;     2. it submits more than one bid in this bidding process, except for alternative offers permitted under ITB Clause 14. However, this does not limit the participation of subcontractor in more than one bid, or of the bidder to submit bids in more than one lot in bidding.   1. The Bidder shall provide the Employer a written notification on whether any condition mentioned in Clauses between 4.7.1 - 4.7.6 is constituted or not. The Bidder shall furnish and submit relevant documents and evidences as the Employer shall reasonably request for purposes of checking and verifying whether any of these conditions is constituted or not.   2. Bidders shall provide an evidence of their license for conducting works as indicated in the BDS. | | |
| **5. Eligible Materials, Equipment and Services** | | | | 5.1 The materials, equipment and services to be supplied under the Contract shall have their origin in eligible source countries as defined in ITB 4.1 above and all expenditures under the Contract will be limited to such materials, equipment, and services. At the Employer’s request, Bidders may be required to provide evidence of the origin of materials, equipment and services.  5.2 For purposes of ITB 5.1 above, “origin” means the place where the materials and equipment are mined, grown, produced or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that differs substantially in its basic characteristics or in purpose or utility from its components. | | |
| **6. Joint Venture** | | | | 6.1 If more than one legal entity participating in the bidding as a joint venture (hereinafter referred as “joint venture (JV)” together and referred as “member of JV” individually), it shall comply with the following requirements unless otherwise specified in the BDS:   1. all members of the JV shall be liable jointly and severally; 2. a formal letter of intent to enter into an agreement or under an existing agreement in the form of a JV shall be enclosed with the Bid; 3. a JV shall nominate a Representative who shall have authority to conduct all businesses for and on behalf of any or all the parties of the JV during the bidding process and, in the event of the JV is awarded the Contract, during the contract execution.   6.2 If the above-mentioned requirements are not complied with, then the JV shall be rejected as non-responsive. | | |

**B. Bidding Documents**

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| 7. Contents of Bidding Documents | 7.1 The bidding document consists of 3 parts, which include all the sections indicated below and should be read in conjunction with any Addenda issued in accordance with the ITB 9:  **Part 1. Bidding procedures**  Section 1. Instructions to Bidders (ITB)  Section 2. Bid Data Sheet (BDS)  Section 3. Evaluation and Qualification Criteria (EQC)  Section 4. Bidding Forms (BDF)  Section 5. Eligible Countries (ELC)  **Part 2. Works Requirements**  Section 6. Specifications and Other Requirements  **Part 3. Conditions of Contract and Contract Forms**  Section 7. General Conditions of Contract (GCC)  Section 8. Particular Conditions of Contract (PCC)  Section 9. Contract Forms (COF)  7.2. The Invitation for Bids issued by the Employer is not part of the Bidding Documents.  7.3 The Employer is not responsible for the completeness of the Bidding Documents and their addendum, if they were not obtained directly from the source stated by the Employer in the invitation for bids.  7.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents. Failure to furnish all information or documentation required by the Bidding Documents may result in the rejection of the bid. |
| 8. Clarification of Bidding Documents, Site Visit, Pre-Bid Meeting | 8.1 A prospective Bidder requiring any clarification of the bidding documents shall contact the Employer in writing at the Employer’s address indicated in the BDS. The Employer will respond to any request for clarification provided that such request is received no later than number of days specified in BDS prior to the deadline for submission of bids. The Employer shall forward copies of its response to all Bidders who have acquired the bidding documents, including a description of the inquiry, but without identifying its source.  8.2 If the Employer considers it necessary to amend the Bidding Document as a result of a request for clarification, it shall do so following the procedure under ITB 9 and ITB 23.2.  8.3 The Bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder’s own expense.  8.4 The Bidder’s designated representative is invited to attend a pre-bid meeting, if provided for in the BDS. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.  8.5 The Bidder is requested to submit any questions in writing, to reach the Employer not later than one week before the meeting.  8.6 Minutes of the pre-bid meeting, including the text of the questions rose, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders.  8.7 Any modification to the Bidding Document that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an addendum pursuant to ITB 9.  8.8 Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder. |
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| 9. Amendment of Bidding Documents | 9.1 At any time prior to the deadline for submission of bids, the Employer may amend the Bidding Documents by issuing addenda.  9.2 Any addendum issued shall be part of the Bidding Documents and shall be communicated in writing to all who have obtained the Bidding Document from the Employer. Every bidder shall inform to the Employer in writing about receiving the documents.  9.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB 23.2. | |

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| 10. Cost of Bidding  11. Language of Bid | **C. Preparation of Bids**  10.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.  11.1 The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Employer, shall be written in the language specified in the BDS.  11.2 Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the BDS, in which case, for purposes of interpretation of the Bid, such translation shall govern. |
| 12. Documents Comprising the Bid | 12.1 The Bid submitted by the Bidder shall comprise the following:   1. Letter of Bid in accordance with ITB 13; 2. Completed schedules as required, including priced Bill of Quantities, in accordance with ITB 13 and 15; 3. Bid Security, in accordance with ITB 20; 4. written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 21; 5. documentary evidence in accordance with ITB 18 establishing the Bidder’s qualifications to perform the contract; 6. Technical Proposals in accordance with ITB 17; 7. Alternative Bids if specified in ITB 14; and 8. any other document required in the BDS. |
| 13. Letter of Bid and Schedules | 13.1 The Letter of Bid and Schedules, including the Bill of Quantities*,* andall other documents shall be prepared using the relevant forms furnished in Section 4, Bidding Forms and in accordance with the ITB 12. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested. |
| 14. Alternative Bids | 14.1 Unless otherwise indicated in the BDS**,** alternative bids shall not be considered. |
| 15. Bid Prices and Discounts | 15.1 The prices and discounts quoted by the Bidder in the Letter of Bid and in the Bill of Quantities shall conform to the requirements specified below.  15.2 The bid price shall consist of all contract works indicated in ITB 1.1 and based on the Bill of Quantity of the Bidder.   * 1. The Bidder shall fill in rates and prices for all items of the Works described in the priced Bill of Quantities. Items against which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Bill of Quantities.   2. The price to be quoted in the Letter of Bid shall be the total price of the Bid, excluding any discounts offered.   3. The Bidder shall quote any unconditional discounts and the methodology for their application in the Letter of Bid.   4. All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 14 days prior to the deadline for submission of bids, shall be included in the rates and prices and the total Bid Price submitted by the Bidder. The Bidder shall enter every unit price, lot total price, detailed Bill of Quantities in all relevant forms.   5. Please refer to the ITB 1.3 for inquiry, whether the works proposed in combination of lots or not. In case the bid is packaged the bidders may submit their bids for one or more packages. |
| 16. Currency of Bid and Payment | 16.1 The currency of the bid and payment shall be the Mongolian Tugrik. |
| 17. Documents Comprising the Technical Proposal  **18.** **Documents Establishing the Qualifications of the Bidder** | 17.1 The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section 6, in sufficient detail to demonstrate the adequacy of the Bidders’ proposal to meet the work requirements and the completion time.  18.1 To establish its qualifications to perform the Contract in accordance with Section 3 (Evaluation and Qualification Criteria) the Bidder shall provide the information requested in the corresponding information sheets included in Section 4 (Bidding Forms). |
| 19. Period of Validity of Bids | 19.1 Bids shall remain valid for the period specified in the BDS after the bid submission deadline date prescribed by the Employer in accordance with ITB 23. A bid valid for a shorter period shall be rejected by the Employer as non-responsive.  19.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Employer may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid. A Bidder granting this extension shall extend its bid security validity term in accordance with ITB 20. |
| 20. Bid Security | 20.1 Unless otherwise specified in the BDS, the Bidder shall furnish as part of its bid, an original of bid security in the amount **s**pecified in BDS andin any of the following forms at the Bidder's option:   * + 1. an unconditional bank guarantee, or     2. a cashier’s or certified check,   all from a reputable bank from an eligible country as described in Section 5 (Eligible Countries). In the case of a bank guarantee, the Bid Security shall be submitted using the Bid Security Form included in Section 4 (Bidding Forms) or another form acceptable to the Employer. The form must include the complete name of the Bidder. The Bid Security shall be valid for twenty-eight days (28) beyond the end of the validity period of the bid, or beyond any period of extension if requested under ITB 19.2.  20.2 The Bid Security of a JV shall be furnished from the JV representative member***.***  20.3 If a Bid security is specified in the ITB 20.1, any Bid not accompanied by a substantially responsive bid security shall be rejected by the Employer as non-responsive.  20.4 The bid security of unsuccessful Bidder shall be returned promptly once the successful Bidder has signed the Contract pursuant to ITB 40 and furnished the required performance security pursuant to ITB 41.  20.5 The bid security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract pursuant to ITB 40 and furnished the required performance security pursuant to ITB 41.  20.6 The Bid Security may be forfeited in the following cases:   1. if a Bidder withdraws its Bid or gives written notice to withdraw its Bid during the period of Validity of Bid, except as provided in ITB 19.2 or 2. if a Bidder does not accept arithmetical correction in accordance with ITB 32.1; or 3. if the successful Bidder fails to:   (i) sign the Contract in accordance with ITB 40; or  (ii) furnish a performance security in accordance with ITB 41. |
| 21. Format and Signing of Bid | 21.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB 12 and clearly mark it “Original.” In addition, the Bidder shall submit copies of the bid, in the number specified in the BDS and clearly mark them “Copy.” In the event of any discrepancy between the original and the copies, the original shall prevail.  21.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the BDS and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Bid, except for unamended printed literature, shall be signed or initialed by the person signing the bid.  21.3 Any amendments such as interlineation, erasures or overwriting shall be valid only if they are signed or initialized by the person signing the bid. |

D. Submission of Bids

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| 22. Sealing and Marking of Bids | 22.1 Bidders shall submit their bids to the Employer by mail or hand. When so specified in the BDS, bidders shall have the option of submitting their bids electronically.  22.2 The Bidder shall enclose the original and all copies of the bid in separate sealed envelopes, duly marking the envelopes as “Original”, “ALTERNATIVE” and “Copy”. These envelopes containing the original and the copies shall then be enclosed in one single outer envelope. The sealing and marking shall be made pursuant to ITB 22.3 and 22.4.  22.3 The inner and outer envelopes shall:   1. bear the name and address of the Bidder; 2. be addressed to the Employer as provided in BDS 23.1; 3. bear the specific name and identification number of the bidding process indicated in BDS 1.1; and 4. bear a warning “not to open” before the specified time and date for bid opening as defined in the ITB 26.1.   22.4 If all envelopes are not sealed and marked as required in the ITB 22.3, the Employer will assume no responsibility for the misplacement or premature opening of the bid.  22.5 Bidders submitting bids electronically shall follow the electronic bid submission procedures specified in the BDS. |
| 23. Deadline for Submission of Bids | 23.1 Bids shall be delivered to the Employer at the address and no later than the time and date specified in the BDS.  23.2 The Employer may, at its discretion, extend the deadline for the submission of bids by issuing an amendment in accordance with ITB 9, in which case all rights and obligations of the Employer and bidders previously subject to the original deadline shall thereafter be subject to the deadline as extended. |
| 24. Late Bids | 24.1 Any Bid received by the Employer after the deadline for submission of Bids prescribed in ITB 23 shall be declared late, rejected and returned unopened to the Bidder. |
| 25. Modification and Withdrawal of Bids | 25.1 A Bidder may modify, substitute or withdraw its bid after it has been submitted by sending a written notice before the deadline for submission of Bids.  25.2 All notices of modification, substitution or withdrawal must be prepared and submitted in accordance with ITB 22 and 23, and in addition, the respective envelopes shall be clearly marked “MODIFICATION”, “SUBSTITUTION”, “WITHDRAWAL,” as appropriate. The notice of withdrawal of a bid may made by cable and an original authorized written notice shall be submitted no later than the deadline for submission of Bids.   * 1. No Bid may be modified after the deadline for submission of Bids.   2. Bids requested to be withdrawn in accordance with ITB 25.1 shall be returned unopened to the Bidders.   3. No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of Bid validity. |

E. Bid Opening and Evaluation

|  |  |
| --- | --- |
| 26. Bid Opening | 26.1 The Employer shall open the bids in public, in the presence of bidders’ designated representatives and anyone who choose to attend, and at the address, date and time specified in the BDS. If the representatives attended in the Bid opening, they must sign in the Record of Bid Opening and in the Attendance Sheet at Opening of Bid.  26.2 First, envelopes marked “WITHDRAWAL” shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked “SUBSTITUTION” shall be opened and read out and exchanged with the corresponding bid being substituted, and the substituted bid shall not be opened, but returned to the Bidder. No bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening. Envelopes marked “MODIFICATION” shall be opened and read out with the corresponding bid. No bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at bid opening. Only bids that are opened and read out at bid opening shall be considered further.  26.3 All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the Bid Price(s), including any discounts and alternative offers; the presence or absence of a bid security, if required; and any other details as the Employer may consider appropriate. Only discounts and alternative offers read out at bid opening shall be considered for evaluation.  26.4 The Employer shall prepare a record of the Bid opening, that shall include the following:  (a) the name of the Bidder and whether there is a withdrawal, substitution or modification;  (b) the Bid price, per lot if applicable, including any discounts and alternative offers; and  (c) the presence or absence of a bid security, if one was required.  26.5 No bid shall be rejected at the bid opening except for late bids. |
| 27. Confidentiality | 27.1 Information relating to the examination, clarification, evaluation, and comparison of bids and recommendation of contract award shall not be disclosed to bidders or any other persons not officially concerned with such process until information on Contract award is communicated to all Bidders.  27.2 Any effort by a Bidder to influence the Employer in the examination, evaluation, comparison, and post-qualification of the Bids or Contract award decisions may result in the rejection of its Bid.  27.3 From the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the bidding process, it may do so in writing. |
| 28. Clarification of Bids | 28.1 To assist in the examination, evaluation, and comparison of bids, the Employer may, at its discretion, ask any Bidder for a clarification of its Bid. The request for clarification and the response shall be in writing. No change in the price or substance of the Bid shall be sought, offered, or permitted except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids, in accordance with ITB 32. |
| **29. Deviations, Reservations, and Omissions**  30. Examination of Bids and Determination of Responsiveness | 29.1 During the evaluation of bids, the following definitions apply:  (a) “Deviation” is a departure from the requirements specified in the Bidding Document;  (b) “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and  (c) “Omission” is the failure to submit part or all of the information or documentation required in the Bidding Document.  30.1 The Employer’s determination of a bid’s responsiveness is to be based on the contents of the bid itself, as defined in ITB 12.  30.2 A substantially responsive bid is one that meets all requirements defined in ITB 30.1.  30.3 A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,  (a) affects in any substantial way the scope, quality, or performance of the Works specified in the Contract;  (b) limits in any substantial way, inconsistent with the Bidding Document, the Employer’s rights or the Bidder’s obligations under the proposed Contract;  (с) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids by means of accepting or adjusting price quotation.  30.4 If a Bid is not substantially responsive to the requirements of the Bidding Documents, it shall be rejected by the Employer, and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.  30.5 The Employer shall examine the specifications of the bid in order to confirm that the bid is responsive to the requirements of the Section 6 (Specifications and Other Requirements) without material deviation, reservation or omission. |
| **31. Nonconformities, Errors, and Omissions**  32. Correction of Arithmetical Errors | 31.1 Provided that a bid is substantially responsive, the Employer may waive any nonconformity in the bid that does not constitute a material deviation, reservation or omission.  31.2 Provided that a bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period, to rectify nonmaterial nonconformities in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the bid. Failure of the Bidder to comply with the request may result in the rejection of its bid.  31.3 Provided that a bid is substantially responsive, the Employer shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price may be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component. The adjustment shall be made using the methods indicated in Section 3 (Evaluation and Qualification Criteria).  32.1 Provided that the bid is substantially responsive, the Employer shall correct arithmetical errors on the following basis:   1. only for unit price contracts, if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected; 2. if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail, and the total shall be corrected; 3. if there is a discrepancy between the bid price in the Summary of Bill of Quantities and the bid amount in the Letter of Bid, the bid price in the Summary of Bill of Quantities will prevail and the bid amount in the Letter of Bid will be corrected; and 4. if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a), (b) and (c) above.   32.2 If there is a correction to be made in the price quotation of the “lowest” evaluated bid, the Employer shall inform to the bidder and receive its acceptance in writing.  32.3 If the Bidder that submitted the lowest evaluated bid does not accept the correction of errors, its bid shall be disqualified, and its bid security may be forfeited. |
| 33. Conversion to Single Currency | 33.1 Conversion to single currency shall not apply in accordance with ITB 16.1. |
| 34. Margin of preference | 34.1 A margin of preference shall not apply. |
| 35. Bid Evaluation and comparison of Bids  36. Qualification of the Bidder  37. Employer’s Right to Accept Any Bid, and to Reject Any or All Bids | 35.1 An Employer shall evaluate and compare only substantially responsive bids which fulfilling the requirements indicated in the ITB 30.  35.2 When evaluating a Bid, the Employer shall consider the following to determine the comparable prices:   1. price adjustment for correction of arithmetic errors in accordance with ITB 32.1; 2. The bid price, excluding provisional sums and the provision, if any, for contingencies in the Summary Bill of Quantities, but including Day-work items, where priced competitively; 3. Price adjustment due to the discounts offered in accordance with ITB 15.5; 4. price adjustment due to quantifiable nonmaterial nonconformities; 5. price adjustment due to factors which should be considered in the evaluation through methodology in accordance with item 1.6 of the Section 3 (Evaluation and Qualification Criteria);   35.3 An Employer reserves the right to accept or reject given modification, deviations and alternative bids. An Employer shall not consider in its evaluation additional benefits to the Employer, modifications, deviations, alternative bids not required in the bidding document.  35.4 If the works of the Bidding documents separated into two or more lots in accordance with ITB 1.3, an Employer shall evaluate as follows.  (a) Evaluate every lot in pursuant to ITB 35.1-35.3 and determine the lowest evaluated bid;  (b) for the Bidder being awarded with two or more lots, its proposed price discount shall be considered;  (c) after this evaluation an Employer shall choose the most efficient alternative among one-lot award, severe lots award or all-lots award.  (d) if the award to a single Bidder of multiple lots the Bidder’s qualification checked again. If the qualification is not enough, an appropriate lot award can be given.  35.5 The Employer shall compare all substantially responsive bids in accordance with ITB 35.2, 35.3 and 35.4 to determine the lowest evaluated bid. The lowest evaluated bid shall be considered as the best bid If an alternative bid has better conditions than the best bid, then the alternative bid shall be considered as the best.  36.1 The Employer shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid meets the qualifying criteria specified in Section 3 (Evaluation and Qualification Criteria).  36.2 The determination shall be based upon an examination of the documentary evidence of the Bidder’s qualifications submitted by the Bidder, pursuant to ITB 18.1, and clarification of Bid, pursuant to ITB 28. No other criteria or methodologies shall be permitted.  36.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Employer shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder’s qualifications to perform satisfactorily.  37.1 The Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders. |

F. Award of Contract

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| 38. Award Criteria | 38.1 The Employer shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated bid and is substantially responsive to the bidding documents.  38.2 If the Bidder, who submitted the lowest evaluated bid, rejects the Employer’s correction of the arithmetic errors in accordance with the ITB 32 or does not answer to the Employer by writing, the Employer shall reject its Bid and pursuant to ITB 20.6 (b) forfeit the bid security. |
| 39. Notification of Award | 39.1 Prior to the expiration of the period of bid validity, the Employer shall notify the successful Bidder, in writing, that its bid has been accepted.  39.2 At the same time, the Employer shall also notify all other bidders of the results of the bidding. The Employer shall publish in the website [www.tender.gov.mn](http://www.tender.gov.mn) the results identifying the bidding name and lot numbers, and the following information:  a) name of each Bidder who submitted a bid;  b) bid prices as read out at bid opening;  c) name and evaluated prices of each bid that was evaluated;  d) name of bidders whose bids were rejected and the reasons for their rejection; and  f) name of the winning Bidder, and the price it offered, as well as the duration and summary scope of the contract awarded.  39.3 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.  39.4 After publication of the contract award, unsuccessful bidders may request the Employer in writing for a debriefing seeking explanation on the grounds on which their bids were not selected. The Employer shall promptly respond in writing to any unsuccessful Bidder who requests such debriefing, and inform of the date, time and venue for the debriefing. If the Employer receives protests or complaints from bidders, the complaint shall be thoroughly examined and responded as quickly as possible.  39.5 After furnishing the performance security pursuant to the ITB 41 and signing of the Contract by the successful bidder, the Employer shall notify all other bidders about returning of bid security in accordance with the term indicated in ITB 20.4. |
| 40. Signing of Contract | 40.1 Together with the notification of contract award, the Employer shall send the successful Bidder the Contract Agreement.  40.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Employer. |
| 41. Performance Security | 41.1 Within twenty-eight (28) days of receipt of the notification of contract award, the successful Bidder shall furnish the Performance Security in accordance with the GCC, using the Performance Security Form included in Section 9, Contract Forms.  41.2 Failure of the successful Bidder to comply with the requirements of ITB 41.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security. In that event the Employer may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive. |

**Section 2 - Bid Data Sheet**

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| *NOTE: The below stipulated information is to make additional modifications and changes in Instruction to Bidders (ITB)’s Clauses. If there are discrepancies appear between ITB and BDS, information given in BDS shall prevail.* | |  |
| **A. General** | | |
| **ITB 1.1** | The Employer is: *[insert complete name]* | |
| **ITB 1.1** | The name of the bidding process is: *[insert complete name]*  The identification number of the bidding process is: *[insert identification number]* | |
| **ITB 1.2** | The Intended Completion Date is: *[insert date]* | |
| ITB 1.3 | The number and identification of lots comprising this bidding process is: *[insert number of lots and identification number and name of each lot, if applicable]* | |
| **ITB 2.1** | The Borrower is: *[insert complete name]*  The number and name of the Project is: *[insert number and name of the Project]*  The other source of funds is: *[specify financial sources authorized by competent authorities]*  Note: Specify source of funds such as other donor organizations, the state budget, the local budget, own budget of an organization, or commercial loan. | |
| **ITB 4.9** | License for works is: *[insert “required” or “not required]*  The identification number and name of the license are: *[insert identification number and name]*  Such licenses will not be required from foreign bidders. Foreign bidders may associate with national bidders as (i) partners in the form of joint venture, or (ii) sub-contractors, who possess the above-mentioned and valid licenses. | |
| **ITB 6.1** | The following additional requirements shall be fulfilled by members of the joint venture: *[Insert additional requirements from the Employer]* | |
| **B. Bidding Documents** | | |
| **ITB 8.1** | For **clarification purposes** only, the Employer’s address is:  Attention: *[insert full name of person, if applicable]*  Street address: *[insert street address and number]*  Floor/Room number: *[insert floor and room number, if applicable]*  Aimag/City: *[insert name of aimag or city]*  Country: *[insert name of country]*  Electronic mail address: *[insert e-mail address and, if applicable]*  Request for clarification should be received by the Purchaser no later than …… days *[insert number of days]* prior to the deadline for submission of bids.  [Note: In general, this period is deemed to 7 working days prior to the deadline for submission of bids.] | |
| **ITB 8.4** | A pre-bid meeting *[insert “shall” or “shall not”]* take place.  *[If a pre-bid meeting takes place, insert date, time and place below]*  Date: *[insert day/month/year, for example, 15 September 2016]*  Time: *[insert time in 24h format, for example, 15:30 hours Ulaanbaatar time]*  Place:  A site visit conducted by the Employer *[insert “will” or “will not”]* be organized. | |
| **C. Preparation of Bids** | | |
| ITB 11.1 | An official language of the bid is: Mongolian. | |
| ITB 11.2 | Supporting documents and printed literature shall be translated into Mongolian  Language. | |
| **ITB 12.1 (h)** | The Bidder shall submit with its bid the following additional documents:  1.  2.  *[List required documents]* | |
| **ITB 14.1** | Alternative bids *[insert “shall” or “shall not”]* be permitted.  [*Insert the following if an alternative bid is permitted*: “Bidders may submit alternative bids differing but complying with basic specifications. But only if initial bid succeeds its alternative bid shall be considered. Alternative bid shall be enveloped separately and clearly marked as: “Alternative bid”.]  Alternative times for completion *[insert “shall” or “shall not”]* be permitted.  If alternative times for completion are permitted, the evaluation method will be as specified in Section 3 (Evaluation and Qualification Criteria).  Alternative technical solutions shall be permitted for the following parts of the Works: *[insert parts of the Works]*  If alternative technical solutions are permitted, the evaluation method will be as specified in Section 3 (Evaluation and Qualification Criteria). | |
| **ITB 19.1** | The bid validity period shall be …… *[insert the number of days deemed appropriate]* days.  *[The period should be sufficient to permit completion of evaluation and comparison of Bids, review of the recommended selection by the ADB (if so required), acquire all necessary approvals, and notify the successful Bidder of the award. Normally, the validity period should not exceed 90 days.]* | |
| **ITB 20.1** | The Bid Security *[insert “shall” or “shall not”]* be required.  If required, the amount of the bid security shall be MNT *[insert an amount]*. | |
| **ITB 21.1** | In addition to the original of the bid, the number of copies is: *[insert number of copies required]* | |
| **ITB 21.2** | The written confirmation of authorization to sign on behalf of the Bidder shall consist of: [*insert the following language*: “Power of attorney specifying the representative’s authority to sign the Bid on behalf of the Bidder. If the Bidder is an intended or an existing joint venture, the power of attorney should be signed by all partners and specify the authority of the named representative of the joint venture to sign on behalf of the intended or existing joint venture. If the joint venture has not yet been formed, also include evidence from all proposed joint venture partners of their intent to enter into a joint venture in the event of a contract award.”] | |
| **D. Submission of Bids** | | |
| **ITB 22.1** | Bidders *[insert “shall” or “shall not”]* have the option of submitting their bids electronically. | |
| **ITB 22.3 (b)** | For bid submission purposes, the Employer’s address is:  Attention: *[insert full name of person, if applicable]*  Street Address: *[insert street address and number]*  Floor/Room number: *[insert floor and room number, if applicable]*  Aimag/City: *[insert name of aimag or city]*  Country: *[insert name of country]* | |
| **ITB 22.3. (c)** | For the purpose to identify bids the outer and inner envelopes shall be clearly borne the name and identification number of this bidding as indicated in ITB 1.1. | |
| **ITB 22.5** | If bidders have the option of submitting their bids electronically, the electronic bidding submission procedures shall be: *[insert a description of the electronic bidding submission procedures]*. | |
| **ITB 23.1** | The deadline for bid submission is:  Date: *[insert day/month/year, for example, 15 September 2016]*  Time: *[insert time in 24h format, for example, 15:30 hours Ulaanbaatar time]* | |
| **E. Opening and Evaluation of Bids** | | |
| **ITB 26.1** | The bid opening shall take place at:  Street Address:  Floor/Room number:  Aimag or City:  Post Number:  Country:  Date: *[insert day/month/year, for example, 15 September 2016]*  Time: *[insert time in 24h format, for example, 15:30 hours Ulaanbaatar time]* | |

**Section 3 - Evaluation and Qualification Criteria**

**Table of Criteria**

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**1. Evaluation**

In addition to the criteria listed in ITB 35.2 (a) – (d), the following criteria shall be applied:

- Note -

*The Employer shall include only the applicable criteria from those listed below.*

**1.1 Adequacy of Technical Proposal**

Evaluation of the Bidder's Technical Proposal will include an assessment of the Bidder's technical capacity to mobilize key equipment and personnel for the contract consistent with its proposal regarding work methods, scheduling, and material sourcing in sufficient detail and fully in accordance with the requirements stipulated in Section 6 (Specifications and Other Requirements).

Non-compliance with equipment and personnel requirements described in Section 6 (Specifications and Other Requirements) shall not normally be a ground for bid rejection and such non- compliance will be subject to clarification during bid evaluation and rectification prior to contract award.

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| --- | --- | --- |
|  | - Note - |  |
| *The Employer shall refer to the appropriate forms in Section 4 to be filled out, if provided. The Employer shall assess whether proposed site organization, method statement, mobilization and construction schedule described in Section 4 (Bidding Forms) are presented in consistent manner and comply with requirements stipulated in Section 6 (Employer’s Requirements) without material deviation, reservation, or omission.* | | |

**1.2 Multiple Contracts**

Works are grouped in multiple contracts and pursuant to ITB 35.4, the Employer will evaluate and compare Bids on the basis of a contract, or a combination of contracts, or as a total of contracts in order to arrive at the least cost combination for the Employer by taking into account discounts offered by Bidders in case of award of multiple contracts.

If a Bidder submits several successful (lowest evaluated substantially responsive) bids, the evaluation will also include an assessment of the Bidder’s capacity to meet the following aggregated requirements as presented in the bid:

• Construction Experience (value of similar contracts previously undertaken by the Bidder),

• Financial Resources Requirements,

• Equipment to be allocated, and

• Personnel to be fielded.

- Note -

*The Employer shall refer to the applicable qualification requirement/(s) for each contract in part 2 of this Section.*

**1.3 Completion Time**

An alternative Completion Time, if permitted under ITB 14.1, will be evaluated as follows:

- Note -

*[Insert in bidding document: Time to complete the works from the commencement date specified in Section 6 (Specifications and Other Requirements) is … [insert number of days]. The adjustment rate in the event of completion beyond the period shall be 0.05 percent of the bid price for each day of delay from above period. Bids offering a completion period beyond above period by … [insert number of days] shall be rejected. No credit will be given for completion earlier than above period.]*

**1.4 Technical Alternatives**

Technical alternatives, if permitted under ITB 14.1, will be evaluated as follows:

- Note -

*The Employer shall describe how this factor will be evaluated.*

**1.5 Quantifiable Nonconformities, Errors and Omissions**

The evaluated cost of quantifiable nonconformities, errors and/or omissions is determined as follows:

Pursuant to ITB 31.3, the cost of all quantifiable nonmaterial nonconformities or omissions shall be evaluated. The Employer will make its own assessment of the cost of any nonmaterial nonconformities and omissions for the purpose of ensuring fair comparison of bids.

|  |  |  |
| --- | --- | --- |
|  | - Note - |  |
| *The cost of minor omissions or missing items should be added to the Bid Price to allow for bid comparison on an equal basis. The price adjustment should be based on a reasonable estimate of the cost by the executing agency, engineer, consultant or bid evaluation committee, taking into consideration the corresponding quoted prices from other conforming bids. The price adjustment should be based on the fair price of the omitted item. The most frequently used method is to use the price equal to the highest price quoted for the same item by the other Bidders.* | | |

**2. Qualification**

Unless specifically indicated otherwise, it is the legal entity or entities comprising the Bidder, and not the Bidder’s parent companies, subsidiaries or affiliates, that must satisfy the qualification criteria described below.

**2.1 Eligibility**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  | | | |  |
| **Criteria** | **Compliance Requirements** | | | | **Documents** |
| **Requirement** | **Single Entity** | **Joint Venture** | | | **Submission**  **Requirements** |
| **All Partners**  **Combined** | **Each**  **Partner** | **One**  **Partner** |

**2.1.1 Nationality**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Nationality in accordance with  ITB Sub-Clause 4.1. | must meet requirement | must meet requirement | must meet requirement | not applicable | Forms  ELI –1; ELI –2 with attachments |

**2.1.2 Conflict of Interest**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| No conflicts of interest in accordance with ITB Sub- Clause 4.2. | must meet requirement | must meet requirement | must meet requirement | not applicable | Letter of Bid |

**2.1.3 ADB Eligibility**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Not having been declared ineligible by ADB, as described in ITB Sub-Clause 4.3. | must meet requirement | must meet requirement | must meet requirement | not applicable | Letter of Bid |

**2.1.4 Government-Owned Entity**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Bidder required to meet conditions of ITB Sub-Clause  4.4. | must meet requirement | must meet requirement | must meet requirement | not applicable | Forms  ELI -1, ELI - 2 with attachments |

**2.1.5 United Nations Eligibility**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Not having been excluded by an act of compliance with a UN Security Council resolution or Employer’s country law, as described in ITB Sub-Clause  4.6. | must meet requirement | must meet requirement | must meet requirement | not applicable | Letter of Bid |

**2.2 Pending Litigation**

Pending Litigation criterion … [shall/shall not] ¹ apply.

**2.2.1 Pending Litigation and Arbitration**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  | | | |  |
| **Criteria** | **Compliance Requirements** | | | | **Documents** |
| **Requirement** | **Single Entity** | **Joint Venture** | | | **Submission**  **Requirements** |
| **All Partners**  **Combined** | **Each**  **Partner** | **One**  **Partner** |
| All pending litigation and arbitration, if any, shall be treated as resolved against the Bidder and so shall in total not represent more than . . .² percent of the Bidder’s net worth calculated as the difference between total assets and total liabilities. | must meet requirement by itself or  as partner to past or existing JV | not applicable | must meet requirement by itself or  as partner to past or existing JV | not applicable | Form LIT - 1 |

- Note –

1. *The Employer can choose to apply this criterion.*

*-- If the Employer chooses not to apply this criterion, it shall indicate “shall not apply” and delete the table and the corresponding Form LIT-1 in Section 4 (Bidding Forms).*

*-- If the Employer chooses to apply this criterion, it should indicate “shall apply”.*

1. *If the criterion will be applied, the Employer should indicate a percentage within the range of 50% to 100% of a Bidder’s net worth*

**2.3 Financial Requirements**

**2.3.1 Financial Performance**

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

- Note -

*The financial information provided by the Bidder should be reviewed in its entirety to allow a truly informed judgment, and the pass–fail decision on the financial position of the Bidder should be given on this basis. Any abnormal features which may lead to financial problems should alert the Employer to seek expert professional advice for further review and interpretation.*

**2.3.2 Average Annual Construction Turnover**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  | | | |  |
| **Criteria** | **Compliance Requirements** | | | | **Documents** |
| **Requirement** | **Single Entity** | **Joint Venture** | | | **Submission**  **Requirements** |
| **All Partners**  **Combined** | **Each**  **Partner** | **One**  **Partner** |
| Minimum average annual construction turnover of MNT . . .. ¹ calculated as total certified payments received for contracts in progress or completed, within the last 3 years. | must meet requirement | must meet requirement | must meet  . . . . . . . . . ***²*** of the  requirement | must meet  . . . . . . . .***³*** of the  requirement | Form FIN - 2 |

- Note -

*1 The amount stated should not be less than 1 x V/T, the estimated annual turnover in the subject contract based on a straight-line projection of the Employer's estimated cost (V), including contingencies, over the contract duration in years (T), where T for contract duration of up to one year shall be “1”.*

*2 Usually not less than 25%.*

*3 Usually not less than 40%.*

**2.3.3 Financial Resources Requirement**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  | | | |  |
| **Criteria** | **Compliance Requirements** | | | | **Documents** |
| **Requirement** | **Single Entity** | **Joint Venture** | | | **Submission**  **Requirements** |
| **All Partners**  **Combined** | **Each**  **Partner** | **One**  **Partner** |
| Using Forms FIN-3 and FIN-4 in Section 4 (Bidding Forms), the Bidder must demonstrate access to, or availability of, liquid assets*1*, lines of credit, or other financial resources (other than any contractual advance payments) to meet the Bidder’s financial resources requirement indicated in Form FIN-4. | must meet requirement | must meet requirement | must meet  . . . . . . . . . ***²*** of the  requirement | must meet  . . . . . . . . ***³*** of the  requirement | Form FIN – 3 and  Form FIN – 4 |

- Note -

***1*** *Liquid Assets mean cash and cash equivalents, short-term financial instruments, short term available-for- sale-securities, marketable securities, trade receivables, short-term financing receivables and other assets that can be converted into cash within one year.*

*2 Usually not less than 25%.*

*3 Usually not less than 40%.*

*If the bid evaluation process and the decision for the award of the Contract takes more than one year from the date of bid submission, Bidders shall be asked to re-submit their current contract commitments and latest information on financial resources supported by latest audited accounts / audited financial statements, or if not required by the law of the Bidder’s country, other financial statements acceptable to the Employer, and the Bidders’ financial capacity shall be re-assessed on this basis.*

* 1. **Construction Experience**

**2.4.1 Contracts of Similar Size and Nature**

Note -

*The Employer has the option of requiring either one or two contracts of similar size and nature and should choose the appropriate language below.*

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  | | | |  |
| **Criteria** | **Compliance Requirements** | | | | **Documents** |
| **Requirement** | **Single Entity** | **Joint Venture** | | | **Submission**  **Requirements** |
| **All Partners**  **Combined** | **Each**  **Partner** | **One**  **Partner** |
| Participation in at least one contract that has been successfully or substantially completed within the last 3 years and that is similar to the proposed works, where the value of the Bidder’s participation exceeds MNT . . . . . . . . . . *1*  The similarity of the Bidder’s participation shall be based on the physical size, nature of works, complexity, methods, technology or other characteristics as described in Section 6 (Specifications and Other Requirements). | must meet requirement | not applicable | not applicable*2* | must meet requirement | Form EXP -1 |

Or

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  | | | |  |
| **Criteria** | **Compliance Requirements** | | | | **Documents** |
| **Requirement** | **Single Entity** | **Joint Venture** | | | **Submission**  **Requirements** |
| **All Partners**  **Combined** | **Each**  **Partner** | **One**  **Partner** |
| Participation in at least two contracts that have been successfully or substantially completed within the last 3 years and that are similar to the proposed works, where the value of the Bidder’s participation exceeds MNT . . . . . . . . .. *1*  The similarity of the Bidder’s participation shall be based on the physical size, nature of works, complexity, methods, technology or other characteristics as described in Section 6 (Specifications and Other Requirements). | must meet requirement | must meet requirement as follows:  Either one partner must meet requirement  Or  any two partners must each demonstrate one (1) successfully or substantially completed contract of similar size and nature | not applicable*2* | not applicable | Form EXP -1 |

*1 Usually 80% of the estimated value of the subject contract. In case of repetitive and contiguous works (e.g. transmission lines, water pipeline), the Employer has the option of specifying a value that is between 50% to 80% of the subject contract value.*

*2 In case of complex works, the Employer may require each partner to demonstrate one successfully or substantially completed contract of similar nature where such partner's value of participation exceeds 25% of the subject contract value.*

**2.4.2 Construction Experience in Key Activities¹** (May be complied with by Specialist Subcontractors. Employer shall require evidence of subcontracting agreement from the Bidder. Specialist Subcontractor is a specialist enterprise engaged for highly specialized processes which cannot be provided by the main Contractor.)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Criteria** | **Compliance Requirements** | | | | **Documents** |
| **Requirement** | **Single Entity** | **Joint Venture** | | | **Submission Requirements** |
| **All Partners Combined** | **Each Partner** | **One Partner** |
| For the above or other contracts executed during the period stipulated in 2.4.1 above, a minimum construction experience in the following key activities: | must meet  requirements | must meet  requirements² | not applicable | not applicable | Form EXP-2 |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

¹ Key activities criterion should only test the bidder’s experience in performing highly specialized construction activities (e.g., tunneling, dredging, and bridge construction) rather than achievement of specified production rates.

² In the case of a joint venture bidder, at least one of the partners must have the experience in the key activity if the bidder itself (not its subcontractor) will carry out the relevant activity.

These requirements for experience in key activities may be waived in simple contracts.

**Section 4 - Bidding Forms**

This Section contains the forms that are to be completed by the Bidder and submitted as part of the Bid.

**Table of Forms**

**Letter of Bid**

**Activity Schedule (Schedules of Prices – Lump Sum Contract)**

**Bill of Quantities (Admeasurement Contract)**

**Bid Security**

**Technical Proposal**

Personnel

Equipment

Site Organization

Method Statement

Mobilization Schedule

Construction Schedule

**Bidder’s Qualification**

Bidder’s Information Sheet

JV Information Sheet

Pending Litigation and Arbitration

Financial Performance

Average Annual Construction Turnover

Availability of Financial Resources

Financial Resources Requirement

Contracts of Similar Size and Nature

**Letter of Bid**

Date: .................................................. NCB No.: ...........................................

Invitation for Bid No.: .......................

To: ...........................................

We, the undersigned, declare that:

1. We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB) Clause 9;

2. We offer to execute in conformity with the Bidding Documents the following Works:

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

3. The total price of our Bid, excluding any discounts offered in item 4 below is:

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

4. The discounts offered and the methodology for their application are:

5. Our bid shall be valid for a period of . . .. . .. days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

6. If our bid is accepted, we commit to obtain a performance security in accordance with the

Bidding Document;

7. Our firm, including any subcontractors or suppliers for any part of the Contract, have nationalities from eligible countries in accordance with ITB 4.1 …………………………;

8. We, including any subcontractors or suppliers for any part of the contract, do not have any conflict of interest in accordance with ITB 4.2;

9. We are not participating, as a Bidder in more than one bid in this bidding process in accordance with ITB 4.2(e), other than alternative offers submitted in accordance with ITB 14;

10. Our firm, its affiliates or subsidiaries, including any Subcontractors or Suppliers for any part of the contract, has not been declared ineligible by ADB, under the Employer’s country laws or official regulations or by an act of compliance with a decision of the United Nations Security Council;

11. We are not a government owned entity /We are a government owned entity but meet the requirements of ITB 4.4;

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

|  |  |  |  |
| --- | --- | --- | --- |
| Name of Recipient | Address | Reason | Amount |
| ......................................... | ........................................ | ............................... | ...................... |
| ......................................... | ........................................ | ............................... | ..................... . |

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

14. We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive; and

15. We agree to permit ADB or its representative to inspect our accounts and records and other documents relating to the bid submission and to have them audited by auditors appointed by ADB.

16. If our Bid is accepted, we commit to mobilizing key equipment and personnel in accordance with the requirements set forth in Section 6 (Specifications and Other Requirements) and our technical proposal, or as otherwise agreed with the Employer.

Name ….....................................................................................................................................................

In the capacity of …………………..........................................................................................................

Signed ..........................................................................................................................................................

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

Date ............................................................................................................................................................

**Activity Schedule**

**[Schedules of Prices – Lump Sum Contract]**

The Employer shall indicate the list of major activities comprising the works and the number of measurement units consistent with the description of works, drawings and specifications in Section 6 (Employer’s Requirements). Each work item shall be described in sufficient details to provide a clear guidance to Bidders with respect to the type of works, their scope and complexity and compliance with the required standards.

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

The whole cost of complying with the provisions of the Contract shall be included in the items provided in the Activity Schedule, and where no items are provided, the cost shall be deemed to be distributed among the amounts for the related items of work.

**Bill of Quantities**

**[Admeasurement Contract]**

## Form of Bid Security

## (Bank Guarantee)

## *[Name of the Employer]*

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

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

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

1. has withdrawn its Bid during the period of bid validity specified by the Bidder in the Form of Bid; or
2. having been notified of the acceptance of its Bid by the Employer during the period of bid validity,

a) fails or refuses to execute the Contract Agreement or

b) fails or refuses to furnish the performance security, in accordance with the ITB.

c) fails or refuses to accept the correction of arithmetical errors, in accordance with the ITB.

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

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

Sincerely yours,

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*[signature(s) of authorized officials of the Bank]*

[name and title of position of the official]

**Bank Seal.:**

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

**Address:**

**Technical Proposal**

**Personnel**

**Equipment**

**Site Organization**

**Method Statement Mobilization Schedule Construction Schedule**

**Technical Proposal - Personnel**

**Form PER – 1: Proposed Personnel**

Bidder shall provide the details of the proposed personnel and their experience records in the relevant

Information Forms below for each candidate:

|  |  |
| --- | --- |
| **1.** | **Title of position\*** |
| **Name** |
| **2.** | **Title of position\*** |
| **Name** |
| **3.** | **Title of position\*** |
| **Name** |
| **4.** | **Title of position\*** |
| **Name** |
| **5.** | **Title of position\*** |
| **Name** |
| **etc.** | **Title of position\*** |
| **Name** |

\*As listed in Section 6 (Specifications and Other Requirements).

**Form PER – 2: Resume of Proposed Personnel**

The Bidder shall provide all the information requested below.

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

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

|  |  |  |
| --- | --- | --- |
| **From** | **To** | **Company, Project, Position and Relevant**  **Technical and Management Experience** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

**Technical Proposal - Equipment**

**Form EQU: Equipment**

The Bidder shall provide adequate information and details to demonstrate clearly that it has the capability to meet the equipment requirements indicated in Section 6 (Specifications and Other Requirements), using the Forms below. A separate Form shall be prepared for each item of equipment requested.

|  |  |  |
| --- | --- | --- |
| **Type of Equipment** | | |
| **Equipment**  **Information** | **Name of manufacturer** | **Model** |
| **Capacity** | **Year of manufacture** |
| **Current**  **Status** | **Current location** | |
| **Details of current commitments** | |
| **Source** | **Indicate source of the equipment**   **Owned**  **Rented**  **Leased**  **Specially manufactured** | |
|  | |

Omit the following information for equipment owned by the Bidder.

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

**Technical Proposal – Site Organization**

**Technical Proposal – Method Statement Technical Proposal – Mobilization Schedule Technical Proposal – Construction Schedule**

**Bidder's Qualification**

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

**Form ELI – 1: Bidder’s Information Sheet**

|  |  |
| --- | --- |
| **Bidder’s Information** | |
| **Bidder’s legal name** |  |
| **In case of JV, legal name of each partner** |  |
| **Bidder’s country of constitution** |  |
| **Bidder’s year of constitution** |  |
| **Bidder’s legal address in country of constitution** |  |
| **Bidder’s authorized representative**  (name, address, telephone numbers, fax numbers, e-mail address) |  |
| **Attached are copies of the following original documents.**   1. In case of single entity, articles of incorporation or constitution of the legal entity named above, in accordance with  ITB 4.1.   2. Authorization to represent the firm or JV named in above, in accordance with ITB 20.2.   3. In case of JV, letter of intent to form JV or JV agreement.   4. In case of a government-owned entity, any additional documents not covered under 1 above required to comply with  ITB 4.4. | |

**Form ELI - 2: JV Information Sheet**

Each member of a JV and Subcontractor must fill in this form

|  |  |
| --- | --- |
| **JV / Subcontractor Information** | |
| **Bidder’s legal name** |  |
| **JV Partner’s or Subcontractor’s legal name** |  |
| **JV Partner’s or Subcontractor’s country of constitution** |  |
| **JV Partner’s or Subcontractor’s year of constitution** |  |
| **JV Partner’s or Subcontractor’s legal address in country of constitution** |  |
| **JV Partner’s or Subcontractor’s authorized representative information**  (name, address, telephone numbers, fax numbers, e-mail address) |  |
| **Attached are copies of the following original documents.**   1. Articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1.   2. Authorization to represent the firm named above, in accordance with ITB 20.2.   3. In the case of government-owned entity, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB 4.4. | |

Subcontractor is a specialist enterprise engaged for highly specialized processes which cannot be provided by the main Contractor.

**Form LIT - 1: Pending Litigation and Arbitration**

Each Bidder or member of a JV must fill in this form if so required under Criterion 2.2 of Section

III (Evaluation and Qualification Criteria).

|  |  |  |  |
| --- | --- | --- | --- |
| **Pending Litigation and Arbitration** | | | |
| **Choose one of the following:**   No pending litigation and arbitration.   Below is a description of all pending litigation and arbitration involving the Bidder (or each JV member if Bidder is a Joint  Venture). | | | |
| **Year** | **Matter in Dispute** | **Value of Pending Claim in MNT** | **Value of Pending Claim as a**  **Percentage of**  **Net Worth** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**Form FIN - 1: Financial Performance**

Each Bidder or member of a JV must fill in this form

|  |  |  |
| --- | --- | --- |
| **Financial Data for Previous 3 Үears, in MNT** | | |
| **Year 1:** | **Year 2:** | **Year 3:** |

**Information from Balance Sheet**

|  |  |  |  |
| --- | --- | --- | --- |
| **Total Assets** |  |  |  |
| **Total Liabilities** |  |  |  |
| **Net Worth** |  |  |  |
| **Current Assets** |  |  |  |
| **Current Liabilities** |  |  |  |

**Information from Income Statement**

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

**Form FIN - 2: Average Annual Construction Turnover**

Each Bidder or member of a JV must fill in this form.

The information supplied should be the Annual Turnover of the Bidder or each member of a JV in terms of the amounts billed to clients for each year for work in progress or completed.

|  |  |  |
| --- | --- | --- |
| **Annual Turnover Data for the Last 3 Years (Construction only)** | | |
| **Year** | **MNT** | |
|  |  | |
|  |  | |
|  |  | |
|  | |  |

**Average Annual Construction Turnover\***

\* *To determine the average annual construction turnover, the Employer shall divide the sum of each year’s annual turnover by three (the number of years).*

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

Specify proposed sources of financing, such as liquid assets***1***, lines of credit, and other financial resources (other than any contractual advance payments) available to meet the financial resources requirement indicated in Form FIN-4.

|  |  |  |
| --- | --- | --- |
| **Financial Resources** | | |
| **No.** | **Source of financing** | **Amount (MNT)** |
| 1 |  |  |
| 2 |  |  |
| 3 |  |  |
|  |  |  |

1 Liquid Assets mean cash and cash equivalents, short-term financial instruments, short term available-for-sale- securities, marketable securities, trade receivables, short-term financing receivables and other assets that can be converted into cash within one year.

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

Bidder (or each JV partner) should provide information indicated below in order to calculate the aggregated financial resources requirement, which equals the sum of: (i) the Bidder’s (or each JV partner’s) current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued and (ii) financial resources requirement for subject contract as determined by the Employer. Bidder must also disclose any other financial obligations that could materially affect the implementation of subject contract if such contract were to be awarded to the Bidder.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Financial Resources Requirement** | | | | | | |
| **No.** | **Name of**  **Contract** | **Employer’s Contact (Address, Tel, Fax)** | **Contract**  **Completion Date** | **Remaining**  **Contract Period**  ***1***  **in months (A)** | **Outstanding Contract Value**  **(B)*2*** | **Monthly Financial Resources Requirement (B / A)** |
| 1 |  |  |  |  |  |  |
| 2 |  |  |  |  |  |  |
| 3 |  |  |  |  |  |  |
| 4 |  |  |  |  |  |  |
| A. Cumulative Financial Resources Requirement for Current Contract Commitments³ | | | | | | MNT ………. |
| B. Financial Resources Requirement for Subject Contract (Employer to specify) | | | | | | MNT ………. |
| **Financial Resources Requirement (Sum of A and B)** | | | | | | **MNT ……….** |

1 Remaining contract period to be calculated from 28 days prior to bid submission deadline.

2 Remaining Outstanding Contract Values to be calculated from 28 days prior to the bid submission deadline (MNT

equivalent based on the MongolBank’s foreign exchange rate as of the same date).

3 Bidder should calculate this amount based on the sum of Monthly Financial Resources Requirements for Each

Current Works Contract based on the following calculation:

Estimated Contract Value (Inclusive of Taxes and Duties)

Completion Period in Months

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

Fill up one (1) form per contract.

|  |  |  |  |
| --- | --- | --- | --- |
| **Contract of Similar Size and Nature** | | | |
| **Contract No** . . . . . . **of** . . . . . | **Contract Identification** | | |
| **Award Date** | | | **Completion Date** |
| **Total Contract Amount** | **MNT** | | |
| **If partner in a JV or subcontractor, specify participation of total contract amount** | **Percent of Total** | | **Amount** |
| **Employer’s Name**  **Address**  **Telephone/Fax Number**  **E-mail** |  | | |
| **Description of the similarity in accordance with Criteria 2.4.1 of Section 3** | | | |
| Note:  *The Employer should insert here*  *contract size, complexity, methods, technology, or other characteristics as described in Criterion 2.4.1 of Section 3 against which the bidder demonstrates similarity in the box on the right-hand side.* | |  | |

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

Fill up one (1) form per contract.

|  |  |  |
| --- | --- | --- |
| **Contract with Similar Key Activities** | | |
| **Contract No** . . . . . . **of** . . . . . | **Contract Identification** | |
| **Award Date** | | **Completion Date** |
| **Total Contract Amount** | **MNT** | |
| **If partner in a Joint Venture or subcontractor, specify participation of total contract amount** | **Percent of Total** | **Amount** |
| **Employer’s Name**  **Address**  **Telephone Number**  **Fax Number**  **E-mail** |  | |
| **Description of the key activities in accordance with Criterion 2.4.2 of Section 3** | | |
| Note:  *The Employer should insert here*  *contract size, complexity, methods, technology, or other characteristics as described in Criterion 2.4.2 of Section 3 against which the bidder demonstrates similarity in the box on the right-hand side.* |  | |

**Section 5 - Eligible Countries**

This Section shall contain the list of eligible countries. Please choose one of the following cases and follow its instruction as appropriate.

- Note -

**For Contracts to be financed by loans/grants from:**

1. **ADB’s ordinary capital resources, with or without cofinancing resources:** Unless a waiver of ADB member country procurement eligibility restrictions was approved by ADB’s Board of Directors, please insert the most recent list of ADB member countries obtainable from the ADB Business Opportunities or the ADB’s webpage at [www.adb.org/about/members.](http://www.adb.org/about/members)
2. **Asian Development Fund (ADF) resources, without cofinancing resources:** Unless a waiver of ADB member country procurement eligibility restrictions was approved by ADB’s Board of Directors, please insert the most recent list of ADB developed member countries that have contributed to the ADB resources, and all developing member countries.
3. **ADF resources and cofinancing resources from anyone of the Asian Clean Energy Fund, Japan Fund for Poverty Reduction, Japan Fund for Public Policy Training, Japan Fund for Information and Communication Technology, the Investment Climate Facilitation Fund and the e-Asia and Knowledge Partnership Fund:** Unless a waiver of ADB member country procurement eligibility restrictions was approved by ADB’s Board of Directors, please insert the most recent list of ADB developed member countries that have contributed to the ADF resources, and all developing member countries.
4. **ADF resources and any other cofinancing (or joint financing) resources than those listed in the preceding paragraph: please state** “No nationality restrictions apply, other than any restrictions arising from ITB 4.6.”

**Section 6 - Specifications and Other Requirements**

## Specifications

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| Precise and clear Specifications are 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 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 materials, Plant, other supplies, and workmanship to be provided. Only if this is done will the objectives of economy, efficiency, and equality in procurement be realized, responsiveness of bids be ensured, and the subsequent task of bid evaluation facilitated. The Specifications should require that all materials, Plant, and other supplies to be incorporated in the Works are new, unused, of the most recent or current models, and incorporate all recent improvements in design and materials unless provided otherwise in the Contract.  Samples of Specifications from previous similar projects in the same country are useful in this respect. The metric units should be used. Most Specifications are normally written specially by the Employer or Engineer to suit the contracts for Works in hand. There are no standard Specifications for universal application in all sectors in all countries, but there are established principles and practices that are reflected in these documents.  There are considerable advantages in standardizing General Specifications for repetitive Works in recognized public sectors, such as highways, ports, railways, urban housing, irrigation, and water supply, in the same country or region where similar conditions prevail. The General Specifications should cover all classes of workmanship, materials, and equipment commonly involved in construction, although not necessarily to be used in a particular Works contract. Deletions or addenda should then adapt the General Specifications to the particular Works.  Care must be taken in drafting Specifications to ensure that they are not restrictive. In the specification of standards for materials, Plant, other supplies, and workmanship, recognized international standards should be used as much as possible. Where other particular standards are used, whether Mongolian standards or other standards, the Specifications should state that materials, Plant, other supplies, and workmanship meeting other authoritative standards, and which ensure substantially equal or higher performance, as the standards mentioned, will also be acceptable.  The following Clause may be inserted in the Conditions of Particular Application or the Specifications:  **Sample Clause: Equivalency of Standards and Codes**  Wherever reference is made in the Contract to specific standards and codes to be met by the materials, Plant, and other supplies to be furnished, and work performed or tested, the provisions of the latest current edition or revision of the relevant standards and codes in effect shall apply, unless otherwise expressly stated in the Contract. Where such standards and codes are national, or relate to a particular country or region, other authoritative standards that ensure substantial equivalence to the standards and codes specified will be accepted subject to the Engineer’s prior review and written approval. Differences between the standards specified and the proposed alternative standards must be fully described in writing by the Contractor and submitted to the Engineer at least 28 days prior to the date when the Contractor desires the Engineer’s approval. In the event the Engineer determines that such proposed deviations do not ensure substantially equal performance, the Contractor shall comply with the standards specified in the documents.  *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.* |

**Drawings**

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| List here Drawings. Drawings, particularly construction site drawings can be inserted in this section or attached separately. |

**Supplementary Information**

**Regarding Works to Be Procured**

**Personnel Requirements**

Using Form PER-1 and PER-2 in Section 4 (Bidding Forms), the Bidder must demonstrate it has personnel that meet the following requirements:

|  |  |  |  |
| --- | --- | --- | --- |
| **No.** | **Position** | **Total Work Experience [years]** | **Experience in Similar**  **Work**  **[years]** |
| 1 |  |  |  |
| 2 |  |  |  |
| 3 |  |  |  |
| 4 |  |  |  |
| 5 |  |  |  |
|  |  |  |  |

**Equipment Requirements**

Using Form EQU in Section 4 (Bidding Forms), the Bidder must demonstrate it has the key equipment listed below:

|  |  |  |
| --- | --- | --- |
| **No.** | **Equipment Type and Characteristics** | **Minimum Number Required** |
| 1 |  |  |
| 2 |  |  |
| 3 |  |  |
| 4 |  |  |
| 5 |  |  |
| 6 |  |  |
| 7 |  |  |

# Section 7 - General Conditions of Contract

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| The General Conditions and Particular Conditions of Contract and other documents listed therein, should be a complete document expressing fairly the rights and obligations of both parties.  These General Conditions can be used directly for smaller admeasurement contracts and, with the modifications noted in the footnotes, it can be adapted for lump sum contracts.  If any changes in General Conditions of Contract exist they should be indicated in Particular Conditions of Contract. |

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**General Conditions of Contract**

**A. General provisions**

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| --- | --- |
| 1. Definitions | 1.1 Defined terms are written in Boldface type.  The **Adjudicator** is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in GCC 30.1 [Appointment of Adjudicator].  **Bill of Quantities** means documents entitled schedules completed by the Contractor and submitted with the Bid, including the data, lists and schedules of rates and prices.  **Compensation Events** are those defined in GCC 53 [Compensation Events] hereunder.  The **Completion Date** means the date for completion of the Works as certified by the Project Manager, in accordance with GCC 71.1 [Completion].  The **Contract** means the Contract between the Employer and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in GCC 2.3 below.  The **Contractor** means the party whose Bid has been accepted by the Employer.  The **Bid** means the completed bidding document submitted by the Contractor to the Employer.  The **Contract Price** means the price stated in the Notification of Award and thereafter as adjusted in accordance with the Contract.  **Days** mean calendar days; months mean calendar months.  **Dayworks** mean varied work inputs subject to payment on a time basis for the Contractor’s Personnel and Equipment, in addition to payments for associated Materials and Plant.  A **Defect** is any part of the Works not completed in accordance with the Contract.  The **Defects Liability Certificate** is the certificate issued by Project Manager upon correction of defects by the Contractor.  The **Defects Liability Period** means the period named in the GCC and calculated from the Completion Date. During this period, the Contractor remains responsible for remedying defects.  **Drawings** mean calculations and other information provided or approved by the Project Manager for the execution of the Contract.  The **Employer** means the party who employs the Contractor to carry out the Works.  **Equipment** is the Contractor’s machinery and vehicles brought to the Site temporarily to construct the Works.  The **Initial Contract Price** is the Contract Price listed in the Employer’s Notification of Award.  The **Intended Completion Date** is the date on which it is intended for completing the Works by the Contractor. This date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.  **Materials** mean all supplies, including consumables used by the Contractor for incorporation in the Works.  **Plant** means any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.  The **Project Manager** means the person named in the **PCC** (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.  The **Site** means the area defined as such in the **PCC**.  **Site Investigation Reports** mean factual and interpretative reports about the surface, subsurface and climate conditions at the Site which were included in the bidding documents.  **Specification** means the Specification of the Works, as included in the Contract and any additions and modifications made or approved by the Project Manager.  The **Start Date** is the date stated in the **PCC** when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.  A **Subcontractor** means an entity who has a Contract with the Contractor to carry out a part of the work in the Contract.  **Temporary Works** are works designed, constructed, installed and removed by the Contractor that are needed for construction or installation of the Works.  A **Variation** means an instruction of the Project Manager which varies the Works.  The **Works** are what the Contract requires the Contractor to construct, install and turn over to the Employer, as defined in the **PCC**.  The **ADB** is the Asian Development Bank. |
| 2. Interpretation | 2.1 In interpreting these GCC, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager shall provide instructions clarifying queries about these GCC.  2.2 If sectional completion is specified in the **PCC**, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the whole Works.   |  | | --- | | 2.3 The documents forming the Contract shall be interpreted in the following order of priority:   1. Contract Agreement, 2. Notification of Award, 3. Letter of Bid, 4. Particular Conditions of Contract, 5. List of Eligible Countries that was specified in Section 5 of the bidding document, 6. General Conditions of Contract, 7. Specifications, 8. Drawings, 9. Completed Activity Schedule or Bill of Quantities, and 10. any other document listed in the **PCC** as forming part of the Contract. | |
| 3. Language and Law | 3.1 The language of the Contract and the governing law of the Contract shall be stated in the **PCC**. |
| **4. Contract**  **Agreement**  **5. Assignment**   1. **Care and Supply of Documents**   **7**. **Confidential**  **Details**  **8**. **Compliance with**  **Laws**  **9**. **Joint and**  **Several Liability**  10. Project Manager’s Decisions | 4.1 The Parties shall enter into a Contract Agreement within 28 days after the Contractor receives the Notification of Award, unless the **PCC** establish otherwise. The Contract Agreement shall be based upon the attached Contract forms in Section 9. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Employer.  5.1 Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party:  (a) may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party, and  (b) may, as security in favor of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.  6.1 The Specification and Drawings shall be in the custody and care of the Employer. Unless otherwise stated in the Contract, two copies of the Contract and of each subsequent Drawing shall be supplied to the Contractor, who may make or request further copies at the cost of the Contractor.  6.2 Each of the Contractor’s Documents shall be in the custody and care of the Contractor, unless and until taken over by the Employer. Unless otherwise stated in the Contract, the Contractor shall supply to the Engineer six copies of each of the Contractor’s Documents.  6.3 The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Specification, the Contractor’s Documents (if any), the Drawings and Variations and other communications given under the Contract. The Employer’s Personnel shall have the right of access to all these documents at all reasonable times.  6.4 If a Party becomes aware of an error or defect in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.  7.1 The Contractor’s and the Employer’s Personnel shall disclose all such confidential and other information as may be reasonably required in order to verify the Contractor’s compliance with the Contract and allow its proper implementation.  7.2 Each of them shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any particulars of the Works prepared by the other Party without the previous agreement of the other Party. However, the Contractor shall be permitted to disclose any publicly available information, or information otherwise required to establish his qualifications to compete for other projects.  7.3 Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this Clause.  8.1 The Contractor shall, in performing the Contract, comply with applicable Laws.  8.2 Unless otherwise stated in the **PCC**:  (a) the Employer shall acquire and pay for all permits, approvals and/or licenses from all government authorities in the Employer’s Country which (i) such authorities require the Employer to obtain in the Employer’s name, and (ii) are necessary for the execution of the Contract, including those required for the performance by both the Contractor and the Employer of their respective obligations under the Contract;  (b) the Contractor shall acquire and pay for all permits, approvals and/or licenses from all government authorities in the Employer’s Country which such authorities require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Contractor’s and Subcontractor’s personnel and entry permits for all imported Contractor’s Equipment. The Contractor shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Employer under Sub-Clause 8.2(a) hereof and that are necessary for the performance of the Contract. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Employer or its personnel, including the Subcontractors and their personnel, but without prejudice to Sub-Clause 8.1 hereof.  9.1 If the Contractor is a joint venture, consortium, or association (JVCA) of two or more persons, all such persons shall be jointly and severally liable to the Employer for the fulfillment of the provisions of the Contract, unless otherwise specified in the **PCC**, and shall designate one of such persons to act as a leader with authority to bind the JVCA. The composition or the constitution of the JVCA shall not be altered without the prior consent of the Employer.  10.1 Unless otherwise specified in the Contract, the Project Manager will decide matters relating to the Contract by representing the Employer. |
| 11. Delegation | 11.1 The Project Manager may delegate any of his authorities to other people, after notifying the Contractor, and may cancel any delegation after notifying the Contractor. |
| 12. Communications | 12.1 Communications between parties that are referred to in the General Conditions shall be effective only when in writing. A written notice shall be effective only when it is delivered. |
| 13. Subcontracting | 13.1 The Contractor may subcontract some part of the work with the approval of the Project Manager. But without written approval of the Employer it cannot assign the Works indicated in the Contract to the others. Subcontracting shall not alter the Contractor’s obligations. |
| 14. Other Contractors | 14.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as referred to in the PCC. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification. |
| 15. Contractor’s Personnel | 15.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the Particular Condition, to carry out the functions stated in the Schedule or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule.  15.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor’s staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.  15.3 If the Employer, Project Manager or Contractor determines, that any employee of the Contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the execution of the Works, then that employee shall be removed in accordance with Clause 15.2 above. |
| 16. Employer’s and Contractor’s Risks | 16.1 The Employer carries the risks, which states Employer’s risks in the Contract, and the Contractor carries the risks, which states Contractor’s risks in the Contract. |
| 17. Employer’s Risks | 17.1 From the Start Date until the Defects Liability Certificate has been issued, the followings are at Employer’s risks:  (a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to  (i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works or  (ii) negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.  (b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in the Employer’s design, or due to Force Majeure directly affecting the country where the Works are to be executed.  17.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is at Employer’s risk except loss of or damage due to  (a) a Defect which existed on the Completion Date,  (b) an event occurring before the Completion Date, which was not itself an Employer’s risk, or  (c) the activities of the Contractor on the Site after the Completion Date. |
| 18. Contractor’s Risks | 18.1 From the Start Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer’s risks are Contractor’s risks. |
| 19. Insurance | 19.1 The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles stated in the **PCC** for the following events which are due to the Contractor’s risks:  (a) loss of or damage to the Works, Plant, and Materials;  (b) loss of or damage to Equipment;  (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and  (d) personal injury or death.  19.2 The Contractor shall deliver contract and certificates for insurance to the Project Manager and the Project Manager shall approve them before the Start Date. All such insurance shall provide compensation for damages specified in 19.1 in the amount indicated in **PCC**.  19.3 If the Contractor does not provide any of the required contracts and certificates of insurance to the Employer, the Employer may sign the insurance contract and insurance payment shall be recovered from Contractors payment. If there is not Contractor’s payment, insurance payment by the Employer is considered as the debt of the Contractor.  19.4 Terms of insurance shall not be modified without approval of the Project Manager.  19.5 Both parties shall comply with any conditions of the insurance contracts. |
| 20. Site Investigation Reports | 20.1 In preparing the Bid, the Contractor shall use Site Investigation Reports and any supplemented information available to the Bidders indicated in the **PCC**. |
| 21. Queries about the Particular Conditions | 21.1 The Project Manager will clarify queries and give interpretation about **PCC**. Such clarification will not however result to amendments to the contract conditions. |
| 22. Construction of the Works by the Contractor | 22.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings. |
| 23. The Works to Be Completed by the Intended Completion Date | 23.1 The Contractor may commence the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date. |
| 24. Approval by the Project Manager | 24.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager. He shall approve them if they comply with the Specifications and Drawings.  24.2 The Contractor shall be responsible for design of Temporary Works.  24.3 The Project Manager’s approval shall not alter the Contractor’s responsibility for design of the Temporary Works.  24.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.  24.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before the Start of Work. |
| 25. Safety | 25.1 The Contractor shall be responsible for the safety of all activities on the Site.  25.2 The Contractor shall be responsible to protect completing Constructions from Force Majeure and to take all reasonable precautions against Force Majeure. The Contractor shall fulfill any regulations and decisions of authorized organizations of Construction, Environment, Health and Fire Department. |
| 26. Discoveries | 26.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of Mongolia[[1]](#footnote-1). The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager’s instructions for dealing with them. |
| 27. Possession of the Site | 27.1 The Employer shall give possession of all parts of the Site to the Contractor including all kind of constructions, plant, engineering lines, permission of removal, transfer and traffic cease of auto- and railways, specifications and drawings for resources of connecting to power, heat, water supply and sewerage line, steam, radio and telephone lines, drawings, permission to commence the construction works, site mark lines and other related documents shall be handed over with permission to use all parts of the Site.  27.2 If possession of a part is not given by the date stated in the PCC, the Employer will be deemed to have delayed the start of the relevant activities, and this should be compensated to the Contractor. |
| 28. Access to the Site | 28.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out. |
| 29. Instructions  **30.** **Appointment of the Adjudicator** | 29.1 The Contractor shall carry out all instructions of the Project Manager, which comply with the applicable laws of Mongolia.  29.2 The Contractor shall permit ADB to inspect the Contractor’s accounts, records and other documents relating to the submission of bids and contract performance and to have them audited by auditors appointed by ADB. The Contractor shall maintain all documents and records related to the Contract for a period of three (3) years after completion of the Works. The Contractor shall provide any documents necessary for the investigation of allegations of corruption, fraud, collusion, or coercion and require its employees or agents with knowledge of the Contract to respond to questions from ADB.  30.1 The Adjudicator shall be appointed jointly by the Employer and the Contractor, at the time of the Employer’s issuance of the Notification of Award. If, in the Notification of Award, the Employer does not agree on the appointment of the Adjudicator, the Employer will request the Appointing Authority designated in the **PCC**, to appoint the Adjudicator within 14 days of receipt of such request.  30.2 Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority at the request of either party, within 14 days of receipt of such request. |
| 31. Procedure for Disputes | 31.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager’s decision.  31.2 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.  31.3 The Adjudicator shall be paid by the hour at the rate specified in the **PCC,** together with reimbursable expenses of the types specified in the **PCC**, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator’s written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator’s decision shall be final and binding.  31.4 The arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and in the place specified in the **PCC**.  **B. Staff and Labor** |

**32.** **Forced Labor** 32.1 The Contractor shall not employ forced labor, which consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty. This covers any kind of involuntary or compulsory labor, such as indentured labor, bonded labor or similar labor–contracting arrangements.

**33. Child Labor** 33.1 The Contractor shall not employ children in a manner that is economically exploitative, or is likely to be hazardous, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. Where national laws have provisions for employment of minors, the Contractor shall follow those laws applicable to the Contractor. Children below the age of 18 years shall not be employed in dangerous work.

**34. Workers’ Organizations** 34.1Where national law recognizes workers’ rights to form and to join workers’ organizations of their choosing without interference and to bargain collectively, the Contractor shall comply with this law. Where national law substantially restricts workers’ organizations, the Contractor shall enable alternative means for the Contractor’s Personnel to express their grievances and protect their rights regarding working conditions and terms of employment. In either case described above, and where national law is silent, the Contractor shall not discourage the Contractor’s Personnel from forming or joining workers’ organizations of their choosing or from bargaining collectively, and shall not discriminate or retaliate against the Contractor’s Personnel who participate, or seek to participate, in such organizations and bargain collectively. The Contractor shall engage with such workers representatives. Worker organizations are expected to fairly represent the workers in the workforce.

**35. Non-Discrimination**

**and Equal Opportunity** 35.1 The Contractor shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment relationship on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline. In countries where national law provides for non-discrimination in employment, the Contractor shall comply with national law. When national laws are silent on non-discrimination in employment, the Contractor shall meet this Sub-Clause’s requirements. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination.

|  |  |
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| 36. Program | **C. Time Control**  **C. Time Control**  36.1 Within the time stated in the **PCC**, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, timing and other required information for all the activities in the Works.  36.2 An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.  36.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period stated in the **PCC**. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount stated in the **PCC** from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted.  36.4 The Project Manager’s approval of the Program shall not alter the Contractor’s obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events. |
| 37. Extension of the Intended Completion Date  38. Acceleration | 37.1 The Project Manager shall extend the Intended Completion Date if a condition of Compensation occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without extra cost.  37.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.  38.1 When the Employer wants the Contractor to finish before the Intended Completion Date, the Project Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Employer and the Contractor.  38.2 If the Contractor’s priced proposals for acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation. |
| 39. Extension of the time by the Project Manager | 39.1 The Project Manager may instruct the Contractor to extend the start or progress of any activity within the Works. |
| 40. Management Meetings | 40.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. In the management meeting the plans for remaining work shall be reviewed and the matters raised in accordance with the early warning procedure shall be discussed.  40.2 The Project Manager shall record the management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all that attended the meeting. |
| 41. Early Warning | 41.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work increase the Contract Price or delay the completion of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The Contractor as soon as reasonably possible shall provide the information.  41.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced and in carrying out any resulting instruction of the Project Manager. |

**D. Quality Control**

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| 42. Identifying Defects | 42.1 The Project Manager shall check the Contractor’s work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor’s responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect. |
| 43. Tests | 43.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event. |
| 44. Completion of Remedying Defects | 44.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period[[2]](#footnote-2) which is defined in the PCC. The Defects Liability Period shall be extended until completion of all Works required to remedy defects or damage.  44.2 After receiving notification of Defects, the Contractor shall remedy the notified Defect at own costs within the length of time specified by the Project Manager’s notice. |
| 45. Failure to Remedy Defects | 45.1 If the Contractor fails to remedy the Defects or damage by the notified date of Project Manager, this remedial Works must be executed at the cost of the Contractor and the Project Manager will calculate the cost. |

E. Cost Control

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| 46. Contract Price | 46.1 In the case of an admeasurement contract, the Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities is used to calculate the Contract Price. The Contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.  46.2 In the case of a lump sum contract, the Activity Schedule shall contain the priced activities for the Works to be performed by the Contractor. The Activity Schedule is used to monitor and control the performance of activities on which basis the Contractor will be paid. If payment for Materials on Site shall be made separately, the Contractor shall show delivery of Materials to the Site separately on the Activity Schedule. |
| 47. Changes in the Contract Price | 47.1 In the case of an admeasurement contract:  (a) If the final quantity of the work done differs from the quantity in the Bill of Quantities for the item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change.  (b) The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Employer.  (c) If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.  47.2 In the case of a lump sum contract, the Activity Schedule shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor’s own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule. |
| 48. Variations | 48.1 All Variations shall be included in updated Programs and Works schedule produced by the Contractor. |
| 49. Payments for Variations | 49.1 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.  49.2 If the Contractor’s quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager’s own forecast of the effects of the Variation on the Contractor’s costs.  49.3 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.  49.4 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning. |
| 50. Cash Flow Forecasts | 50.1 When the Program or the Activity Schedule is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include currencies and exchange rates, as defined in the Contract. |
| 51. Payment Certificates | 51.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less than cumulative amount certified previously.  51.2 The Project Manager shall check the Contractor’s monthly statement and certify the amount to be paid to the Contractor.  51.3 The value of work executed shall comprise:  (a) In the case of an admeasurement contract, the value of the quantities of work in the Bill of Quantities that have been completed; or  (b) In the case of a lump sum contract, the value of work executed shall comprise the value of completed activities in the Activity Schedule.  51.4 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information. |
| 52. Payments | 52.1 Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within the days described in the PCC. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for the currency in which payments are made.  52.2 If an amount certified is increased in a later certificate or as a result of a decision of the adjudicator or the Court, the Contractor shall be paid interest upon the delayed payment as set out in this Clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.  52.3 All payments and deductions will be paid or charged in the currency of the Contract Price.  52.4 Items of the Works for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract. |
| 53. Compensation Events | 53.1 The following shall be Compensation Events:  (a) The Employer does not give access to a part of the Site by the Site Possession Date stated in the GCC 27.1.  (b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.  (c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.  (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.  (e) The Project Manager unreasonably does not approve subcontracting.  (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Notification of Award from the information issued to bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.  (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.  (h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.  (i) The advance payment is delayed.  (j) The effects on the Contractor of any of the Employer’s Risks.  (k) The Project Manager unreasonably delays issuing a Certificate of Completion.  (l) Other Compensation Events described in the Contract or determined by the Project Manager shall apply.  53.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.  53.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor’s forecast cost has been provided by the Contractor, the Project Manager shall assess it, and the Contract Price shall be adjusted accordingly. If the Contractor’s forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager’s own forecast. The Project Manager will assume that the Contractor will react competently and promptly to the event.  53.4 The Contractor shall not be entitled to compensation to the extent that the Employer’s interests are adversely affected by the Contractor’s not having given early warning or not having cooperated with the Project Manager. |
| 54. Tax | 54.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC 56.1. |
| 55. Currency | 55.1 The currency of payment shall be the Mongolian Tugrik. |
| 56. Price Adjustment | 56.1 Prices shall be adjusted for rises in the cost of inputs to the Works only if specified in the PCC. The adjustment to be applied to the amount, after deducting the advance payment, shall be determined from formulae for the currency in which the Contract Price is payable.  **Pc = Ac + Bc Imc/Ioc**  where:  **Pc** - the adjustment factor  **Ac** and **Bc** - coefficients[[3]](#footnote-3) specified in the PCC, representing the nonadjustable and adjustable portions, respectively; and  **Imc** - the index prevailing at the end of the month being invoiced;  **Ioc** - the index prevailing on the day of bid opening.  56.2 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 rises in costs. |
| 57. Retention | 57.1 The Employer shall retain[[4]](#footnote-4) from each payment due to the Contractor the proportion stated in the PCC until Completion of the whole of the Works.  57.2 Upon the issue of a Certificate of Completion of the Works, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected.  57.3 Upon the completion of the whole Works, the Contractor may substitute retention money with an “on demand” bank guarantee. |
| 58. Liquidated Damages | 58.1 The Contractor shall pay liquidated damages[[5]](#footnote-5) to the Employer at the rate per day stated in the PCC for each day later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the PCC. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor’s liabilities.  58.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC 52.1. |
| 59. Bonus | 59.1 The Contractor shall be paid a Bonus[[6]](#footnote-6) calculated at the rate per calendar day stated in the PCC for each day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete. |
| 60. Advance Payment | 60.1 The Employer shall make advance payment to the Contractor of the amounts stated in the PCC by the date stated in the PCC, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Employer in amount and currency equal to the advance payment. The amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment.  60.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.  60.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages. |
| 61. Performance Security | 61.1 The Performance Security shall be provided to the Employer no later than the date specified in the Notification of Award and shall be issued in an amount and form and by a bank or surety acceptable to the Employer, and denominated in the currency in which the Contract Price is payable. The Performance Security shall be valid within 28 days from the date of issue of the Certificate of Completion. |
| 62. Day-works | 62.1 If applicable, the Day-works rates in the Contractor’s Bid shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.  62.2 All work to be paid for as Day-works shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.  62.3 The Contractor shall be paid for Day-works subject to obtaining signed Day-works forms. |
| 63. Cost of Repairs  64. Definition of  **Force Majeure**  65. Notice of Force Majeure  66. Duty to Minimize Delay  67. Consequences of Force Majeure | 63.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Commencement Date and the end of the Defects Liability period shall be remedied by the Contractor at the Contractor’s cost if the loss or damage arises from the Contractor’s acts or omissions.  **F. Force Majeure**  64.1 In this Clause, “Force Majeure” means an exceptional event or circumstance:   1. which is beyond a Party’s control, 2. which such Party could not reasonably have provided against before entering into the Contract, 3. which, having arisen, such Party could not reasonably have avoided or overcome, and 4. which is not substantially attributable to the other Party.   64.2 Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:  (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,  (b) rebellion, terrorism, sabotage by persons other than the Contractor’s Personnel, revolution, insurrection, military or usurped power, or civil war,  (c) riot, commotion, disorder, strike or lockout by persons other than the Contractor’s Personnel,  (d) munitions of war, explosive materials, ionizing radiation or contamination by radioactivity, except as may be attributable to the Contractor’s use of such munitions, explosives, radiation or radioactivity, and  (e) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.  65.1 If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.  65.2 The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.  65.3 Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.  66.1 Each Party shall at all times use all reasonable endeavors to minimize any delay in the performance of the Contract as a result of Force Majeure.  66.2 A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.  67.1 If the Contractor is prevented from performing its substantial obligations under the Contract by Force Majeure of which notice has been given under GCC Clause 65, and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to GCC Clause 31 to:   1. an extension of time for any such delay, if completion is or will be delayed, under GCC Clause 37, and 2. if the event or circumstance is of the kind described in GCC Clause 64.2 and, in the case of sub-paragraphs (b) to (d), occurs in the Country, payment of any such Cost, including the costs of rectifying or replacing the Works and/or Goods damaged or destructed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in GCC Clause 19.   67.2 After receiving this notice, the Project Manager shall proceed in accordance with GCC Clause 10 to agree or determine these matters. |
| **68. Force Majeure Affecting Subcontractor** | 68.1 If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor’s non-performance or entitle him to relief under this Clause. |
| **69. Optional Termination,**  **Payment and Release** | 69.1 If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under GCC Clause 65, or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with GCC Clause 75.    69.2 Upon such termination, the Project Manager shall determine the value of the work done and issue a Payment Certificate which shall include:   1. the amounts payable for any work carried out for which a price is stated in the Contract; 2. the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery. This Plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer’s disposal; 3. other Costs or liabilities which in the circumstances were reasonably and necessarily incurred by the Contractor in the expectation of completing the Works; 4. the Cost of removal of Temporary Works and Contractor’s Equipment from the Site and the return of these items to the Contractor’s Works in his country (or to any other destination at no greater cost); 5. the Cost of repatriation of the Contractor’s staff and labor employed wholly in connection with the Works at the date of termination. |
| **70. Release from Performance** | 70.1 Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfill its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:  (a) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and  (b) the sum payable by the Employer to the Contractor shall be the same as would have been payable under GCC Sub-Clause 69 if the Contract had been terminated under GCC Sub-Clause 69. |

**G. Terminating the Contract**

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| 71. Completion | 71.1 The Contractor shall request the Project Manager to issue a certificate of Completion of the Works, and the Project Manager will do so upon deciding that the work is completed. Upon the completion of construction, the Contactor shall fully reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition. |
| 72. Taking Over | 72.1 The Employer shall take over the Site and the Works within seven days of the Project Manager’s issuing a certificate of Completion. |
| 73. Final Payment | 73.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 28 days of receiving the Contractor’s account if it is correct and complete. If it is not, the Project Manager shall issue within 28 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate. |
| 74. Operating and Maintenance Manuals | 74.1 If “as built” Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the PCC.  74.2 If the Contractor does not supply the Drawings and/or manuals stated in Sub-Clause 74.1 above by the dates stated in the PCC, or they do not receive the Project Manager’s approval, the Project Manager shall withhold the amount stated in the PCC from payments due to the Contractor. |
| 75. Termination | 75.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.  75.2 Fundamental breaches of Contract shall include, but shall not be limited to the followings:  (a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;  (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;  (c) the Employer or the Contractor becomes bankrupt or goes into liquidation other than for a reconstruction or amalgamation;  (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 60 days of the date of the Project Manager’s certificate;  (e) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;  (f) the Contractor does not maintain a Security, which is required; and  (g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the PCC.  (h) if the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract, pursuant to GCC 76.  75.3 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under Sub-Clause 75.2 above, the Project Manager shall decide whether the breach is fundamental or not.  75.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.  75.5 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible. |
| 76. Fraud and Corruption  77. Payment upon Termination | 76.1 ADB’s Anticorruption Policy requires that Borrowers (including beneficiaries of ADB-financed activity), as well as Contractors, Subcontractors, manufacturers, and Consultants under ADB-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, ADB:  (a) defines, for the purposes of this provision, the terms set forth below as follows:  (i) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;  (ii) “fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;  (iii) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;  (iv) “collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;   1. “integrity violation” means any act, as defined under ADB’s Integrity Principles and Guidelines, which violates ADB’s Anticorruption Policy including corrupt, fraudulent, coercive, or collusive practice, abuse, and obstructive practice.    * + 1. “obstructive practice” means (a) deliberately destroying, falsifying, altering or concealing of evidence material to an ADB investigation; (b) making false statements to investigators in order to materially impede an ADB investigation; (c) failing to comply with requests to provide information, documents or records in connection with an OAI investigation; (d) threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (e) materially impeding ADB’s contractual rights of audit or access to information.   (b) will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations in competing for the Contract;  (c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the borrower or of a beneficiary of ADB-financing engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the procurement or the execution of that contract, without the borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation; and  (d) will sanction impose remedial actions on a firm or an individual, at any time, in accordance with ADB’s Anticorruption Policy and Integrity Principles and Guidelines (both as amended from time to time), including declaring ineligible, either indefinitely or for a stated period of time, to participatein ADB-financed, or administered or supported activities or to benefit from an ADB-financed, administered or supported contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations.  77.1 If the Contract is terminated because of a serious breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the PCC. Additional Liquidated Damages shall not apply to the Contractor. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.  77.2 If the Contract is terminated for the Employer’s convenience or because of a serious breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor’s personnel employed solely on the Works, and the Contractor’s costs of protecting and securing the Works, and less advance payments received up to the date of the certificate. |
| 78. Property | 78.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works paid by the Employer shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor’s default. |
| 79. Release from Performance  **80**. **Suspension of ADB Loan or Credit** | 79.1 If any event or circumstance due to Force Majeure ariseswhich makes it impossible or unlawful to fulfill contractual obligations, the Project Manager shall certify the event. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.  80.1 In the event that the ADB suspends the Loan or Credit to the Employer, from which part of the payments to the Contractor are being made:  (a) The Employer is obligated to notify the Contractor, with copy to the Project Manager, of such suspension within 7 days of having received the ADB’s suspension notice.  (b) If the Contractor has not received sums due it within the 28 days for payment provided for in GCC 52.1, the Contractor may immediately issue a 14-day termination notice. |
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| 81. Eligibility | 81.1The Contractor shall have the nationality of an eligible country as specified in Section 5 (Eligible Countries) of the bidding document. The Contractor shall be deemed to have the nationality of a country if the Contractor is a citizen or is constituted, or incorporated, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed Subcontractors or suppliers for any part of the Contract including related services.  81.2The Materials, equipment and services to be supplied under the Contract shall have their origin in eligible source countries as specified in Section 5 (Eligible Countries) of the bidding document and all expenditures under the Contract will be limited to such Materials, equipment, and services. At the Employer’s request, the Contractor may be required to provide evidence of the origin of Materials, equipment and services.  81.3 For purposes of GCC 81.2, “origin” means the place where the Materials and equipment are mined, grown, produced or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that differs substantially in its basic characteristics or in purpose or utility from its components. |

**Section 8 - Particular Conditions of Contract**

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| Except where otherwise indicated, the Employer prior to issuance of the bidding documents should fill in all Particular Conditions of Contract. Schedules and reports to be provided by the Employer should be annexed. |

The following documents are also part of the Contract:

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| **GCC 1.1** | The Employer is *[insert name and address]*. |
| **GCC 1.1** | The Project Manager is *[insert name and address]*. |
| **GCC 1.1** | The name and identification number of the Contract is *[insert name and number as indicated in the Invitation for Bids (or Prequalification, if any)]*. |
| **GCC 1.1** | The Works consist of *[insert brief summary, including relationship to other contracts under the Project]*. |
| **GCC 1.1** | The Start Date is *[insert date]* |
| **GCC 1.1** | The Site is located at *[insert name and address of Site]* and is defined in drawing No. *[insert numbers]* |
| **GCC 3.1** | The documents of the contract shall be in *[insert name of the language]* |
| **GCC 3.1** | Governing law is the law of Mongolia. |
| **GCC 14.1** | Schedule of Other Contractors is: *[insert schedule of other contractors, if appropriate]* |
| **GCC 19.1** | The minimum insurance amounts and deductibles shall be:  (a) The maximum deductible for insurance of the Works, Plant and Materials: *[insert amounts]*.  (b) The minimum cover for insurance of the Works, Plant and Materials in respect of the Contractor’s faulty design is *[insert amounts]*.  (c) The maximum deductible for insurance of Equipment: *[insert amounts]*.  (d) The minimum cover for loss or damage to Equipment: *[insert amounts]*.  (e) The maximum deductible for insurance of other property: *[insert amounts]*.  (f) The minimum cover of other property: *[insert amounts]*.  (g) The minimum cover for personal injury or death insurance  (i) for the Contractor’s personnel: *[insert amounts]*.  (ii) for other people: *[insert amounts]*. |
| **GCC 20.1** | Site Investigation Reports are: *[list site investigation reports]*. |
| **GCC 23.1, 37.1** | Works Completion Date is: *[insert date]*[[7]](#footnote-7). |
| **GCC 27.2** | Site Possession Date(s) shall be: *[insert locations(s) and date(s)]*[[8]](#footnote-8). |
| **GCC 30.1** | Appointing Authority for the Adjudicator: *[insert name of authority]*  *[The appointing authority shall be a person or an entity that is independent of the Employer/Project Executing Agency/Project Implementing Agency.]* |
| **GCC 31.3** | The Adjudicator shall be paid by the hour at the rate of: *[insert rate]*  The reimbursable expenses are: *[insert reimbursable expenses]* |
| **GCC 31.4** | Institution whose arbitration procedures shall be used:  Arbitration shall be conducted in accordance with the laws of Mongolia.  Place for the arbitration is Ulaanbaatar. |
| **GCC 36.1** | The Contractor shall submit for approval a Program for the Works within *[insert number]*days from the date of acceptance of award for contract. |
| **GCC 36.3** | The period between Program updates is *[insert number]* days.  The amount to be withheld for late submission of an updated Program is *[insert amount]*. |
| **GCC 44.1** | Defects Liability Period is: *[insert number]*[[9]](#footnote-9) days. |
| **GCC 52.1** | Payment shall be made within *[insert number]*[[10]](#footnote-10) days after an issuance of paymentcertificate. |
| **GCC 56.1** | The Contract *[insert “is” or “is not”]* subject to price adjustment in accordance with GCC Clause 56, and the following information regarding coefficients *[insert “does” or “does not”]* apply.  The coefficients for adjustment of prices in Mongolian Tugrik are:  (i) *[insert number]* percent for nonadjustable item (coefficient A).  (ii) *[insert number]* percent for adjustable item (coefficient B).  The index for Mongolian Tugrik[[11]](#footnote-11) will be *[insert index]* |
| **GCC 57.1** | The proportion of payments retained is *[insert number]* percent. |
| **GCC 58.1** | The liquidated damages for the whole of the Works are *[insert percentage of the Contract Price]* per day. The maximum amount of liquidated damages for the whole of the Works is *[insert percentage]* of the Contract Price. |
| **GCC 59.1** | The Bonus for the whole of the Works is *[insert percentage of the Contract Price]*[[12]](#footnote-12) per day. The maximum amount of Bonus for the whole of the Works is *[insert percentage]* of the Contract Price. |
| **GCC 60.1** | The Advance Payment shall be *[insert amount]* and shall be paid to the Contractor no later than *[insert date]*. |
| **GCC 61.1** | The Performance Security amount is *[insert amount]* of the Contract Price.  The type of acceptable Performance Security is a bank guarantee issued in the format included in Section 9 of the Bidding Document. |
| **GCC 74.1** | The date by which operating and maintenance manuals are required is *[insert date]*.  The date by which as built operating drawings are required is *[insert date]*. |
| **GCC 74.2** | The amount to be withheld for failing to produce “as built” drawings and/or operating and maintenance manuals by the date required is in GCC 74.1 is *[insert amount in local currency]*. |
| **GCC 77.1** | The percentage to apply to the value of the work not completed, representing the Employer’s additional cost for completing the Works, is *[insert percentage]*. |

# Section 9 - Contract Forms

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

**Table of Forms**

**Contract Agreement ................................................................................................................................**

**Performance Security ..............................................................................................................................**

**Advance Payment Security ....................................................................................................................**

**Contract Agreement**

THIS AGREEMENT made the . . . . . *[insert number]* day of the month of . . . . . *[insert month]*, . . . . . . *[insert year]*, between . . . . . *[name of the Employer]* (hereinafter “the Employer”), of the one part, and . . . . . *[name of the Contractor]* . . . . . (hereinafter “the Contractor”), of the other part:

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

The Employer and the Contractor agree as follows:

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

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

a) the Contract Agreement,

b) the Notification of Award,

c) the Letter of Bid,

d) the Particular Conditions of Contract,

e) the List of Eligible Countries that was specified in Section 5 of the bidding document,

f) the General Conditions of Contract,

g) the Specification,

h) the Drawings,

i) the Completed Activity Schedules or Bill of Quantities, and

j) any other document listed in the **PCC** as forming part of the Contract.

3. In consideration of the payments to be made by the Employer to the Contractor as indicated in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy Defects therein in conformity in all respects with the provisions of the Contract.

4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of Defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

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

**FOR AND ON BEHALF OF THE EMPLOYER FOR AND ON BEHALF THE CONTRACTOR**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name and Title: Name and Title:

STAMP STAMP

Address: Address:

Phone/Fax: Phone/Fax:

## Performance Security

## (Bank Guarantee)

To: *[name and address of Employer]*

Whereas *[name and address of Contractor]* (hereinafter called “the Contractor”) has undertaken, in pursuance of contract to execute *[name of Contract and brief description of Works]* (hereinafter called “the Contract”);

And whereas it has been stipulated by you in the said Contract that the Contractor 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 Contractor such a Bank Guarantee;

Now therefore we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of *[amount of Guarantee] [amount in words]*, such sum being payable in the currency 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 Contractor 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 Works to be performed thereunder or of any of the Contract documents which may be made between you and the Contractor 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

## Advance Payment Security

## (Bank Guarantee)

To: *[name and address of Employer]*

In accordance with the provisions of the General Conditions of Contract, Clause 60 (“Advance Payment”) of the above-mentioned Contract, *[name and address of Contractor]* (hereinafter called “the Contractor”) 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 Contractor, 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 Contractor, in the amount not exceeding *[amount of Guarantee] [amount in words and figures]*. We further agree that no change or addition to or other modification of the terms of the Contract or of Works to be performed thereunder or of any of the Contract documents which may be made between *[name of Employer]* and the Contractor, 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 Contractor.

Yours truly,

Signature and seal:

Name of Bank/Financial Institution:

Address:

Date:

ANNEX

Bid Invitation

|  |
| --- |
| The Invitation for Bids (IFB) shall be prepared and advertised in accordance with relevant format approved by the ADB. The IFB is not a part of the Bidding Document and therefore, it shall not be included in the Bidding Document.  The Invitation for Bids provides information that enable potential Bidders to decide whether to participate.  In case of prequalification an Invitation for Bidding and Bidding Documents shall be sent only to pre-qualified bidders. |

**Standard Format for Invitation for Bids**

**Date:** ........................................................................................................................ **Loan/Grant No. and Title:** .................................................................................... **Contract No. and Title:** ......................................................................................... **Deadline for Submission of Bids:** ………………*insert closing date and time.........*

1. The Mongolia has receivedfinancing from the Asian Development Bank (ADB) towards the cost of . . . . . *insert name of project* . . . . . Part of this financing will be used for payments under the contract***1*** named above*.* Bidding is open to Bidders***2*** from eligible source countries of the ADB.***3***

2. The . . . . . *insert name of Employer* . . . . . (“the Employer”) invites sealed bids from eligible Bidders***2*** for the construction and completion of . . . . . *insert brief description of the Works*. . . . . (“the Works”).

3. The bidding will be conducted in accordance with ADB’s national competitive bidding method.

4. Only eligible Bidders with the following key qualifications***4*** should participate in this bidding:

- . . . . . *insert key experience requirement*

- . . . . . *insert key financial requirement*

- . . . . . *insert number and title of license, if required*

5. To obtain further information and inspect the bidding documents, Bidders should contact:

. . . . . *insert details of Employer's address* . . . . . ***5***

. . . . . *insert room and floor’s number*. . . . .

. . . . . *insert email address*. . . . .

. . . . . *insert fax no*. . . . .

6. To purchase the bidding documents in Mongolian, eligible Bidders should:

- write to address above requesting the bidding documents for . . . . . *insert number & title of contract* . . . . .

- pay a non-refundable fee***6*** of . . . . . *insert amount and currency* . . . . . to the project’s account.

7. Deliver your bid to the address above on or before the deadline for submission of bids together with a Bid Security as described in the Bidding Document. Bids will be opened immediately after the deadline for bid submission in the presence of Bidders’ representatives who choose to attend.

-- Note --

*1 Substitute “contracts” where bids are called concurrently for multiple contracts. Add a new para. 2 and renumber paras. 2 - 8 as follows: “Bidders may bid for one or several contracts, as further defined in the bidding document. Bidders wishing to offer discounts in case they are awarded more than one contract will be allowed to do so, provided those discounts are included in the Letter of Bid.”*

*2 Insert "prequalified" if the bidding is preceded by a prequalification exercise.*

*3 Add if applicable: “This contract will be jointly financed by . . . . . (insert name of co-financing agency). The eligibility rules and procedures of the ADB will govern the bidding process.” The list of eligible countries will be specified in Section 5 of the Bidding Document.*

*4 Insert clear-cut, fail-pass qualification criteria in order to enable Bidders to make an informed decision whether to pursue a specific contract and, if so, either as a single entity or in joint venture. Omit this paragraph and renumber the rest if the bidding is preceded by a prequalification exercise.*

*5 The Borrower and the Employer may be the same or different entities. The text of the Invitation for Bids and the texts of the other associated documents must indicate which agency will act as the Employer.*

*6 The fee chargeable should only be nominal to cover reproduction and mailing costs.*

1. Project manager shall handover anything of historical or other interest or of significant value discovered to the relevant organizations in accordance with the appropriate procedures. [↑](#footnote-ref-1)
2. Defect Liability Period is determined based on the Civil law and Construction Law of Mongolia [↑](#footnote-ref-2)
3. The sum of the two coefficients Ac and Bc should be 1 (one) in the formula. Coefficient A, for the nonadjustable portion of the payments, is a very approximate figure (usually 0.15) to take account of fixed cost elements or other nonadjustable components. The sum of the adjustments is added to the Contract Price. [↑](#footnote-ref-3)
4. The retention amount is usually close to 5 percent and in no case exceeds 10 percent. [↑](#footnote-ref-4)
5. Usually liquidated damages are set between 0.05 percent and 0.10 percent per day, and the total amount is not to exceed between 5 percent and 10 percent of the Contract Price. [↑](#footnote-ref-5)
6. If early completion would provide benefits to the Employer, this Clause should remain; otherwise delete. The Bonus is usually numerically equal to the liquidated damages. [↑](#footnote-ref-6)
7. If works are scheduled partially, list those partial periods. [↑](#footnote-ref-7)
8. If possession to the site is to be provided partially, list those partial periods. [↑](#footnote-ref-8)
9. This period is to follow the relevant Law of Mongolia. [↑](#footnote-ref-9)
10. This shall not exceed 2 months. [↑](#footnote-ref-10)
11. These indexes shall be defined by Employer. [↑](#footnote-ref-11)
12. If not necessary, enter “0 (zero)”. If works shall be executed in separate parts and each of these considered with bonus, then indicate here. [↑](#footnote-ref-12)