STANDARD BIDDING DOCUMENT

**PROCUREMENT OF WORKS**

**The August 2019-Revised based on Review of the Asian Development Bank**

**For Use in Procurement under Open Competitive Bidding (**with national advertisement) **Method in ADB-Financed Projects governed by the**

**2017 Procurement Regulations for ADB Borrowers**

(as amended from time to time)

Ministry of Finance, Mongolia

Ulaanbaatar

**Foreword**

This Standard Bidding Document for Procurement of Works, Single-Stage: One Envelope Bidding procedure, which was initially developed by the Ministry of Finance in 2006 and subsequently updated in 2012 in order to implement the Public Procurement Law of Mongolia (hereinafter referred as to “the law”). This latest version of the document was reviewed and revised by the Asian Development Bank (ADB) in October 2018 in consultation with the Ministry of Finance, and it shall be used for the projects financed by ADB under open competitive bidding (with national advertisement) method in ADB-Financed Projects governed by the 2017 Procurement Regulations for ADB Borrowers (as amended from time to time).

In the Single-Stage: One-Envelope bidding procedure, Bidders submit Bids in one envelope containing both the Technical Bid and the Price Bid. The envelopes are opened in public at the date and time advised in the Bidding Document. The Bids are evaluated, and following approval by ADB, as necessary, the Contract is awarded to the Bidder whose Bid has been determined to be the lowest evaluated substantially responsive Bid.

The Employer shall use these Standard Bidding Document with minimum changes to address project specific conditions. The provisions in Section 1 (Instructions to Bidders) and Section 7 (General Conditions of Contract), must be used with their text unchanged. Any data and provisions that these sections require for a specific procurement and contract shall be included respectively in Section 2 (Bid Data Sheet) and Section 8 (Particular Conditions of Contract), and that particular requirement shall be entered in Section 3 (Evaluation and Qualification Criteria), Section 5 (Eligible Countries), and Section 6 (Specifications and other Requirements).

The following directives shall be sought:

1. Bidding document shall be prepared in accordance with the Standard bidding document for Procurement of Works, by addressing the project specific conditions.
2. The Employer should be guided by the Notes in each of the section and shall fill the *italicized bracket*s with appropriate datasuch as words, sentences, quantities, percentage, and currency when preparing the Bidding document. Fields or spaces for Bidders shall not be filled by the Employer.
3. Footnotes and notes in each section of the Standard bidding document are intended to support and instruct those who prepare Bidding Document, and that such footnotes and notes shall be excluded when the specific Bidding Document is drafted.
4. Notes in double rectangular brackets shall remain in the Bidding document 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 document 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.e-procurement.mn](http://www.e-procurement.mn)

Invitation for Bids

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| |  | | --- | | **Notes on the Invitation for Bids**  *The Invitation for Bids (IFB) shall be prepared and advertised in accordance with relevant format approved by the ADB.*  *The IFB is not part of the Bidding Document and therefore it shall not be included in the Bidding Document.* |   . |

**Sample Format for Invitation for Bids**

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

**Loan / Grant No. and Title: [***insert Loan or Grant No and Title]*

**Contract No. and Title: [***insert Contract No and Title]*

1. Mongolia *[has received/has applied*] financing from the Asian Development Bank (ADB) towards the cost of [*insert name of the project],* and it intends to apply part of the proceedsof this financing to payments under the contract[[1]](#footnote-1)named above*.* Bidding is open to Bidder from eligible source countries of the ADB[[2]](#footnote-2).

2. The [*insert name of Employer]* (“the Employer”) invites sealed bids from eligible[[3]](#footnote-3) Bidders for the construction and completion of [*insert brief description of the Works[[4]](#footnote-4)*] (“the Works”).

3. Open competitive bidding (with national advertisement) will be conducted in accordance with ADB’s *Single Stage: One Envelope* procedure and is open to all Bidders from eligible countries as described in the Bidding Document.

4. Only eligible Bidders with the following key qualifications[[5]](#footnote-5) should participate in this bidding:

[*insert key experience requirement]*

[*insert key financial requirement]*

[*insert number and title of license, if required]*

5. Interested eligible Bidders may obtain further information and inspect the bidding documents at the address given below:

[*insert details of Employer's address[[6]](#footnote-6)]*

[*insert room and floor’s number]*

[*insert email address]*

[*insert fax number]*

6. The Bidding Document, in the Mongolian language, may be purchased by interested Bidders on the submission of a written application to the address below *[state address at the end of document]* and upon payment of a nonrefundable fee[[7]](#footnote-7)  of MNT *[insert amount].* The method of payment will be *[insert method of payment[[8]](#footnote-8)]*.

7. Bids must be delivered to [*insert address*] on or before the deadline for submission of bids of: *[insert closing date and time consistent with those indicated in ITB 23.1 of the BDS]* 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.

8. The [*insert name of Employer*] will not be responsible for any costs or expenses incurred by Bidders in connection with the preparation or delivery of Bids.

**BIDDING DOCUMENT**

**Procurement of Works**

**Employer:**

**Country: Mongolia**

**Project No. and Name:**

**Bidding Name:**

**Bidding No.:**

**Issued on:**

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| ***Notes on the Instructions to Bidders***  *This Section of the bidding document provides the information necessary for bidders to prepare 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.*  *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 is an integral part of the Bidding Document, but not of the Contract.* |

**Section 1 - Instructions to Bidders**

This section specifies the procedures to be followed by Bidders when preparing and submitting their Bids. Information is also provided on the submission, opening, evaluation of bids, and award of contract.

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| **Section 1 - Instructions to Bidders** | | | | | | |
|  | | | | **A. General** | | |
| 1. Scope of Bid | | | | * 1. In connection with the Invitation for Bids (IFB) indicated in the Bid Data Sheet (BDS), the Employer, as indicated in the BDS, issues this Bidding Document for the procurement of Works as specified in Section 6 (Specifications and Other Requirements). The name, identification, and number of contracts of the open competitive bidding (OCB) 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 contract, unless otherwise specified in the BDS. If the bidding comprises of multiple contracts or lots, bidders are allowed to submit bids in one or more than one lot.   * 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 (hereinafter called “Borrower”) indicated in the BDS has applied for or received financing (hereinafter called “funds”) from the Asian Development Bank (hereinafter called “ADB”) toward the cost of the project named in the BDS. The Borrower intends to apply a portion of the funds to eligible payments under the contract(s) for which this Bidding Document is issued  2.2 Payments by the ADB will be made only at the request of the Borrower and upon approval by ADB in accordance with the terms and conditions of the Financing Agreement between the Borrower and ADB (hereinafter called “Financing Agreement”), and will be subject in all respects to the terms and conditions of that Financing Agreement. No party other than the Borrower shall derive any rights from the Financing Agreement or have any claim to the funds. | | |
| 3. Fraud and Corruption | | | | 3.1 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, 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. “abuse” means theft, waste, or improper use of assets related to ADB-related activity, either committed intentionally or through reckless disregard;        6. "conflict of interest" means any situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations;        7. “obstructive practice” means (a) deliberately destroying, falsifying, altering, or concealing of evidence material to an ADB investigation, or deliberately making false statements to investigators, with the intent to impede an ADB investigation; (b) threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to a Bank investigation or from pursuing the investigation; or (c) deliberate acts intended to impede the exercise of ADB’s contractual rights of audit or inspection or access to information; and        8. “integrity violation” is any act, as defined under ADB’s Integrity Principles and Guidelines (2015, as amended from time to time), which violates ADB’s Anticorruption Policy, including (i) to (vii) above and the following: violations of ADB sanctions, retaliation against whistleblowers or witnesses, and other violations of ADB's Anticorruption Policy, including failure to adhere to the highest ethical standard.     2. 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;     3. 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;     4. will impose remedial actions on a firm or an individual, at any time, in accordance with ADB’s Anticorruption Policy and Integrity Principles and Guidelines, including declaring ineligible, either indefinitely or for a stated period of time, to participate**[[9]](#footnote-9)** in ADB-financed, -administered, or -supported activities or to benefit from an ADB-financed, -administered, or -supported contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations; and     5. 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 may be a natural person, private entity, or government-owned enterprises subject to ITB 4.5-or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a Joint Venture. In the case of a Joint Venture:  (a) all partners shall be jointly and severally liable; and  (b) the Joint Venture shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the parties of the Joint Venture during the bidding process and, in the event the Joint Venture is awarded the Contract, during contract execution.  4.2 A Bidder, and all parties constituting the Bidder, shall have the nationality of an eligible country, in accordance with Section 5 (Eligible Countries). A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed Subcontractors or Suppliers for any part of the Contract including related services.  4.3 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be in a conflict of interest with one or more parties in this bidding process if any of, including but not limited to, the following apply:  (a) they have controlling partners in common; or  (b) they receive or have received any direct or indirect subsidy from any of them; or  (c) they have the same legal representative for purposes of this bid; or  (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to material information about or improperly influence the Bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or  (e) a Bidder participates in more than one bid in this bidding process, either individually or as a partner in a Joint Venture, except for alternative offers permitted under ITB 14 of the Bidding Document. This will result in the disqualification of all Bids in which it is involved. However, subject to any finding of a conflict of interest in terms of ITB 4.3 (a)–(d) above, this does not limit the participation of a Bidder as a Subcontractor in another Bid or of a firm as a Subcontractor in more than one Bid; or  (f) a Bidder, Joint Venture partner, associates, parent company, or any affiliated entity, participated as a Consultant in the preparation of the design or technical specifications of the works that are the subject of the Bid; or  (g) a Bidder was affiliated with a firm or entity that has been hired (or is proposed to be hired) by the Employer or Borrower as Engineer for the Contract; or  (h) a Bidder would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the BDS ITB 2.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm.  4.4 A firm shall not be eligible to participate in any procurement activities under an ADB-financed, -administered, or -supported project while under temporary suspension or debarment by ADB pursuant to its Anticorruption Policy (see ITB 3), whether such debarment was directly imposed by ADB, or enforced by ADB pursuant to the Agreement for Mutual Enforcement of Debarment Decisions. A bid from a temporary suspended or debarred firm will be rejected.  4.5 Government-owned enterprises in the Borrower’s country shall be eligible only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not a dependent agency of the Borrower.  4.6 A Bidder shall not be under suspension from Bidding by the Employer as the result of the execution of a Bid–Securing Declaration. | | |
|  | | | | * 1. Bidders shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.   2. 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. | | |
| **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:  (a) all members of the JV shall be liable jointly and severally;  (b) 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;  (c) 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 Document, 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 to 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 Document | 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.  14.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the BDS, as will the method of evaluating different times for completion.  14.3 Except as provided under ITB 14.4 below, Bidders wishing to offer technical alternatives to the requirements of the Bidding Document must first price the Employer’s design as described in the Bidding Document and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Employer.  14.4 When specified in the BDS, Bidders are permitted to submit alternative technical solutions for specified parts of the Works. Such parts will be identified in the BDS and described in Section 6 (Specifications and Other Requirements). The method for their evaluation will be stipulated in Section 3 (Evaluation and Qualification Criteria). |
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| 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.  15.3 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.  15.4 The price to be quoted in the Letter of Bid shall be the total price of the Bid, excluding any discounts offered.  15.5 The Bidder shall quote any unconditional discounts and the methodology for their application in the Letter of Bid.  15.6 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.  15.7 An information of packaging the contract into lots shall be indicated in ITB 1.3. In case the bid is packaged into lots the bidders may submit their bids for one or more lots.  15.8 The prices shall be either fixed or adjustable as specified in the BDS.   1. In the case of Fixed Price, prices quoted by the Bidder shall be fixed during the Bidder’s performance of the contract and not subject to variation on any account. A Bid submitted with an adjustable price will be treated as nonresponsive and rejected. 2. In the case of Adjustable Price, prices quoted by the Bidder shall be subject to adjustment during performance of the contract to reflect changes in the cost elements such as labor, material, transport, and contractor’s equipment in accordance with the provisions of the Conditions of Contract. A Bid submitted with a fixed price will be treated as nonresponsive and be rejected. The Bidder shall furnish the indexes and weightings for the price adjustment formulas in the Tables of Adjustment Data included in Section 4 (Bidding Forms) and the Employer may require the Bidder to justify its proposed indexes and weightings. Any bid that omits indexes and weightings shall be subject to clarification with the Bidder. |
| 16. Currencies of Bid and Payment | 16.1 As stipulated by paragraphs 4.1 and 4.2 of Mongolian Law on Conducting Settlement in National Currency, the currency of bid shall be 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 Unless otherwise specified in the BDS, any Bid not accompanied by a substantially compliant 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 42 and furnished the required performance security pursuant to ITB 43.  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 42 and furnished the required performance security pursuant to ITB 43.  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 42; or  (ii) furnish a performance security in accordance with ITB 43. |
| 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. If a Bidder submits a deficient authorization, the Bid shall not be rejected in the first instance. The Employer shall request the Bidder to submit an acceptable authorization within the number of days as specified in the BDS. Failure to provide an acceptable authorization within the period stated in the Employer’s request shall cause the rejection of the Bid. If the Letter of Bid is not signed, the Bid shall be rejected.  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, Substitution, 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 21 and 22, 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.  25.3 No Bid may be modified after the deadline for submission of Bids.  25.4 Bids requested to be withdrawn in accordance with ITB 25.1 shall be returned unopened to the Bidders.  25.5 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. Opening and Evaluation of Bids

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| 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 of Bids | 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**  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 of time, to rectify nonmaterial nonconformities in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the bid. Failure of the Bidder to comply with the request may result in the rejection of its bid.  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 priced 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. Margin of Preference | 33.1 A margin of preference shall not apply. |
| 34. Evaluation and Comparison of Bids  35. Qualification of the Bidder  36. Employer’s Right to Accept Any Bid, and to Reject Any or All Bids  37. Abnormally Low Bids  38. Unbalanced or Front-Loaded Bids  39. Notice of Intention for Award of Contract | 34.1 The Employer shall use the criteria and methodologies listed in this clause. No other evaluation criteria or methodologies shall be permitted.  34.2 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 in accordance with ITB 31; 5. assessment whether the bid is abnormally low in accordance with ITB 37; and, 6. application of all the evaluation factors indicated in Section 3 (Evaluation and Qualification Criteria).   34.3 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.  34.4 If this Bidding Document allows Bidders to quote separate prices for different contracts, and to award multiple contracts to a single Bidder, the methodology to determine the lowest evaluated price of the contract combinations, including any discounts offered in the Letter of Bid, is specified in Section 3 (Evaluation and Qualification Criteria).  34.5 The Employer shall compare all substantially responsive bids in accordance with ITB 34.2 to determine the lowest evaluated bid.  35.1 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).  35.2 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.  35.3 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.  36.1 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.  37.1 An abnormally low bid is one where the bid price, in combination with other elements of the bid, appears to be so low that it raises concerns as to the capability of the Bidder to perform the contract for the offered bid price.  37.2 When the offered bid price appears to be abnormally low, the Employer shall undertake a three-step review process as follows:  (a) identify abnormally low costs and unit rates by comparing them with the Engineer’s estimates, other substantially responsive bids, or recently awarded similar contracts;  (b) clarify and analyze the Bidder’s resource inputs and pricing, including overheads, contingencies, and profit margins; and  (c) decide whether to accept or reject the bid.  37.3 With regard to ITB 37.2 (b) above, the Employer will seek a written explanation from the Bidder of the reasons for the offered bid price, including a detailed analysis of costs and unit prices, by reference to the scope, proposed methodology, schedule, and allocation of risks and responsibilities. This may also include information regarding the economy of the manufacturing process; the services to be provided, or the construction method to be used; the technical solutions to be adopted; and any exceptionally favorable conditions available to the Bidder for the works, equipment or services proposed.  37.4 After examining the explanation given and the detailed price analyses presented by the Bidder, the Employer may   1. accept the bid, if the evidence provided satisfactorily accounts for the low bid price and costs, in which case the bid is not considered abnormally low; 2. accept the bid but require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss. The amount of the performance security shall generally be not more than 20% of the contract price; or    * 1. reject the bid if the evidence provided does not satisfactorily account for the low bid price and make a similar determination for the next ranked bid, if required.   38.1 If the Bid, which results in the lowest evaluated Bid Price, is seriously unbalanced or front-loaded in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed, as well as the pricing and sources of materials, equipment and labor.  38.2 After the evaluation of the information and detailed price analyses presented by the Bidder, the Employer may as appropriate:   1. accept the Bid; or 2. accept the Bid, but require that the total amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract subject to ITB 43.2; or 3. reject the Bid and make a similar determination for the next ranked bid.   39.1 If Standstill provisions apply as specified in the BDS, the standstill period shall be defined in the BDS to specify the duration subsequent to notification of intention for award of contract (before making the actual contract award) within which any unsuccessful Bidder can challenge the proposed award. |

F. Award of Contract

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| 40. Award Criteria | 40.1 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, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.  40.2 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. |
| 41. Notification of Award | 41.1 Prior to the expiration of the period of bid validity, and upon expiry of the standstill period specified in ITB 39.1; or upon satisfactory resolution of a complaint filed within standstill period, if applicable, the Employer shall transmit the Notification of Award using the form included in Section 9 (Contract Forms) to the successful Bidder, in writing, that its Bid has been accepted.  41.2 Unless a standstill period applies, upon notification of award, unsuccessful Bidders may request in writing to the Employer for a debriefing seeking explanations on the grounds on which their Bids were not selected. The Employer shall promptly respond in writing and/or in a debriefing meeting to any unsuccessful Bidder who, after publication of contract award, requests a debriefing.  41.3 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.  41.4 Within 2 weeks of the award of contract or expiry of the standstill period, where such period applies; or, if a complaint has been filed within the standstill period, upon receipt of ADB’s confirmation of satisfactory resolution of the complaint, the Employer shall also notify all other bidders of the results of the bidding. The Employer shall publish in the website [www.e-procurement.mof.gov.mn](http://www.e-procurement.mof.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.  41.5 After furnishing the performance security pursuant to the ITB 43 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. |
| 42. Signing of Contract | 42.1 Together with the notification of contract award, the Employer shall send the successful Bidder the Contract Agreement.  42.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Employer. |
| 43. Performance Security  44. Bidding Related Complaints | 43.1 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.  43.2 Failure of the successful Bidder to comply with the requirements of ITB 43.1 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 and is determined by the Employer to be qualified to perform the Contract satisfactorily.  44.1 The procedures for dealing with Bidding-Related Complaints arising out of this bidding process are specified in the BDS. |

**Section 2 - Bid Data Sheet**

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| ***Notes on the Bid Data Sheet***  *Section 2 to the Bidding Document provides the information necessary for bidders to prepare responsive bids, in accordance with the requirements of the Employer.*  *The following specific data for the Works to be procured shall complement, supplement, or amend the provisions in the Instructions to Bidders (ITB). To facilitate the preparation of the BDS, each of the clauses are numbered with the same numbers as the corresponding ITB clauses.*  *Specific information for those notes in italics should be entered by the Employer, and such notes in italics and small letters should be taken out by the Employer as the Bidding Document is finalized. The final documents should contain neither blank spaces nor options.* |  |

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| **A. General** | |
| **ITB 1.1** | The number of the Invitation for Bid (IFB) is: [*insert identification number of the IFB*] |
| **ITB 1.1** | The Employer is: *[insert complete name]* |
| **ITB 1.1** | The name of the open competitive bidding (OCB) process is: *[insert the name of the OCB]*  The identification number of the OCB is: *[insert identification number of the OCB]* |
| **ITB 1.2** | The Intended Completion Date is: *[insert date]* |
| ITB 1.3 | The number and identification of lots comprising this OCB is*: [ if there are no lots, insert “None”. If there is a combination of multiple contracts or lots, insert a list of lots identifying each lot by number and title]* |
| **ITB 2.1** | The Borrower is: Mongolia |
| **ITB 2.1** | The name of the Project is: *[insert name of the project]* |
| **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. |
| **ITB 6.1** | The following additional requirements shall be fulfilled by members of the joint venture: *[Insert additional requirements from the Employer otherwise indicate “None” if there is no additional requirement]* |
| **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]*  Telephone: *[insert telephone number, including country and city codes]*  Facsimile number: *[insert phone number, with country and city codes]*  Electronic mail address: *[insert e-mail address and, if applicable]*  Request for clarification should be received by the Employer no later than …… days *[insert number of days, which in general is deemed seven (7) days prior to the deadline for submission of bids indicated in ITB 23.1 BDS]* 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]*  Time: *[insert time in 24h format, for example, 15:30 hours Ulaanbaatar time]*  Place: *[insert location]*  A site visit conducted by the Employer *[insert “will” or “will not”]* be organized. |
| **C. Preparation of Bids** | |
| ITB 11.1 | The 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:  *[Insert any additional documents not listed in ITB 12.1 that must be submitted with the bid otherwise insert “None” if no additional document is required. ]* |
| **ITB 14.1** | Alternative bids *[insert “shall” or “shall not”]* be permitted. |
| **ITB 14.2** | 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). |
| **ITB 14.4** | Alternative technical solutions shall be permitted for the following parts of the Works: *[Either provide a list parts of the Works for which alternative technical solutions are permitted or indicate “None”]*  If alternative technical solutions are permitted, the evaluation method will be as specified in Section 3 (Evaluation and Qualification Criteria). |
| **ITB 15.8** | The prices quoted by the Bidder *[insert either “shall be fixed “or “shall be adjustable”]*  [*If prices are to be adjustable, insert*: “The formula for adjusting the prices and explanatory details are specified in the GCC Clause 56.1. Bidder shall fill out the Tables of Adjustment Data in Section 4 (Bidding Forms).”]  *[Use ‘“Adjustable” where the contract period exceeds 18 months). Prices payable to the Contractor shall be subject to price adjustment during the performance of the contract.*]  *[If prices shall be fixed, the Tables of Adjustment Data in Section 4 (Bidding Forms) shall be removed.” ]* |
| **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 which is from 1% to 2% of the estimated cost.]* |
| **ITB 20.3** | *[Choose one of the following options as appropriate*.*]*  No further instruction.  *[or]*  Subject to the succeeding sentences, any bid not accompanied by an irrevocable and callable bid security shall be rejected by the Employer as nonresponsive. If a Bidder submits a bid security that (i) deviates in form, amount, and/or period of validity, or (ii) does not provide sufficient identification of the Bidder (including, without limitation, failure to indicate the name of the Joint Venture or, where the Joint Venture has not yet been constituted, the names of all future Joint Venture Partners), the Employer shall request the Bidder to submit a compliant bid security within *[insert number of days, which is normally 14 days]* days of receiving such a request. Failure to provide a compliant bid security within the prescribed period of receiving such a request shall cause the rejection of the Bid. |
| **ITB 21.1** | In addition to the original of the bid, the number of copies is: *[insert number of additional copies required]* |
| **ITB 21.2** | The written confirmation of authorization to sign on behalf of the Bidder shall consist of:  [*insert the following language*: “An organizational document, board resolution, or its equivalent or power of attorney specifying the representative’s authority to sign the Bid on behalf of, and to legally blind, the Bidder. If the Bidder is an intended or an existing joint venture, the power of attorney should be signed by all partners and specify the authority of the named representative of the joint venture to sign on behalf of, and legally bid, 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.”] |
| **ITB 21.2** | The Bidder shall submit an acceptable authorization within *[insert number of days, which is normally 14 days]* days. |
| **D. Submission of Bids** | |
| **ITB 22.1** | Bidders *[insert “shall” or “shall not”]* have the option of submitting their bids electronically.  *[The option to allow electronic submission of bids will be selected only for government agencies implementing ADB project(s) where the national e-Procurement system had been reviewed, assessed and approved for use by ADB, otherwise “shall not” should be indicated.]* |
| **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)** | The inner and outer envelopes shall bear the name and identification number of this bidding as indicated in ITB 1.1 of the BDS. |
| **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, or otherwise indicate “Not Applicable” ]*. |
| **ITB 23.1** | The deadline for bid submission is:  Date: *[insert day/month/year]*  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: *[insert all the required and applicable information]*  Street Address:  Floor/Room number:  Aimag or City:  Post Number:  Country:  Bid Opening Date: *[insert day/month/year]*  Bid Opening Time: *[insert time in 24h format, for example, 15:30 hours Ulaanbaatar time]*  *[Bid opening address, date and time shall be consistent with the address, date and time for the deadline for bid submission.]* |
| **ITB 39.1** | *[Choose one of the following options as appropriate.]*  Standstill provisions shall not apply.  *[or]*  Standstill provisions shall apply. The duration of standstill period will be [*insert number of days*] …. days from the date of notice of intention for award of contract.  The Employer shall, at the start of the standstill period, notify in writing each Bidder that submitted a bid, of its intention to award a contract to the successful Bidder at the end of standstill period. The notification, using the form included in Section 9 (Contract Forms), shall include the following information:  (a) the name of each Bidder who submitted a Bid;  (b) the bid prices as read out at bid opening;  (c) the name and evaluated prices of each Bid that was evaluated;  (d) the name of Bidders whose bids were rejected and the reasons for their rejection;  (e) the name of the winning Bidder, and the price it offered, as well as the duration and summary scope of the contract awarded; and,  (f) a statement of the reason(s) the bid of the unsuccessful Bidder to whom the notification is addressed was unsuccessful, unless the price information under (e) of this paragraph already reveals the reason. |
| **F. Award of Contract** | |
| **ITB 44.1** | The procedures for Bidding-Related Complaints are referenced in the Procurement Regulations for ADB Borrowers (Appendix 7). The Bidder should submit its complaint following these procedures, in writing, to:  For the attention: [*insert full name of person receiving complaints*]  Title/position: [*insert title/position*]  Employer: [*insert name of Employer*]  E-mail address: [*insert e-mail address*]  Fax number: *[insert fax number; delete if not used]* |

**Section 3 - Evaluation and Qualification Criteria**

|  |
| --- |
| ***Notes on the Evaluation and Qualification Criteria***  *This section contains the criteria that the Employer shall use to evaluate bids and qualify Bidders if the bidding was not preceded by a prequalification exercise and postqualification is applied. ADB requires Bidders to be qualified by meeting predefined, precise minimum requirements. The method entails setting criteria, which, if not met by the Bidder, results in disqualification. It will therefore be necessary to ensure that a Bidder’s risk of having its bid rejected on grounds of qualification is remote if due diligence is exercised by the Bidder during bid preparation. For that purpose, clear-cut, pass-fail qualification criteria need to be defined and indicated in the Invitation for Bids and the Bidding Document to enable Bidders to make an informed decision whether to pursue a specific contract and, if so, whether to pursue it as a single entity or in Joint Venture.*  *The criteria adopted must relate to characteristics that are essential to ensure satisfactory execution of the contract and must be stated in clear terms.*  *In accordance with ITB 34 to ITB 38, the Employer shall not use any other criteria and methodology in evaluation of the bids other than those included in Section 3 (Evaluation and Qualification Criteria).*  *The Bidder shall provide all the information requested in the forms included in Section 4 (Bidding Forms).*  *The Evaluation and Qualification Criteria is not a Contract document and, therefore, it is not a part of the Contract.* |

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**1. EVALUATION CRITERIA**

In addition to the criteria listed in ITB 34.2 (a) – (e), the following criteria shall be applied:

*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.

|  |
| --- |
| *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 (Specifications and Other Requirements).*  *without material deviation, reservation, or omission.* |

**1.2 Multiple Contracts or Lots**

*If works are grouped in multiple contracts or lots, the following provision must be used:*

The Employer shall evaluate and compare Bids on the basis of a lot, or a combination of lots, or as a total of lots 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 as defined in ITB 4.1 submits several successful (lowest evaluated substantially responsive) bids for multiple contracts or lots, the evaluation will also include an assessment of the Bidder’s capacity to meet the following aggregated requirements as presented in the bid:

* Average annual construction turnover,
* Financial resources,
* Equipment to be allocated, and
* Personnel to be fielded.

**1.3 Completion Time**

An alternative Completion Time, if permitted under ITB 14.2, will be evaluated as follows:

|  |
| --- |
| *The Employer shall describe how this factor will be evaluated, otherwise indicate that this factor is “Not Applicable” if “Shall Not” is indicated in ITB 14.2 in the BDS.*  *As an example, 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 14.4, will be evaluated as follows:

|  |
| --- |
| *The Employer shall describe how this factor will be evaluated or otherwise indicate “Not Applicable” if the Employer indicated “None” in ITB 14.4 of the BDS.* |

*.*

**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.

|  |
| --- |
| *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 CRITERIA**

**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 4.2. | 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 4.3. | 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 4.4. | 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 4.5. | 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 4.8. | must meet requirement | must meet requirement | must meet requirement | not applicable | Letter of Bid |

**2.2 History of Contract Non-Performance**

**2.2.1 History of Nonperforming Contracts**

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

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Nonperformance of a contract a did not occur as a result of contractor default since 1 January [*insert year]* | Must meet requirement | Must meet requirement | Must meet requirement b | Not applicable | Form CON-1 |

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

b This requirement also applies to contracts executed by the Bidder as Joint Venture member.

**2.2.2 Pending Litigation and Arbitration**

Pending litigation and arbitration criterion … [*shall/shall not*][[10]](#footnote-10) apply.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  | | | |  |
| **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 [*insert percentage which should be between 50% to 100%]* percent of the Bidder’s net worth calculated as the difference between total assets and total liabilities should be positive. | Must meet requirement | Not applicable | Must meet requirement | Not applicable | Form CON-1 |

**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 . . .. a 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 25 per cent of the  requirement | must meet 40 per cent of the  requirement | Form FIN-2 |

a 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”.

**2.3.3 Financial Resources Requirement**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Criteria** | **Compliance Requirements** | | | | **Documents** |
| **Requirement** | **Single Entity** | **Joint Venture** | | | **Submission Requirements** |
| **All Partners Combined** | **Each Partner** | **One Partner** |
| For Single Entities  The Bidder must demonstrate that its financial resources defined in FIN-3, less its financial obligations for its current contract commitments defined in FIN-4, meet or exceed the total requirement for the Subject Contract of …………a | Must meet requirement | Not applicable | Not applicable | Not applicable | Form FIN–3 and  Form FIN–4 |
| For Joint Ventures   1. **One partner** must demonstrate that its financial resources defined in FIN-3, less its financial obligations for its own current contract commitments defined in FIN-4, meet or exceed its required share of 40% from the total requirement for the Subject Contract.   AND | Not applicable | Not applicable | Not applicable | Must meet requirement | Form FIN–3 and  Form FIN–4 |
| 1. **Each partner** must demonstrate that its financial resources defined in FIN-3, less its financial obligations for its own current contract commitments defined in FIN-4, meet or exceed its required share of 25% from the total requirement for the Subject Contract.   AND | Not applicable | Not applicable | Must meet requirement | Not applicable | Form FIN–3 and  Form FIN–4 |
| 1. The Joint Venture must demonstrate that the combined financial resources of all partners defined in FIN-3, less all the partners’ total financial obligations for the current contract commitments defined in FIN-4, meet or exceed the total requirement for the Subject Contract of ………a | Not applicable | Must meet requirement | Not applicable | Not applicable | Form FIN–3 and  Form FIN–4 |

a The Employer is to specify the total requirement for the Subject Contract based on the following calculation:

[2 x Estimated Contract Value (Inclusive of Taxes and Duties)] /Completion Period in Months

* 1. **Construction Experience**

**2.4.1 Contracts of Similar Size and Nature**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Bbbbbbbbbb |  | | | |  |
| **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 . . . . . . . а  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*b* | 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 . . . . . . . а  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*b* | not applicable | Form EXP-1 |

a 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.

b 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 Activities**[[11]](#footnote-11)

(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  requirements a | not applicable | not applicable | Form EXP-2 |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

a 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)**

**Table of Adjustment Data**

**Bid Security**

**Technical Proposal**

Personnel

Form PER-1: Proposed Personnel

Form PER-2: Resume of Proposed Personnel

Form EQU: Equipment

Site Organization

Method Statement

Mobilization Schedule

Construction Schedule

**Bidder’s Qualification**

Form ELI-1: Bidder’s Information Sheet

Form ELI-2: JV Information Sheet

Form CON-1: Historical Contract Non-Performance

Form FIN-1: Historical Financial Performance

Form FIN-2: Average Annual Construction Turnover

Form FIN-3: Availability of Financial Resources

Form FIN-4: Financial Requirements for Current Contract Commitments

Form EXP-1: Contracts of Similar Size and Nature

Form EXP-2: Construction Experience in Key Activities

**Letter of Bid**

**-Note-**

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

Date: .................................................. OCB No.: ..................................................

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

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

We, the undersigned, declare that:

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: [*insert narrative*]

1. The total price of our Bid, excluding any discounts offered in item (d) below is:

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

1. The discounts offered and the methodology for their application are as follows: [*insert discounts and methodology for their application if any*];
2. Our bid shall be valid for a period of [*insert bid validity period as specified in ITB 19.1 of the BDS*] 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.
3. If our bid is accepted, we commit to obtain a performance security in accordance with the Bidding Document.
4. Our firm, including any Subcontractors or Suppliers for any part of the Contract, have nationalities from eligible countries in accordance with ITB 4.2.
5. We, including any Subcontractors or Suppliers for any part of the contract, do not have any conflict of interest in accordance with ITB 4.3.
6. We are not participating, as a Bidder, either individually or as partner in a Joint Venture, in more than one Bid in this bidding process in accordance with ITB 4.3(e), other than alternative offers submitted in accordance with ITB 14.
7. Our firm, Joint Venture partners, associates, parent company, its affiliates or subsidiaries, including any Subcontractors or Suppliers for any part of the contract, are not subject to, or not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the Asian Development Bank or a debarment imposed by the Asian Development Bank in accordance with the Agreement for Mutual Enforcement of Debarment Decisions between the Asian Development Bank and other development banks.[[12]](#footnote-12)
8. Our firm, Joint Venture partners, associates, parent company, affiliates or subsidiaries, including any Subcontractors or Suppliers for any part of the Contract, are not, or have never been, temporarily suspended, debarred, declared ineligible, or blacklisted by the Employer’s country, any international organization, and other donor agency.

If so debarred, declared ineligible, temporarily suspended, or blacklisted, please state details (as applicable to each Joint Venture partner, associate, parent company, affiliate, subsidiaries, Subcontractors, and/or Suppliers):

1. Name of Institution: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. Period of debarment, ineligibility, or blacklisting [*start and end date*]: \_\_\_\_\_\_\_\_\_\_\_\_
3. Reason for the debarment, ineligibility, or blacklisting: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
4. Our firms, Joint Venture partners, associates, parent company’s affiliates or subsidiaries, including any Subcontractors or Suppliers key officers and directors have not been [*charged or convicted*] of any criminal offense (including felonies and misdemeanors) or infractions/violations of ordinance which carry the penalty of imprisonment.

If so charged or convicted, please state details:

1. Nature of the offense/violation: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. Court and/or area of jurisdiction: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
3. Resolution [i*.e. dismissed; settled; convicted/duration of penalty*]: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
4. Other relevant details [*please specify*]: \_\_\_\_\_\_\_\_\_\_\_\_\_\_
5. We understand that it is our obligation to notify ADB should our firm, Joint Venture partners, associates, parent company, affiliates or subsidiaries, including any Subcontractors or Suppliers, be temporarily suspended, debarred or become ineligible to work with ADB or any other MDBs, the Employer’s country, international organizations, and other donor agencies, or any of our key officers and directors be charged or convicted of any criminal offense or infractions/violations of ordinance which carry the penalty of imprisonment.
6. Our firm, Joint Venture partners, associates, parent company, affiliates or subsidiaries, including any Subcontractors or Suppliers, are not from a country which is prohibited to export goods to or receive any payments from the Employer’s country by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.
7. [We are not a government-owned enterprise] / [We are a government-owned enterprise but meet the requirements of ITB 4.5].**[[13]](#footnote-13)**
8. We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract:**[[14]](#footnote-14)**

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

1. 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.
2. We understand that you are not bound to accept the lowest evaluated Bid or any other Bid that you may receive.
3. 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.
4. 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.
5. We understand that any misrepresentation that knowingly or recklessly misleads, or attempts to mislead may lead to the automatic rejection of the Bid or cancellation of the contract, if awarded, and may result in remedial actions, in accordance with ADB’s Anticorruption Policy (1998, as amended to date) and Integrity Principles and Guidelines (2015, as amended from time to time).

Name [*insert complete name of person signing the bid]*

In the capacity of [*insert legal capacity of person signing the bid]*

Signed [*insert signature of person whose name and capacity are shown above]*

Duly authorized to sign the Bid for and on behalf of [*insert complete name of the bidder]*

Date [*insert date of signing]*

**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 (Specifications and Other 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]**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Notes to Bill of Quantities**  *Objectives*  *The objectives of the Bill of Quantities are*  *(a) to provide sufficient information on the quantities of Works to be performed to enable bids to be prepared efficiently and accurately; and*  *(b) when a contract has been entered into, to provide a priced Bill of Quantities for use in the periodic*  *valuation of Works executed.*  *To attain these objectives, Works should be itemized in the Bill of Quantities in sufficient detail to distinguish between the different classes of Works, or between Works of the same nature carried out in different locations or in other circumstances that may give rise to different considerations of cost. Consistent with these requirements, the layout and content of the Bill of Quantities should be as simple and brief as possible.*  *Content*  *The Bill of Quantities should be divided generally into the following sections:*  *(a) Preamble,*  *(b) Work Items (grouped into parts),*  *(c) Daywork Schedule, and*  *(d) Summary.*  *Preamble*  *The Preamble should indicate the inclusiveness of the unit prices and should state the methods of measurement that have been adopted in the preparation of the Bill of Quantities and that are to be used for the measurement of any part of the Works.*  *Rock*  *Where excavation, boring, or driving is included in the Works, a comprehensive definition of rock (always a contentious topic in contract administration), if not given in the Technical Specification, should be given in the Preamble, and this definition should be used for the purposes of measurement and payment.*  *Work Items*  *The items in the Bill of Quantities should be grouped into sections to distinguish between those parts of the Works, which by nature, location, access, timing, or any other special characteristics may give rise to different methods of construction, phasing of the Works, or considerations of cost. General items common to all parts of the Works may be grouped as a separate section in the Bill of Quantities. When families of Price Adjustment Formulas are used, they should relate to appropriate sections in the Bill of Quantities.*  *Quantities*  *Quantities should be computed net from the Drawings, unless directed otherwise in the Contract, and no allowance should be made for bulking, shrinkage, or waste. Quantities should be rounded up or down where appropriate, and spurious accuracy should be avoided.*  *Units of Measurement*  *The following units of measurement and abbreviations are recommended for use unless other national units are mandatory in the country of the Employer.*   |  |  |  |  | | --- | --- | --- | --- | | *Unit* | *Abbreviation* | *Unit* | *Abbreviation* | | *cubic meter*  *hectare*  *hour*  *kilogram*  *kilowatt*  *lump sum*  *meter* | *m3 or cu m*  *ha*  *h*  *kg*  *kW*  *sum*  *m* | *Metric Ton (1,000 kg)*  *millimeter*  *month*  *number*  *square meter*  *square millimeter*  *week* | *t*  *mm*  *mon*  *nr*  *m2 or sq m*  *mm2 or sq mm*  *wk* |   *Ground and Excavation Levels*  *The commencing surface should be identified in the description of each item for work involving excavation, boring, or driving, for which the commencing surface is not also the original surface. The excavated surface should be identified in the description of each item for work involving excavation for which the excavated surface is not also the final surface. The depths of work should be measured from the commencing surface to the excavated surface, as defined.*  *Daywork Schedule*  *A Daywork Schedule should be included if the probability of unforeseen work, outside the items included in the Bill of Quantities, is relatively high. To facilitate checking by the Employer of the realism of rates quoted by the Bidders, the Daywork Schedule should normally comprise*  *(a) a list of the various classes of labor, materials, and Contractor’s Equipment for which basic Daywork rates or prices are to be inserted by the Bidder, together with a statement of the conditions under which the Contractor will be paid for work executed on a Daywork basis; and*  *(b) a percentage to be entered by the Bidder against each basic Daywork Subtotal amount for labor, materials, and plant representing the Contractor’s profit, overheads, supervision, and other charges.*  *Provisional Quantities and Sums*  *Provision for quantity contingencies in any particular item or class of work with a high expectation of quantity overrun should be made by entering specific “Provisional Quantities” or “Provisional Items” in the Bill of Quantities, and not by increasing the quantities for that item or class of work beyond those of the work normally expected to be required. To the extent not covered above, a general provision for physical contingencies (quantity overruns) should be made by including a “Provisional Sum” in the Summary of the Bill of Quantities. Similarly, a contingency allowance for possible price increases should be provided as a “Provisional Sum” in the Summary of the Bill of Quantities. The inclusion of such Provisional Sums often facilitates budgetary approval by avoiding the need to request periodic supplementary approvals as future needs arise.*  *The estimated cost of specialized work to be carried out, or of special goods to be supplied, by a Nominated Subcontractor should be indicated in the relevant part of the Bill of Quantities as a particular Provisional Sum with an appropriate brief description. A separate bidding procedure is normally carried out by the Employer to select the specialists, who are then nominated as Subcontractors to the main or prime contractor. To provide an element of competition among the main Bidders (or prime contractors) in respect of any facilities, amenities, attendance, etc., to be provided by the successful Bidder as prime contractor for the use and convenience of the specialist or nominated Subcontractor, each related Provisional Sum should be following by an item in the Bill of Quantities inviting a percentage (to be quoted by the main Bidder) payable on the actual expenditure from the Provisional Sum.*  *Summary*  *The Summary should contain a tabulation of the separate parts of the Bill of Quantities carried forward, with provisional sums for Daywork, for physical (quantity) contingencies, and for price contingencies (upward price adjustment) where applicable.* |

**Sample Bill of Quantities**

**A. Preamble**

1. The Bill of Quantities shall be read in conjunction with the Instructions to Bidders, General and Particular Conditions of Contract, Technical Specifications, and Drawings.

2. The quantities given in the Bill of Quantities are estimated and provisional and are given to provide a common basis for bidding. The basis of payment will be the actual quantities of work ordered and carried out, as measured by the Contractor and verified by the Project Manager and valued at the rates and prices bid in the priced Bill of Quantities, where applicable, and otherwise at such rates and prices as the Project Manager may fix within the terms of the Contract.

3. The rates and prices bid in the priced Bill of Quantities shall, except as otherwise provided under the Contract, include all construction equipment, labor, supervision, materials, erection, maintenance, insurance, profit, taxes, and duties, together with all general risks, liabilities, and obligations set out or implied in the Contract.

4. A rate or price shall be entered against each item in the priced Bill of Quantities, whether quantities are stated or not. The cost of items against which the Contractor has failed to enter a rate or price shall be deemed covered by other rates and prices entered in the Bill of Quantities. The units and rates in figures entered into the Bill of Quantities should be typewritten or if written by hand, must be in print form. Bill of Quantities not presented accordingly may be considered nonresponsive.

5. The whole cost of complying with the provisions of the Contract shall be included in the Items provided in the priced Bill of Quantities, and where no items are provided, the cost shall be deemed to be distributed among the rates and prices entered for the related Items of Work.

6. General directions and descriptions of work and materials are not necessarily repeated or summarized in the Bill of Quantities. References to the relevant sections of the Contract documentation shall be made before entering prices against each item in the priced Bill of Quantities.

7. Provisional Sums included and so designated in the Bill of Quantities shall be expended in whole or in part at the direction and discretion of the Project Manager in accordance with the Conditions of Contract.

8. The method of measurement of completed work for payment shall be in accordance with *[insert the name of a standard reference guide, or full details of the methods to be used. The method of measurement should be spelled out precisely in the Preamble to the Bill of Quantities, describing for example the allowances (if any) for timbering in excavation, etc. Many national standard reference guides have been prepared on the subject, and one such guide is the Civil Engineering Standard Method of Measurement of the Institution of Civil Engineers in the United Kingdom.*].

9. Arithmetic errors will be corrected by the Employer as follows:

(a) If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected.

(b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail, and the total shall be corrected.

(c) If there is a discrepancy between the bid price in the Summary of Bill of Quantities and the bid amount in item (c) of the Letter of Bid, the bid price in the Summary of Bill of Quantities will prevail and the bid amount in item (c) of the Letter of Bid will be corrected.

(d) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a), (b), and (c) above.

10. Rock is defined as all materials that, in the opinion of the Project Manager, require blasting, or the use of metal wedges and sledgehammers, or the use of compressed air drilling for their removal, and that cannot be extracted by ripping with a tractor of at least 150 brake horsepower with a single, rear-mounted, heavy duty ripper.

**B. Work Items**

1. The Bill of Quantities usually contains the following part Bills, which have been grouped according to the

nature or timing of the work:

Bill No. 1 – General Items;

Bill No. 2 – Earthworks;

Bill No. 3 – Culverts and Bridges; and

Summary Bill of Quantities.

2. Bidders shall price the Bill of Quantities in local currency only and shall indicate in the Schedule of Payment Currencies the percentage expected for payment in foreign currency or currencies. The example given illustrates one of the two alternative methods of setting up a Bill of Quantities, in which rates and prices are entered in local currency only, with Bidders stating separately their proportionate requirements in different types and amounts of foreign currencies. The second method is where rates and prices are broken down for each item into local and foreign currency components. The first method is administratively more convenient and hence is more commonly used in Works contracts.

Bill No. 1: General Items

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Item No | Description | Unit | Quantity | Rate | Amount |
| 113 | Maintain Project Manager’s Offices for 24 months including services | Month | 24 |  |  |
| 122 | Traffic control and maintenance of diversion road | Month | 24 |  |  |
| 132 | Provide for cleaning up the site on completion | Lump sum | 1 |  |  |
| Total for Bill No. 1…………. | | | | | |
| Carried forward to Summary, ………. | | | | | |

Bill No. 2: Earthworks

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Item No | Description | Unit | Quantity | Rate | Amount |
| 201 | Excavate topsoil to maximum depth of 25 cm and  stockpile for reuse, maximum haul distance 1 km | Cu. m. | 15,000 |  |  |
| 202 | Excavate topsoil to maximum depth of 25–50 cm | Cu. m. | 258,000 |  |  |
| 206 | Excavate fill material from cuttings or approved borrow  pits, haul up to 1 km, deposit, shape, and compact to fill | Cu. m. | 80,000 |  |  |
| Total for Bill No. 2…………. | | | | | |
| Carried forward to Summary, ………. | | | | | |

Bill No. 3: Culverts and Bridges

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Item No | Description | Unit | Quantity | Rate | Amount |
| 301 | Excavate in all materials other than rock from ground level  to underside of foundations, maximum depth of 5 m, and  dispose | Cu. m. | 35,000 |  |  |
| 311 | Concrete class B in abutments | Cu. m. | 20,000 |  |  |
| 318 | Mild steel reinforcement in abutments and piers up to  20 mm diameter | ton | 370 |  |  |
| Total for Bill No. 3…………. | | | | | |
| Carried forward to Summary, ………. | | | | | |

Provisional Sum

|  |  |  |  |
| --- | --- | --- | --- |
| Bill No. | Item No. | Description | Amount |
| 2 | 2.8 | Supply and install equipment in pumping station | 1,250,000 |
| 3 | 3.32 | Provide ventilation system | 3,500,000 |
| Total, Specified Provisional Sum | | | 4,750,000 |
| Carried forward to Summary, ………. | | |  |

**Summary of Bill of Quantities**

|  |  |  |
| --- | --- | --- |
| Genera; Summary | Page | Amount |
| Bill No. 1: General Items |  |  |
| Bill No. 2: Earthworks |  |  |
| Bill No. 3: Culverts and Bridges |  |  |
| **Sub-total of Bills** | (A) |  |
| Specified Provisional Sum (PS) | (B) | 4,750,000 |
| **Total of Bills plus PS (A+B)** | (C) |  |
| Add any Provisional Sum for Contingency | (D) |  |
| **Bid Price (C +D) to be carried forward to the Letter of Bid** | (E) |  |

**Table of Adjustment Data**

**Table A - Local Currency**

To be entered by the Employer

*To be entered by the Bidder*

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Index**  **Code** | **Index Description** | **Source of Index** | **Base Value**  **and Date** | **Bidder’s**  **Local Currency Amount** | **Bidder’s**  **Proposed**  **Weighting** |
|  | Nonadjustable | — | — | — | A: 0.15  B:  C:  D:  E: |
|  |  |  | **Total** |  | **1.00** |

- Notes -

*“Base Date” means the date 28 days prior to the deadline for submission of the bid.*

*Tables of Adjustment Data shall only be included if prices are to be quoted as adjustable prices in accordance with ITB 15.8.*

## Form of Bid Security

Bank Guarantee

[Bank’s name, and address of issuing branch or office][[15]](#footnote-15)

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

Date: ...................................................................................................................................................................................

Bid Security No.:

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

Furthermore, we understand that, according to your conditions, bids must be supported by a bid guarantee. At the request of the Bidder, we [name of bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [amount in words] [amount in figures] upon receipt by us of your first demand in writing accompanied by a written statement stating that the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder

(a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Letter of Bid; or

(b) does not accept the correction of errors in accordance with the Instructions to Bidders (hereinafter “the ITB”); or

(c) having been notified of the acceptance of its Bid by the Employer during the period of bid validity, (i) fails or refuses to execute the Contract Agreement, or (ii) fails or refuses to furnish the performance security, in accordance with the ITB, or (iii) fails or refuses to furnish the domestic preference security, if required.

This guarantee will expire (a) if the Bidder is the successful Bidder, upon our receipt of copies of the Contract Agreement signed by the Bidder and the Performance Security issued to you upon the instruction of the Bidder; or (b) if the Bidder is not the successful Bidder, upon the earlier of (i) our receipt of a copy of your notification to the Bidder of the name of the successful Bidder, or (ii) 28 days after the expiration of the Bidder’s bid. Consequently, any demand for payment under this guarantee must be received by us at the office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458[[16]](#footnote-16).

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

**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 and ITB 4.2.   2. Authorization to represent the firm or JV named in above, in accordance with ITB 21.2.   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 4.5. | |

**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 and ITB 4.2.   2. Authorization to represent the firm named above, in accordance with ITB 21.2.   3. In the case of government-owned entity, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB 4.5. | |

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

Each Bidder must fill out this form in accordance with Criteria 2.2.1 and 2.2.2 of Section 3 (Evaluation and Qualification Criteria) to describe any history of nonperforming contracts and pending litigation or arbitration formally commenced against it.

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

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

|  |  |  |  |
| --- | --- | --- | --- |
| **Table 1: History of Nonperforming Contracts** | | | |
| **Choose one of the following:**   * No nonperforming contracts. * Below is a description of nonperforming contracts involving the Bidder (or each Joint Venture member if Bidder is a Joint Venture). | | | |
| **Year** | **Description** | **Amount of Nonperformed Portion of Contract (MNT)** | **Total Contract Amount (MNT)** |
| *[insert year]* | Contract Identification: *[indicate complete contract name/ number, and any other identification]*  Name of Employer: *[insert full name]*  Address of Employer: *[insert street/city/country]*  Reason(s) for nonperformance: *[indicate main reason(s)]* | *[insert amount]* | *[insert amount]* |
|  |  |  |  |
| **Table 2: 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 Joint Venture 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** |
| *[insert year]* | Contract Identification: *[indicate complete contract name/ number, and any other identification]*  Name of Employer: *[insert full name]*  Address of Employer: *[insert street/city/country]*  Matter of Dispute: *[indicate full description of dispute]*  Party who initiated the dispute: [ind*icate “Employer” or “Contractor”*]  Status: [*indicate status of dispute*] | *[insert amount]* | *[insert amount]* |
|  |  |  |  |

- Note -

*Table 2 of this form shall only be included if Criterion 2.2.2 of Section 3 (Evaluation and Qualification Criteria) is applicable.*

**Form FIN-1: Historical Financial Performance**

Each Bidder must fill out this form.

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

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

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

**Information from Balance Sheet**

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

|  |  |  |
| --- | --- | --- |
| **Most Recent**  **Working Capital** |  | To be obtained for most recent year and carried forward to FIN-3 Line 1; in case of Joint Ventures, to the corresponding Joint Venture Partner’s FIN-3. |

**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 legal entity or entities comprising the Bidder and not the Bidder’s parent companies, subsidiaries, or affiliates. * Historical financial statements must be audited by a certified accountant. * Historical financial statements must be complete, including all notes to the financial statements. * Historical financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted). | | | |

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

Each Bidder must fill out this form.

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

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

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

|  |  |  |
| --- | --- | --- |
| **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**

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

1. its current contract commitments, and
2. the subject contract.

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

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

|  |  |  |
| --- | --- | --- |
| **Financial Resources** | | |
| **No.** | **Source of financing** | **Amount (MNT equivalent)** |
| 1 | Working Capital (to be taken from FIN - 1) |  |
| 2 | Credit Line***a*** |  |
| 3 | Other Financial Resources |  |
|  | Total Available Financial Resources |  |

a To be substantiated by a letter from the bank issuing the line of credit.

**Form FIN-4: Financial Requirements for Current Contract Commitments**

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

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

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

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Current Contract Commitments** | | | | | | |
| **No.** | **Name of**  **Contract** | **Employer’s Contact (Address, Tel, Fax)** | **Contract**  **Completion Date** | **Remaining**  **Contract Period**  а  **in months (X)** | **Outstanding Contract Value**  **(Y)**b | **Monthly Financial Resources Requirement (X/ Y)** |
| 1 |  |  |  |  |  |  |
| 2 |  |  |  |  |  |  |
| 3 |  |  |  |  |  |  |
| 4 |  |  |  |  |  |  |
| **Total Monthly Financial Requirements for Current Contract Commitments** | | | | | | MNT ………. |

a Remaining outstanding contract values to be calculated from 28 days prior to bid submission deadline.

b Remaining contract period to be calculated from 28 days prior to the bid submission deadline

**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**

|  |
| --- |
| ***Notes***  *This section contains the list of eligible countries. Please choose one of the following cases and follow the instructions as appropriate.*  *For Contracts to be financed by loans/grants from*   1. *Ordinary Capital Resources (OCR) without cofinancing resources:*   *Unless a waiver of ADB member country procurement eligibility restrictions was approved by the ADB Board of Directors, please insert the most recent list of ADB member countries obtainable from www.adb.org/about/members*  *EXCEPTION: If any other contract under the project is financed by cofinancing resources that are administered by ADB (other than those listed in paragraph 2 below), then please state “No nationality restrictions apply, other than any restrictions arising from ITB 4.6.”*  *2. Regular loan from OCR with cofinancing resources from any one of the following funds:*  *(i) Asian Clean Energy Fund,*  *(ii) Japan Fund for Poverty Reduction,*  *(iii) Investment Climate Facilitation Fund,*  *(iv) Japan Fund for the Joint Credit Mechanism, and*  *(v) e-Asia and Knowledge Partnership Fund.*  *Unless a waiver of ADB member country procurement eligibility restrictions was approved by the ADB Board of Directors, please insert the most recent list of ADB member countries obtainable from www.adb.org/about/members*  *3. Concessional loan from OCR with cofinancing resources from any one of the following funds:*  *(i) Asian Clean Energy Fund,*  *(ii) Japan Fund for Poverty Reduction,*  *(iii) Japan Fund for Public Policy Training,*  *(iv) Japan Fund for Information and Communication Technology,*  *(v) Investment Climate Facilitation Fund, and*  *(vi) e-Asia and Knowledge Partnership Fund.*  *Unless a waiver of ADB member country procurement eligibility restrictions was approved by the ADB Board of Directors, please insert the most recent list of ADB member countries obtainable from www.adb.org/about/members*  *4. Regular loan from OCR with cofinancing resources other than those listed in paragraph 2 above:*  *Please state “No nationality restrictions apply, other than any restrictions arising from ITB 4.6.”*  *5. Concessional loan from OCR with cofinancing resources other than those listed in paragraph 3 above:*  *Please state “No nationality restrictions apply, other than any restrictions arising from ITB 4.6.”*  *6. ADF without cofinancing resources:*  *Unless a waiver of ADB member country procurement eligibility restrictions was approved by the ADB Board of Directors, please insert the most recent list of ADB developed member countries that have contributed to ADF resources, and all ADB*  *developing member countries.*  *EXCEPTION: If any other contract under the project is financed by cofinancing resources that are administered by ADB (other than those listed in paragraph 7 below), then please state “No nationality restrictions apply, other than any restrictions arising*  *from ITB 4.6.”*  *7. ADF with cofinancing resources from any one of the following funds:*  *(i) Asian Clean Energy Fund,*  *(ii) Japan Fund for Poverty Reduction,*  *(iii) Japan Fund for Public Policy Training,*  *(iv) Japan Fund for Information and Communication Technology,*  *(v) Investment Climate Facilitation Fund, and*  *(vi) e-Asia and Knowledge Partnership Fund.*  *Unless a waiver of ADB member country procurement eligibility restrictions was approved by the ADB Board of Directors, please insert the most recent list of ADB developed member countries that have contributed to ADF resources, and all ADB developing member countries.*  *8. ADF with cofinancing resources other than those listed in paragraph 6 above: Please state “No nationality restrictions apply, other than any restrictions arising from ITB 4.8.”* |

**Section 6 - Specifications and Other Requirements**

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

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Specifications

Drawings

Supplementary Information Regarding Works to Be Procured

Personnel Requirements

Equipment Requirements

## Specifications

|  |
| --- |
| ***Note***  *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**

|  |
| --- |
| ***Notes***   1. *It is customary to bind the drawings in a separate volume, which is often larger than other volumes of the contract documents. The size will be dictated by the scale of the drawings, which must not be reduced to the extent that details are rendered illegible.* 2. *A simplified map showing the location of the Site in relation to the local geography, including major roads, ports, airports, and railroads, is helpful.* 3. *The construction drawings, even if not fully developed, must show sufficient details to enable Bidders to understand the type and complexity of the work involved and to price the bill of quantities.*   *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**

|  |
| --- |
| ***Notes on Personnel Requirements***  *The managerial and technical competence of a Contractor is largely related to key personnel on site. The extent to which the Bidder should demonstrate having staff with extensive experience should be limited to those requiring critical operational or technical skills. The personnel requirement should therefore refer to a limited number of such key personnel, for instance, the project or contract manager and those superintendents working under the project manager who will be responsible for major components (e.g., superintendents specialized in dredging, piling, tunneling, or earthworks, as required for each particular project). Requirements should specify*  *(a) the minimum number of years of experience in a similar position; and*  *(b) the minimum number of years of experience and/or number of comparable projects carried out in a specified number of preceding years.*  *The requirement of education and academic qualifications is normally unnecessary for such positions, as contractors often employ competent staff who have learned their profession “on the job” rather than through academic training. It is appropriate to specify that certain positions are filled by individuals who have held posts of comparable authority for, say, 3 years with the Bidder, so that key staff in executive site positions have sufficient knowledge of the Bidder’s management, policy, procedures, and practices to act*  *with confidence and authority within that framework.* |

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**

|  |
| --- |
| ***Notes on Equipment Requirements***  *The Employer should only specify bulky or specialized items that are critical for the type of project to be implemented, and which may be difficult for the Contractor to obtain quickly. Examples may include items such as heavy lift cranes and piling barges, dredgers, tunnel boring machines, or asphalt mixing plant.*  *An inventory of construction equipment represents a high capital cost overhead to a contractor. Consequently, not all competent potential Bidders will maintain an inventory of high-value items that are in suitable condition for major contracts. This is particularly so with management contractors, who undertake construction projects mainly by subcontracting. In most cases, Bidders can readily purchase, lease, or hire equipment; examples may include items such as heavy lift cranes and piling barges, etc. Even in such cases, contractors may not own the specialized items of equipment, and may rely on specialist Subcontractors or equipment-hire firms. The availability of such Subcontractors and of the specified equipment should be subject to verification prior to contract award. The terms of any lease or hire agreement for equipment should preferably include a provision that the equipment will remain on the site (or be vested in the Employer) in the event of default of the contractor, thereby ensuring more timely continuity of work by a replacement contractor.* |

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

|  |
| --- |
| **Notes on General Conditions of Contract**  *The General Conditions of Contract (GCC), read in conjunction with the Particular Conditions of Contract (PCC) 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 for smaller admeasurement contracts and, with the modifications noted in the footnotes, it can be adapted for lump sum contracts.*  *The provisions in Section 7 (General Conditions of Contract), must be used with their text unchanged. Any change(s) in General Conditions of Contract needed to be specified should be indicated in Particular Conditions of Contract.* |

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**General Conditions of Contract**

**A. General provisions**

|  |  |
| --- | --- |
| 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. Letter of Acceptance, 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. Contractor to Perform the Works | 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 Procedures | 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[[17]](#footnote-17). 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 corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations and require its employees or agents with knowledge of the Contract to respond to questions from ADB.  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 based on 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. Delays Ordered by the Project Manager | 39.1 The Project Manager may instruct the Contractor to delay 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. Remedy of Defects | 44.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period[[18]](#footnote-18) 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 have to be executed at the cost of the Contractor and the Project Manager will calculate the cost. |

E. Cost Control

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| 46. Bill of Quantities | 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 Bill of Quantities | 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 particular 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. Payment | 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 each of the currencies 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 Unless otherwise stated, all payments and deductions will be paid or charged in the proportions of currencies comprising 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. Currencies | 55.1 Payments are to be made in 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 each of the currencies in which the Contract Price is payable.  **Pc = Ac + Bc Imc/Ioc**  where:  **Pc** - the adjustment factor for the portion of the Contract Price.  **Ac** and **Bc** - coefficients[[19]](#footnote-19) specified in the PCC, representing the nonadjustable and adjustable portions, respectively, of the Contract Price; 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[[20]](#footnote-20) 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[[21]](#footnote-21) 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[[22]](#footnote-22) 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 amounts and currencies 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 types and proportions of the currencies in which the Contract Price is payable as specified in the PCC. 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 radio-activity, except as may be attributable to the Contractor’s use of such munitions, explosives, radiation or radio-activity, and  (e) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.  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. Finishing the Contract**

|  |  |
| --- | --- |
| 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 Contractor 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 (1998, as amended to date) 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:   * + - 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 an obligation;       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. "abuse" means theft, waste, or improper use of assets related to ADB-related activity, either committed intentionally or through reckless disregard;       6. "conflict of interest" means any situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations;       7. "obstructive practice" means (a) deliberately destroying, falsifying, altering, or concealing of evidence material to an ADB investigation, or deliberately making false statements to investigators, with the intent to impede an ADB investigation; (b) threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to a Bank investigation or from pursuing the investigation; or (c) deliberate acts intended to impede the exercise of ADB's contractual rights of audit or inspection or access to information; and       8. “integrity violation" is any act, as defined under ADB’s Integrity Principles and Guidelines (2015, as amended from time to time), which violates ADB’s Anticorruption Policy, including (i) to (vii) above and the following: violations of ADB sanctions, retaliation against whistleblowers or witnesses, and other violations of ADB's Anticorruption Policy, including failure to adhere to the highest ethical standard.   (b) will reject a proposal for award if it determines that the Bidder recommended for award 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 impose remedial actions on a firm or an individual, at any time, in accordance with ADB’s Anticorruption Policy and Integrity Principles and Guidelines, including declaring ineligible, either indefinitely or for a stated period of time, to participate in ADB-financed, -administered, or -supported activities or to benefit from an ADB-financed, -administered, or -supported contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations.  76.2 All Bidders, consultants, contractors, suppliers and other third parties engaged or involved in ADB-related activities have a duty to cooperate fully in any screening or investigation when requested by ADB to do so. Such cooperation includes, but is not limited to, the following:  (a) being available to be interviewed and replying fully and truthfully to all questions asked;  (b) providing ADB with any items requested that are within the party’s control including, but not limited to, documents and other physical objects;  (c) upon written request by ADB, authorizing other related entities to release directly to ADB such information that is specifically and materially related, directly or indirectly, to the said entities or issues which are the subject of the investigation;  (d) cooperating with all reasonable requests to search or physically inspect their person and/or work areas, including files, electronic databases, and personal property used on ADB activities, or that utilizes ADB’s Information and Communications Technology (ICT) resources or systems (including mobile phones, personal electronic devices, and electronic storage devices such as external disk drives);  (e) cooperating in any testing requested by ADB, including but not limited to, fingerprint identification, handwriting analysis, and physical examination and analysis; and  (f) preserving and protecting confidentiality of all information discussed with, and as required by, ADB.  76.3 All Bidders, consultants, contractors and suppliers shall ensure that, in its contract with its sub-consultants, Subcontractors, and other third parties engaged or involved in ADB-related activities, such sub-consultants, Subcontractors, and other third parties similarly undertake the foregoing duty to cooperate fully in any screening or investigation when requested by ADB to do so.  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 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. |
|  |  |
| 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**

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.

|  |  |
| --- | --- |
|  |  |
| **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 2.2** | Sectional completion is [ indicate if *“Allowed” or “Not Allowed”]*  *If allowed, insert the list of the sections, the time of completion for each section and*  *the completion date for each section.* |
| **GCC 2.3(j)** | The following documents also form part of the Contract: [*insert the list of documents” otherwise indicate “None” if there are no other documents]* |
| **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) for loss or damage to the Works, Plant and Materials: *[insert amounts]*  (b) for loss or damage to Equipment: *[insert amounts]*  (c) for loss or damage to property (except the Works, Plant and Materials): *[insert amounts]*  (d) for personal injury or death:  (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]*[[23]](#footnote-23). |
| **GCC 27.2** | Site Possession Date(s) shall be: *[insert locations(s) and date(s)]*[[24]](#footnote-24). |
| **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 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]*[[25]](#footnote-25) days. |
| **GCC 52.1** | Payment shall be made within *[insert number]*[[26]](#footnote-26) 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 are:  (a)  For Mongolian Tugrik:  (i)  *[insert value]* percent for nonadjustable item (coefficient A).  *[insert value]* percent for adjustable item (coefficient B). |
| **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 Contract *[insert “is” or “is not”]* subject to Bonus.  [*If the contract is subject to, insert*: “The Bonus for the whole of the Works is *[insert percentage of the Contract Price]*[[27]](#footnote-27) per day. The maximum amount of Bonus for the whole of the Works is *[insert percentage]* of the Contract Price.  *[The option to allow inclusion of Bonus is subject to the Employer’s prior discussion with ADB, otherwise “is not” should be indicated.]* |
| **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 is *[percentage]* 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 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**

Notice of Intention for Award of Contract

Notification of Award

Contract Agreement

Performance Security

Advance Payment Security

**Notice of Intention for Award of Contract**

[*on letterhead paper of the Employer*]

[*date of notification*]

To: [*name of the Bidder*]

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

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

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

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

This is to notify you of our intention to award the contract [*insert name of the contract and identification number, as given in the Bid Data Sheet*]. You have [*insert number of days as specified in ITB 39.1 of the BDS*] days from the date of this notification to (i) request for a debriefing in relation to the evaluation of your Bid; and/or (ii) submit a bidding-related complaint in relation to the intention for award of contract, in accordance with the procedures specified in ITB 44.1.

The summary of the evaluation are as follows:

1. **List of Bidders**

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

1. **Reason/s Why Your Bid Was Unsuccessful**

………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………

1. **The Successful Bidder**

|  |  |
| --- | --- |
| Name of Bidder: |  |
| Address: |  |
| Contract Price: |  |
| Duration of Contract: |  |
| Scope of the Contract Awarded: |  |
| Amount Performance Security Required: |  |

Authorized Signature: ……………………………………………………………

Name and Title of Signatory: ……………………………………………………

Name of Agency: …………………………………………………………………

**Notification of Award**

[*on letterhead paper of the Employer*]

**Letter of Acceptance**

[*date*]

To: [*Name and address of the contractor*]

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

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

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract and any additional security required as a result of the evaluation of your bid, using for that purpose thePerformance Security Form included in Section 9 (Contract Forms) of the Bidding Document.

Authorized Signature:

Name and Title of Signatory:

Name of Agency:

Attachment: Contract Agreement

**Contract Agreement**

THIS AGREEMENT made the. . . . . *[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) Letter of Acceptance,

c) the Letter of Bid,

d) Addenda Nos.[*insert addenda numbers, if any]*

(e) 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 documents shall be added here[[28]](#footnote-28).

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’s name, and address of issuing branch or office*]

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

**Date:**

**Performance Guarantee No.:**

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

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

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

This guarantee shall expire, no later than the [*date*] day of [*month*], [*year*],**[[29]](#footnote-29)** and any demand for payment under it must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458 [*or ICC Publication No. 758 as applicable*], except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.**[[30]](#footnote-30)**

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

**Note to Bidder**

*If the institution issuing the performance security is located outside the country of the Employer, it shall have a correspondent financial institution located in the country of the Employer to make it enforceable.*

**Advance Payment Security**

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

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

**Date:**

**Advance Payment Guarantee No.:**

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

Furthermore, we understand that, according to the Conditions of the Contract, an advance payment in the sum [*name of the currency and amount in words*]**[[31]](#footnote-31)** [*amount in figures*] is to be made against an advance payment guarantee.

At the request of the Contractor, we [*name of the bank*] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [*name of the currency and amount in words*]**[[32]](#footnote-32)** [*amount in figures*] upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor:

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

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

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety percent (90%) of the Contract Price has been certified for payment, or on the [*date*] day of [*month*], [*year*],***[[33]](#footnote-33)*** whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458[*or ICC Publication No. 758 as applicable*].

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

**Note to Bidder**

*If the institution issuing the advance payment security is located outside the country of the Employer, it shall have a correspondent financial institution located in the country of the Employer to make it enforceable.*

1. Substitute “contracts” where bids are called concurrently for multiple contracts or lots. Add a new para. 2 as follows: “Bidders may bid for one or multiple 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.” [↑](#footnote-ref-1)
2. 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. [↑](#footnote-ref-2)
3. Insert "prequalified" if the bidding is preceded by a prequalification exercise. [↑](#footnote-ref-3)
4. A brief description of the type(s) of Works should be provided, including principal quantities, location of project, and

   other information necessary to enable potential Bidders to decide whether to respond to the invitation. [↑](#footnote-ref-4)
5. Insert only the key qualification requirements as among those indicated in Section 3 to the Bidding Document [↑](#footnote-ref-5)
6. 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. [↑](#footnote-ref-6)
7. The fee chargeable should only be nominal to cover reproduction costs. [↑](#footnote-ref-7)
8. For example, cashier’s check, direct deposit to a specified account number, etc. [↑](#footnote-ref-8)
9. Whether as a Contractor, Subcontractor, Consultant, Manufacturer or Supplier, or Service Provider; or in any other capacity (dissimilar names are used depending on the Bidding Document). [↑](#footnote-ref-9)
10. 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 CON-1 in Section 4 (Bidding Forms). [↑](#footnote-ref-10)
11. 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. [↑](#footnote-ref-11)
12. These institutions include African Development Bank, European Bank for Reconstruction and Development (EBRD), Inter-American Development Bank (IADB), and the World Bank Group. According to paragraph 9 of the Agreement, other international financial institutions may join upon the consent of all Participating Institutions and signature of a Letter of Adherence by the international financial institution substantially in the form provided (Annex B to the Agreement). Upon adherence, such international financial institution shall become a Participating Institution for purposes of the Agreement. Bidders are advised to check [www.adb.org/integrity](http://www.adb.org/integrity) for updates. [↑](#footnote-ref-12)
13. Use one of the two options as appropriate. [↑](#footnote-ref-13)
14. If none has been paid or is to be paid, indicate “None”. [↑](#footnote-ref-14)
15. All italicized text is for use in preparing this form and shall be deleted from the final document. [↑](#footnote-ref-15)
16. Or 758 as applicable. [↑](#footnote-ref-16)
17. 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-17)
18. Defect Liability Period is determined based on the Construction Law of Mongolia [↑](#footnote-ref-18)
19. The sum of the two coefficients Ac and Bc should be 1 (one) in the formula for each currency. Normally, both coefficients will be the same in the formulae for all currencies, since coefficient A, for the nonadjustable portion of the payments, is a very approximate figure (usually 0.15 km) to take account of fixed cost elements or other nonadjustable components. The sum of the adjustments for each currency is added to the Contract Price. [↑](#footnote-ref-19)
20. The retention amount is usually close to 5 percent and in no case exceeds 10 percent. [↑](#footnote-ref-20)
21. 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-21)
22. 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-22)
23. If works are scheduled partially, list those partial periods. [↑](#footnote-ref-23)
24. If possession to the site is to be provided partially, list those partial periods. [↑](#footnote-ref-24)
25. This period is to be in compliance with the Construction Law of Mongolia. [↑](#footnote-ref-25)
26. This shall not exceed 2 months. [↑](#footnote-ref-26)
27. 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-27)
28. Tables of Adjustment data maybe added if the contract provides for price adjustment (see GCC 56.1) [↑](#footnote-ref-28)
29. Insert the date 28 days after the expected completion date. The Employer should note that in the event of an extension of the time for completion of the contract, the Employer would need to request an extension of this guarantee from the guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [6 months] [1 year], in response to the Employer’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.” [↑](#footnote-ref-29)
30. Or the same or similar to this clause specified in the Uniform Rules for Demand Guarantees, ICC Publication No. 758 where applicable. [↑](#footnote-ref-30)
31. The guarantor shall insert an amount representing the amount of the advance payment denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer. [↑](#footnote-ref-31)
32. Footnote 31. [↑](#footnote-ref-32)
33. Insert the expected expiration date of the time for completion. The Employer should note that in the event of an extension of the time for completion of the contract, the Employer would need to request an extension of this guarantee from the guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [6 months] [1 year], in response to the Employer’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee." [↑](#footnote-ref-33)