**Government of Jamaica**

PUBLIC PROCUREMENT STANDARD BIDDING DOCUMENT

**ANNEX W 12**

**Supply and Installation**

**of Plant and Equipment**

**International Competitive Bidding-ICB**

**April 2019**

**Foreword**

This standard bidding document (SBD) for the “Supply and Installation of Plant and Equipment” has been prepared by the Ministry of Finance (MOF). Its use is mandatory for the procurement of plant and equipment through international competitive bidding.

The application of this SBD means the procuring entity would have obtained the requsite approvals for the use of this procurement document. Further edits to ensure compliance with the Act and its Regulations may be required by the procureing entity.

Those wishing to submit comments or questions on this document or to obtain additional information should contact:

Chief Public Procurement Policy Officer,

Office of Public Procurement Policy,

30 National Heroes Circle

Kingston 4

Jamaica

**opppcustomercare@mof.gov.jm**

BIDDING DOCUMENTS

Issued on: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**for**

**Procurement of**

*[insert identification of the plant]* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

**Ref No:** *[insert reference number]*

**Procuring entity:** *[insert name of procuring entity]*

**Table of Contents**

Part 1 – Bidding Procedures 7

Single Stage Bidding 7

Section I. Instructions to Bidders 1

Section II. Bid Data Sheet 21

Section III. Evaluation and Qualification Criteria 25

Section IV.Bidding Forms 31

PART 2 - Procuring Entity’s Requirements 73

Section V - Procuring Entity’s Requirements 74

PART 3 – Conditions of Contract and Contract Forms 91

Section VI. General Conditions of Contract 92

Section VII. Particular Conditions of Contract 157

Section VII. Contract Forms 163

**Acronyms**

Act Public Procurement Act, 2015

BDS Bid Data Sheet

DB Dispute Board

e-GP electronic Government Procurement System

GCC General Conditions

GoJ Government of Jamaica

ICB International Competitive Bidding

ITB Instructions to Bidders

JV Joint Venture

MOF Ministry of Finance

PCC Particular Conditions

regulations The Public Procurement Regulations

SBD Standard Bidding Document

TAJ Tax Administration of Jamaica

TCL Tax Compliance Letter

Part 1 – Bidding Procedures

# Section I. Instructions to Bidders

**Table of Clauses**

A. Introduction 4

1. Scope of Bid 4

2. Source of Funds 4

3. Corrupt Practices 4

4. Eligible bidders 4

5. Eligible Plant, Equipment, and Services 6

B. The Bidding Documents 7

6. Content of Bidding Documents 7

7. Clarification of Bidding Documents 7

8. Pre-bid Meeting and Site Visit 7

9. Amendment of Bidding Documents 8

C. Preparation of Bids 9

10 Cost of Bidding 9

11. Language of Bid 9

12. Documents Comprising the Bid 9

13. Letter of Bid and Price Schedules 10

14. Alternative Bids 10

15. Documents Establishing the Qualifications of the Bidder 10

16. Documents Establishing the Conformity of the Plant and Installation Services 10

17. Bid Prices and Discounts 10

18. Bid Currencies 12

19. Period of Validity of Bids 13

20. Bid Security 13

21. Format and Signing of Bid 14

D. Submission and Opening of Bids 14

22. Sealing and Marking of Bids 14

23. Deadline for Submission of Bids 15

24. Late Bids 15

25. Withdrawal and Modification of Bids 15

26. Bid Opening 16

E. Evaluation and Comparison of Bids 17

27. Confidentiality 17

28. Clarification of Bids 17

29. Deviations, Reservations, and Omissions 17

30. Determination of Responsiveness 17

31. Nonmaterial Nonconformities 18

32. Correction of Arithmetical Errors 18

33. Conversion to Single Currency 18

34. Evaluation of Bids 19

35. Comparison of Bids 19

36. Abnormally Low Bids 20

37. Unbalanced or Front Loaded Bids 20

38. Qualification of the Bidder 20

39. Procuring entity’s Right to Accept Any Bid, and to Reject Any or All Bids 20

F. Award of Contract 21

40. Award Criteria 21

41. Notification of Award and Standstill Period 21

42. Signing of Contract 21

43. Performance Security 21

**Instructions to Bidders**

A. Introduction

|  |  |
| --- | --- |
| 1. Scope of Bid   * 1. The procuring entity **specified in the Bidding Data Sheet (BDS),** issues this standard bidding document (SBD) for the procurement of plant and equipment as specified in Section V, Procuring Entity’s Requirements. The name and identification number of this international competitive bidding (ICB) procurement are **specified in the BDS.** The name, identification, and number of lots are **provided in the BDS.**   2. Throughout this bidding document:      1. the term “in writing” means a communication in hand or machine written type and includes messages by facsimile, e-mail and other electronic forms of communications with proof of receipt.      2. “Electronic communications” means the transfer of information using electronic or similar media and the recording of information using electronic media.      3. if the context so requires, “singular” means “plural” and vice versa; and      4. “day” means calendar day.   3. Bidding will be conducted either in hard copy or using the Government of Jamaica Electronic Procurement (GOJEP) System as specified in the **BDS**. | |
| 2. Source of Funds   * 1. The procuring entity has received public funds toward the cost of the project named in the **BDS** for the execution of this procurement. | |
| 1. **Eligible bidders**      * 1. In accordance with the Public Procurement Regulations, 2018, Section 17, bidders shall have to demonstrate that they have paid all taxes, duties, fees and other impositions as may be levied in Jamaica at the time of award of contract provided that the procurement contract requires the contractor to be physically located in Jamaica.   2. In accordance with the Public Procurement Regulations, 2018, Section 17, bidders shall have to demonstrate their compliance with Section 15 of the Act at the time of award of contract provided that the procurement contract requires the contractor to be physically located in Jamaica.   3.3 Bidders shall provide such evidence of their continued eligibility as the procuring entity may reasonably request. | |
| 1. **Qualification of the Bidder**   4.1 A Bidder must meet the following qualification requirements to be considered for the procurement contract award:   * 1. Evidence as a Contractor in the construction of at least one work of the nature and complexity equivalent to the works included in this Invitation, over the last three years.   2. Evidence of financial resources to successfully complete the works i.e. letter from a bank, credit institutions, or other financial intermediary, supporting the availability of financial resources.   3. The Bidder may not subcontract any part of the works.  1. **Disqualified Bidders**    1. Failure to directly **obtain** the bidding documents from the procuring entity will result in d**isqualification from the procurement proceedings.**    2. A bidder shall not have a conflict of interest. All bidders found to have a conflict of interest shall be disqualified. Bidders may be considered to have a conflict of interest with one or more parties in this bidding process, if they are or have been associated in the past, with a firm or any of its affiliates which have been engaged by the procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods to be purchased under this bidding document; or that has been hired (or is proposed to be hired) by the procuring entity as Project Manager for the Contract.    3. A bidder that is ineligible in accordance with ITB Clause 3, at the date of contract award, shall be disqualified.    4. A Bidder falling in any of the disqualification grounds in sections 18 and 19 of The Public Procurement Regulations 2018 shall be disqualified. 2. **Fraud, Corruption and Other Prohibited Practices**    1. The Government of Jamaica requires that all parties involved in the procurement proceedings and execution of such contracts observe the highest standard of ethics.    2. For the purposes of this provision, offences of fraud and corruption are defined in Part VII of the Public Procurement Act, 2015 (Act) and any other Act relating to corrupt activities in Jamaica.    3. A person who commits an offence under the Act or any other Act relating to corrupt activities in Jamaica shall ---       1. be liable for conviction under the provisions of the Act or any other Act relating to corrupt activities in Jamaica;       2. have their bid rejected if it is determined that the bidder is not in compliance with the provisions of the Act, the regulations or any other Act relating to corrupt activities in Jamaica;       3. risk other sanctions provided for in the Act or the regulations. | |
| 1. Eligible Plant, Equipment, and Services   7.1 For the purposes of this bidding document, the words “facilities,” “plant and equipment,” “installation services,” etc., shall be construed in accordance with the respective definitions given to them in the General Conditions of Contract.   * 1. All plant and equipment to be supplied, installed and commissioned, and services carried out under the contract shall have their origin in any country. At the procuring entity’s request, bidders may be required to provide evidence of the origin of materials, equipment and services.   2. For purposes of this clause, “origin” means the place where the plant and equipment or component parts, are mined, grown or produced. Plant and equipment are produced when, through manufacturing processing or substantial and major assembling of componets, a commercially recognised product results that is substantially different in basic characteristics or in purpose or utility from its componets, Processing,   3. The origin of the plant, equipment, and related services is distinct from the nationality of the bidder. | |
| B. Contents of Bidding Document | |
| 8. Sections of Bidding Document   * 1. The facilities required, bidding procedures, contract terms and technical requirements are prescribed in the bidding documents. The bidding documents include the following sections:   Instructions to Bidders (ITB)  Bid Data Sheet (**BDS**)  General Conditions of Contract (GCC)  Particular Conditions of Contract (PCC)  Technical Specifications and Drawings (TS)  Forms and Procedures (FP)  1. Letter of Bid and Price Schedules  2. Bid Security Form  3. Form of Contract Agreement  4. Performance Security Forms  5. Bank Guarantee Form for Mobilization Payment  6. Form of Completion Certificate  7. Form of Operational Acceptance Certificate  8. Change Order Procedures   * 1. Unless obtained directly from the procuring entity, the procuring entity is not responsible for the completeness of the bidding documents and their addenda.   2. The bidder is expected to examine all instructions, forms, terms, specifications and other information in the bidding documents. Failure to furnish all information required by the bidding documents or submission of a bid not substantially responsive to the bidding documents in every respect will be at the bidder’s risk and may result in rejection of its bid. | |
| 9. Clarification of Bidding Documents   * 1. A prospective bidder requiring any clarification of the bidding documents shall contact the procuring entity in writing at the procuring entity’s address specified in the **BDS**. The procuring entity will respond in writing to any request for clarification, provided that such request is received prior to the period specified in the **BDS**. In the case of electronic bidding clarifications should be submitted through the GOJEP System. The procuring entity shall forward copies of its response to all those who have acquired the bidding documents directly from it, including a description of the inquiry but without identifying its source.   2. Should the procuring entity deem it necessary to amend the bidding documents as a result of a clarification or the pre-bid meeting, it shall do so following the procedure under ITB Clause 9. | |
| 10. Pre-bid Meeting and Site Visit   * 1. The bidder is advised to visit and examine the site(s) where the facilities are to be installed and its surroundings and obtain for itself, at its own responsibility and risk, all information that may be necessary for preparing the bid and entering into the contract. The costs of visiting the site(s) shall be at the bidder’s own expense.   2. The procuring entity will arrange for the bidder and any of its personnel or agents to gain access to the relevant site(s), provided that the bidder gives the procuring entity adequate notice of a proposed visit of at least fourteen (14) days. Alternatively, the procuring entity may organize a site visit, if specified in the **BDS,** or visits concurrently with a pre-bid meeting, if one is required. Failure of a bidder to attend a site visit will not be a cause for its disqualification.   3. No site visits shall be arranged or scheduled after the deadline for the submission of the bids and prior to the award of contract.   4. The bidder and any of its personnel or agents will be granted permission by the procuring entity to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the bidder, its personnel, and agents will release and indemnify the procuring entity and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.   5. 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. Nonattendance at the pre-bid meeting will not be a cause for disqualification of a bidder.   6. The bidder is requested, as far as possible, to submit any questions in writing, to reach the procuring entity not later than the number of days before the pre-bid meeting, as indicated in the **BDS**.   7. Minutes of the pre-bid meeting, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all bidders who have bought the bidding documents in accordance with ITB Sub-Clause 4.9. | |
| 11. Amendment of Bidding Documents   * 1. At any time prior to the deadline for submission of bids, the procuring entity may, for any reason, whether at its own initiative, or in response to a clarification requested by a prospective bidder, amend the bidding documents. Later amendments on the same subject modify or replace earlier ones.   2. Amendments will be provided in the form of Addenda to the bidding documents, which will be sent in writing to all prospective bidders that received the bidding documents from the procuring entity. Addenda will be binding on bidders. bidders are required to immediately acknowledge receipt of any such Addenda. It will be assumed by the procuring entity that the amendments contained in such Addenda will have been taken into account by the bidder in its bid. In the case of electronic bidding any amendments to the bidding documents will be issued through the GOJEP System.   3. In order to afford prospective bidders reasonable time in which to take the amendment into account in preparing their bids, the procuring entity may, at its discretion, extend the deadline for the submission of bids, in which case, the procuring entity will notify all bidders in writing of the extended deadline for the submission of bids, pursuant to ITB Sub-Clause 23.2.   4. If the clarification results in the ITB being materially inaccurate the procuring entity shall withdraw and reissue the ITB. Bidders who obtained these original documents will be permitted to participate without penalty. | |
| C. Preparation of Bids | |
| 1. Cost of Bidding   12.1 The bidder shall bear all costs associated with the preparation and submission of its bid, and the procuring entity shall not be responsible or liable for those costs.   * 1. The procuring entity shall incur no liability by virtue of it exercising its power to cancel a procurement in accordance with Sections 41 and 44 of the Act.   2. Notwithstanding sections 10.1 and 10.2, should the Procurement Review Board, following an application for reconsideration decide that the actions of the procuring entity were not in compliance with the provisions of the Act or the regulations, the Procurement Review Board may require the payment of compensation for any reasonable costs incurred by the bidder. Any payment shall be limited to the costs of the preparation of the bid or the costs relating to the application, or both. | |
| 13. Language of Bid   * 1. The bid, as well as, all correspondence and documents relating to the bid exchanged by the bidder and the procuring entity, shall be written in the English language. | |
| 14. Documents Comprising the Bid   * 1. The bid submitted shall comprise the following:  1. Letter of Bid duly completed and signed by the bidder, together with all Attachments identified in ITB Sub-Clause 9.3 below. 2. Price Schedules duly completed by the bidder; 3. bid security, in accordance with ITB Clause 20; 4. alternative bids, if permissible, in accordance with ITB Clause 14; 5. written confirmation authorizing the signatory of the bid to commit the bidder, in accordance with ITB Sub-Clause 21.2; 6. documentary evidence in accordance with ITB Clause 15 establishing the bidder’s qualifications to perform the contract if its bid is accepted; 7. documentary evidence in accordance with ITB Clause 16 establishing the eligibility and conformity of the facilities; and 8. any other document required in the **BDS**.    1. In addition to the requirements under ITB Sub-Clause 12.1, bids submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all partners. Alternatively, a Letter of Intent to execute a Joint Venture Agreement in the event of a successful bid shall be signed by all partners and submitted with the bid, together with a copy of the proposed agreement. | |
| 15. Letter of Bid and Price Schedules   * 1. The Letter of Bid and appropriate Price Schedules, furnished in Section IVI, Bidding Forms must be completed without any alterations, amendments or modifications to its format with the information requested. | |
| 16. Alternative Bids   * 1. Unless otherwise indicated in the **BDS**, alternative bids shall not be considered.   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.   3. When specified in the **BDS**, bidders are permitted to submit alternative technical solutions for specified parts of the works, and such parts will be identified in the **BDS**, as will the method for their evaluating, and described in Section V, Procuring Entity’s Requirements. |
| 17. Documents Establishing the Qualifications of the Bidder   * 1. The documentary evidence of the bidder’s qualifications to perform the contract if its bid is accepted shall establish to the procuring entity’s satisfaction:      1. that it has the financial and technical capability necessary to perform the contract, meets the qualification criteria specified in the **BDS,** and has a successful performance history. For the purposes of establishing a bidder’s qualifications, and unless stated to the contrary in the **BDS**, the experience and / or resources of any Subcontractor will not contribute to the bidder’s qualifications; only those of a Joint Venture partner will be considered.      2. that the bidder meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria. |
| 18. Documents Establishing the Conformity of the Plant and Installation Services  18.1 The bidder shall furnish the information stipulated in Section IV, Bidding Forms in sufficient detail to demonstrate substantial responsiveness of the bidders’ proposal to the work requirements and the completion time.   * 1. For major items of Plant and Installation Services as listed by the procuring entity in Section III, Evaluation and Qualification Criteria, which the bidder intends to purchase or subcontract, the bidder shall give details of the name and nationality of the proposed Subcontractors, including manufacturers, for each of those items. In addition, the bidder shall include in its bid information establishing compliance with the requirements specified by the procuring entity for these items. Quoted rates and prices will be deemed to apply to whichever Subcontractor is appointed, and no adjustment of the rates and prices will be permitted.   2. The bidder shall be responsible for ensuring that any Subcontractor proposed complies with the requirements of ITB Clause 4, and that any plant, or services to be provided by the Subcontractor comply with the requirements of ITB 5 and ITB 16.1. | |
| 19. Bid Prices and Discounts   * 1. Unless otherwise specified in the requirements, bidders shall quote for the entire facilities on a “single responsibility” basis such that the total bid price covers all the contractor’s obligations mentioned in or to be reasonably inferred from the bidding documents in respect of the design, manufacture, including procurement and subcontracting (if any), delivery, construction, installation and completion of the facilities. This includes all requirements under the contractor’s responsibilities for testing, precommissioning and commissioning of the facilities and, where so required by the bidding documents, the acquisition of all permits, approvals and licenses, etc.; the operation, maintenance and training services and such other items and services as may be specified in the bidding documents, all in accordance with the requirements of the General Conditions of Contract. Items against which no price is entered by the bidder will not be paid for by the procuring entity when executed and shall be deemed to be covered by the prices for other items.   2. Bidders are required to quote the price for the commercial, contractual and technical obligations outlined in the bidding documents.   3. Bidders shall give a breakdown of the prices in the manner and detail called for in the Price Schedules. Where no Price Schedules are included in the bidding documents, bidders shall present their prices in the following manner:   Separate numbered Schedules shall be used for each of the following elements. The total amount from each Schedule (1 to 4) shall be summarized in a Grand Summary (Schedule 5) giving the total bid price(s) to be entered in the Letter of Bid.  Schedule No. 1 Plant and Equipment (including Mandatory Spare Parts) Supplied from Abroad  Schedule No. 2 Plant and Equipment (including Mandatory Spare Parts) Supplied from within Jamaica  Schedule No. 3 Local Transportation  Schedule No. 4 Installation Services  Schedule No. 5 Grand Summary (Schedule Nos. 1 to 4)  Schedule No. 6 Recommended Spare Parts  Bidders shall note that the plant and equipment included in Schedule Nos. 1 and 2 above **exclude** materials used for civil, building and other construction works. All such materials shall be included and priced under Schedule No. 4, Installation Services.   * 1. In the Schedules, bidders shall give the required details and a breakdown of their prices as follows:   (a) Plant and equipment to be supplied from abroad (Schedule No. 1) shall be quoted on CIP-named place of destination as specified in **BDS.** (Note: The named place destination shall be the site(s) where the equipment will be installed. If it is different from the site of installation (project site) it shall be clearly stated in the **BDS**.)  (b) Plant and equipment manufactured or fabricated within the procuring entity’s country (Schedule No. 2) shall be quoted on an EXW (ex factory, ex works, ex warehouse or off-the-shelf, as applicable) basis, and shall be inclusive of all costs as well as duties and taxes paid or payable on components and raw materials incorporated or to be incorporated in the facilities**.**  (c) Local transportation to the named place of destination, as specified in **BDS,** insurance and other services incidental to delivery of the plant and equipment including any local taxes for transportation services payable in the procuring entity’s country as of twenty-eight (28) days prior to the deadline for submission of bids. (Schedule No. 3). (Note: When the named place of destination is the project site, the transportation costs for Schedule No. 1 items are covered under CIP and therefore will not be stated here. This schedule will cover only for items in Schedule No.2. If the named place of destination is different from the site of installation (project site), then the transport cost from the named place of destination to project site for Schedule No.1 shall be also included here.)  (d) Installation Services shall be quoted separately (Schedule No.4) and shall include rates or prices for all labor, contractor’s equipment, temporary works, materials, consumables and all matters and things of whatsoever nature, including operations and maintenance services, the provision of operations and maintenance manuals, training, etc., where identified in the bidding documents, as necessary for the proper execution of the Installation Services, including all taxes, duties, levies and charges payable in the procuring entity’s country as of twenty-eight (28) days prior to the deadline for submission of bids.  (e) Recommended spare parts shall be quoted separately (Schedule 6) as specified in either subparagraph (a) or (b) above in accordance with the origin of the spare parts.   * 1. The terms EXW, CIF, CIP, etc., shall be governed by the edition of Incoterms, as specified in the **BDS**.   2. 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 quotation will be treated as nonresponsive and rejected. The price to be quoted in the Letter of Bid shall be the total price of the bid including all applicable taxes, and excluding any discounts offered.   3. The bidder shall quote any unconditional discounts and indicate the method for their application in the Letter of Bid in accordance with ITB Sub-Clause 13.1.   4. If so, indicated in ITB Sub-Clause 1.1, bids are invited for individual contracts (lots) or for any combination of contracts (packages). Unless otherwise indicated in the **BDS**, prices quoted shall correspond to 100 % of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Bidders wishing to offer any price reduction (discount) for the award of more than one contract shall specify the applicable price reduction in accordance with ITB Sub-Clause 13.1 provided the bids for all lots are submitted and opened at the same time.   5. All duties, taxes, and other levies payable by the contractor under the contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the rates and prices and the total bid Price submitted by the bidder. | |
| 20. Bid Currencies   * 1. The currency(ies) of the bid and the currency(ies) of payments shall be the same. The bidder shall quote in Jamaican Dollars the portion of the bid price that corresponds to expenditures incurred in Jamaica, unless otherwise specified **in the BDS.**   2. The bidder may express the bid price for expenditure outside of Jamaica in any freely convertible currency. If the bidder wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly but shall use no more than three freely convertible international currencies in addition to Jamaican Dollars. Bidders may be required by the procuring entity to justify, to the procuring entity’s satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Summary of Payment Currency Schedule, in which case a detailed breakdown of the foreign currency requirements shall be provided by bidders. | |
| 21. Period of Validity of Bids   * 1. Bids shall remain valid for the period **specified in the BDS** after the bid submission deadline date prescribed by the procuring entity. A bid valid for a shorter period shall be rejected by the procuring entity as non-responsive.   2. In exceptional circumstances, prior to the expiration of the bid validity period, the procuring entity may request bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITB Clause 20, it shall also be extended. 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. | |
| 22. Bid Security   * 1. The bidder shall furnish as part of its bid a bid security, if required, as specified in the **BDS**.   2. The bid security shall be in the amount specified in the **BDS** and denominated in the currency of the bid, and shall:  1. at the bidder’s option, be in the form of either an irrevocable letter of credit, or a bank guarantee from a banking institution, or a bond issued by a Surety which is incorporated and domiciled in Jamaica, or a bid securing declaration, or a certified managers cheque, or an insurance certificate; 2. be issued by a reputable financial institution selected by the bidder and located in any eligible country. If the institution issuing the bid security is located outside Jamaica, it shall have a correspondent financial institution located in the Jamaica to make it enforceable; 3. be in accordance with one of the forms of bid security included in Section IV, Bidding Forms; 4. be payable promptly upon written demand by the procuring entity in case the conditions listed in ITB Sub-Clause 20.5 are invoked; 5. be submitted in its original form with the bid (copies shall not be considered compliant with the requirement). In the case of the electronic submission of bids, an electronic copy of the bid security shall be sent and uploaded by the bidder, the original must be submitted to the address provided at ITB Sub-Clause 23.1 not later than the time and date of bid submission deadline. 6. remain valid for a period of 28 days beyond the validity period of the bids, or 28 days beyond the extended validity period, if applicable in accordance with ITB Sub-Clause 19.2. 7. be stamped by the Stamp Office of Jamaica, in keeping with the Stamp Duty Act, as proof of payment for the relevant Stamp Duty. The Stamp Duty Division within the Tax Administration of Jamaica (TAJ) issues a Vermillion seal on the bond and a validation barcode, which is placed on the reverse of the consideration (first) page.    1. If a bid security is required in accordance with ITB Sub-Clause 20.1, any bid not accompanied by a substantially responsive bid security in accordance with ITB Sub-Clause 20.1 and 20.2, shall be rejected by the procuring entity as non-responsive.    2. The bid security of unsuccessful bidders shall be returned as promptly as possible upon the successful bidder’s furnishing of the performance security, if required, and upon the procuring entity’s receipt of a signed contract agreement.    3. The bid security may be forfeited: 8. if a bidder materially modifies or withdraws its bid during the period of bid validity specified by the bidder on the Bid Submission Form, except as provided in ITB Sub-Clause 19.2; or 9. if a bidder does not to accept a correction of errors; or 10. if the successful bidder fails to:     1. sign the contract in accordance with ITB Clause 43 and     2. furnish a performance security in accordance with ITB Clause 44.     3. The bid security of a JV must be in the name of the JV that submits the bid. If the JV has not been legally constituted at the time of bidding, the bid security or the Bid Securing Declaration shall be in the names of all future partners as named in the letter of intent mentioned in Section IV “Bidding Forms”. | |
| 23. Format and Signing of Bid  23.1The bidder shall prepare one original of the documents comprising the bid as described in ITB Clause 12 and clearly mark it “ORIGINAL” In the case of electronic bidding the bid uploaded on the e-GP system shall be the “ORIGINAL”. Alternative bids, if permitted in accordance with ITB Clause 14, shall be clearly marked “ALTERNATIVE”. In addition, for hard copy bids, 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.  23.2The original and all copies of the bid shall be typed, digitally entered or written in permanent ink and shall be signed and stamped by a person duly authorized to sign on behalf of the bidder. This authorization shall consist of a power of attorney and shall be attached to the bid.   * 1. Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialled by the person signing the bid. | |
| D. Submission and Opening of Bids | |
| 24. Sealing and Marking of Bids   * 1. Bids shall be submitted by hand in hard copy or electronically as specified in the **BDS**.      1. Bidders submitting bids by mail or by hand shall enclose the original and each copy of the bid, including alternative bids, if permitted, in accordance with ITB Clause 14, in separate sealed envelopes, duly marking the envelopes as **“ORIGINAL”** and **“COPY.”** These envelopes containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITB Sub-Clauses 22.2, 22.3 and 22.4.      2. Bidders submitting bids electronically shall follow the GOJEP procedures as described in the GOJEP System: Quick Guide for Suppliers.   2. For hard copy bids the inner and outer envelopes shall:  1. bear the name and address of the bidder; 2. be addressed to the procuring entity in accordance with ITB Sub-Clause 23.1; 3. bear the specific identification of this bidding process indicated in the **BDS** Sub-Clause 1.1 and any additional identification marks as specified in the **BDS**; and 4. bear a warning not to open before the time and date for bid opening, in accordance with ITB Sub-Clause 26.1.    1. If all envelopes are not sealed and marked as required, the procuring entity will assume no responsibility for the misplacement or premature opening of the bid.    2. The proposals shall be deposited in the BID BOX provided in the address stated in ITB Sub-Clause 23.1. | |
| 25. Deadline for Submission of Bids   * 1. Bids must be received by the procuring entity at the address or through the GOJEP System and no later than the date and time **indicated in the BDS**.   2. The procuring entity may, at its discretion, extend the deadline for the submission of bids by amending the bidding document in accordance with ITB Clause 9, in which case all rights and obligations of the procuring entity and bidders previously subject to the deadline shall thereafter be subject to the deadline as extended. | |
| 26. Late Bids   * 1. The procuring entity shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB Clause 23. All late bids shall be declared late and rejected. The bidder will be notified and must collect their bid within 30 days. It the bid is not collected within this period it shall be destroyed.   2. In the case of electronic bidding bidders will be unable to upload their bid once the bid submission deadline has passed. | |
| 27. Withdrawal and Modification of Bids   * 1. A bidder may withdraw or modify its bid after it has been submitted in accordance with ITB Clause 22 but only prior to the deadline for submission of bids.   2. In the case of hard copy bids bidders must send a written notice, duly signed by an authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with ITB Sub-Clause 21.2, (except that no copies of the withdrawal notice are required). The modification of the bid must accompany the respective written notice. All notices must be:      1. submitted in accordance with ITB Clause 21 and ITB 22, and in addition, the respective envelopes shall be clearly marked “Withdrawal” or “Modification” and      2. received by the procuring entity prior to the deadline prescribed for submission of bids, in accordance with ITB Clause 23.   3. Bids requested to be withdrawn in accordance with ITB Sub-Clause 25.1 shall be returned unopened to the bidders.   4. In the case of electronic bids the submitted bid must be removed in accordance with the e-GP System: Quick Guide for Suppliers and a new bid uploaded.   5. After the bid submission deadline the withdrawal or modification of a bid will result in, forfeiture of any bid security and rejection of the bid. | |
| 28. Bid Opening   * 1. Bid Opening      1. For hard copy bids the procuring entity shall conduct the bid opening in public at the address, date and time **specified in the** **BDS** and in accordance with ITB Sub-Clauses 26.2 to 26.6.      2. For electronic bidding the e-GP System shall prepare a bid opening report that shall include, as a minimum: the name of the bidder; the Bid Price, per lot if applicable, and, if required, the presence or absence of a bid security. A copy of the report will be distributed to all bidders who submitted a bid.   2. 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. If the withdrawal envelope does not contain a copy of the “power of attorney” confirming the signature as a person duly authorized to sign on behalf of the bidder, the corresponding bid will be opened. 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.   3. Envelopes marked “MODIFICATION” shall be opened and read out with the corresponding bid. No bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at bid opening. Only envelopes that are opened and read out at bid opening shall be considered further.   4. 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 Prices, including any discounts and alternative **bids**; the presence of a bid security, if required; and any other details as the procuring entity may consider appropriate. Only discounts and alternative **bids** read out at bid opening shall be considered for evaluation. Bids shall be rejected at the bid opening in accordance with ITB Sub-Clause 24.1 and 25.3.   5. The procuring entity shall prepare a record of the bid opening that shall include, as a minimum:   + the name of the bidder and whether there is a withdrawal or modification;   + the Bid Price, per lot if applicable, including any discounts, and alternative **bids** if they were permitted;   + and the presence or absence of a bid security, if one was required.   + The bidders’ representatives who are present shall be requested to sign the attendance sheet.   + A copy of the record shall be distributed to all bidders who submitted bids in time and posted online when electronic bidding is permitted. | |
| E. Evaluation and Comparison of Bids | |
| 29. Confidentiality  29.1Information relating to the examination, evaluation, comparison and post-qualification of bids and recommendation of contract award shall not be disclosed to bidders or any other persons not officially concerned with such process until publications of the contract award.   * 1. Any attempt by a bidder or any person to influence the procuring entity in the examination, evaluation, comparison and post-qualification of the bids or contract award decisions, pursuant to Section 56 of the Act, shall result in the rejection of its bid.   2. Notwithstanding ITB Sub-Clause 27.2, from the time of bid opening to the time of contract award, if any bidder wishes to contact the procuring entity on any matter related to the bidding process, it should do so in writing. | |
| 30. Clarification of Bids  30.1To assist in the examination, evaluation, and comparison of the bids, and qualification of the bids, the procuring entity may, at its discretion, ask any bidder for a clarification of its bid. Any clarification submitted by a bidder in respect to its bid and that is not in response to a request by the procuring entity shall not be considered. The procuring entity’s request for clarification and the response shall be in writing. In the case of electronic bidding this will be managed through the GOJEP System. No change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the procuring entity in the evaluation of the bids, in accordance with ITB Clause 32.   * 1. If a bidder does not provide clarifications of its bid by the date and time set in the procuring entity’s request for clarification, its bid shall be rejected. | |
| 31. Deviations, Reservations, and Omissions   * 1. During the evaluation of bids, the following definitions apply:  1. “Deviation” is a departure from the requirements specified in the bidding document; 2. “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the bidding document; and 3. “Omission” is the failure to submit part or all of the information or documentation required in the bidding document. | |
| 32. Determination of Responsiveness   * 1. The procuring entity’s determination of a bid’s responsiveness is to be based on the contents of the bid itself.   32.2 A substantially responsive bid is one that conforms to all the terms, conditions and specifications of the bidding documents without material deviation, reservation or omission.  32.3 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; or  (b) limits in any substantial way, inconsistent with the bidding documents, the procuring entity’s rights or the bidder’s obligations under the contract; or  (c) if rectified would unfairly affect the competitive position of other bidders presenting substantially responsive bids.   * 1. If a bid is not substantially responsive to the bidding documents, it shall be rejected by the procuring entity and may not subsequently be made responsive by the bidder by correction of the material deviation, reservation, or omission. | |
| 33. Nonmaterial Nonconformities   * 1. Provided that a bid is substantially responsive, the procuring entity may waive any non-conformities in the bid that do not constitute a material deviation, reservation or omission. Provided that a bid is substantially responsive, the procuring entity 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. Provided that a bid is substantially responsive, the procuring entity shall rectify nonmaterial nonconformities related to the bid price. To this effect, the bid price shall 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 method indicated in the **BDS**. | |
| 34. Correction of Arithmetical Errors   * 1. Provided that the bid is substantially responsive, the procuring entity shall correct arithmetical errors on the following basis:   (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 theprocuring entity 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; and  (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.   * 1. If the bidder that submitted the lowest evaluated or most advantageous bid does not accept the correction of errors, its bid shall be rejected. | |
| 35. Conversion to Single Currency   * 1. For evaluation and comparison purposes, the procuring entity shall convert all bid prices expressed in amounts in various currencies into an amount in a single currency specified in the **BDS**, using the selling exchange rates established by the source and on the date specified in the **BDS**. | |
| 36. Evaluation of Bids   * 1. The procuring entity shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.   2. To evaluate a bid, the procuring entity shall consider the following: | |
| 1. **Technical Evaluation**   (i) The procuring entity will carry out a detailed evaluation of the bids previously determined to be substantially responsive in order to determine whether the technical aspects are in accordance with the requirements set forth in the bidding documents. In order to reach such a determination, the procuring entity will examine and compare the technical aspects of the bids on the basis of the information supplied by the bidders, taking into account the following factors:  (a) overall completeness and compliance with the Technical Specifications and Drawings; suitability of the facilities offered in relation to the environmental and climatic conditions prevailing at the site; and quality, function and operation of any process control concept included in the bid. The bid that does not meet minimum acceptable standards of completeness, consistency and detail will be rejected for nonresponsiveness.  (b) achievement of specified performance criteria by the facilities  (c) type, quantity and long-term availability of mandatory and recommended spare parts and maintenance services  (d) any other relevant factors, if any, listed in Section III, Evaluation and Qualification Criteria.  (ii) Where alternative technical solutions have been permitted, the procuring entity will make a similar evaluation of the alternatives, which will be treated in the technical and commercial evaluations as if they were base bids. Where alternatives are not permitted, but have in any event been offered, they shall be ignored. | |
| 1. **Commercial Evaluation**   The comparison shall be:   * + - 1. on the total price in Price Schedule No.5 Grand Summary (Total of Schedule Nos. 1 to 4).       2. price adjustment for correction of arithmetic errors in accordance with ITB 32.1;       3. price adjustment due to discounts offered in accordance with ITB 17.11;       4. price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 31.3;       5. converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 33; and       6. the evaluation factors specified in Section III, Evaluation and Qualification Criteria. | |
| 37. Comparison of Bids   * 1. The procuring entity shall compare all substantially responsive bids in accordance with ITB Clause 35 to determine the bid that has the lowest bid price or is the most advantageous. | |
| 38. Abnormally Low Bids   * 1. An Abnormally Low Bid is one where the bid price, in combination with other elements of the bid, appears so low that it raises material concerns as to the capability of the bidder in regards to the bidder’s ability to perform the contract for the offered bid price.   2. In the event of identification of a potentially Abnormally Low Bid, the procuring entity shall seek written clarifications from the bidder, including detailed price analyses of its bid price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the bidding document.   3. After evaluation of the price, in the event that the procuring entity determines that the bidder has failed to demonstrate its capability to perform the bid for the offered bid price, the procuring entity shall reject the Bid. | |
| 39. Unbalanced or Front-Loaded Bids   * 1. If the bid that is evaluated as the lowest bid price or most advantageous is, in the procuring entity’s opinion, seriously unbalanced or front loaded, the procuring entity may require the bidder to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the bid prices with the scope of works, proposed methodology, schedule and any other requirements of the bidding document.   2. After the evaluation of the information and detailed price analyses presented by the bidder, the procuring entity may as appropriate:  1. accept the bid; or 2. require that the total amount of the performance security be increased at the expense of the bidder to a level not exceeding 20 % of the contract Price; or 3. reject the Bid. | |
| 40. Qualification of the Bidder   * 1. The procuring entity will determine at its own cost and to its satisfaction whether the bidder that is selected as having submitted the lowest bid price or most advantageous bid is qualified to perform the contract satisfactorily, in accordance with ITB Clause 15.   2. Meeting the qualification criteria as specified in Section III shall be a prerequisite for award of the contract to the bidder. Failure to meet the qualification criteria shall result in disqualification of the bid, in which event the procuring entity shall proceed to the next ranked bid to make a similar determination of that bidder’s qualifications to perform satisfactorily. If the second ranked bidder does not meet the qualification requirements, this bid too shall be disqualified and the qualifications of the next ranked bidder shall be examined and so on in succession until the determination of the lowest bid price or most advantageous bid. | |
| 41. Procuring entity’s Right to Accept Any Bid, and to Reject Any or All Bids   * 1. The procuring entity reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids without thereby incurring any liability to bidders in accordance with the Act:   (a) at any time prior to the acceptance of the successful bid; or  (b) after the successful bid is accepted if:   * + - 1. the bidder presenting the successful bid is disqualified under the Act or the regulations;       2. the procurement is cancelled;       3. the bidder presenting the successful bid is excluded on the grounds of an unfair competitive advantage or a conflict of interest that is likely to impair the integrity of those procurement proceedings;       4. the procurement, the bid or the bidder contravenes or is otherwise not compliant with the provisions of Act or the regulations. | |
| F. Award of Contract | |
| 42. Award Criteria   * 1. The procuring entity shall award the contract to the bidder whose bid has been determined to be the lowest priced or the most advantageous, as defined in ITB Sub-Clause 35.1. | |
| 43. Notification of Award and Standstill Period   * 1. Prior to the expiration of the period of bid validity, the procuring entity shall notify all bidders, in writing, of the determination of the successful bid including all the information required by Section 44(2) of the Act.   2. The date of the notification under ITB Sub-Clause 41.1 establishes the commencement of the standstill period specified in the **BDS**. During this time bidders may query, apply for reconsideration or otherwise challenge the decision of the procuring entity. This may include a request for debriefing seeking explanations for the grounds on which their bids were not selected. | |
| 44. Signing of Contract   * 1. On the expiry of the standstill period the procuring entity shall send the successful bidder the Letter of Acceptance.   2. The successful bidder shall return the signed contract within 28 days from the date of the Letter of Acceptance and shall sign, date, and return to the procuring entity the signed contract Agreement and performance security, if required, pursuant to ITB Clause 43.   3. On receipt of the signed contract Agreement and performance security, if required, the procuring entity will immediately notify in writing all unsuccessful bidders, of the final results of the bidding process. This notice will discharge their bid securities pursuant to ITB Clause 20.4.   4. Following signature of the contract Agreement, the procuring entity shall publish, in the manner prescribed by the Office, the results, identifying the name of the contractor, the contract price and the contract number. | |
| 45. Performance Security   * 1. Within 28 days of receipt of the Letter of Acceptance the successful bidder, if required, shall furnish the performance security in accordance with the GCC, using for that purpose the performance security form included in Section VIII Contract Forms.   2. Failure of the successful bidder to submit the above-mentioned performance security or sign the contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security. In that event the procuring entity may award the contract to the next ranked bidder, whose bidis substantially responsive and is determined by the procuring entity to be the lowest priced or most advantageous bid. | |

1. **Right to Reconsideration or Review**

46.1 Subject to section 49 of the Public Procurement Act 2015 and in accordance with The Public Procurement (Reconsideration and Review) Regulations, 2018 an eligible bidder has the right to reconsideration or review of an action or decision of the procuring entity.

* 1. Notwithstanding ITB Sub-Clauses 10.1 and 10.2, should the Procurement Review Board, following an application for reconsideration decide that the actions of the procuring entity were not in compliance with the provisions of the Act or the regulations, the Procurement Review Board may require the payment of compensation for any reasonable costs incurred by the bidder. Any payment shall be limited to the costs of the preparation of the bid or the costs relating to the application, or both.

# Section II. Bid Data Sheet

The following specific data for the plant and equipment to be procured shall complement, supplement, or amend the provisions in the ITB. **Whenever there is a conflict, the provisions herein shall prevail over those in ITB.**

*[Instructions for completing the Bid Data Sheet are provided, as needed, in square brackets and italics for the relevant ITB Clauses.]*

|  |  |
| --- | --- |
| **A. Introduction** | |
| **ITB 1.1** | The procuring entity is: *[insert name of procuring entity]* |
| **ITB 1.1** | The name and identification number of the ICB are: *[insert name and identification number]*  The number, identification and names of the lots comprising this ICB are: *[insert number; list the lots of works]* |
| **ITB 1.3** | Bidding will be conducted in accordance with *[hard copy procedures or GOJEP procedures as further defined in the Quick Guide for Suppliers].* |
| **ITB 2.1** | The name of the Project is: |
| **ITB 4.1** | Maximum number of members in the JV shall be: *[insert a number or state no maximum]* |
| ITB 4.4 | Prequalified bidders [may/may not] submit joint bids. |
| ITB 4.10 | [This bid is open to prequalified bidders] |
| **B. Bidding Document** | |
| **ITB 7.1** | *[For hard copy bids:*  *For* ***Clarification of bid purposes*** *only, the procuring entity’s address is:*  *Attention: [insert name and room number of Project Officer]*  *Address: [insert street name and number]*  *[insert floor and room number, if applicable]*  City: *[insert name of city or town]*  *Postal Code: [insert postal code, if applicable]*  *Country : Jamaica*  *Facsimile number: [insert fax number**including country and city codes]*  *Electronic mail address: [insert e-mail address of Project Officer]]*  *[For electronic bids:*  *All clarifications must be submitted through the GOJEP System. Copies of all clarifications received will be available through the GOJEP System.]*  Requests for clarification should be received by the procuring entity no later than: ***[insert no. of days]*** before the deadline for submission of bids stated at ITB 23.1. |
| **ITB 8.2** | A site visit *[will/will not]* be organized as part of the pre-bid meeting.  *[The site visit will take place at the following date, time and place:*  *Date:*  *Time:*  *Place:* ] |
| **ITB 8.5** | A pre-bid meeting *[shall/shall not]* take place.  *[The pre-bid meeting shall take place at the following date, time and place:*  *Date:*  *Time:*  *Place:* ] |
| **ITB 8.6** | Any questions must be submitted *[insert number]* days before the date of the pre-bid meeting. |
| **C. Preparation of Bids** | |
| **ITB 12.1 (g)** | Period of time the goods are expected to be functioning (for the purpose of spare parts, special tools, applicable warranties etc): *[insert duration]* |
| **ITB 12.1 (h)** | The bidder shall submit the following additional documents: *[insert list of documents, if any, particularly pursuant to any administrative guidance issued by the Office]* |
| **ITB 14.1** | Alternative bids *[shall/shall not] be considered.*  Bidders *[may/may not]* propose alternative bids for the facilities as indicated in Section VI, Technical Specifications and Drawings. |
| **ITB 14.2** | Alternative times for completion *[are/are not]* permitted.  If alternative times for completion are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria. |
| **ITB 14.3** | Alternative technical solutions shall be permitted for the following parts of the works: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.  If alternative technical solutions are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria. |
| **ITB 15.1(a)** | The bidder shall submit, with its bid, the following documentary evidence to prove that it has the financial and technical and capability to perform the contract.  *[List hereunder the requirements: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]*  The Subcontractor(s) experience and/or resources [*will/will not*] contribute to the bidder’s qualifications. |
| **ITB 17.4 (a)** | Final destination (Project Site): *[insert name of location where the goods are to be actually used* or  Place of Destination: *[insert named port or place of destination as per Incoterm used]]* |
| **ITB 17.4 (c)** | Place of Destination: *[insert named port or place of destination as per Incoterm used]* |
| **ITB 17.5** | The Incoterms edition is: **Incoterms \_\_\_\_\_** [indicate year] |
| **ITB 17.8** | Prices quoted for each lot (contract) shall correspond at least to *[insert figure*] percent of the items specified for each lot (contract).  Prices quoted for each item of a lot shall correspond at least to *[insert figure]* percent of the quantities specified for this item of a lot. |
| **ITB 18.1** | *[The bidder is not required to quote in Jamaican dollars the portion of the bid price that corresponds to expenditures incurred in that currency].* |
| **ITB 19.1** | The bid validity period shall be *[insert number]* days. |
| **ITB 20.1** | *[insert one of the following options]:*  [*No bid security is required. or*  *The bid shall include a bid security (issued by a bank or Surety) included in Section IV Bidding Forms.*] |
| **ITB 20.2** | The amount of the bid security shall be: *[insert amount]* |
| **ITB 21.1** | In addition to the original bid, the required number of copies is: *[insert number]*  *[In the case of an electronic bid only one bid will be submitted (uploaded) and this shall be the ORIGINAL.]* |
| **D. Submission and Opening of Bids** | |
| **ITB 22.1** | Bids will be submitted in *[hard copy or electronically (GOJEP procedures are defined in the Quick Guide for Suppliers)].* |
| **ITB 22.2 (c)** | The inner and outer envelopes shall bear the following additional identification marks: *[insert the name and/or number that must appear on the bid envelope to identify this specific bidding process].* |
| **ITB 23.1** | For bid submission purposes, the procuring entity’s address is:  Attention: *[insert full name of person, if applicable, or insert name of the Project Officer]*  Address: *[insert street name and number]*  Floor-Room number: *[insert floor and room number, if applicable] [important to avoid delays or misplacement of bids]*  City: *[insert name of city or town]*  Jamaica  The deadline for the submission of bids is:  Date: *[insert day, month, and year, i.e. 15 June, 2016]*  Time: *[insert time, and identify if a.m. or p.m., i.e. 10:30 a.m.]* |
| **ITB 26.1** | The bid opening shall take place at:  Street Address: *[insert street address and number]*  City: *[insert name of city or town]*  Jamaica  Date: *[insert day, month, and year, i.e. 15 June, 2016]*  Time: *[insert time, and identify if a.m. or p.m. i.e. 10:30 a.m.]* |
| **E. Evaluation, and Comparison of Bids** | |
| **ITB 31.1** | The adjustment shall be based on the*[insert “average” or “highest”]*price of the item or component as quoted in other substantially responsive bids. If the price of the item or component cannot be derived from the price of other substantially responsive bids, the procuring entity shall use its best estimate. |
| **ITB 33.1** | Bid prices expressed in different currencies shall be converted to: *[insert the name of the currency]*  The source of exchange rate shall be: Bank of Jamaica  The date for the exchange rate shall be *[insert date of deadline for bid submission]* |
| **ITB 42.2** | The number of days for standstill shall be [\_\_\_\_\_\_\_] days.  *[Note: the maximum allowed by the Act is ten (10) days.]* |

# 

|  |
| --- |
| Section III. Evaluation and Qualification Criteria |

This Section contains all the criteria that the procuring entity shall use to evaluate bids and qualify bidders. In accordance with ITB Clauses 34 to 38, no other factors, methods or criteria shall be used. The bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms.

[*The procuring entity shall select the criteria deemed appropriate for the procurement process, insert the appropriate wording using the samples below or other acceptable wording, and delete the text in italics]*

**Contents**

1. Alternative Bids (ITB Clause 14)

2. Multiple Contracts (ITB Sub-Clause 34)

43 Evaluation Criteria (ITB Clause 34)

4. Qualification Requirements (ITB Clause 38)

**1. Alternative Bids (ITB Clause 14)**

An alternative if permitted under ITB Sub-Clause 14.1, will be evaluated as follows:

A bidder may submit an alternative bid only with a bid for the base case. The procuring entity shall only consider the alternative bid as specified in the requirements of Section VI, Technical Specifications and Drawings offered by the bidder whose bid for the base case was determined to be the lowest priced bid or the most advantageous bid. Except as provided under subparagraph below, bidders wishing to offer technical alternatives shall further provide all information necessary for a complete evaluation of the alternatives by the procuring entity, including drawings, design calculations, technical specifications, breakdown of prices, proposed installation methodology and other relevant details.

**Alternative Completion Times**, if permitted under ITB Sub-Clause 14.2, will be evaluated as below.

**Technical alternatives for specified parts of the facilities**, if permitted under ITB Sub-Clause 14.3, shall be considered by the procuring entity on their own merits.

**2. Multiple Contracts (ITB Sub-Clause 34)**

The procuring entity may award multiple contracts to the bidder that offers the lowest priced or most advantageous combination of bids (one contract per bid) and meets the post-qualification criteria (this Section III, Sub-Section ITB Clause 38 Qualification Requirements)

The procuring entity shall:

* + 1. evaluate only lots or contracts that include at least the percentages of items per lot and quantity per item as specified in ITB Clause 17.
    2. take into account:
       1. the lowest responsive bid for each lot and

(ii) the price reduction per lot and the methodology for its application as offered by the bidder in its bid.

**3. Evaluation Criteria (ITB Clause 34)**

In addition to the criteria listed in ITB Sub-Clause 34.2 the following criteria shall apply:

* + - * 1. **Assessment of adequacy of Technical Proposal with Requirements**
        2. **Time schedule (program of performance)**

Time to complete the facilities from the effective date specified in Article 3 of the Contract Agreement for determining time for completion of precommissioning activities [The time period for completion shall be for the entire facilities or for parts or sections of the facilities.] No credit will be given for earlier completion.

If no time schedule is given in the Appendix to Form of Contract Agreement as stated above, the completion date(s):……………….

or [Where alternative time schedule is accepted, pursuant to ITB Sub-Clause 14.3(g) bids offering a completion date beyond the minimum designated period shall be adjusted in the evaluation by adding a factor specified below to the bid price. Bids offering a completion date beyond the maximum designated period shall be rejected.]

Time to complete the facilities from the effective date specified in Article 3 of the Contract Agreement for determining time for completion of precommissioning activities shall be between [date or days] minimum and [date or days] maximum. The adjustment rate in the event of completion beyond the minimum period shall be [percent (%)] for each week of delay from that minimum period.

[One-fifth of a percent (0.2%) per week is a reasonable figure. Alternatively, the rate may be a fixed amount per month, or pro rata per week, of delay related to the loss of benefits to the procuring entity. The accepted period between the minimum and maximum time for completion should be such that the percentage or amount corresponding to the maximum period for completion should be less than or equal to the percentage or amount of liquidated damages specified in the PCC in relation to GCC Sub-Clause 26.2.]

(c) ***Operating and maintenance costs***

[Life cycle costing should be used when the costs of operation and/or maintenance over the specified life of the goods or works are estimated to be considerable in comparison with the initial cost and may vary among different Bids/proposals. It shall be evaluated on a net present value basis. When using life cycle costing, the procuring entity shall specify the following information:]

Since the operating and maintenance costs of the facilities being procured form a major part of the **life cycle cost** of the facilities, these costs will be evaluated according to the principles given hereafter, including the cost of spare parts for the initial period of operation stated below and based on prices furnished by each bidder in Price Schedule Nos. 1 and 2, as well as on past experience of the procuring entity or other employers similarly placed. Such costs shall be added to the bid price for evaluation.

Option 1:

The operating and maintenance costs factors for calculation of the life cycle cost are:

(i) number of years for life cycle *\_\_\_\_[Insert number of years]*

(ii) operating costs

(iii) maintenance costs, including the cost of spare parts for the initial period of operation, and

(iv) Interest rate: \_\_\_\_\_\_\_\_*[insert interest rate in percent]* to be used to discount to present value all annual future costs calculated under (ii) and (iii) above for the period specified in (i).

**Or**

Option 2:

Reference to the methodology specified in the Specification or elsewhere in the bidding document.

The price of recommended spare parts quoted in Price Schedule No. 6 shall not be considered for evaluation*.*

(d) ***Functional Guarantees of the facilities***

The minimum (or maximum) requirements stated in the Specification for functional guarantees required in the Specification are:

| **Functional Guarantee** | **Minimum (or Maximum, as appropriate) Requirement** |
| --- | --- |
| 1. |  |
| 2. |  |
| 3. |  |
| *…* |  |

For the purposes of evaluation, for each percentage point that the functional guarantee of the proposed Plant and Installation Services is below the norm specified in the Specification and in the above table, but above the minimum acceptable levels also specified therein, an adjustment of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_will be added to the Bid price. If the drop below the norm or the excess above the minimum acceptable levels is less than one percent, the adjustment will be prorated accordingly.

Bids offering plant and equipment with functional guarantees less (or more) than the minimum (or maximum) specified shall be rejected.

(e) ***Work, services, facilities, etc., to be provided by the procuring entity***

Where bids include the undertaking of work or the provision of services or facilities by the procuring entity in excess of the provisions allowed for in the bidding documents, the procuring entity shall assess the costs of such additional work, services and/or facilities during the duration of the contract. Such costs shall be added to the bid price for evaluation.

1. **Specific additional criteria**.

Other specific additional criteria to be considered in the evaluation, and the evaluation method shall be detailed in **BDS** Clause 34. [If specific sustainable procurement technical requirements have been specified in Section V Procuring Entity’s Requirements, either state that (i) those requirements will be evaluated on a pass/fail (compliance basis) or otherwise (ii) in addition to evaluating those requirements on a pass/fail (compliance basis), if applicable, specify the monetary adjustments  to be applied to Bid Prices for comparison purposes on account of Bids that exceed the specified minimum sustainable procurement technical requirements.]

**4. Qualification Requirements (ITB Clause 38)**

After determining the lowest responsive bid in accordance with ITB Sub-Clause 34.1, the procuring entity shall carry out the qualification of the bidder in accordance with ITB Clause 38, using only the requirements specified. Requirements not included in the text below shall not be used in the evaluation of the bidder’s qualifications.

* + - * 1. Eligibility and Qualification Table

The bidder shall meet the eligibility and qualification criteria and provide the required evidence stipulated in the table as follows;

* + 1. **Eligibility**
* Conflict of Interest
  + 1. **Historical Contract Non Performance**
* History of Non Performing Contracts
* Pending Litigation
  + 1. **Financial Situation**
* Historical Financial Performance
* Average Annual Construction Turnover
* Financial Resources

Using forms in Section IV, Bidding Forms, the bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual mobilization payments to meet:

(i) the following cash-flow requirement: …………………………………………………………………………

and

* + - 1. the overall cash flow requirements for this contract and its current works commitment.

The successful bidder will also be required to furnish a valid Tax Compliance Letter (TCL) prior to award of contract.

* + 1. **Experience**
* General Construction Experience
* Specific Construction Experience
  + 1. **Personnel**

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

|  |  |  |  |
| --- | --- | --- | --- |
| **No.** | **Position** | **Total Work Similar Experience (years)** | **In Similar Works Experience**  **(years)** |
| 1 |  |  |  |
| 2 |  |  |  |
| 3 |  |  |  |
|  |  |  |  |

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

* + 1. **Equipment**

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

|  |  |  |
| --- | --- | --- |
| **No.** | **Equipment Type and Characteristics** | **Minimum Number required** |
| 1 |  |  |
| 2 |  |  |
| 3 |  |  |
|  |  |  |

The bidder shall provide further details of proposed items of equipment using the relevant Form in Section IV, Bidding Forms.

* + 1. **Specialized Subcontractors**

Subcontractors/manufacturers for the following major items of supply or services (‘Specialized Subcontractors’) must meet the following minimum criteria, herein listed for that item:

|  |  |  |
| --- | --- | --- |
| **Item No.** | **Description of Item** | **Minimum Criteria to be met** |
| 1 |  |  |
| 2 |  |  |
| 3 |  |  |
| … |  |  |

Failure to comply with this requirement will result in rejection of the subcontractor.

In the case of a bidder who offers to supply and install major items of supply under the contract that the bidder did not manufacture or otherwise produce, the bidder shall provide the manufacturer’s authorization, using the form provided in Section IV, Bidding Forms showing that the bidder has been duly authorized by the manufacturer or producer of the related plant and equipment or component to supply and install that item in the procuring entity’s Country. The bidder is responsible for ensuring that the manufacturer or producer complies with the requirements of ITB 4 and 5 and meets the minimum criteria listed above for that item.

|  |
| --- |
| Section IV.Bidding Forms |

**Table of Forms**

[Letter of Bid 32](#_Toc472603130)

[Schedule of Rates and Prices 34](#_Toc472603131)

[Technical Proposal 38](#_Toc472603132)

[Bidders Qualification 49](#_Toc472603133)

[Form of Bid Security 69](#_Toc472603134)

[Bid Security (Bid Bond) 70](#_Toc472603135)

[Bid-Securing Declaration 71](#_Toc472603136)

[Manufacturer’s Authorization 72](#_Toc472603137)

.

|  |
| --- |
| **Letter of Bid** |

Date:

Ref No.:

Alternative No: [insert identification no if this a bid for an alternative]

To: [insert complete name of the procuring entity]

We, the undersigned, declare that:

1. We have examined and have no reservations to the bidding document, including Addenda No \_\_ ;
2. We offer to execute in conformity with the bidding document the following works:

;

1. We attach evidence of our fulfilment of the non-price criteria of award set out in Section III, Evaluation and Qualification Criteria;
2. The total price of our bid, excluding any discounts offered in item (d) below is:

;

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

**Discounts.** If our bid is accepted, the following discounts shall apply.\_\_\_\_\_\_\_*[Specify in detail each discount offered and the specific item of the Schedule of Requirements to which it applies or state none] ;*

**Methodology of Application of the Discounts.** The discounts shall be applied using the following method:\_\_\_\_\_\_\_\_\_\_ *[Specify in detail the method that shall be used to apply the discounts or state not applicable];*

1. Our bid shall be valid for the period of time specified in ITB Sub-Clause 19.1 from the date fixed for the bid submission deadline in accordance with ITB Sub-Clause 23.1, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
2. If our bid is accepted, we commit to obtain a performance security in accordance with ITB Clause 43 and GCC Clause Sub-Clause 13.3 for the due performance of the contract;
3. We, including any subcontractors or bidders for any part of the contract, have or will have nationalities from eligible countries, in accordance with ITB-Sub-Clause 4.2;
4. We, including any subcontractors or bidders for any part of the contract, do not have any conflict of interest in accordance with ITB-Sub-Clause 4.4;
5. Weare not participating, as a bidder or as a subcontractor, in more than one bid in this bidding process in accordance with ITB-Sub-Clause 4.6, other than alternative **bids** submitted in accordance with ITB-Clause 14;
6. We, including any of our subcontractors or bidders for any part of the contract,have not been declared ineligible in accordance with ITB Sub-Clause 4.7;
7. We hereby agree that in competing for (and, if the award is made to us, in executing) the contract, we undertake to observe the laws against fraud and corruption, including bribery, in force in Jamaica;
8. The following commissions, gratuities, or fees have been paid or are to be paid with respect to the bidding process or execution of the contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission]*

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

(If none has been paid or is to be paid, indicate “none.”)

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; and
2. We understand that you are not bound to accept the lowest price or the most advantageous bid or any other bid that you may receive. Furthermore, we understand that the procuring entity may cancel a procurement at any time prior to the acceptance of the successful bid or after the successful bid is accepted if
   * + 2. the procurement is cancelled;
       3. the bidder presenting the successful bid is excluded on the grounds of corruption, unfair competition and a conflict of interest; or
       4. the procurement, the bid or the bidder contravenes or is otherwise not compliant with the provisions of the Public Procurement Act, 2015.

Name In the capacity of \_

Signed

Duly authorized to sign the bid for and on behalf of

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

**Schedule of Rates and Prices**

**Schedule No. 1. Plant and Mandatory Spare Parts Supplied from Abroad**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Item | Description | | | | | Code1 | | Qty. |  | | Unit Price2 | | Total Price2 |
|  |  | | | | |  | |  |  | |  | *CIP* |  |
|  |  | | | | |  | | *(1)* |  | | *(2)* | *(3)* | *(1) x (3)* |
|  |  | | | | |  | |  |  | |  |  |  |
|  |  | | | | |  | |  |  | |  |  |  |
|  |  | | | | |  | |  |  | |  |  |  |
|  |  | | | | |  |  | |  |  |  |
|  |  | | | | |  |  | |  |  |  |
|  |  | | | | |  |  | |  |  |  |
|  |  | | | | |  |  | |  |  |  |
|  |  | | | | |  | |  |  | |  |  |  |
|  |  | | | | |  |  | |  |  |  |
|  | | |  | | TOTAL (to Schedule No. 5. Grand Summary) | | | | | | | |  |
|  |  | | | | |  |  | | | Name of bidder | |  | |
|  |  | | | | |  |  | | | Signature of bidder | |  | |
|  |  | | | | |  |  | |  | |  |  |  |
|  | |  | | 1 Bidders shall enter a code representing the country of origin of all imported plant and equipment.  2 Specify currency. Create and use as many columns for Unit Price and Total Price as there are currencies. | | | | | | | | | |

**Schedule No. 2. Plant and Mandatory Spare Parts Supplied from Within the procuring entity’s Country**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Item | Description | | | Qty. | | EXW Unit Price1 | | EXW Total Price1 | |
|  |  | | | *(1)* | | *(2)* | | *(1) x (2)* | |
|  |  | | |  | |  | |  | |
|  |  | | |  | |  | |  | |
|  |  | | |  | |  | |  | |
| TOTAL (to Schedule No. 5. Grand Summary) | | | | | | | |  | |
|  |  |  |  | |  | |  | |  |
|  |  |  | Name of bidder | | | |  | | |
|  |  |  |  | |  | |  | |  |
|  |  |  | Signature of bidder | | | |  | | |
| 1 Specify currency in accordance with ITB 18 | | | | | | | | | |

**Schedule No. 3. Design Services**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Item | Description | | Qty. | Unit Price1 | | | | Total Price1 |
|  |  | |  | Local Currency Portion | | Foreign Currency Portion | |  |
|  |  | | *(1)* | *(2)* | | *(optional)* | | *(1) x (2)* |
|  |  | |  |  | |  | |  |
|  |  | |  |  | |  | |  |
|  |  | |  |  | |  | |  |
| TOTAL (to Schedule No. 5. Grand Summary) | | | | | | | |  |
|  |  |  | |  |  | |  |  |
|  |  |  | | Name of bidder | | |  | |
|  |  |  | |  |  | |  |  |
|  |  |  | | Signature of bidder | | |  | |
|  |  |  | |  |  | |  |  |

**Schedule No. 4. Installation and Other Services**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Item | Description | Qty. | Unit Price1 | | | | Total Price1 | | |
|  |  |  | Foreign Currency Portion | | Local Currency Portion | | Foreign | | Local |
|  |  | *(1)* | *(2)* | | *(3)* | | *(1) x (2)* | | *(1) x (3)* |
|  |  |  |  | |  | |  | |  |
|  |  |  |  | |  | |  | |  |
|  |  |  |  | |  | |  | |  |
| TOTAL (to Schedule No. 5. Grand Summary) | | | | | | | | |  |
|  |  |  |  |  | |  | |  | |
|  |  |  | Name of bidder | | |  | | | |
|  |  |  |  |  | |  | |  | |
|  |  |  | Signature of bidder | | |  | | | |
| 1 Specify currency in accordance with ITB 18 | | | | | | | | | |

**Schedule No. 5. Grand Summary**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Item | Description | | | Total Price1 | | |
|  |  | | | Foreign | | Local |
|  | Total Schedule No. 1. Plant, and Mandatory Spare Parts Supplied from Abroad | | |  | |  |
|  | Total Schedule No. 2. Plant, and Mandatory Spare Parts Supplied from Within the procuring entity’s Country | | |  | |  |
|  | Total Schedule No. 3. Design Services | | |  | |  |
|  | Total Schedule No. 4. Installation and Other Services | | |  | |  |
|  |  | | |  | |  |
| TOTAL (to Letter of Bid) | | | | | |  |
|  |  |  | Name of bidder | |  | |
|  |  |  | Signature of bidder | |  | |
| 1Specify currency in accordance with ITB 18. Create and use as many columns for Foreign Currency requirement as there are foreign currencies | | | | | | |

**Schedule No. 6. Recommended Spare Parts**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Item | Description | | Qty. | Unit Price | | | Total Price | |
|  |  | |  | CIF or CIP  (foreign parts) | | EXW  (local parts) |  | |
|  |  | | *(1)* | *(2)* | | *(3)* | *(1) x (2) or(3)* | |
|  |  | |  |  | |  |  | |
|  |  | |  |  | |  |  | |
|  |  | |  |  | |  |  | |
|  |  | |  |  | |  |  | |
|  |  | |  |  | |  |  | |
|  | | | | | | |  | |
|  |  |  |  | |  |  |  | |
|  |  |  |  | |  |  |  | |
|  |  |  | Name of bidder | | |  | | |
|  |  |  |  | |  |  | |  |
|  |  |  |  | |  |  | |  |
|  |  |  | Signature of bidder | | |  | | |
|  |  |  |  | |  |  | |  |

|  |
| --- |
| **Technical Proposal** |

* **Site Organization**
* **Method Statement**
* **Mobilization Schedule**
* **Construction Schedule**
* **Plant**
* **contractor’s Equipment**
* **Personnel**
* **Proposed Subcontractors for Major Items of Plant and Installation Services**
* **Others**

**Site Organization**

**Method Statement**

**Mobilization Schedule**

**Plant**

**Construction Schedule *C*ontractor’s Equipment**

Form EQU

The bidder shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III, Evaluation and Qualification Criteria. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the bidder.

|  |  |  |
| --- | --- | --- |
| Item of equipment | | |
| Equipment information | Name of manufacturer | Model and power rating |
|  | Capacity | Year of manufacture |
| Current status | Current location | |
|  | Details of current commitments | |
|  |  | |
| Source | Indicate source of the equipment  o Owned o Rented o Leased o 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 | |
|  |  | |
|  |  | |

**Form FUNC**

The bidder shall copy in the left column of the table below, the identification of each functional guarantee required in the Specification and stated by the procuring entity in Section III, Evaluation and Qualification Criteria, and in the right column, provide the corresponding value for each functional guarantee of the proposed plant and equipment.

|  |  |
| --- | --- |
| **Required Functional Guarantee** | **Value of Functional Guarantee of the Proposed Plant and Equipment** |
| 1. |  |
| 2. |  |
| 3. |  |
| … |  |

|  |
| --- |
| Personnel |

**Form PER -1**

Proposed Personnel

Bidders should provide the names of suitably qualified personnel to meet the specified requirements stated in Section III. The data on their experience should be supplied using the Form below for each candidate.

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

*\*As listed in Section III.*

**Form PER-2**

Resume of Proposed Personnel

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

Summarize professional experience over the last [*procuring entity to insert number of years up to a maximum of* 20] years, in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

| **From** | **To** | **Company / Project / Position / Relevant technical and management experience** |
| --- | --- | --- |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

***Proposed Subcontr******actors for Major Items of Plant and Installation Services***

*A list of major items of Plant and Installation Services is provided below.*

*The following Subcontractors and/or manufacturers are proposed for carrying out the item of the facilities indicated. Bidders are free to propose more than one for each item*

|  |  |  |
| --- | --- | --- |
| ***Major Items of Plant and Installation Services*** | ***Proposed Subcontractors/Manufacturers*** | ***Nationality*** |
|  |  |  |
|  |  |  |
|  |  |  |

|  |
| --- |
| **Bidders Qualification** |

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

**Eligibility and Qualification Table**

| **Eligibility and Qualification Criteria** | | | **Compliance Requirements** | | | | **Documentation** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **No.** | **Subject** | **Requirement** | **Single Entity** | **Joint Venture (existing or intended)** | | | **Submission Requirements** |
| **All Members Combined** | **Each Member** | **One Member** |
| **1. Eligibility** | | | | | | | |
| **1.1** | **Nationality** | Nationality in accordance with ITB 4.2 | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Forms ELI – 1.1 and 1.2, with attachments |
| **1.2** | **Conflict of Interest** | No conflicts of interest in accordance with ITB 4.4 | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Letter of Bid |
| **1.3** | **Law of Jamaica** | Eligible in accordance with ITB 4.7. | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Forms ELI – 1.1 and 1.2, with attachments |
| **2. Historical contract Non-Performance** | | | | | | | |
| **2.1** | **History of Non-Performing Contracts** | Non-performance of a contract[[1]](#footnote-1) did not occur as a result of contractor default since 1st January [*insert year]*. | Must meet requirement | Must meet requirements | Must meet requirement[[2]](#footnote-2) | N/A | Form CON-2 |
| **2.2** | **Pending Litigation** | Bidder’s financial position and prospective long term profitability still sound according to criteria established in 3.1 below and assuming that all pending litigation will be resolved against the Bidder | Must meet requirement | N/A | Must meet requirement | N/A | Form CON – 2 |
| **2.3** | **Litigation History** | No consistent history of court/arbitral award decisions against the Bidder[[3]](#footnote-3) since 1st January *[insert year]* | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Form CON – 2 |
| **3. Financial Situation and Performance** | | | | | | | |
| **3.1** | **Financial Capabilities** | (i) The bidder shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual mobilization payment) sufficient to meet the construction cash flow requirements estimated as USD $ *[insert amount]* for the subject contract(s) net of the bidder’s other commitments  (ii) The bidders shall also demonstrate, to the satisfaction of the procuring entity, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.  (iii) The audited balance sheets or, if not required by the laws of the bidder’s country, other financial statements acceptable to the procuring entity, for the last *[insert number of years]* years shall be submitted and must demonstrate the current soundness of the bidder’s financial position and indicate its prospective long-term profitability. | Must meet requirement  Must meet requirement  Must meet requirement | Must meet requirement  Must meet requirement  N/A | N/A  N/A  Must meet requirement | N/A  N/A  N/A | Form FIN – 3.1 with attachments |
| **3.2** | **Average Annual Construction Turnover** | Minimum average annual construction turnover of US$ *[insert amount]*, calculated as total certified payments received for contracts in progress and/or completed within the last *[insert of year]* years, divided by *[insert number of years]* years | Must meet requirement | Must meet requirement | Must meet *[insert number]* %, *[insert percentage in words]* of the requirement | Must meet *[insert number]* %, *[insert percentage in words]* of the requirement | Form FIN – 3.2 |
| **4. Experience** | | | | | | | |
| **4.1 (a)** | **General Construction Experience** | Experience under construction contracts in the role of prime contractor, JV member, sub-contractor, or management contractor for at least the last *[insert number of years]* years, starting 1st January *[insert year]*. | Must meet requirement | N/A | Must meet requirement | N/A | Form EXP – 4.1 |
| **4.2 (a)** | **Specific Construction & contract Management Experience** | (i) A minimum number of *[state the number]* similar contracts specified below that have been satisfactorily and substantially[[4]](#footnote-4) completed as a prime contractor, joint venture member[[5]](#footnote-5), management contractor or sub-contractor between 1st January [insert year] and bid submission deadline:  (i) N contracts, each of minimum value V;  Or  (ii) Less than or equal to N contracts, each of minimum value V, but with total value of all contracts equal or more than N x V; [insert values of N & V, delete (ii) above if not applicable].  [*In case the works are to be bid as individual contracts under a slice and package (multiple contract) procedure, the minimum number of contracts required for purposes of evaluating qualification shall be selected from the options mentioned in ITB 36]*  The similarity of the contracts shall be based on the following: [*Based on Section V, Scope of Works, specify the minimum key requirements in terms of physical size, complexity, construction method, technology and/or other characteristics including part of the requirements that may be met by specialized subcontractors, if permitted in accordance with ITB 35]* | Must meet requirement | Must meet requirement[[6]](#footnote-6) | N/A | Must meet the following requirements for the key activities listed below [list key activities and the corresponding minimum requirements to be met by one member otherwise state:”N/A”] | Form EXP 4.2(a) |
| **4.2 (b)** |  | For the above and any other contracts [substantially completed and under implementation] as prime contractor, joint venture member, or sub-contractor between 1st January *[insert year]* and Application submission deadline, a minimum construction experience in the following key activities successfully completed[[7]](#footnote-7): *[list key activities indicating volume, number or rate of production as applicable.*  *Under 4.2(a), specified requirements define similarity of contracts, whereas the key activities or production rates to be specified under 4.2 (b) define the required capability of the Applicant to execute the works. There shall not be any inconsistency or repetition of requirement between 4.2(a) and 4.2(b). For the rate of production, specify that the rate of production shall be on the basis of either the average during the entire specified period OR the rate of annual production in any 12 month period in the specified period.]*[[8]](#footnote-8) | Must meet requirements  *[Specify activities that may be met through a specialized subcontractor, if permitted in accordance with ITB 35]* | Must meet requirements [*Specify activities that may be met through a Specialized Subcontractor, if permitted in accordance with ITB 35****]*** | N/A | Must meet the following requirements for key activities listed below *[****if applicable, out of the key activities in the first column of this 4.2 b),*** *list key activities (volume, number or rate of production as applicable) and the corresponding minimum requirements that have to be met by one member,* ***otherwise this cell should state: “N/A”.]*** | Form EXP – 4.2 (b) |

***Note: [For Multiple lots (contracts) specify financial and experience criteria for each lot under Sub-Factors 3.1, 3.2, 4.2(a) and 4.2(b)]***

Form ELI -1.1

Bidder Information Form

Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  
Ref No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  
Page *\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

|  |
| --- |
| Bidder's name |
| In case of Joint Venture (JV), name of each member: |
| Bidder's actual or intended country of registration:  *[indicate country of Constitution]* |
| Bidder's actual or intended year of incorporation: |
| Bidder's legal address [in country of registration]: |
| Bidder's authorized representative information  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Address: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Telephone/Fax numbers: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  E-mail address: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |
| 1. Attached are copies of original documents of  🞎 Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITB Sub-Clause 4.4  🞎 In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB Sub-Clause 4.1  2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. |

Form ELI -1.2

Bidder's JV Information Form  
(to be completed for each member of Bidder’s JV)

Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Ref No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* of *\_\_\_\_\_\_\_\_\_\_\_\_* pages

|  |
| --- |
| Bidder’s JV name: |
| JV member’s name: |
| JV member’s country of registration: |
| JV member’s year of constitution: |
| JV member’s legal address in country of constitution: |
| JV member’s authorized representative information  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Telephone/Fax numbers: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  E-mail address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| 1. Attached are copies of original documents of  🞎 Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITB Sub-Clause 4.4.  2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. |

Form CON – 2

Historical Contract Non-Performance, Pending Litigation and Litigation History

Bidder’s Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*JV Member’s Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Ref No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria | | | | | | | | |
| 🞎 Contract non-performance did not occur since 1st January *[insert year]* specified in Section III, Evaluation and Qualification Criteria.  🞎 Contract(s) not performed since 1st January *[insert year]* specified in Section III, Evaluation and Qualification Criteria | | | | | | | | |
| **Year** | **Non- performed portion of contract** | | | **Contract Identification** | | | | **Total Contract Amount (current value, currency, exchange rate and US$ equivalent)** |
| *[insert year]* | *[insert amount and percentage]* | | | Contract Identification: *[indicate complete contract name/ number, and any other identification]*  Name of Employer: *[insert full name]*  Address of Employer: *[insert street/city/country]*  Reason(s) for nonperformance: *[indicate main reason(s)]* | | | | *[insert amount]* |
| Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria | | | | | | | | |
| 🞎 No pending litigation in accordance with Section III, Evaluation and Qualification Criteria | | | | | | | | |
| 🞎 Pending litigation in accordance with Section III, Evaluation and Qualification Criteria | | | | | | | | |
| **Year of dispute** | | | | **Amount in dispute (currency)** | | | **Contract Identification** | **Total Contract Amount (currency), USD Equivalent (exchange rate)** | | |
|  | | | |  | | | Contract Identification: \_\_\_\_\_\_\_  Name of Employer: \_\_\_\_\_\_\_\_\_\_\_\_  Address of Employer: \_\_\_\_\_\_\_\_\_\_  Matter in dispute: \_\_\_\_\_\_\_\_\_\_\_\_\_  Party who initiated the dispute: \_\_  Status of dispute: *\_\_\_\_\_\_\_\_\_\_\_* |  | | |
|  | | | |  | | | Contract Identification:  Name of Employer:  Address of Employer:  Matter in dispute:  Party who initiated the dispute:  Status of dispute: |  | | |
| Litigation History in accordance with Section III, Evaluation and Qualification Criteria | | | | | | | | | | |
| 🞎 No Litigation History in accordance with Section III, Evaluation and Qualification Criteria.  🞎 Litigation History in accordance with Section III, Evaluation and Qualification Criteria. | | | | | | | | | | |
| **Year of award** | | | **Outcome as percentage of Net Worth** | | | **Contract Identification** | | **Total Contract Amount (currency), USD Equivalent (exchange rate)** | | |
| *[insert year]* | | | *[insert percentage]* | | | Contract Identification: [indicate complete contract name, number, and any other identification]  Name of Employer: *[insert full name]*  Address of Employer: *[insert street/city/country]*  Matter in dispute: *[indicate main issues in dispute]*  Party who initiated the dispute: *[indicate “procuring entity” or “contractor”]*  Reason(s) for Litigation and award decision *[indicate main reason(s)]* | | *[insert amount]* | | |

Form FIN – 3.1:

**Financial Situation and Performance**

Bidder’s Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*JV Member’s Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Ref No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

**1. Financial data**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Type of Financial information in**  **(currency)** | **Historic information for previous** *\_\_\_\_\_\_\_\_\_years,*  *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  **(amount in currency, currency, exchange rate\*, USD equivalent)** | | | | |
|  | Year 1 | Year 2 | Year 3 | Year4 | Year 5 |
| Statement of Financial Position (Information from Balance Sheet) | | | | | |
| Total Assets (TA) |  |  |  |  |  |
| Total Liabilities (TL) |  |  |  |  |  |
| Total Equity/Net Worth (NW) |  |  |  |  |  |
| Current Assets (CA) |  |  |  |  |  |
| Current Liabilities (CL) |  |  |  |  |  |
| Working Capital (WC) |  |  |  |  |  |
| Information from Income Statement | | | | | |
| Total Revenue (TR) |  |  |  |  |  |
| Profits Before Taxes (PBT) |  |  |  |  |  |
| Cash Flow Information | | | | | |
| Cash Flow from Operating Activities |  |  |  |  |  |

\*Refer to ITB Clause 16 for the exchange rate

**2. Sources of Finance**

Specify sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.

|  |  |  |
| --- | --- | --- |
| **No.** | **Source of finance** | **Amount (US$ equivalent)** |
| 1 |  |  |
| 2 |  |  |
| 3 |  |  |
|  |  |  |

**3. Financial documents**

The bidder and its parties shall provide copies of financial statements for *\_\_\_\_\_\_\_\_\_\_\_*years pursuant Section III, Evaluation and Qualifications Criteria. The financial statements shall:

(a) reflect the financial situation of the bidder or in case of JV member, and not an affiliated entity (such as parent company or group member).

(b) be independently audited or certified in accordance with local legislation.

(c) be complete, including all notes to the financial statements.

(d) correspond to accounting periods already completed and audited.

🞎 Attached are copies of financial statements[[9]](#footnote-9) for the *\_\_\_\_\_\_\_\_\_\_\_\_*years required above; and complying with the requirements

Form FIN – 3.2:

**Average Annual Construction Turnover**

Bidder’s Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*JV Member’s Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Ref No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | | **Annual turnover data (construction only)** | | |
| **Year** | **Amount**  **Currency** | | **Exchange rate** | **USD equivalent** |
| *[indicate year]* | *[insert amount and indicate currency]* | |  |  |
|  |  | |  |  |
|  |  | |  |  |
|  |  | |  |  |
|  |  | |  |  |
| Average Annual Construction Turnover \* |  | |  |  |

\* See Section III, Evaluation and Qualification Criteria.

Form FIN – 3.3:

**Financial Resources**

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

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

Form FIN – 3.4:

**Current Contract Commitments / Works in Progress**

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

|  |
| --- |
| **Current Contract Commitments** |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| No. | Name of Contract | Employer’s **Contact Address, Tel, Fax** | **Value of Outstanding Work**  **[Current US$ Equivalent]** | **Estimated Completion Date** | **Average Monthly Invoicing Over Last Six Months [US$/month)]** |
| 1 |  |  |  |  |  |
| 2 |  |  |  |  |  |
| 3 |  |  |  |  |  |
| 4 |  |  |  |  |  |
| 5 |  |  |  |  |  |
|  |  |  |  |  |  |

Form EXP - 4.1

General Construction Experience

Bidder’s Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*JV Member’s Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Ref No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

|  |  |  |  |
| --- | --- | --- | --- |
| Starting  Year | Ending  Year | Contract Identification | Role of  Bidder |
|  |  | Contract name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Brief Description of the works performed by the  Bidder: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Amount of contract: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Name of Employer: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Address: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |  |
|  |  | Contract name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Brief Description of the works performed by the  Bidder: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Amount of contract: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Name of Employer: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Address: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |  |
|  |  | Contract name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Brief Description of the works performed by the  Bidder: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Amount of contract: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Name of Employer: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Address: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |  |

Form EXP - 4.2(a)

**Specific Construction and Contract Management Experience**

Bidder’s Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*JV Member’s Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Ref No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Similar Contract No.** | **Information** | | | | |
| Contract Identification |  | | | | |
| Award date |  | | | | |
| Completion date |  | | | | |
| Role in Contract | Prime contractor 🞎 | | Member in  JV  🞎 | Management contractor  🞎 | Sub-contractor 🞎 |
| Total Contract Amount |  | | | US$ | |
| If member in a JV or sub-contractor, specify participation in total Contract amount |  |  | |  | |
| Employer's Name: |  | | | | |
| Address:  Telephone/fax number  E-mail: |  | | | | |

**Form EXP - 4.2(a) (cont.)**

**Specific Construction and Contract Management Experience (cont.)**

|  |  |
| --- | --- |
| **Similar Contract No.** | **Information** |
| Description of the similarity in accordance with Sub-Factor 4.2(a) of Section III: |  |
| 1. Amount |  |
| 2. Physical size of required works items |  |
| 3. Complexity |  |
| 4. Methods/Technology |  |
| 5. Construction rate for key activities |  |
| 6. Other Characteristics |  |

Form EXP - 4.2(b)

Construction Experience in Key Activities

Bidder's Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Bidder's JV Member Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Sub-contractor's Name[[10]](#footnote-10) (as per ITB Clause 35): *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Ref No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

All Sub-contractors for key activities must complete the information in this form as per ITB Clause 35 and Section III, Evaluation and Qualification Criteria.

1. Key Activity No One: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

|  | **Information** | | | | |
| --- | --- | --- | --- | --- | --- |
| Contract Identification |  | | | | |
| Award date |  | | | | |
| Completion date |  | | | | |
| Role in Contract | Prime contractor  🞎 | Member in  JV  🞎 | | Management contractor  🞎 | Sub-contractor  🞎 |
| Total Contract Amount |  | | | US$ | |
| Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year | Total quantity in the contract  (i) | | Percentage  participation  (ii) | | Actual Quantity Performed  (i) x (ii) |
| Year 1 |  | |  | |  |
| Year 2 |  | |  | |  |
| Year 3 |  | |  | |  |
| Year 4 |  | |  | |  |
| Employer’s Name: |  | | | | | |
| Address:  Telephone/fax number  E-mail: |  | | | | | |

|  |  |
| --- | --- |
|  | **Information** |
| Description of the key activities in accordance with Sub-Factor 4.2(b) of Section III: |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

2. Activity No. Two

3. …………………

|  |
| --- |
| **Form of Bid Security** |

**(Bank Guarantee)**

*[The Bank shall fill in this Bank Guarantee Form in accordance with the instructions indicated.]*

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
[Bank’s Name, and Address of Issuing Branch or Office]*

**Beneficiary:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[Name and Address of procuring entity]*

**[*Indicate here if this guarantee is for an alternative bid and, if so, identify the details of the alternative bid, if applicable.]***

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

**BID GUARANTEE No.:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

We have been informed that *[name of the bidder or Joint Venture, showing also the names of all the members thereof]* (hereinafter called "the bidder") has submitted to you its bid dated (hereinafter called "the bid") for the execution of *[name of contract]* under International Competitive Bid No. *[Ref number]* (“the ICB”).

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

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

* + - * 1. has materially modified or withdrawn its bid during the period of bid validity specified by the bidder in the Letter of Bid; or
        2. does not accept a correction of errors; or
        3. having been notified of the acceptance of its bid by the procuring entity 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.

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

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

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

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***[signature(s)]*

**Bid Security (Bid Bond)**

*[The Surety shall fill in this Bid Bond Form in accordance with the instructions indicated.]*

BOND NO. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

BY THIS BOND *[name of bidder]* as Principal (hereinafter called “the Principal”), and *[name, legal title, and address of surety],* **authorized to transact business in** *[name of country of procuring entity],* as Surety (hereinafter called “the Surety”), are held and firmly bound unto *[name of procuring entity]* as Obligee (hereinafter called “the procuring entity”) in the sum of *[amount of Bond]*[[11]](#footnote-11) *[amount in words]*, for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has submitted a written bid to the procuring entity dated the \_\_\_ day of \_\_\_\_\_\_, 20\_\_, for the construction of *[name of contract]* (hereinafter called the “bid”).

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal:

1. materially modifies or withdraws its bid during the period of bid validity specified in the Letter of Bid; or
2. does not accept a correction of errors; or
3. having been notified of the acceptance of its bid by the procuring entity during the period of bid validity or any extension provided by the Principal; (i) fails or refuses to execute the contract Form; or (ii) fails or refuses to furnish the performance security, if required, in accordance with the Instructions to Bidders of the procuring entity’s bidding document.

then the Surety undertakes to immediately pay to the procuring entity up to the above amount upon receipt of the procuring entity’s first written demand, without the procuring entity having to substantiate its demand, provided that in its demand the procuring entity shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

The Surety hereby agrees that its obligation will remain in full force and effect up to and including the date 28 days after the date of expiration of the bid validity as stated in the Invitation to Bid or extended by the Principal at any time prior to this date, notice of which extension(s) to the Surety being hereby waived.

IN TESTIMONY WHEREOF, the Principal and the Surety have caused these presents to be executed in their respective names this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_ 20\_\_.

Principal: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Surety: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Corporate Seal (where appropriate)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
*(Signature) (Signature)  
(Printed name and title) (Printed name and title)*

**Bid-Securing Declaration**

*[The bidder shall fill in this Form in accordance with the instructions indicated.]*

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

Ref No.: *[number of bidding process]*

Alternative No.: *[identification No if this is a bid for an alternative]*

To: *[complete name of procuring entity]*

We, the undersigned, declare that:

We understand that, according to your conditions, bids must be supported by a Bid-Securing Declaration.

We accept that we will automatically be suspended from being eligible for bidding in any contract with the procuring entity for the period of time of *[number of months or years]* starting on *[date],* if we are in breach of our obligation(s) under the bid conditions, because we:

1. have materially modified or withdrawn our bid during the period of bid validity specified in the Letter of Bid; or
2. do not accept a correction of errors; or
3. having been notified of the acceptance of our bid by the procuring entity during the period of bid validity, fail or refuse to execute the contract; or (ii) fail or refuse to furnish the performance security, if required, in accordance with the ITB.

We understand this Bid Securing Declaration shall expire if we are not the successful bidder, upon the earlier of (i) our receipt of your notification to us advising the execution of the contract with of the name of the successful bidder; or (ii) twenty-eight days after the expiration of our bid.

Signed: *[signature of person whose name and capacity are shown]* In the capacity of *[legal capacity of person signing the Bid Securing Declaration]*

Name: *[complete name of person signing the Bid Securing Declaration]*

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

Dated *[date of signing]*

Corporate Seal (where appropriate)

*[Note: In case of a Joint Venture, the Bid Securing Declaration must be in the name of all partners to the Joint Venture that submits the bid.]*

**Manufacturer’s Authorization**

*[The bidder shall require the Manufacturer to fill in this Form in accordance with the instructions indicated. This* *letter of authorization should be on the letterhead of the Manufacturer and should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer. The bidder shall include it in its bid, if so indicated in the* ***BDS.****]*

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

Ref No.: *[insert number of bidding process]*

Alternative No.: *[insert identification No if this is a bid for an**alternative]*

To: *[insert complete name of procuring entity]*

WHEREAS

We *[insert complete name of Manufacturer],* who are official manufacturers of*[insert type of goods manufactured],* having factories at [insert full address of Manufacturer’s factories], do hereby authorize *[insert complete name of bidder]* to submit a bid the purpose of which is to provide the following goods, manufactured by us *[insert name and or brief description of the goods],* and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 27 of the General Conditions of Contract, with respect to the goods offered by the above firm.

Signed: *[insert signature(s) of authorized representative(s) of the Manufacturer]*

Name: *[insert complete name(s) of authorized representative(s) of the Manufacturer]*

Title: *[insert title]*

Duly authorized to sign this Authorization on behalf of: *[insert complete name of bidder]*

Dated on \_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_ *[insert date of signing]*

PART 2 - Procuring Entity’s Requirements

|  |
| --- |
| Section V - Procuring Entity’s Requirements |

**Contents**

[Scope of Supply of Plant and Installation Services by the contractor 75](#_Toc454103656)

[Specification 76](#_Toc454103657)

[Forms and Procedures 77](#_Toc454103658)

[Form of Completion Certificate 77](#_Toc454103659)

[Form of Operational Acceptance Certificate 78](#_Toc454103660)

[Change Order Procedure and Forms 79](#_Toc454103661)

[Change Order Procedure 80](#_Toc454103662)

[Annex 1. Request for Change Proposal 81](#_Toc454103663)

[Annex 2. Estimate for Change Proposal 82](#_Toc454103664)

[Annex 3. Acceptance of Estimate 83](#_Toc454103665)

[Annex 4. Change Proposal 84](#_Toc454103666)

[Annex 5. Change Order 86](#_Toc454103667)

[Annex 6. Pending Agreement Change Order 87](#_Toc454103668)

[Annex 7. Application for Change Proposal 88](#_Toc454103669)

[Drawings 89](#_Toc454103670)

[Supplementary Information 90](#_Toc454103671)

**Scope of Supply of Plant and Installation Services by the contractor**

|  |
| --- |
| **Specification** |

*In drafting of the Specification, care must be taken to ensure that the requirements are not restrictive. Recognized international standards should be used as much as possible for the description of goods, materials and workmanship. Where other particular standards are specified, whether national standards or other standards, it should be stated that goods, materials and workmanship meeting other authoritative standards and which promise to ensure equal or higher quality than the standards specified, will also be acceptable. Where a brand name of a product is specified it should always be qualified with the terms “or equivalent”.*

*For a design, supply and install contract no detail drawings would generally be available at the pre-bidding process stage. It would, however, be useful to include such conceptual drawings as are appropriate to supplement or help explain the general concept of the procuring entity’s needs.*

*Any sustainable procurement technical requirements for the works shall be clearly specified. The requirements to be specified shall be specific enough to not demand evaluation based on rated criteria/merit point system. The sustainable procurement requirements shall be specified to enable evaluation of such a requirement on a pass/fail basis. To encourage bidders’ innovation in addressing sustainable procurement requirements, as long as the bid evaluation criteria specify the mechanism for monetary adjustments for the purpose of bid comparisons, Bidders may be invited to offer works that exceeds the specified minimum sustainable procurement requirements.*

**Forms and Procedures**

**Form of Completion Certificate**

Date:

Ref No: \_\_\_\_\_\_

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

To: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dear Ladies and/or Gentlemen,

Pursuant to GCC Clause 24 (Completion of the Facilities) of the General Conditions of the Contract entered into between yourselves and the procuring entity dated *\_\_\_\_\_\_\_\_\_\_\_\_\_*, relating to the *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,*  we hereby notify you that the following part(s) of the Facilities was (were) complete on the date specified below, and that, in accordance with the terms of the Contract, the procuring entity hereby takes over the said part(s) of the Facilities, together with the responsibility for care and custody and the risk of loss thereof on the date mentioned below.

1. Description of the Facilities or part thereof: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

2. Date of Completion: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

However, you are required to complete the outstanding items listed in the attachment hereto as soon as practicable.

This letter does not relieve you of your obligation to complete the execution of the Facilities in accordance with the Contract nor of your obligations during the Defect Liability Period.

Very truly yours,

Title

(Project Manager)

**Form of Operational Acceptance Certificate**

Date:

Ref No: \_\_\_\_\_\_

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

To: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Dear Ladies and/or Gentlemen,

Pursuant to GCC Sub-Clause 25.3 (Operational Acceptance) of the General Conditions of the Contract entered into between yourselves and the procuring entity dated *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*, relating to the *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*, we hereby notify you that the Functional Guarantees of the following part(s) of the Facilities were satisfactorily attained on the date specified below.

1. Description of the Facilities or part thereof: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

2. Date of Operational Acceptance: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

This letter does not relieve you of your obligation to complete the execution of the Facilities in accordance with the Contract nor of your obligations during the Defect Liability Period.

Very truly yours,

Title

(Project Manager)

**Change Order Procedure and Forms**

Date:

Ref No: \_\_\_\_\_\_

CONTENTS

1. General

2. Change Order Log

3. References for Changes

ANNEXES

Annex 1 Request for Change Proposal

Annex 2 Estimate for Change Proposal

Annex 3 Acceptance of Estimate

Annex 4 Change Proposal

Annex 5 Change Order

Annex 6 Pending Agreement Change Order

Annex 7 Application for Change Proposal

**Change Order Procedure**

**1. General**

This section provides samples of procedures and forms for implementing changes in the Facilities during the performance of the Contract in accordance with GCC Clause 39 (Change in the Facilities) of the General Conditions.

**2. Change Order Log**

The contractor shall keep an up-to-date Change Order Log to show the current status of Requests for Change and Changes authorized or pending, as Annex 8. Entries of the Changes in the Change Order Log shall be made to ensure that the log is up-to-date. The contractor shall attach a copy of the current Change Order Log in the monthly progress report to be submitted to the procuring entity.

**3. References for Changes**

(1) Request for Change as referred to in GCC Clause 39 shall be serially numbered CR-X-nnn.

(2) Estimate for Change Proposal as referred to in GCC Clause 39 shall be serially numbered CN-X-nnn.

(3) Acceptance of Estimate as referred to in GCC Clause 39 shall be serially numbered CA-X-nnn.

(4) Change Proposal as referred to in GCC Clause 39 shall be serially numbered CP-X-nnn.

(5) Change Order as referred to in GCC Clause 39 shall be serially numbered CO-X-nnn.

Note: (a) Requests for Change issued from the procuring entity’s Home Office and the Site representatives of the procuring entity shall have the following respective references:

Home Office CR-H-nnn

Site CR-S-nnn

(b) The above number “nnn” is the same for Request for Change, Estimate for Change Proposal, Acceptance of Estimate, Change Proposal and Change Order.

**Annex 1. Request for Change Proposal**

(procuring entity’s Letterhead)

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

Attention: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Number: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Dear Ladies and/or Gentlemen:

With reference to the captioned Contract, you are requested to prepare and submit a Change Proposal for the Change noted below in accordance with the following instructions within *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* days of the date of this letter*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*.

1. Title of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

2. Change Request No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

3. Originator of Change: procuring entity: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

contractor (by Application for Change Proposal No. *\_\_\_\_\_\_\_*:

4. Brief Description of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

5. Facilities and/or Item No. of equipment related to the requested Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_*

6. Reference drawings and/or technical documents for the request of Change:

Drawing No./Document No. Description

7. Detailed conditions or special requirements on the requested Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

8. General Terms and Conditions:

(a) Please submit your estimate to us showing what effect the requested Change will have on the Contract Price.

(b) Your estimate shall include your claim for the additional time, if any, for completion of the requested Change.

(c) If you have any opinion negative to the adoption of the requested Change in connection with the conformability to the other provisions of the Contract or the safety of the Plant or Facilities, please inform us of your opinion in your proposal of revised provisions.

(d) Any increase or decrease in the work of the contractor relating to the services of its personnel shall be calculated.

(e) You shall not proceed with the execution of the work for the requested Change until we have accepted and confirmed the amount and nature in writing.

(procuring entity’s Name)

(Signature)

(Name of signatory)

(Title of signatory)

**Annex 2. Estimate for Chang****e Proposal**

(contractor’s Letterhead)

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

Attention: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Number: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Dear Ladies and/or Gentlemen:

With reference to your Request for Change Proposal, we are pleased to notify you of the approximate cost of preparing the below-referenced Change Proposal in accordance with GCC Sub-Clause 39.2.1 of the General Conditions. We acknowledge that your agreement to the cost of preparing the Change Proposal, in accordance with GCC Sub-Clause 39.2.2, is required before estimating the cost for change work.

1. Title of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

2. Change Request No./Rev.: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

3. Brief Description of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

4. Scheduled Impact of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

5. Cost for Preparation of Change Proposal: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*[[12]](#footnote-12)

(a) Engineering (Amount)

(i) Engineer hrs x rate/hr =

(ii) Draftsperson hrs x rate/hr =

Sub-total hrs

Total Engineering Cost

(b) Other Cost

Total Cost (a) + (b)

(contractor’s Name)

(Signature)

(Name of signatory)

(Title of signatory)

**Annex 3. Acceptance of Estimate**

(procuring entity’s Letterhead)

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

Attention: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Number: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Dear Ladies and/or Gentlemen:

We hereby accept your Estimate for Change Proposal and agree that you should proceed with the preparation of the Change Proposal.

1. Title of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

2. Change Request No./Rev.: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

3. Estimate for Change Proposal No./Rev.: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

4. Acceptance of Estimate No./Rev.: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

5. Brief Description of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

6. Other Terms and Conditions: In the event that we decide not to order the Change accepted, you shall be entitled to compensation for the cost of preparation of Change Proposal described in your Estimate for Change Proposal mentioned in para. 3 above in accordance with GCC Clause 39 of the General Conditions.

(procuring entity’s Name)

(Signature)

(Name and Title of signatory)

**Annex 4. Change Proposal**

(contractor’s Letterhead)

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

Attention: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Number: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Dear Ladies and/or Gentlemen:

In response to your Request for Change Proposal No. *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*, we hereby submit our proposal as follows:

1. Title of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

2. Change Proposal No./Rev.: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

3. Originator of Change: procuring entity: *[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

contractor: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

4. Brief Description of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

5. Reasons for Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

6. Facilities and/or Item No. of Equipment related to the requested Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

7. Reference drawings and/or technical documents for the requested Change:

Drawing/Document No. Description

8. Estimate of increase/decrease to the Contract Price resulting from Change Proposal:[[13]](#footnote-13) (Amount)

(a) Direct material

(b) Major construction equipment

(c) Direct field labor (Total hrs)

(d) Subcontracts

(e) Indirect material and labor

(f) Site supervision

(g) Head office technical staff salaries

Process engineer hrs @ rate/hr

Project engineer hrs @ rate/hr

Equipment engineer hrs @ rate/hr

Procurement hrs @ rate/hr

Draftsperson hrs @ rate/hr

Total hrs

(h) Extraordinary costs (computer, travel, etc.)

(i) Fee for general administration, % of Items

(j) Taxes and customs duties

Total lump sum cost of Change Proposal

*(Sum of items (a) to (j))*

Cost to prepare Estimate for Change Proposal

*(Amount payable if Change is not accepted)*

9. Additional time for Completion required due to Change Proposal

10. Effect on the Functional Guarantees

11. Effect on the other terms and conditions of the Contract

12. Validity of this Proposal: within *[Number]* days after receipt of this Proposal by the procuring entity

13. Other terms and conditions of this Change Proposal:

(a) You are requested to notify us of your acceptance, comments or rejection of this detailed Change Proposal within *\_\_\_\_\_\_\_\_\_\_\_\_\_\_* days from your receipt of this Proposal.

(b) The amount of any increase and/or decrease shall be taken into account in the adjustment of the Contract Price.

(c) contractor’s cost for preparation of this Change Proposal:[[14]](#footnote-14)2

(contractor’s Name)

(Signature)

(Name of signatory)

(Title of signatory)

**Annex 5. Change Order**

(procuring entity’s Letterhead)

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

Attention: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Number: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Dear Ladies and/or Gentlemen:

We approve the Change Order for the work specified in the Change Proposal (No. *\_\_\_\_\_\_\_*), and agree to adjust the Contract Price, Time for Completion and/or other conditions of the Contract in accordance with GCC Clause 39 of the General Conditions.

1. Title of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

2. Change Request No./Rev.: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

3. Change Order No./Rev.: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

4. Originator of Change: procuring entity: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

contractor: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

5. Authorized Price:

Ref. No.: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Foreign currency portion *\_\_\_\_\_\_\_\_\_\_* plus Local currency portion *\_\_\_\_\_\_\_\_\_\_*

6. Adjustment of Time for Completion

None Increase *\_\_\_\_\_\_\_\_\_* days Decrease *\_\_\_\_\_\_\_\_\_* days

7. Other effects, if any

Authorized by: Date:

(procuring entity)

Accepted by: Date:

(contractor) **Annex 6. Pending Agreement Change Order**

(procuring entity’s Letterhead)

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

Attention: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Number: *[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Dear Ladies and/or Gentlemen:

We instruct you to carry out the work in the Change Order detailed below in accordance with GCC Clause 39 of the General Conditions.

1. Title of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

2. procuring entity’s Request for Change Proposal No./Rev.: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*dated: *\_\_\_\_\_\_\_\_\_\_*

3. contractor’s Change Proposal No./Rev.: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* dated: *\_\_\_\_\_\_\_\_\_\_*

4. Brief Description of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

5. Facilities and/or Item No. of equipment related to the requested Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

6. Reference Drawings and/or technical documents for the requested Change:

Drawing/Document No. Description

7. Adjustment of Time for Completion:

8. Other change in the Contract terms:

9. Other terms and conditions:

(procuring entity’s Name)

(Signature)

(Name of signatory)

(Title of signatory)

**Annex 7. Application for Change Proposal**

(contractor’s Letterhead)

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

Attention: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Contract Number: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Dear Ladies and/or Gentlemen:

We hereby propose that the below-mentioned work be treated as a Change in the Facilities.

1. Title of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

2. Application for Change Proposal No./Rev.: *\_\_\_\_\_\_\_\_\_\_\_\_\_* dated: *\_\_\_\_\_\_\_\_\_*

3. Brief Description of Change: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

4. Reasons for Change:

5. Order of Magnitude Estimation (in the currencies of the Contract):

6. Scheduled Impact of Change:

7. Effect on Functional Guarantees, if any:

8. Appendix:

(contractor’s Name)

(Signature)

(Name of signatory)

(Title of signatory)

|  |
| --- |
| **Drawings** |

|  |
| --- |
| **Supplementary Information** |

PART 3 – Conditions of Contract and Contract Forms

# Section VI. General Conditions of Contract

**Table of Clauses**

[A. Contract and Interpretation 94](#_Toc472604401)

[1. Definitions 94](#_Toc472604402)

[2. Contract Documents 96](#_Toc472604403)

[3. Interpretation 96](#_Toc472604404)

[4. Communications 98](#_Toc472604405)

[5. Governing Law 98](#_Toc472604406)

[6.Fraud and Corruption 98](#_Toc472604407)

[**B. Subject Matter of Contract 98**](#_Toc472604408)

[7. Scope of Facilities 98](#_Toc472604409)

[8. Time for Commencement and Completion 99](#_Toc472604410)

[9. contractor’s Responsibilities 99](#_Toc472604411)

[10. Procuring Entity’s Responsibilities 100](#_Toc472604412)

[**C. Payment 101**](#_Toc472604413)

[11. Contract Price 101](#_Toc472604414)

[12. Terms of Payment 101](#_Toc472604415)

[13. Securities 102](#_Toc472604416)

[14. Taxes and Duties 103](#_Toc472604417)

[**D. Intellectual Property 103**](#_Toc472604418)

[15. License/Use of Technical Information 103](#_Toc472604419)

[16. Confidential Information 104](#_Toc472604420)

[**E. Execution of the Facilities 104**](#_Toc472604421)

[17. Representatives 104](#_Toc472604422)

[18. Work Program 106](#_Toc472604423)

[19. Subcontracting 107](#_Toc472604424)

[20. Design and Engineering 107](#_Toc472604425)

[21. Procurement 109](#_Toc472604426)

[22. Installation 111](#_Toc472604427)

[23. Test and Inspection 117](#_Toc472604428)

[24. Completion of the Facilities 118](#_Toc472604429)

[25. Commissioning and Operational Acceptance 119](#_Toc472604430)

[**F. Guarantees and Liabilities 122**](#_Toc472604431)

[26. Completion Time Guarantee 122](#_Toc472604432)

[27. Defect Liability 122](#_Toc472604433)

[28. Functional Guarantees 124](#_Toc472604434)

[29. Patent Indemnity 125](#_Toc472604435)

[30. Limitation of Liability 126](#_Toc472604436)

[**G. Risk Distribution 126**](#_Toc472604437)

[31. Transfer of Ownership 126](#_Toc472604438)

[32. Care of Facilities 126](#_Toc472604439)

[33. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification 127](#_Toc472604440)

[34. Insurance 128](#_Toc472604441)

[35. Unforeseen Conditions 130](#_Toc472604442)

[36. Change in Laws and Regulations 131](#_Toc472604443)

[37. Force Majeure 131](#_Toc472604444)

[38. War Risks 132](#_Toc472604445)

[**H. Change in Contract Elements 134**](#_Toc472604446)

[39. Change in the Facilities 134](#_Toc472604447)

[40. Extension of Time for Completion 137](#_Toc472604448)

[41. Suspension 137](#_Toc472604449)

[42. Termination 139](#_Toc472604450)

[43. Assignment 144](#_Toc472604451)

[44. Export Restriction 144](#_Toc472604452)

[**I. Claims, Disputes and Arbitration 145**](#_Toc472604453)

[45. contractor’s Claims 145](#_Toc472604454)

[46. Disputes and Arbitration 146](#_Toc472604455)

**General Conditions of Contract**

**A. Contract and Interpretation**

1. Definitions

1.1 The following words and expressions shall have the meanings hereby assigned to them:

|  |
| --- |
| a) **“Commissioning”** means operation of the Facilities or any part thereof by the contractor following Completion, which operation is to be carried out by the contractor as provided in GCC Sub-Clause 25.1 (Commissioning) hereof, for the purpose of carrying out Guarantee Test(s).  (b) **“Completion”** means that the Facilities (or a specific part thereof where specific parts are specified in the contract **PCC**) have been completed operationally and structurally and put in a tight and clean condition, and that all work in respect of Precommissioning of the Facilities or such specific part thereof has been completed; in other words, that the Facilities or specific part thereof are ready for Commissioning as provided in GCC Clause 24 (Completion) hereof.  (c) **“contract”** means the Contract Agreement entered into between the procuring entity and the contractor, together with the Contract Documents referred to therein; they shall constitute the contract, and the term “the contract” shall in all such documents be construed accordingly.  (d) **“Contract Documents”** means the documents listed in Article 1.1 (Contract Documents) of the Form of Contract Agreement (including any amendments thereto).  (e) **“Contract Price”** means the sum specified in Article 2.1 (Contract Price) of the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the contract.  (f) **“contractor”** means a bidder to whom a procurement contract has been awarded by the procuring entity. The contractor is named as such in the Contract Agreement and **PCC,** and includes the legal successors or permitted assigns of the contractor.  (g) **“contractor’s Equipment”** means all plant, facilities, equipment, machinery, tools, apparatus, appliances or things of every kind required in or for installation, completion and maintenance of Facilities that are to be provided by the contractor, but does not include Plant and Equipment, or other things intended to form or forming part of the Facilities.  (h) **“contractor’s Representative”** means any person nominated by the contractor and named as such in the **PCC** and approved by the procuring entity in the manner provided in GCC Sub-Clause 17.2 (contractor’s Representative and Construction Manager) hereof to perform the duties delegated by the contractor.  (i) **“Day”** means calendar day.  (j) **“Defect Liability Period”** means the period of validity of the warranties given by the contractor commencing at Completion of the Facilities or a part thereof, during which the contractor is responsible for defects with respect to the Facilities (or the relevant part thereof) as provided in GCC Clause 27 (Defect Liability) hereof.  (k) “Dispute Board” (DB) means the person or persons named as such in the PCC appointed by agreement between the procuring entity and the contractor to make a decision with respect to any dispute or difference between the procuring entity and the contractor referred to him or her by the Parties pursuant to GCC Sub-Clause 46.1 (Dispute Board) hereof.  (l) **“Effective Date”** means the date of fulfillment of all conditions stated in Article 3 (Effective Date for Determining Time for Completion) of the Form of contract Agreement, for the purpose of determining the Time for Completion.  (m) **“procuring entity”** means the person named as such in the **PCC** and includes the legal successors or permitted assigns of the procuring entity.  (n) **“Facilities”** means the Plant and Equipment to be supplied and installed, as well as all the Installation Services to be carried out by the contractor under the contract.  (o) **“GCC”** means the General Conditions of contract hereof.  (p) “GoJ” means the Government of Jamaica.  (q) **“Guarantee Test(s)”** means the test(s) specified in the Technical Specifications to be carried out to ascertain whether the Facilities or a specified part thereof is able to attain the Functional Guarantees specified in the Technical Specifications in accordance with the provisions of GCC Sub-Clause 25.2 (Guarantee Test) hereof.  (r) **“Installation Services”** means all those services ancillary to the supply of the Plant and Equipment for the Facilities, to be provided by the contractor under the contract; e.g., transportation and provision of marine or other similar insurance, inspection, expediting, site preparation works (including the provision and use of contractor’s Equipment and the supply of all construction materials required), installation, testing, precommissioning, commissioning, operations, maintenance, the provision of operations and maintenance manuals, training, etc.  (s) **“Month”** means calendar month.  (t) **“Operational Acceptance”** means the acceptance by the procuring entity of the Facilities (or any part of the Facilities where the contract provides for acceptance of the Facilities in parts), which certifies the contractor’s fulfillment of the contract in respect of Functional Guarantees of the Facilities (or the relevant part thereof) in accordance with the provisions of GCC Clause 28 (Functional Guarantees) hereof and shall include deemed acceptance in accordance with GCC Clause 25 (Commissioning and Operational Acceptance) hereof.  (u) “Party” means the procuring entity or the contractor, as the context requires, and “Parties” means both of them.  (v) **“Plant and Equipment”** means permanent plant, equipment, machinery, apparatus, articles and things of all kinds to be provided and incorporated in the Facilities by the contractor under the contract (including the spare parts to be supplied by the contractor under GCC Sub-Clause 7.3 hereof), but does not include contractor’s Equipment.  (w) **“Precommissioning”** means the testing, checking and other requirements specified in the Technical Specifications that are to be carried out by the contractor in preparation for Commissioning as provided in GCC Clause 24 (Completion) hereof.  (x) “Procurement Review Board” or “Review Board” means the body established in accordance with Section 50 of the Act.  (y) **“Project Manager”** means the person appointed by the procuring entity in the manner provided in GCC Sub-Clause 17.1 (Project Manager) hereof and named as such in the **PCC** to perform the duties delegated by the procuring entity.  (z) **“PCC”** means the Particular Conditions of Contract.  (aa) **“Site”** means the land and other places upon which the Facilities are to be installed, and such other land or places as may be specified in the contract as forming part of the Site.  (bb) **“Subcontractor,”** including vendors, means any person to whom execution of any part of the Facilities, including preparation of any design or supply of any Plant and Equipment, is sub-contracted directly or indirectly by the contractor, and includes its legal successors or permitted assigns.  (cc) **“Time for Completion”** means the time within which Completion of the Facilities as a whole (or of a part of the Facilities where a separate Time for Completion of such part has been prescribed) is to be attained in accordance with the specifications in the **PCC** and the relevant provisions of the contract. |
| 2. Contract Documents  2.1 Subject to Article 1.2 (Order of Precedence) of the Contract Agreement, all documents forming part of the contract (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The contract shall be read as a whole. |
| 3. Interpretation  3.1 Language  3.1.1 The ruling language of the contract shall be specified in the PCC.  3.1.2 The language for communications shall be that stated in the PCC. If no language is stated there, the language for communications shall be the ruling language of the contract.  3.2 Singular and Plural  The singular shall include the plural and the plural the singular, except where the context otherwise requires.  3.3 Headings  The headings and marginal notes in the General Conditions of contract are included for ease of reference, and shall neither constitute a part of the contract nor affect its interpretation.  3.4 Persons  Words importing persons or parties shall include firms, corporations and government entities.  3.5 Incoterms  Unless inconsistent with any provision of the contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.  Incoterms means international rules for interpreting trade terms published by the International Chamber of Commerce (latest edition), 38 Cours Albert 1er, 75008 Paris, France.  3.6 Entire Agreement  Subject to GCC Sub-Clause 16.4 hereof, the contract constitutes the entire agreement between the procuring entity and contractor with respect to the subject matter of contract and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of contract.  3.7 Amendment  No amendment or other variation of the contract shall be effective unless it is in writing, is dated, expressly refers to the contract, and is signed by a duly authorized representative of each party hereto.  3.8 Independent contractor  The contractor shall be an independent contractor performing the contract. The contract does not create any agency, partnership, joint venture or other joint relationship between the parties hereto.  Subject to the provisions of the contract, the contractor shall be solely responsible for the manner in which the contract is performed. All employees, representatives or Subcontractors engaged by the contractor in connection with the performance of the contract shall be under the complete control of the contractor and shall not be deemed to be employees of the procuring entity, and nothing contained in the contract or in any subcontract awarded by the contractor shall be construed to create any contractual relationship between any such employees, representatives or Subcontractors and the procuring entity.  3.9 Joint Venture  If the contractor is a joint venture of two or more persons, all such firms shall be jointly and severally bound to the procuring entity for the fulfillment of the provisions of the contract and shall designate one of such persons to act as a leader with authority to bind the joint venture. The composition or the constitution of the joint venture shall not be altered without the prior consent of the procuring entity.  3.10 Non-Waiver  3.10.1 Subject to GCC Sub-Clause 3.10.2 below, no relaxation, forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of the contract or the granting of time by either party to the other shall prejudice, affect or restrict the rights of that party under the contract, nor shall any waiver by either party of any breach of contract operate as waiver of any subsequent or continuing breach of contract.  3.10.2 Any waiver of a party’s rights, powers or remedies under the contract must be in writing, must be dated and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.  3.11 Severability  If any provision or condition of the contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the contract. |
| 4. Communications  4.1 Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:   * + 1. in writing and delivered against receipt; and     2. delivered, sent or transmitted to the address for the recipient’s communications as stated in the Contract Agreement.   4.2 When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Project Manager, a copy shall be sent to the Project Manager or the other Party, as the case may be. |
| 5. Governing Law  5.1 The contract shall be governed by and interpreted in accordance with laws of Jamaica, as specified in the **PCC**. |
| 6.Fraud and Corruption  6.1 GoJ requires that all parties involved in the procurement proceedings and execution of such contracts observe the highest standard of ethics.  6.2 For the purposes of this provision, offences of fraud and corruption are defined in Part VII of the Act and any other Act relating to corrupt activities in Jamaica.  6.3 A person who commits an offence under the Act or any other Act relating to corrupt activities in Jamaica shall  (a) be liable for conviction under the provisions of the Act or any other Act relating to corrupt activities in Jamaica;  (b) have their bid rejected if it is determined that the bid or bidder is not in compliance with the provisions of the Act, the regulations or any other Act relating to corrupt activities in Jamaica  (c) risk other sanctions provided for in the Act or the regulations.  6.4 If is determined that the contractor has committed an offence, then the procuring entity may, after giving 14 days notice to the contractor, terminate the contractor's employment under the Contract and expel him from the Site. |
| B. Subject Matter of Contract |
| 7. Scope of Facilities  7.1 Unless otherwise expressly limited in the Technical Specifications, the contractor’s obligations cover the provision of all Plant and Equipment and the performance of all Installation Services required for the design, the manufacture (including procurement, quality assurance, construction, installation, associated civil works, Precommissioning and delivery) of the Plant and Equipment and the installation, completion and commissioning of the facilities in accordance with the plans, procedures, specifications, drawings, codes and any other documents as specified in the Technical Specifications. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labor, materials, equipment, spare parts (as specified in GCC Sub-Clause 7.3 below) and accessories; contractor’s Equipment; construction utilities and supplies; temporary materials, structures and facilities; transportation (including, without limitation, unloading and hauling to, from and at the Site); and storage, except for those supplies, works and services that will be provided or performed by the procuring entity, as set forth in the corresponding Appendix (Scope of works and Supply by the procuring entity) to the contract Agreement.  7.2 The contractor shall, unless specifically excluded in the contract, perform all such work and/or supply all such items and materials not specifically mentioned in the contract but that can be reasonably inferred from the contract as being required for attaining completion of the facilities as if such work and/or items and materials were expressly mentioned in the contract.  7.3 In addition to the supply of Mandatory Spare Parts included in the contract, the contractor agrees to supply spare parts required for the operation and maintenance of the Facilities for the period specified in the **PCC.** However, the identity, specifications and quantities of such spare parts and the terms and conditions relating to the supply thereof are to be agreed between the procuring entity and the contractor, and the price of such spare parts shall be that given in Price Schedule No. 6, which shall be added to the contract Price. The price of such spare parts shall include the purchase price therefor and other costs and expenses (including the contractor’s fees) relating to the supply of spare parts. |
| 8. Time for Commencement and Completion  8.1 The contractor shall commence work on the Facilities within the period specified in the **PCC** and without prejudice to GCC Sub-Clause 26.2 hereof, the contractor shall thereafter proceed with the Facilities in accordance with the time schedule specified in the corresponding Appendix (Time Schedule) to the Contract Agreement.  8.2 The contractor shall attain completion of the facilities (or of a part where a separate time for Completion of such part is specified in the contract) within the time stated in the **PCC** or within such extended time to which the contractor shall be entitled under GCC Clause 40. |
| 9. Contractor’s Responsibilities  9.1 The contractor shall design, manufacture (including associated purchases and/or subcontracting), install and complete the Facilities with due care and diligence in accordance with the contract.  9.2 The contractor confirms that it has entered into this contract on the basis of a proper examination of the data relating to the Facilities (including any data as to boring tests) provided by the procuring entity, and on the basis of information that the contractor could have obtained from a visual inspection of the Site (if access thereto was available) and of other data readily available to it relating to the facilities as of the date twenty-eight (28) days prior to bid submission. The contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Facilities.  9.3 The Contractor shall acquire in its name all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located that 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 procuring entity under GCC Sub-Clause 10.3 hereof and that are necessary for the performance of the Contract.  9.4 The Contractor shall comply with all laws in force in the country where the Facilities are installed and where the Installation Services are carried out. The laws will include all local, state, national or other laws that affect the performance of the Contract and bind upon the contractor. The Contractor shall indemnify and hold harmless the procuring entity from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to GCC Sub-Clause 10.1.  9.5 Any Plant, Material and Services that will be incorporated in or be required for the Facilities and other supplies shall have their origin as specified under GCC Clause 1 (Country of Origin).   * 1. If the Contractor is a joint venture, or association (JV) of two or more persons, all such persons shall be jointly and severally bound to the procuring entity 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 JV. The composition or the constitution of the JV shall not be altered without the prior consent of the procuring entity.   2. The Contractor shall permit and shall cause its subcontractors and subconsultants to permit, the procuring entity and/or persons appointed by the procuring entity to inspect the Site and/or the accounts and records relating to the performance of the Contract and the submission of the bid, and to have such accounts and records audited by auditors appointed by the procuring entity if requested by them. Acts intended to materially impede the exercise of the procuring entity’s inspection and audit rights constitute a prohibited practice subject to Contract termination (as well as to a possible determination of ineligibility). |
| 10. Procuring Entity’s Responsibilities  10.1 The procuring entity shall ensure the accuracy of all information and/or data to be supplied by the procuring entity as described in the corresponding Appendix to the Contract Agreement, except when otherwise expressly stated in the Contract.  10.2 The procuring entity shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the contract, including all requisite rights of way, as specified in the corresponding Appendix (Scope of works and Supply by the procuring entity) to the contract Agreement. The procuring entity shall give full possession of and accord all rights of access thereto on or before the date(s) specified in that Appendix.  10.3 The procuring entity shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the site is located. Such authorities or undertakings require the procuring entity to obtain them in the procuring entity’s name, are necessary for the execution of the contract (they include those required for the performance by both the contractor and the procuring entity of their respective obligations under the contract), and are specified in the corresponding Appendix (Scope of works and Supply by the procuring entity) to the Contract Agreement.  10.4 If requested by the Contractor, the procuring entity shall use its best endeavors to assist the contractor in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the execution of the contract from all local, state or national government authorities or public service undertakings that such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain.  10.5 Unless otherwise specified in the contract or agreed upon by the procuring entity and the Contractor, the procuring entity shall provide sufficient, properly qualified operating and maintenance personnel; shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts, other materials and facilities; and shall perform all work and services of whatsoever nature, including those required by the contractor to properly carry out Precommissioning, Commissioning and Guarantee Tests, all in accordance with the provisions of the corresponding Appendix (Scope of works and Supply by the procuring entity) to the Contract Agreement at or before the time specified in the program furnished by the contractor under GCC Sub-Clause 18.2 hereof and in the manner thereupon specified or as otherwise agreed upon by the procuring entity and the contractor.  10.6 The procuring entity shall be responsible for the continued operation of the Facilities after Completion, in accordance with GCC Sub-Clause 24.8, and shall be responsible for facilitating the Guarantee Test(s) for the Facilities, in accordance with GCC Sub-Clause 25.2.  10.7 All costs and expenses involved in the performance of the obligations under this GCC Clause 10 shall be the responsibility of the procuring entity, save those to be incurred by the contractor with respect to the performance of Guarantee Tests, in accordance with GCC Sub-Clause 25.2. |
| C. Payment |
| 11. Contract Price  11.1 The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Form of Contract Agreement.  11.2 Unless indicated otherwise in the **PCC**, the Contract Price shall be a firm lump sum not subject to any alteration, except in the event of a Change in the Facilities or as otherwise provided in the contract.  11.3 Subject to GCC Sub-Clauses 9.2, 10.1 and 35 hereof, the contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the contract, cover all its obligations under the contract. |
| 12. Terms of Payment  12.1 The Contract Price shall be paid as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement. The procedures to be followed in making application for and processing payments shall be those outlined in the same Appendix.  12.2 No payment made by the procuring entity herein shall be deemed to constitute acceptance by the procuring entity of the Facilities or any part(s) thereof.  12.3 In the event that the procuring entity fails to make any payment by its respective due date or within the period set forth in the contract, the procuring entity shall pay to the contractor interest on the amount of such delayed payment at the rate(s) shown in the corresponding Appendix (Terms and Procedures of Payment) to the Contract Agreement for the period of delay until payment has been made in full, whether before or after judgment or arbitrage award.  12.4 The currency or currencies in which payments are made to the contractor under this contract shall be specified in the corresponding Appendix (Terms and Procedures of Payment) to the Contract Agreement, subject to the general principle that payments will be made in the currency or currencies in which the Contract Price has been stated in the contractor’s bid.  12.5 If the contractor has not already shown the Contractor’s Levy as a deduction from the total due, a levy in the sum of two percent (2%) shall be deducted from the gross amount paid to contractors and sub-contractors for construction, haulage and tillage, in accordance with the Contractor’s Levy Act 1985. Whichever party makes the deduction they must, within fourteen days after making the payment, furnish the principal contractor or sub-contractor, as the case may be, with a certificate setting out the gross amount of the payment and the amount of the levy which has been deducted (or, as the case may be, ought to have been deducted) and such other particulars as may be prescribed. |
| 13. Securities  13.1 Issuance of Securities  The contractor shall provide the securities specified below in favor of the procuring entity at the times, and in the amount, manner and form specified below.  13.2 Mobilization Payment Security  13.2.1 The contractor shall, within twenty-eight (28) days of the notification of contract award, provide a security in an amount equal to the mobilization payment calculated in accordance with the corresponding Appendix (Terms and Procedures of Payment) to the Contract Agreement, and in the same currency or currencies.  13.2.2 The security shall be in the form provided in the bidding documents or in another form acceptable to the procuring entity. The amount of the security shall be reduced in proportion to the value of the Facilities executed by and paid to the contractor from time to time, and shall automatically become null and void when the full amount of the mobilization payment has been recovered by the procuring entity. The security shall be returned to the contractor immediately after its expiration.  13.3 Performance security  13.3.1 The Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a security for the due performance of the contract in the amount specified in the **PCC**.  13.3.2 The security shall be denominated in the currency or currencies of the Contract, or in a freely convertible currency acceptable to the procuring entity, and shall be in one of the forms of bank guarantees provided in the bidding documents, as stipulated by the procuring entity in the **PCC**, or in another form acceptable to the procuring entity.  13.3.3 The security shall automatically be reduced by half on the date of the Operational Acceptance and shall become null and void, eighteen (18) months after Completion of the Facilities or twelve (12) months after Operational Acceptance of the Facilities, whichever occurs first; provided, however, that if the Defects Liability Period has been extended on any part of the Facilities pursuant to GCC Sub-Clause 27.8 hereof, the contractor shall issue an additional security in an amount proportionate to the Contract Price of that part. The security shall be returned to the contractor immediately after its expiration, provided, however, that if the contractor, pursuant to GCC Sub-Clause 27.10, is liable for an extended warranty obligation, the performance security shall be extended for the period and up to the amount specified in the **PCC**.  The procuring entity shall not make a claim under the Performance Security, except for amounts to which the procuring entity is entitled under the Contract. The procuring entity shall indemnify and hold the contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent to which the procuring entity was not entitled to make the claim. |
| 14. Taxes and Duties  14.1 Except as otherwise specifically provided in the contract, the contractor shall bear and pay all taxes, duties, levies and charges assessed on the Contractor, its Subcontractors or their employees by all municipal, state or national government authorities in connection with the Facilities in and outside of the country where the Site is located.  14.2 Notwithstanding GCC Sub-Clause 14.1 above, the procuring entity shall bear and promptly pay (a) all customs and import duties for the Plant and Equipment specified in Price Schedule No. 1; and (b)other domestic taxes such as, sales tax and General Consumption Tax(GCT) on the Plant and Equipment specified in Price Schedules No.1 & 2 and that are to be incorporated into the Facilities, and on the finished goods, imposed by the law of the country where the Site is located.  14.3 If any tax exemptions, reductions, allowances or privileges may be available to the contractor in the country where the Site is located, the procuring entity shall use its best endeavors to enable the contractor to benefit from any such tax savings to the maximum allowable extent.  14.4 For the purpose of the contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Form of Contract Agreement is based on the taxes, duties, levies and charges prevailing at the date twenty-eight (28) days prior to the date of bid submission in the country where the Site is located (hereinafter called “Tax” in this GCC Sub-Clause 14.4). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of contract, which was or will be assessed on the contractor, Subcontractors or their employees in connection with performance of the contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction therefrom, as the case may be, in accordance with GCC Clause 36 hereof. |
| D. Intellectual Property |
| 1. License/Use of Technical Information    1. For the operation and maintenance of the Plant, the contractor hereby grants a non-exclusive and non-transferable license (without the right to sub-license) to the procuring entity under the patents, utility models or other industrial property rights owned by the contractor or by a third Party from whom the contractor has received the right to grant licenses thereunder, and shall also grant to the procuring entity a non-exclusive and non-transferable right (without the right to sub-license) to use the know-how and other technical information disclosed to the procuring entity under the Contract. Nothing contained herein shall be construed as transferring ownership of any patent, utility model, trademark, design, copyright, know-how or other intellectual property right from the contractor or any third Party to the procuring entity.    2. The copyright in all drawings, documents and other materials containing data and information furnished to the procuring entity by the contractor herein shall remain vested in the contractor or, if they are furnished to the procuring entity directly or through the contractor by any third Party, including suppliers of materials, the copyright in such materials shall remain vested in such third Party. |
| 16. Confidential Information  16.1 The procuring entity and the contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the contract, whether such information has been furnished prior to, during or following termination of the contract. Notwithstanding the above, the contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from the procuring entity 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 GCC Clause 16.  16.2 The Procuring Entity shall not use such documents, data and other information received from the contractor for any purpose other than the operation and maintenance of the Facilities. Similarly, the contractor shall not use such documents, data and other information received from the procuring entity for any purpose other than the design, procurement of Plant, construction or such other work and services as are required for the performance of the Contract.  16.3 The obligation of a party under GCC Sub-Clauses 16.1 and 16.2 above, however, shall not apply to that information which:  (a) now or hereafter enters the public domain through no fault of that party.  (b) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party.  (c) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.  16.4 The above provisions of this GCC Clause 16 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the contract in respect of the Facilities or any part thereof.  16.5 The provisions of this GCC Clause 16 shall survive termination, for whatever reason, of the contract. |
| E. Execution of the Facilities |
| 17. Representatives  17.1 Project Manager: If the Project Manager is not named in the contract, then within fourteen (14) days of the Effective Date, the procuring entity shall appoint and notify the contractor in writing of the name of the Project Manager. The procuring entity may from time to time appoint some other person as the Project Manager in place of the person previously so appointed, and shall give a notice of the name of such other person to the contractor without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the Facilities. Such appointment shall only take effect upon receipt of such notice by the contractor. The Project Manager shall represent and act for the procuring entity at all times during the currency of the contract. All notices, instructions, orders, certificates, approvals and all other communications under the contract shall be given by the Project Manager, except as herein otherwise provided.  All notices, instructions, information and other communications given by the contractor to the procuring entity under the contract shall be given to the Project Manager, except as herein otherwise provided.  17.2 Contractor’s Representative & Construction Manager  17.2.1 If the contractor’s Representative is not named in the contract, then within fourteen (14) days of the Effective Date, the contractor shall appoint the contractor’s Representative and shall request the procuring entity in writing to approve the person so appointed. If the procuring entity makes no objection to the appointment within fourteen (14) days, the contractor’s Representative shall be deemed to have been approved. If the procuring entity objects to the appointment within fourteen (14) days giving the reason therefor, then the contractor shall appoint a replacement within fourteen (14) days of such objection, and the foregoing provisions of this GCC Sub-Clause 17.2.1 shall apply.  17.2.2 The Contractor’s Representative shall represent and act for the contractor at all times during the currency of the contract and shall give to the Project Manager all the contractor’s notices, instructions, information and all other communications under the contract. All notices, instructions, information and all other communications given by the procuring entity or the Project Manager to the contractor under the contract shall be given to the contractor’s Representative or, in its absence, its deputy, except as herein otherwise provided. The contractor shall not revoke the appointment of the contractor’s Representative without the procuring entity’s prior written consent, which shall not be unreasonably withheld. If the procuring entity consents thereto, the contractor shall appoint some other person as the contractor’s Representative, pursuant to the procedure set out in GCC Sub-Clause 17.2.1.  17.2.3 The contractor’s Representative may, subject to the approval of the procuring entity (which shall not be unreasonably withheld), at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the contractor’s Representative, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the procuring entity and the Project Manager. Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GCC Sub-Clause 17.2.3 shall be deemed to be an act or exercise by the contractor’s Representative.  17.2.4 From the commencement of installation of the Facilities at the Site until Completion, the contractor’s Representative shall appoint a suitable person as the construction manager (hereinafter referred to as “the Construction Manager”). The Construction Manager shall supervise all work done at the Site by the contractor and shall be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the contract. Whenever the Construction Manager is absent from the Site, a suitable person shall be appointed to act as his or her deputy.  17.2.5 The procuring entity may by notice to the contractor object to any representative or person employed by the contractor in the execution of the contract who, in the reasonable opinion of the procuring entity, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under GCC Sub-Clause 22.3. The procuring entity shall provide evidence of the same, whereupon the contractor shall remove such person from the Facilities.  17.2.6 If any representative or person employed by the contractor is removed in accordance with GCC Sub-Clause 17.2.5, the contractor shall, where required, promptly appoint a replacement. |
| 18. Work Program  18.1 Contractor’s Organization  The contractor shall supply to the procuring entity and the Project Manager a chart showing the proposed organization to be established by the contractor for carrying out work on the Facilities. The chart shall include the identities of the key personnel together with the curricula vitae of such key personnel to be employed within twenty-one (21) days of the Effective Date. The contractor shall promptly inform the procuring entity and the Project Manager in writing of any revision or alteration of such an organization chart.  18.2 Program of Performance  Within twenty-eight (28) days after the date of signing the contract Agreement, the contractor shall prepare and submit to the Project Manager a detailed program of performance of the contract, made in the form specified in the **PCC** and showing the sequence in which it proposes to design, manufacture, transport, assemble, install and precommission the Facilities, as well as the date by which the contractor reasonably requires that the procuring entity shall have fulfilled its obligations under the contract so as to enable the contractor to execute the contract in accordance with the program and to achieve Completion, Commissioning and Acceptance of the Facilities in accordance with the contract. The program so submitted by the contractor shall accord with the Time Schedule included in the corresponding Appendix (Time Schedule) to the contract Agreement and any other dates and periods specified in the contract. The contractor shall update and revise the program as and when appropriate or when required by the Project Manager, but without modification in the Times for Completion given in the **PCC** and any extension granted in accordance with GCC Clause 40, and shall submit all such revisions to the Project Manager.  18.3 Progress Report  The contractor shall monitor progress of all the activities specified in the program referred to in GCC Sub-Clause 18.2 above, and supply a progress report to the Project Manager every month.  The progress report shall be in a form acceptable to the Project Manager and shall indicate: (a) percentage completion achieved compared with the planned percentage completion for each activity; and (b) where any activity is behind the program, giving comments and likely consequences and stating the corrective action being taken.  18.4 Progress of Performance  If at any time the contractor’s actual progress falls behind the program referred to in GCC Sub-Clause 18.2, or it becomes apparent that it will so fall behind, the contractor shall, at the request of the procuring entity or the Project Manager, prepare and submit to the Project Manager a revised program, taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress so as to attain Completion of the Facilities within the Time for Completion under GCC Sub-Clause 8.2, any extension thereof entitled under GCC Sub-Clause 40.1, or any extended period as may otherwise be agreed upon between the procuring entity and the contractor.  18.5 Work Procedures  The Contract shall be executed in accordance with the contract Documents and the procedures given in the section on Sample Forms and Procedures of the Contract Documents.  The Contractor may execute the contract in accordance with its own standard project execution plans and procedures to the extent that they do not conflict with the provisions contained in the contract. |
| 19. Subcontracting  19.1 The corresponding Appendix (List of Approved Subcontractors) to the Contract Agreement specifies major items of supply or services and a list of approved Subcontractors against each item, including vendors. Insofar as no Subcontractors are listed against any such item, the contractor shall prepare a list of Subcontractors for such item for inclusion in such list. The contractor may from time to time propose any addition to or deletion from any such list. The contractor shall submit any such list or any modification thereto to the procuring entity for its approval in sufficient time so as not to impede the progress of work on the Facilities. Such approval by the procuring entity for any of the Subcontractors shall not relieve the contractor from any of its obligations, duties or responsibilities under the contract.  19.2 The contractor shall select and employ its Subcontractors for such major items from those listed in the lists referred to in GCC Sub-Clause 19.1.  19.3 For items or parts of the Facilities not specified in the corresponding Appendix (List of Approved Subcontractors) to the Contract Agreement, the contractor may employ such Subcontractors as it may select, at its discretion.   * 1. Each sub-contract shall include provisions which would entitle the procuring entity to require the sub-contract to be assigned to the procuring entity under GCC 19.5 (if and when applicable), or in event of termination by the procuring entity under GCC 42.2.   If a sub-contractor's obligations extend beyond the expiry date of the relevant Defects Liability Period and the Project Manager, prior to that date, instructs the contractor to assign the benefits of such obligations to the procuring entity, then the contractor shall do so. |
| 20. Design and Engineering  20.1 Specifications and Drawings  20.1.1 The contractor shall execute the basic and detailed design and the engineering work in compliance with the provisions of the contract, or where not so specified, in accordance with good engineering practice.  The contractor shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, whether such specifications, drawings and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors or omissions are not because of inaccurate information furnished in writing to the contractor by or on behalf of the procuring entity.  20.1.2 The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designated by or on behalf of the procuring entity, by giving a notice of such disclaimer to the Project Manager.  20.2 Codes and Standards  Wherever references are made in the contract to codes and standards in accordance with which the contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of bid submission shall apply unless otherwise specified. During contract execution, any changes in such codes and standards shall be applied after approval by the procuring entity and shall be treated in accordance with GCC Clause 39.  20.3 Approval/Review of Technical Documents by Project Manager  20.3.1 The Contractor shall prepare (or cause its Subcontractors to prepare) and furnish to the Project Manager the documents listed in the corresponding Appendix (List of Documents for Approval or Review) to the contract Agreement for its approval or review as specified and in accordance with the requirements of GCC Sub-Clause 18.2 (Program of Performance).Any part of the Facilities covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager’s approval. GCC Sub-Clauses 20.3.2 through 20.3.7 shall apply to those documents requiring the Project Manager’s approval, but not to those furnished to the Project Manager for its review only.  20.3.2 Within fourteen (14) days after receipt by the Project Manager of any document requiring the Project Manager’s approval in accordance with GCC Sub-Clause 20.3.1, the Project Manager shall either return one copy to the contractor with its approval endorsed or shall notify the contractor in writing of its disapproval and the reasons and the modifications that the Project Manager proposes. If the Project Manager fails to take such action within the said fourteen (14) days, then the said document shall be deemed to have been approved by the Project Manager.  20.3.3 The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with some specified provision of the contract or that it is contrary to good engineering practice.  20.3.4 If the Project Manager disapproves the document, the contractor shall modify the document and resubmit it for the Project Manager’s approval in accordance with GCC Sub-Clause 20.3.2. If the Project Manager approves the document subject to modification(s), the contractor shall make the required modification(s), whereupon the document shall be deemed to have been approved.  20.3.5 If any dispute or difference occurs between the procuring entity and the contractor in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) that cannot be settled between the parties within a reasonable period, then such dispute or difference may be referred to the Dispute Board for determination in accordance with GCC Sub-Clause 6.1. If such dispute or difference is referred to the Dispute Board, the Project Manager shall give instructions as to whether and if so, how, performance of the contract is to proceed. The contractor shall proceed with the contract in accordance with the Project Manager’s instructions, provided that if the Adjudicator upholds the contractor’s view on the dispute and if the procuring entity has not given notice under GCC Sub-Clause 6.1.2 hereof, then the contractor shall be reimbursed by the procuring entity for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Adjudicator shall decide, and the Time for Completion shall be extended accordingly.  20.3.6 The Project Manager’s approval, with or without modification of the document furnished by the contractor, shall not relieve the contractor of any responsibility or liability imposed upon it by any provisions of the contract except to the extent that any subsequent failure results from modifications required by the Project Manager.  20.3.7 The Contractor shall not depart from any approved document unless the contractor has first submitted to the Project Manager an amended document and obtained the Project Manager’s approval thereof, pursuant to the provisions of this GCC Sub-Clause 20.3. If the Project Manager requests any change in any already approved document and/or in any document based thereon, the provisions of GCC Clause 39 shall apply to such request. |
| 21. Procurement  21.1 Plant and Equipment  Subject to GCC Sub-Clause 14.2, the contractor shall manufacture or procure and transport all the Plant and Equipment in an expeditious and orderly manner to the Site.  21.2 Procuring entity-Supplied Plant, Equipment, and Materials  If the corresponding Appendix (Scope of works and Supply by the procuring entity) to the Contract Agreement provides that the procuring entity shall furnish any specific items of machinery, equipment or materials to the contractor, the following provisions shall apply:  21.2.1 The procuring entity shall, at its own risk and expense, transport each item to the place on or near the Site as agreed upon by the parties and make such item available to the contractor at the time specified in the program furnished by the contractor, pursuant to GCC Sub-Clause 18.2, unless otherwise mutually agreed.  21.2.2 Upon receipt of such item, the contractor shall inspect the same visually and notify the Project Manager of any detected shortage, defect or default. The procuring entity shall immediately remedy any shortage, defect or default, or the contractor shall, if practicable and possible, at the request of the procuring entity, remedy such shortage, defect or default at the procuring entity’s cost and expense. After inspection, such item shall fall under the care, custody and control of the contractor. The provision of this GCC Sub-Clause 21.2.2 shall apply to any item supplied to remedy any such shortage or default or to substitute for any defective item, or shall apply to defective items that have been repaired.  21.2.3 The foregoing responsibilities of the contractor and its obligations of care, custody and control shall not relieve the procuring entity of liability for any undetected shortage, defect or default, nor place the contractor under any liability for any such shortage, defect or default whether under GCC Clause 27 or under any other provision of contract.  21.3 Transportation  21.3.1 The contractor shall at its own risk and expense transport all the Plant and Equipment and the contractor’s Equipment to the Site by the mode of transport that the contractor judges most suitable under all the circumstances.  21.3.2 Unless otherwise provided in the contract, the contractor shall be entitled to select any safe mode of transport operated by any person to carry the Plant and Equipment and the contractor’s Equipment.  21.3.3 Upon dispatch of each shipment of the Plant and Equipment and the contractor’s Equipment, the contractor shall notify the procuring entity by telex, cable, facsimile or Electronic Data Interchange (EDI) of the description of the Plant and Equipment and of the contractor’s Equipment, the point and means of dispatch, and the estimated time and point of arrival in the country where the Site is located, if applicable, and at the Site. The contractor shall furnish the procuring entity with relevant shipping documents to be agreed upon between the parties.  21.3.4 The contractor shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the Plant and Equipment and the contractor’s Equipment to the Site. The procuring entity shall use its best endeavors in a timely and expeditious manner to assist the contractor in obtaining such approvals, if requested by the contractor. The contractor shall indemnify and hold harmless the procuring entity from and against any claim for damage to roads, bridges or any other traffic facilities that may be caused by the transport of the Plant and Equipment and the contractor’s Equipment to the Site.  21.4 **Customs Clearance**  The contractor shall, at its own expense, handle all imported Plant and Equipment and contractor’s Equipment at the point(s) of import and shall handle any formalities for customs clearance, subject to the procuring entity’s obligations under GCC Sub-Clause 14.2, provided that if applicable laws or regulations require any application or act to be made by or in the name of the procuring entity, the procuring entity shall take all necessary steps to comply with such laws or regulations. In the event of delays in customs clearance that are not the fault of the contractor, the contractor shall be entitled to an extension in the Time for Completion, pursuant to GCC Clause 40. |
| 22. Installation  22.1 Setting Out/Supervision/Labor  22.1.1 Bench Mark: The contractor shall be responsible for the true and proper setting-out of the Facilities in relation to bench marks, reference marks and lines provided to it in writing by or on behalf of the procuring entity.  If, at any time during the progress of installation of the Facilities, any error shall appear in the position, level or alignment of the Facilities, the contractor shall forthwith notify the Project Manager of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of the Project Manager. If such error is based on incorrect data provided in writing by or on behalf of the procuring entity, the expense of rectifying the same shall be borne by the Procuring Entity.  22.1.2 contractor’s Supervision: The contractor shall give or provide all necessary superintendence during the installation of the Facilities, and the Construction Manager or its deputy shall be constantly on the Site to provide full-time superintendence of the installation. The contractor shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.   1. Labor:   23.1 Engagement of Staff and Labor   * 1. Except as otherwise stated in the Specification, the contractor shall make arrangements for the engagement of all staff and labor, local or otherwise, and for their payment, housing, feeding and transport.   2. The contractor shall provide and employ on the Site in the installation of the Facilities such skilled, semi-skilled and unskilled labor as is necessary for the proper and timely execution of the Contract. The contractor is encouraged to use local labor that has the necessary skills.   3. The contractor shall be responsible for obtaining all necessary permit(s) and/or visa(s) from the appropriate authorities for the entry of all labor and personnel to be employed on the Site into the country where the Site is located. The procuring entity will, if requested by the contractor, use his best endeavors in a timely and expeditious manner to assist the contractor in obtaining any local, state, national or government permission required for bringing in the contractor’s personnel.   4. The contractor shall at its own expense provide the means of repatriation to all of its and its Subcontractor’s personnel employed on the Contract at the Site to the place where they were recruited or to their domicile. It shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Contract to the date programmed for their departure. In the event that the contractor defaults in providing such means of transportation and temporary maintenance, the procuring entity may provide the same to such personnel and recover the cost of doing so from the contractor.   22.2.2 Persons in the Service of procuring entity  The contractor shall not recruit, or attempt to recruit, staff and labor from amongst the procuring entity’s Personnel.  22.2.3 Labor Laws  The contractor shall comply with all the relevant labor Laws applicable to the contractor’s Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.  The contractor shall at all times during the progress of the Contract use its best endeavors to prevent any unlawful, riotous or disorderly conduct or behavior by or amongst its employees and the labor of its Subcontractors.  The contractor shall, in all dealings with its labor and the labor of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs and all local laws and regulations pertaining to the employment of labor.  22.2.4 Rates of Wages and Conditions of Labor   * 1. The contractor shall pay rates of wages, and observe conditions of labor, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the contractor.   2. The contractor shall inform the contractor’s Personnel about their liability to pay personal income taxes in the Country in respect of such of their salaries, wages and allowances as are chargeable under the Laws for the time being in force, and the contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.   22.2.5Working Hours  No work shall be carried out on the Site on locally recognized days of rest, or outside the normal working hours **stated in the PCC,** unless:  (a) otherwise stated in the Contract,  (b) the Project Manager gives consent, or  (c) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the contractor shall immediately advise the Project Manager.   * 1. If and when the contractor considers it necessary to carry out work at night or on public holidays so as to meet the Time for Completion and requests the Project Manager’s consent thereto, the Project Manager shall not unreasonably withhold such consent.   2. This Sub-Clause shall not apply to any work which is customarily carried out by rotary or double-shifts.   22.2.6 Facilities for Staff and Labor   * 1. Except as otherwise stated in the Specification, the contractor shall provide and maintain all necessary accommodation and welfare facilities for the contractor’s Personnel. The contractor shall also provide facilities for the procuring entity’s Personnel as stated in the Specification.   2. The contractor shall not permit any of the contractor’s Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.   22.2.7 Health and Safety   * 1. The contractor shall at all times take all reasonable precautions to maintain the health and safety of the contractor’s Personnel. In collaboration with local health authorities, the contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for contractor’s and procuring entity’s Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.   2. The contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the performance of the Contract, the contractor shall provide whatever is required by this person to exercise this responsibility and authority.   3. The contractor shall send to the Project Manager, details of any accident as soon as practicable after its occurrence. The contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Engineer may reasonably require.   4. The contractor shall throughout the contract (including the Defects Notification Period): (i) conduct Information, Education and Consultation Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and labor (including all the contractor's employees, all Sub-Contractors and procuring entity’s and Project Manager’s' employees, and all truck drivers and crew making deliveries to Site for construction activities) and to the immediate local communities, concerning the risks, dangers and impact, and appropriate avoidance behavior with respect to of Sexually Transmitted Diseases (STD)—or Sexually Transmitted Infections (STI) in general and HIV/AIDS in particular; (ii) provide male or female condoms for all Site staff and labor as appropriate; and (iii) provide for STI and HIV/AIDS screening, diagnosis, counseling and referral to a dedicated national STI and HIV/AIDS program, (unless otherwise agreed) of all Site staff and labor.   5. The contractor shall include in the program to be submitted for the execution of the Facilities under Sub-Clause 18.2 an alleviation program for Site staff and labor and their families in respect of Sexually Transmitted Infections (STI) and Sexually Transmitted Diseases (STD) including HIV/AIDS. The STI, STD and HIV/AIDS alleviation program shall indicate when, how and at what cost the contractor plans to satisfy the requirements of this Sub-Clause and the related specification. For each component, the program shall detail the resources to be provided or utilized and any related sub-contracting proposed. The program shall also include provision of a detailed cost estimate with supporting documentation. Payment to the contractor for preparation and implementation this program shall not exceed the Provisional Sum dedicated for this purpose.   22.2.8 Funeral Arrangements   1. In the event of the death of any of the contractor’s personnel or accompanying members of their families, the contractor shall be responsible for making the appropriate arrangements for their return or burial, unless otherwise **specified in the PCC.**   22.2.9 Records of contractor’s Personnel   1. The contractor shall keep accurate records of the contractor’s personnel, including the number of each class of contractor’s Personnel on the Site and the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarized on a monthly basis in a form approved by the Project Manager and shall be available for inspection by the Project Manager until the contractor has completed all work.   22.2.10 Supply of Foodstuffs   1. The contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Specification at reasonable prices for the contractor’s Personnel for the purposes of or in connection with the Contract.   22.2.11 Supply of Water  The contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the contractor’s Personnel.  22.2.12 Measures against Insect and Pest Nuisance  The contractor shall at all times take the necessary precautions to protect the contractor’s Personnel employed on the Site from insect and pest nuisance, and to reduce their danger to health. The contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.  22.2.13 Alcoholic Liquor or Drugs  The contractor shall not, otherwise than in accordance with the Laws of the Country, import, sell, give barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift barter or disposal by contractor's Personnel.  22.2.14 Arms and Ammunition  The contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow contractor's Personnel to do so.  22.2.15 Prohibition of All Forms of Forced or Compulsory Labor  The contractor shall not employ “forced or compulsory labor” in any form. “Forced or compulsory labor” consists of all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.  22.2.16 Prohibition of Harmful Child Labor  The contractor shall not employ any child to perform any work that is economically exploitative, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.  22.2 Contractor’s Equipment  22.2.1 All contractor’s Equipment brought by the contractor onto the Site shall be deemed to be intended to be used exclusively for the execution of the contract. The contractor shall not remove the same from the Site without the Project Manager’s consent that such contractor’s Equipment is no longer required for the execution of the contract.  22.2.2 Unless otherwise specified in the contract, upon completion of the Facilities, the contractor shall remove from the Site all Equipment brought by the contractor onto the Site and any surplus materials remaining thereon.  22.2.3 The procuring entity will, if requested, use its best endeavors to assist the contractor in obtaining any local, state or national government permission required by the contractor for the export of the contractor’s Equipment imported by the contractor for use in the execution of the contract that is no longer required for the execution of the contract.  22.3 Site Regulations and Safety  The procuring entity and the contractor shall establish Site regulations setting out the rules to be observed in the execution of the contract at the Site and shall comply therewith. The contractor shall prepare and submit to the procuring entity, with a copy to the Project Manager, proposed Site regulations for the procuring entity’s approval, which approval shall not be unreasonably withheld.  Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety of the Facilities, gate control, sanitation, medical care, and fire prevention.  22.4 Opportunities for Other Contractors  22.4.1 The contractor shall, upon written request from the procuring entity or the Project Manager, give all reasonable opportunities for carrying out the work to any other contractors employed by the procuring entity on or near the Site.  22.4.2 If the contractor, upon written request from the procuring entity or the Project Manager, makes available to other contractors any roads or ways the maintenance for which the contractor is responsible, permits the use by such other contractors of the contractor’s Equipment, or provides any other service of whatsoever nature for such other contractors, the procuring entity shall fully compensate the contractor for any loss or damage caused or occasioned by such other contractors in respect of any such use or service, and shall pay to the contractor reasonable remuneration for the use of such equipment or the provision of such services.  22.4.3 The contractor shall also so arrange to perform its work as to minimize, to the extent possible, interference with the work of other contractors. The Project Manager shall determine the resolution of any difference or conflict that may arise between the contractor and other contractors and the workers of the procuring entity in regard to their work.  22.4.4 The contractor shall notify the Project Manager promptly of any defects in the other contractors’ work that come to its notice, and that could affect the contractor’s work. The Project Manager shall determine the corrective measures, if any, required to rectify the situation after inspection of the Facilities. Decisions made by the Project Manager shall be binding on the contractor.  22.5 Emergency Work  If, by reason of an emergency arising in connection with and during the execution of the contract, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Facilities, the contractor shall immediately carry out such work.  If the contractor is unable or unwilling to do such work immediately, the procuring entity may do or cause such work to be done as the procuring entity may determine is necessary in order to prevent damage to the Facilities. In such event the procuring entity shall, as soon as practicable after the occurrence of any such emergency, notify the contractor in writing of such emergency, the work done and the reasons therefor. If the work done or caused to be done by the procuring entity is work that the contractor was liable to do at its own expense under the contract, the reasonable costs incurred by the procuring entity in connection therewith shall be paid by the contractor to the procuring entity. Otherwise, the cost of such remedial work shall be borne by the procuring entity.  22.6 Site Clearance  22.6.1 Site Clearance in Course of Performance: In the course of carrying out the contract, the contractor shall keep the Site reasonably free from all unnecessary obstruction, store or remove any surplus materials, clear away any wreckage, rubbish or temporary works from the Site, and remove any contractor’s Equipment no longer required for execution of the contract.  22.6.2 Clearance of Site after Completion: After Completion of all parts of the Facilities, the contractor shall clear away and remove all wreckage, rubbish and debris of any kind from the Site, and shall leave the Site and Facilities clean and safe.  22.7 Watching and Lighting  The contractor shall provide and maintain at its own expense all lighting, fencing, and watching when and where necessary for the proper execution and the protection of the Facilities, or for the safety of the owners and occupiers of adjacent property and for the safety of the public.  22.8 Work at Night and on Holidays  22.8.1 Unless otherwise provided in the contract, no work shall be carried out during the night and on public holidays of the country where the Site is located without prior written consent of the procuring entity, except where work is necessary or required to ensure safety of the Facilities or for the protection of life, or to prevent loss or damage to property, when the contractor shall immediately advise the Project Manager, provided that provisions of this GCC Sub-Clause 22.8.1 shall not apply to any work which is customarily carried out by rotary or double-shifts.  22.8.2 Notwithstanding GCC Sub-Clauses 22.8.1 or 22.1.3, if and when the Contractor considers it necessary to carry out work at night or on public holidays so as to meet the Time for Completion and requests the procuring entity’s consent thereto, the procuring entity shall not unreasonably withhold such consent. |
| 23. Test and Inspection  23.1 The Contractor shall at its own expense carry out at the place of manufacture and/or on the Site all such tests and/or inspections of the Plant and Equipment and any part of the Facilities as are specified in the contract.  23.2 The Procuring Entity and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the procuring entity shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.  23.3 Whenever the contractor is ready to carry out any such test and/or inspection, the contractor shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The contractor shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the procuring entity and the Project Manager (or their designated representatives) to attend the test and/or inspection.  23.4 The contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection.  23.5 If the procuring entity or Project Manager (or their designated representatives) fails to attend the test and/or inspection, or if it is agreed between the parties that such persons shall not do so, then the contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Project Manager with a certified report of the results.  23.6 The Project Manager may require the contractor to carry out any test and/or inspection not required by the contract, provided that the contractor’s reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of work on the Facilities and/or the contractor’s performance of its other obligations under the contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.  23.7 If any Plant and Equipment or any part of the Facilities fails to pass any test and/or inspection, the contractor shall either rectify or replace such Plant and Equipment or part of the Facilities and shall repeat the test and/or inspection upon giving a notice under GCC Sub-Clause 23.3.  23.8 If any dispute or difference of opinion shall arise between the parties in connection with or arising out of the test and/or inspection of the Plant and Equipment or part of the Facilities that cannot be settled between the parties within a reasonable period of time, it may be referred to the Dispute Board for determination in accordance with GCC Sub-Clause 6.1.  23.9 The Contractor shall afford the procuring entity and the Project Manager, at the procuring entity’s expense, access at any reasonable time to any place where the Plant and Equipment are being manufactured or the Facilities are being installed, in order to inspect the progress and the manner of manufacture or installation, provided that the Project Manager shall give the contractor a reasonable prior notice.  23.10 The Contractor agrees that neither the execution of a test and/or inspection of Plant and Equipment or any part of the Facilities, nor the attendance by the procuring entity or the Project Manager, nor the issue of any test certificate pursuant to GCC Sub-Clause 23.4, shall release the contractor from any other responsibilities under the contract.  23.11 No part of the Facilities or foundations shall be covered up on the Site without the contractor carrying out any test and/or inspection required under the contract. The contractor shall give a reasonable notice to the Project Manager whenever any such part of the Facilities or foundations are ready or about to be ready for test and/or inspection; such test and/or inspection and notice thereof shall be subject to the requirements of the Contract.  23.12 The contractor shall uncover any part of the Facilities or foundations, or shall make openings in or through the same as the Project Manager may from time to time require at the Site, and shall reinstate and make good such part or parts.  23.13 If any parts of the Facilities or foundations have been covered up at the Site after compliance with the requirement of GCC Sub-Clause 23.10 and are found to be executed in accordance with the contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by the procuring entity, and the Time for Completion shall be reasonably adjusted to the extent that the contractor has thereby been delayed or impeded in the performance of any of its obligations under the contract. |
| 24. Completion of the Facilities  24.1 As soon as the Facilities or any part thereof has, in the opinion of the contractor, been completed operationally and structurally and put in a tight and clean condition as specified in the Technical Specifications, excluding minor items not materially affecting the operation or safety of the Facilities, the contractor shall so notify the procuring entity in writing.  24.2 Within seven (7) days after receipt of the notice from the contractor under GCC Sub-Clause 24.1, the procuring entity shall supply the operating and maintenance personnel specified in the corresponding Appendix (Scope of works and Supply by the procuring entity) to the Contract Agreement for Precommissioning of the Facilities or any part thereof.  Pursuant to the corresponding Appendix (Scope of works and Supply by the procuring entity) to the Contract Agreement, the procuring entity shall also provide, within the said seven (7) day period, the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Precommissioning of the Facilities or any part thereof.  24.3 As soon as reasonably practicable after the operating and maintenance personnel have been supplied by the procuring entity and the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters have been provided by the procuring entity in accordance with GCC Sub-Clause 24.2, the contractor shall commence Precommissioning of the Facilities or the relevant part thereof in preparation for Commissioning.  24.4 As soon as all works in respect of Precommissioning are completed and, in the opinion of the contractor, the Facilities or any part thereof is ready for Commissioning, the contractor shall so notify the Project Manager in writing.  24.5 The Project Manager shall, within fourteen (14) days after receipt of the contractor’s notice under GCC Sub-Clause 24.4, either issue a Completion Certificate in the form specified in the Sample Forms and Procedures section in the bidding documents, stating that the Facilities or that part thereof have reached Completion as of the date of the contractor’s notice under GCC Sub-Clause 24.4, or notify the contractor in writing of any defects and/or deficiencies.  If the Project Manager notifies the contractor of any defects and/or deficiencies, the contractor shall then correct such defects and/or deficiencies, and shall repeat the procedure described in GCC Sub-Clause 24.4.If the Project Manager is satisfied that the Facilities or that part thereof have reached Completion, the Project Manager shall, within seven (7) days after receipt of the contractor’s repeated notice, issue a Completion Certificate stating that the Facilities or that part thereof have reached Completion as of the date of the contractor’s repeated notice. If the Project Manager is not so satisfied, then it shall notify the contractor in writing of any defects and/or deficiencies within seven (7) days after receipt of the contractor’s repeated notice, and the above procedure shall be repeated.  24.6 If the Project Manager fails to issue the Completion Certificate and fails to inform the contractor of any defects and/or deficiencies within fourteen (14) days after receipt of the contractor’s notice under GCC Sub-Clause 24.4 or within seven (7) days after receipt of the contractor’s repeated notice under GCC Sub-Clause 24.5, or if the procuring entity makes use of the Facilities or part thereof, then the Facilities or that part thereof shall be deemed to have reached Completion as of the date of the contractor’s notice or repeated notice, or as of the procuring entity’s use of the Facilities, as the case may be.  24.7 As soon as possible after Completion, the contractor shall complete all outstanding minor items so that the Facilities are fully in accordance with the requirements of the contract, failing which the procuring entity will undertake such completion and deduct the costs thereof from any monies owing to the Contractor.  24.8 Upon Completion, the procuring entity shall be responsible for the care and custody of the Facilities or the relevant part thereof, together with the risk of loss or damage thereto, and shall thereafter take over the Facilities or the relevant part thereof. |
| 25. Commissioning and Operational Acceptance  25.1 Commissioning  25.1.1 Commissioning of the Facilities or any part thereof shall be commenced by the contractor immediately after issue of the Completion Certificate by the Project Manager, pursuant to GCC Sub-Clause 24.5, or immediately after issue of the deemed Completion, under GCC Sub-Clause 24.6.  25.1.2 The procuring entity shall supply the operating and maintenance personnel and all raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Commissioning.  25.2 Guarantee Test  25.2.1 The Guarantee Test (and repeats thereof) shall be conducted by the contractor during Commissioning of the Facilities or the relevant part thereof to ascertain whether the Facilities or the relevant part can attain the Functional Guarantees specified in the Technical Specifications. The contractor’s and Project Manager’s advisory personnel shall attend the Guarantee Test, and shall advise and assist the procuring entity. The procuring entity shall promptly provide the contractor with such information as the contractor may reasonably require in relation to the conduct and results of the Guarantee Test (and any repeats thereof).  25.2.2 If for reasons not attributable to the contractor, the Guarantee Test of the Facilities or the relevant part thereof cannot be successfully completed within the period from the date of Completion specified in the **PCC** or any other period agreed upon by the procuring entity and the contractor, the contractor shall be deemed to have fulfilled its obligations with respect to the Functional Guarantees, and GCC Sub-Clauses 28.2 and 28.3 shall not apply.  25.3 Operational Acceptance  25.3.1 Subject to GCC Sub-Clause 25.4 below, Operational Acceptance shall occur in respect of the Facilities or any part thereof when:  (a) the Guarantee Test has been successfully completed and the Functional Guarantees are met; or  (b) the Guarantee Test has not been successfully completed or has not been carried out for reasons not attributable to the contractor within the period from the date of Completion specified in the PCC or any other agreed upon period as specified in GCC Sub-Clause 25.2.2 above; or  (c) the contractor has paid the liquidated damages specified in GCC Sub-Clause 28.3 hereof; and  (d) any minor items mentioned in GCC Sub-Clause 24.7 hereof relevant to the Facilities or that part thereof have been completed.  25.3.2 At any time after any of the events set out in GCC Sub-Clause 25.3.1 have occurred, the contractor may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate in the form provided in the bidding documents or in another form acceptable to the procuring entity in respect of the Facilities or the part thereof specified in such notice as of the date of such notice.  25.3.3 The Project Manager shall, after consultation with the procuring entity, and within seven (7) days after receipt of the contractor’s notice, issue an Operational Acceptance Certificate.  25.3.4 If within seven (7) days after receipt of the contractor’s notice, the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the contractor in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the Facilities or the relevant part thereof shall be deemed to have been accepted as of the date of the contractor’s said notice.  25.4 **Partial Acceptance**  25.4.1 If the contract specifies that Completion and Commissioning shall be carried out in respect of parts of the Facilities, the provisions relating to Completion and Commissioning including the Guarantee Test shall apply to each such part of the Facilities individually, and the Operational Acceptance Certificate shall be issued accordingly for each such part of the Facilities.  25.4.2 If a part of the Facilities comprises facilities such as buildings, for which no Commissioning or Guarantee Test is required, then the Project Manager shall issue the Operational Acceptance Certificate for such facility when it attains Completion, provided that the contractor shall thereafter complete any outstanding minor items that are listed in the Operational Acceptance Certificate.   * 1. **Delayed Precommissioning and/or Guarantee Test**   25.5.1 In the event that the contractor is unable to proceed with the Precommissioning of the Facilities pursuant to Sub-Clause 24.3, or with the Guarantee Test pursuant to Sub-Clause 25.2, for reasons attributable to the procuring entity either on account of non availability of other facilities under the responsibilities of other contractor(s), or for reasons beyond the contractor’s control, the provisions leading to “deemed” completion of activities such as Completion, pursuant to GCC Sub-Clause 24.6, and Operational Acceptance, pursuant to GCC Sub-Clause 25.3.4, and contractor’s obligations regarding Defect Liability Period, pursuant to GCC Sub-Clause 27.2, Functional Guarantee, pursuant to GCC Clause 28, and Care of Facilities, pursuant to GCC Clause 32, and GCC Clause 41.1, Suspension, shall not apply. In this case, the following provisions shall apply.  25.5.2 When the contractor is notified by the Project Manager that he will be unable to proceed with the activities and obligations pursuant to above Sub-Clause 13.1, the contractor shall be entitled to the following:  (a) the Time of Completion shall be extended for the period of suspension without imposition of liquidated damages pursuant to GCC Sub-Clause 26.2;  (b) payments due to the contractor in accordance with the provision specified in the Appendix to the Contract Agreement titled Terms and Procedures of Payment, which would not have been payable in normal circumstances due to non-completion of the subject activities, shall be released to the contractor against submission of a security in the form of a bank guarantee of equivalent amount acceptable to the procuring entity, and which shall become null and void when the contractor will have complied with its obligations regarding those payments, subject to the provision of Sub-Clause 25.5.3 below;  (c) the expenses towards the above security and extension of other securities under the contract, of which validity needs to be extended, shall be reimbursed to the contractor by the procuring entity;  (d) the additional charges towards the care of the Facilities pursuant to GCC Sub-Clause 32.1 shall be reimbursed to the contractor by the procuring entity for the period between the notification mentioned above and the notification mentioned in Sub-Clause 25.5.4 below. The provision of GCC Sub-Clause 33.2 shall apply to the Facilities during the same period.  25.5.3 In the event that the period of suspension under above Sub-Clause 25.5.1 actually exceeds one hundred eighty (180) days, the procuring entity and contractor shall mutually agree to any additional compensation payable to the contractor.  25.5.4 When the contractor is notified by the Project Manager that the plant is ready for Precommissioning, the contractor shall proceed without delay in performing Precommissioning in accordance with Clause 24. |
| F. Guarantees and Liabilities |
| 26. Completion Time Guarantee  26.1 The contractor guarantees that it shall attain Completion of the Facilities (or a part for which a separate time for completion is specified in the PCC) within the Time for Completion specified in the PCC pursuant to GCC Sub-Clause 8.2, or within such extended time to which the contractor shall be entitled under GCC Clause 40.  26.2 If the contractor fails to attain Completion of the Facilities or any part within the Time for Completion or any extension under GCC Clause 40, the contractor shall pay to the procuring entity liquidated damages in the amount specified in the **PCC** as a percentage rate of the Contract Price, or the relevant part. The aggregate amount of such liquidated damages shall in no event exceed the amount specified as “Maximum” in the **PCC**. Once the “Maximum” is reached, the procuring entity may consider termination of the contract, pursuant to GCC Sub-Clause 42.2.2. Such payment shall completely satisfy the contractor’s obligation to attain Completion of the Facilities or the relevant part thereof within the Time for Completion or any extension under GCC Clause 40. The contractor shall have no further liability whatsoever to the procuring entity in respect.   1. However, the payment of liquidated damages shall not in any way relieve the contractor from any of its obligations to complete the Facilities or from any other obligations and liabilities of the contractor under the contract. 2. Save for liquidated damages payable under this GCC Sub-Clause 26.2, the failure by the contractor to attain any milestone or other act, matter or thing by any date specified in the corresponding Appendix (Time Schedule) to the Contract Agreement and/or other program of work prepared pursuant to GCC Sub-Clause 18.2 shall not render the contractor liable for any loss or damage thereby suffered by the procuring entity.   26.3 If the contractor attains Completion of the Facilities or any part thereof before the Time for Completion or any extension thereof under GCC Clause 40, the procuring entity shall pay to the contractor a bonus in the amount specified in the **PCC**. The aggregate amount of such bonus shall in no event exceed the amount specified as “Maximum” in the **PCC**. |
| 27. Defect Liability  27.1 The contractor warrants that the Facilities or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Plant and Equipment supplied and of the work executed.  27.2 The Defect Liability Period shall be eighteen (18) months from the date of Completion of the Facilities (or any part thereof) or twelve (12) months from the date of Operational Acceptance of the Facilities (or any part thereof), whichever first occurs, unless specified otherwise in the PCC.  If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Plant and Equipment supplied or of the work executed by the contractor, the contractor shall promptly, in consultation and agreement with the procuring entity regarding appropriate remedying of the defects, and at its cost, repair, replace or otherwise make good (as the contractor shall, at its discretion, determine) such defect as well as any damage to the Facilities caused by such defect. The contractor shall not be responsible for the repair, replacement or making good of any defect or of any damage to the Facilities arising out of or resulting from any of the following causes:  (a) improper operation or maintenance of the Facilities by the procuring entity  (b) operation of the Facilities outside specifications provided in the contract  (c) normal wear and tear.  27.3 The Contractor’s obligations under this GCC Clause 27 shall not apply to  (a) any materials that are supplied by the procuring entity under GCC Sub-Clause 21.2, are normally consumed in operation, or have a normal life shorter than the Defect Liability Period stated.  (b) any designs, specifications or other data designed, supplied or specified by or on behalf of the procuring entity or any matters for which the contractor has disclaimed responsibility’  (c) any other materials supplied or any other work executed by or on behalf of the procuring entity, except for the work executed by the procuring entity under GCC Sub-Clause 27.7.  27.4 The procuring entity shall give the contractor a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery. The procuring entity shall afford all reasonable opportunity for the contractor to inspect any such defect.  27.5 The procuring entity shall afford the contractor all necessary access to the Facilities and the Site to enable the contractor to perform its obligations under this GCC Clause 27.The contractor may, with the consent of the procuring entity, remove from the Site any Plant and Equipment or any part of the Facilities that are defective if the nature of the defect, and/or any damage to the Facilities caused by the defect, is such that repairs cannot be expeditiously carried out at the Site.  27.6 If the repair, replacement or making good is of such a character that it may affect the efficiency of the Facilities or any part, the procuring entity may give to the contractor a notice requiring that tests of the defective part of the Facilities shall be made by the contractor immediately upon completion of such remedial work, whereupon the contractor shall carry out such tests.  If such part fails the tests, the contractor shall carry out further repair, replacement or making good (as the case may be) until that part of the Facilities passes such tests. The tests shall be agreed upon by the procuring entity and the contractor.  27.7 If the contractor fails to commence the work necessary to remedy such defect or any damage to the Facilities caused by such defect within a reasonable time (which shall in no event be considered to be less than fifteen (15) days), the procuring entity may, following notice to the contractor, proceed to do such work, and the reasonable costs incurred by the procuring entity in connection therewith shall be paid to the procuring entity by the contractor or may be deducted by the procuring entity from any monies due the contractor or claimed under the performance security.  27.8 If the facilities or any part cannot be used by reason of such defect and/or making good of such defect, the Defect Liability Period of the Facilities or such part, as the case may be, shall be extended by a period equal to the period during which the Facilities or such part cannot be used by the procuring entity because of any of the aforesaid reasons.  27.9 Except as provided in GCC Clauses 27 and 33, the contractor shall be under no liability whatsoever and howsoever arising, and whether under the contract or at law, in respect of defects in the Facilities or any part thereof, the Plant and Equipment, design or engineering or work executed that appear after Completion of the Facilities or any part thereof, except where such defects are the result of the gross negligence, fraud, criminal or willful action of the contractor.  27.10 In addition, the contractor shall also provide an extended warranty for any such component of the Facilities and during the period of time as may be specified in the **PCC.** Such obligation shall be in addition to the defect liability specified under GCC Sub-Clause 27.2. |
| 28. Functional Guarantees  28.1 The contractor guarantees that during the Guarantee Test, the Facilities and all parts thereof shall attain the Functional Guarantees specified in the corresponding Appendix (Functional Guarantees) to the Contract Agreement, subject to and upon the conditions therein specified.  28.2 If, for reasons attributable to the Contractor, the minimum level of the Functional Guarantees specified in the corresponding Appendix (Functional Guarantees) to the Contract Agreement are not met either in whole or in part, the contractor shall at its cost and expense make such changes, modifications and/or additions to the Plant or any part thereof as may be necessary to meet at least the minimum level of such Guarantees. The contractor shall notify the procuring entity upon completion of the necessary changes, modifications and/or additions, and shall request the procuring entity to repeat the Guarantee Test until the minimum level of the Guarantees has been met. If the contractor eventually fails to meet the minimum level of Functional Guarantees, the procuring entity may consider termination of the contract, pursuant to GCC Sub-Clause 42.2.2.  28.3 If, for reasons attributable to the contractor, the Functional Guarantees specified in the corresponding Appendix (Functional Guarantees) to the Contract Agreement are not attained either in whole or in part, but the minimum level of the Functional Guarantees specified in the said Appendix to the Contract Agreement is met, the contractor shall, at the contractor’s option, either:  (a) make such changes, modifications and/or additions to the Facilities or any part thereof that are necessary to attain the Functional Guarantees at its cost and expense, and shall request the procuring entity to repeat the Guarantee Test or:  (b) pay liquidated damages to the procuring entity in respect of the failure to meet the Functional Guarantees in accordance with the provisions in the corresponding Appendix (Functional Guarantees) to the Contract Agreement.  28.4 The payment of liquidated damages under GCC Sub-Clause 28.3, up to the limitation of liability specified in the PCC, shall completely satisfy the contractor’s guarantees under GCC Sub-Clause 28.3, and the contractor shall have no further liability whatsoever to the procuring entity. Upon the payment of such liquidated damages by the contractor, the Project Manager shall issue the Operational Acceptance Certificate for the Facilities or any part in respect of which the liquidated damages have been so paid. |
| 29. Patent Indemnity  29.1 The contractor shall, subject to the procuring entity’s compliance with GCC Sub-Clause 29.2, indemnify and hold harmless the procuring entity and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney’s fees and expenses, which the procuring entity may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the contract by reason of: (a) the installation of the Facilities by the contractor or the use of the Facilities in the country where the Site is located; and (b) the sale of the products produced by the Facilities in any country.   1. Such indemnity shall not cover any use of the Facilities or any part other than for the purpose indicated by or to be reasonably inferred from the contract, any infringement resulting from the use of the Facilities or any part , or any products produced in association or combination with any other equipment, plant or materials not supplied by the contractor, pursuant to the Contract Agreement.   29.2 If any proceedings are brought or any claim is made against the procuring entity arising out of the matters referred to in GCC Sub-Clause 29.1, the procuring entity shall promptly give the contractor a notice, and the contractor may at its own expense and in the procuring entity’s name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the contractor fails to notify the procuring entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the procuring entity shall be free to conduct the same on its own behalf. Unless the contractor has so failed to notify the procuring entity within the twenty-eight (28) day period, the procuring entity shall make no admission that may be prejudicial to the defense of any such proceedings or claim.  The Procuring Entity shall, at the contractor’s request, afford all available assistance to the contractor in conducting such proceedings or claim, and shall be reimbursed by the contractor for all reasonable expenses incurred in so doing.  29.3 The procuring entity shall indemnify and hold harmless the contractor and its employees, officers and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney’s fees and expenses, which the contractor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the procuring entity. |
| 30. Limitation of Liability  30.1 Except in cases of criminal negligence or willful misconduct,  (a) the contractor shall not be liable to the procuring entity, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the contractor to pay liquidated damages to the procuring entity and  (b) the aggregate liability of the contractor to the procuring entity, whether under the contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the contractor to indemnify the procuring entity with respect to patent infringement. |
| G. Risk Distribution |
| 31. Transfer of Ownership  31.1 Ownership of the Plant and Equipment (including spare parts) to be imported into the country where the Site is located shall be transferred to the procuring entity upon loading on to the mode of transport to be used to convey the Plant and Equipment from the country of origin to that country.  31.2 Ownership of the Plant and Equipment (including spare parts) procured in the country where the Site is located shall be transferred to the procuring entity when the Plant and Equipment are brought on to the Site.  31.3 Ownership of the contractor’s Equipment used by the contractor and its Subcontractors in connection with the contract shall remain with the contractor or its Subcontractors.  31.4 Ownership of any Plant and Equipment in excess of the requirements for the Facilities shall revert to the contractor upon Completion of the Facilities or at such earlier time when the procuring entity and the contractor agree that the Plant and Equipment in question are no longer required for the Facilities.  31.5 Notwithstanding the transfer of ownership of the Plant and Equipment, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the contractor pursuant to GCC Clause 32 (Care of Facilities) hereof until Completion of the Facilities or the part thereof in which such Plant and Equipment are incorporated. |
| 32. Care of Facilities  32.1 The contractor shall be responsible for the care and custody of the Facilities or any part until the date of Completion of the Facilities pursuant to GCC Clause 24 or, where the contract provides for Completion of the Facilities in parts, until the date of Completion of the relevant part, and shall make good at its own cost any loss or damage that may occur to the Facilities or the relevant part from any cause whatsoever during such period. The contractor shall also be responsible for any loss or damage to the Facilities caused by the contractor or its Subcontractors in the course of any work carried out, pursuant to GCC Clause 27. Notwithstanding the foregoing, the contractor shall not be liable for any loss or damage to the Facilities or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Sub-Clauses 32.2 and 38  32.2 If any loss or damage occurs to the Facilities or any part, or to the contractor’s temporary facilities by reason of:   1. (a(insofar as they relate to the country where the Site is located) nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks and Political Risks, taken out under GCC Clause 34. 2. any use or occupation by the procuring entity or any third party (other than a Subcontractor) authorized by the procuring entity of any part of the Facilities. 3. any use of or reliance upon any design, data or specification provided or designated by or on behalf of the procuring entity, or any such matter for which the contractor has disclaimed responsibility. 4. the procuring entity shall pay to the contractor all sums payable in respect of the Facilities executed, notwithstanding that the same be lost, destroyed or damaged, and will pay to the contractor the replacement value of all temporary facilities and all parts thereof lost, destroyed or damaged. If the procuring entity requests the contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the contractor shall make good the same at the cost of the procuring entity in accordance with GCC Clause 39. 5. If the procuring entity does not request the contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the procuring entity shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the Facilities thereby lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the Facilities, the procuring entity shall terminate the contract pursuant to GCC Sub-Clause 42.1.   32.3 The contractor shall be liable for any loss of or damage to any contractor’s Equipment, or any other property of the contractor used or intended to be used for purposes of the Facilities, except (i) as mentioned in GCC Sub-Clause 32.2 (with respect to the contractor’s temporary facilities), and (ii) where such loss or damage arises by reason of any of the matters specified in GCC Sub-Clauses 32.2 (b) and (c) and 38.1.  32.4 With respect to any loss or damage caused to the Facilities or any part thereof or to the contractor’s Equipment by reason of any of the matters specified in GCC Sub-Clause 38.1, the provisions of GCC Sub-Clause 38.3 shall apply. |
| 33. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification  33.1 Subject to GCC Sub-Clause 33.3, the contractor shall indemnify and hold harmless the procuring entity and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney’s fees and expenses, in respect of the death or injury of any person or loss of or damage to any property (other than the Facilities whether accepted or not), arising in connection with the supply and installation of the Facilities and by reason of the negligence of the contractor or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the procuring entity, its contractors, employees, officers or agents.  33.2 If any proceedings are brought or any claim is made against the procuring entity that might subject the contractor to liability under GCC Sub-Clause 33.1, the procuring entity shall promptly give the contractor a notice thereof and the contractor may at its own expense and in the procuring entity’s name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.  If the contractor fails to notify the procuring entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the procuring entity shall be free to conduct the same on its own behalf. Unless the contractor has so failed to notify the procuring entity within the twenty-eight (28) day period, the procuring entity shall make no admission that may be prejudicial to the defense of any such proceedings or claim.  The procuring entity shall, at the contractor’s request, afford all available assistance to the contractor in conducting such proceedings or claim, and shall be reimbursed by the contractor for all reasonable expenses incurred in so doing.  33.3 The procuring entity shall indemnify and hold harmless the contractor and its employees, officers and Subcontractors from any liability for loss of or damage to property of the procuring entity, other than the Facilities not yet taken over, that is caused by fire, explosion or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 34, provided that such fire, explosion or other perils were not caused by any act or failure of the contractor.  33.4 The party entitled to the benefit of an indemnity under this GCC Clause 33 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the party fails to take such measures, the other party’s liabilities shall be correspondingly reduced. |
| 34. Insurance  34.1 To the extent specified in the corresponding Appendix (Insurance Requirements) to the contract Agreement, the contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in the said Appendix. The identity of the insurers and the form of the policies shall be subject to the approval of the procuring entity, who should not unreasonably withhold such approval.  (a) Cargo Insurance During Transport  Covering loss or damage occurring while in transit from the contractor’s or Subcontractor’s works or stores until arrival at the Site, to the Plant and Equipment (including spare parts therefor) and to the contractor’s Equipment.  (b) Installation All Risks Insurance  Covering physical loss or damage to the Facilities at the Site, occurring prior to Completion of the Facilities, with an extended maintenance coverage for the contractor’s liability in respect of any loss or damage occurring during the Defect Liability Period while the contractor is on the Site for the purpose of performing its obligations during the Defect Liability Period.  (c) Third Party Liability Insurance  Covering bodily injury or death suffered by third parties (including the procuring entity’s personnel) and loss of or damage to property occurring in connection with the supply and installation of the Facilities.  (d) Automobile Liability Insurance  Covering use of all vehicles used by the contractor or its Subcontractors (whether or not owned by them) in connection with the execution of the contract.  (e) Workers’ Compensation  In accordance with the statutory requirements applicable in any country where the contract or any part thereof is executed.  (f) Procuring entity’s Liability  In accordance with the statutory requirements applicable in any country where the contract or any part thereof is executed.  (g) Other Insurances  Such other insurances as may be specifically agreed upon by the parties hereto as listed in the said the corresponding Appendix.  34.2 The procuring entity shall be named as co-insured under all insurance policies taken out by the contractor pursuant to GCC Sub-Clause 34.1, except for the Third Party Liability, Workers’ Compensation and procuring entity’s Liability Insurances, and the contractor’s Subcontractors shall be named as co-insureds under all insurance policies taken out by the contractor pursuant to GCC Sub-Clause 34.1 except for the Cargo Insurance During Transport, Workers’ Compensation and procuring entity’s Liability Insurances. All insurer’s rights of subrogation against such co-insureds for losses or claims arising out of the performance of the contract shall be waived under such policies.  34.3 The contractor shall, in accordance with the provisions of the corresponding Appendix (Insurance Requirements) to the Contract Agreement, deliver to the procuring entity certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect. The certificates shall provide that no less than twenty-one (21) days’ notice shall be given to the procuring entity by insurers prior to cancellation or material modification of a policy.  34.4 The contractor shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the contract, unless such Subcontractors are covered by the policies taken out by the contractor.  34.5 The procuring entity shall at its expense take out and maintain in effect during the performance of the contract those insurances specified in the corresponding Appendix (Insurance Requirements) to the Contract Agreement, in the sums and with the deductibles and other conditions specified in the said Appendix. The contractor and the contractor’s Subcontractors shall be named as co-insureds under all such policies. All insurers’ rights of subrogation against such co-insureds for losses or claims arising out of the performance of the contract shall be waived under such policies. The procuring entity shall deliver to the contractor satisfactory evidence that the required insurances are in full force and effect. The policies shall provide that not less than twenty-one (21) days’ notice shall be given to the contractor by all insurers prior to any cancellation or material modification of the policies. If so requested by the contractor, the procuring entity shall provide copies of the policies taken out by the procuring entity under this GCC Sub-Clause 34.5.  34.6 If the contractor fails to take out and/or maintain in effect the insurances referred to in GCC Sub-Clause 34.1, the procuring entity may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the contractor under the contract any premium that the procuring entity shall have paid to the insurer, or may otherwise recover such amount as a debt due from the contractor. If the procuring entity fails to take out and/or maintain in effect the insurances referred to in GCC 34.5, the contractor may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the procuring entity under the contract any premium that the contractor shall have paid to the insurer, or may otherwise recover such amount as a debt due from the procuring entity. If the contractor fails to or is unable to take out and maintain in effect any such insurances, the contractor shall nevertheless have no liability or responsibility towards the procuring entity, and the contractor shall have full recourse against the procuring entity for any and all liabilities of the procuring entity herein.  34.7 Unless otherwise provided in the contract, the contractor shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GCC Clause 34, and all monies payable by any insurers shall be paid to the contractor. The procuring entity shall give to the contractor all such reasonable assistance as may be required by the contractor. With respect to insurance claims in which the procuring entity’s interest is involved, the contractor shall not give any release or make any compromise with the insurer without the prior written consent of the procuring entity. With respect to insurance claims in which the contractor’s interest is involved, the procuring entity shall not give any release or make any compromise with the insurer without the prior written consent of the contractor. |
| 35. Unforeseen Conditions  35.1 If, during the execution of the contract, the contractor shall encounter on the Site any physical conditions (other than climatic conditions) or artificial obstructions that could not have been reasonably foreseen prior to the date of the Contract Agreement by an experienced contractor on the basis of reasonable examination of the data relating to the Facilities (including any data as to boring tests) provided by the procuring entity, and on the basis of information that it could have obtained from a visual inspection of the Site (if access was available) or other data readily available to it relating to the Facilities, and if the contractor determines that it will in consequence of such conditions or obstructions incur additional cost and expense or require additional time to perform its obligations under the contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the contractor shall promptly, and before performing additional work or using additional Plant and Equipment or contractor’s Equipment, notify the Project Manager in writing of  (a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen  (b) the additional work and/or Plant and Equipment and/or contractor’s Equipment required, including the steps which the contractor will or proposes to take to overcome such conditions or obstructions  (c) the extent of the anticipated delay  (d) the additional cost and expense that the contractor is likely to incur.  On receiving any notice from the contractor under this GCC Sub-Clause 35.1, the Project Manager shall promptly consult with the procuring entity and contractor and decide upon the actions to be taken to overcome the physical conditions or artificial obstructions encountered. Following such consultations, the Project Manager shall instruct the contractor, with a copy to the procuring entity, of the actions to be taken.  35.2 Any reasonable additional cost and expense incurred by the contractor in following the instructions from the Project Manager to overcome such physical conditions or artificial obstructions referred to in GCC Sub-Clause 35.1 shall be paid by the procuring entity to the contractor as an addition to the Contract Price.  35.3 If the contractor is delayed or impeded in the performance of the contract because of any such physical conditions or artificial obstructions referred to in GCC Sub-Clause 35.1, the Time for Completion shall be extended in accordance with GCC Clause 40. |
| 36. Change in Laws and Regulations  36.1 If, after the date twenty-eight (28) days prior to the date of bid submission, in the country where the Site is located, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the costs and expenses of the contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the contractor has been affected in the performance of any of its obligations under the contract. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the PCC. |
| 37. Force Majeure  37.1 “Force Majeure” shall mean any event beyond the reasonable control of the procuring entity or of the contractor, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected, and shall include, without limitation, the following:  (a) war, hostilities or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy and civil war,  (b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts,  (c) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority,  (d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine and plague,  (e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster,  (f) shortage of labor, materials or utilities where caused by circumstances that are themselves Force Majeure.  37.2 If either party is prevented, hindered or delayed from or in performing any of its obligations under the contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event.  37.3 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the contract for so long as the relevant event of Force Majeure continues and to the extent that such party’s performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with GCC Clause 40.  37.4 The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the contract and to fulfill its or their obligations under the contract, but without prejudice to either party’s right to terminate the contract under GCC Sub-Clauses 37.6 and 38.5.  37.5 No delay or nonperformance by either party hereto caused by the occurrence of any event of Force Majeure shall  (a) constitute a default or breach of the contract,  (b) (subject to GCC Sub-Clauses 32.2, 38.3 and 38.4) give rise to any claim for damages or additional cost or expense occasioned thereby  if and to the extent that such delay or nonperformance is caused by the occurrence of an event of Force Majeure.  37.6 If the performance of the contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the contract, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the contract by giving a notice to the other, but without prejudice to either party’s right to terminate the contract under GCC Sub-Clause 38.5.  37.7 In the event of termination pursuant to GCC Sub-Clause 37.6, the rights and obligations of the procuring entity and the contractor shall be as specified in GCC Sub-Clauses 42.1.2 and 42.1.3.  37.8 Notwithstanding GCC Sub-Clause 37.5, Force Majeure shall not apply to any obligation of the procuring entity to make payments to the contractor herein. |
| 38. War Risks  38.1 “War Risks” shall mean any event specified in paragraphs (a) and (b) of GCC Sub-Clause 37.1 and any explosion or impact of any mine, bomb, shell, grenade or other projectile, missile, munitions or explosive of war, occurring or existing in or near the country (or countries) where the Site is located.  38.2 Notwithstanding anything contained in the contract, the contractor shall have no liability whatsoever for or with respect to;  (a) destruction of or damage to Facilities, Plant and Equipment, or any part thereof,  (b) destruction of or damage to property of the procuring entity or any third party,  (c) injury or loss of life  if such destruction, damage, injury or loss of life is caused by any War Risks, and the procuring entity shall indemnify and hold the contractor harmless from and against any and all claims, liabilities, actions, lawsuits, damages, costs, charges or expenses arising in consequence of or in connection with the same.  38.3 If the Facilities or any Plant and Equipment or contractor’s Equipment or any other property of the contractor used or intended to be used for the purposes of the Facilities shall sustain destruction or damage by reason of any War Risks, the procuring entity shall pay the contractor for;  (a) any part of the Facilities or the Plant and Equipment so destroyed or damaged (to the extent not already paid for by the procuring entity),  (b) replacing or making good any contractor’s Equipment or other property of the contractor so destroyed or damaged,  (c) replacing or making good any such destruction or damage to the Facilities or the Plant and Equipment or any part thereof,  so far as may be required by the procuring entity, and as may be necessary for completion of the Facilities.  If the procuring entity does not require the contractor to replace or make good any such destruction or damage to the Facilities, the procuring entity shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the Facilities thereby destroyed or damaged or, where the loss, destruction or damage affects a substantial part of the Facilities, shall terminate the contract, pursuant to GCC Sub-Clause 42.1.  38.4 Notwithstanding anything contained in the contract, the procuring entity shall pay the contractor for any increased costs or incidentals to the execution of the contract that are in any way attributable to, consequent on, resulting from, or in any way connected with any War Risks, provided that the contractor shall as soon as practicable notify the procuring entity in writing of any such increased cost.  38.5 If during the performance of the contract any War Risks shall occur that financially or otherwise materially affect the execution of the contract by the contractor, the contractor shall use its reasonable efforts to execute the contract with due and proper consideration given to the safety of its and its Subcontractors’ personnel engaged in the work on the Facilities, provided, however, that if the execution of the work on the Facilities becomes impossible or is substantially prevented for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of any War Risks, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the contract by giving a notice to the other.  38.6 In the event of termination pursuant to GCC Sub-Clauses 38.3 or 38.5, the rights and obligations of the procuring entity and the contractor shall be specified in GCC Sub-Clauses 42.1.2 and 42.1.3. |
| H. Change in Contract Elements |
| 39. Change in the Facilities  39.1 Introducing a Change  39.1.1 Subject to GCC Sub-Clauses 39.2.5 and 39.2.7, the procuring entity shall have the right to propose, and subsequently require, that the Project Manager order the contractor from time to time during the performance of the contract to make any change, modification, addition or deletion to, in or from the Facilities (hereinafter called “Change”), provided that such Change falls within the general scope of the Facilities and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Facilities and the technical compatibility of the Change envisaged with the nature of the Facilities as specified in the contract.  39.1.2 The contractor may prepare, at its own cost, a value engineering proposal at any time during the performance of the Contract. The value engineering proposal shall, at a minimum, include the following;  (a) the proposed change(s), and a description of the difference to the existing contract requirements;  (b) a full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs) the procuring entity may incur in implementing the value engineering proposal; and  (c) a description of any effect(s) of the change on performance/functionality.  The procuring entity may accept the value engineering proposal if the proposal demonstrates benefits that:  (a) accelerates the delivery period; or  (b) reduces the Contract Price or the life cycle costs to the procuring entity; or  (c) improves the quality, efficiency, safety or sustainability of the Facilities; or  (d) yields any other benefits to the procuring entity,  without compromising the necessary functions of the Facilities.  If the value engineering proposal is approved by the procuring entity and results in:  (a) a reduction of the Contract Price; the amount to be paid to the contractor shall be the percentage specified in the PCC of the reduction in the Contract Price; or  (b) an increase in the Contract Price; but results in a reduction in life cycle costs due to any benefit described in (a) to (d) above, the amount to be paid to the contractor shall be the full increase in the Contract Price.  39.1.3 Notwithstanding GCC Sub-Clauses 39.1.1 and 39.1.2, no change made necessary because of any default of the contractor in the performance of its obligations under the contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Completion.  39.1.4 The procedure on how to proceed with and execute Changes is specified in GCC Sub-Clauses 39.2 and 39.3, and further details and sample forms are provided in the Sample Forms and Procedures section in the bidding documents.  39.2 Changes Originating from procuring entity  39.2.1 If the procuring entity proposes a Change pursuant to GCC Sub-Clause 39.1.1, it shall send to the contractor a “Request for Change Proposal,” requiring the contractor to prepare and furnish to the Project Manager as soon as reasonably practicable a “Change Proposal,” which shall include the following:  (a) brief description of the Change  (b) effect on the Time for Completion  (c) estimated cost of the Change  (d) effect on Functional Guarantees (if any)  (e) effect on the Facilities  (f) effect on any other provisions of the contract.  39.2.2 Prior to preparing and submitting the “Change Proposal,” the contractor shall submit to the Project Manager an “Estimate for Change Proposal,” which shall be an estimate of the cost of preparing and submitting the Change Proposal.  Upon receipt of the contractor’s Estimate for Change Proposal, the procuring entity shall do one of the following:  (a) accept the contractor’s estimate with instructions to the contractor to proceed with the preparation of the Change Proposal  (b) advise the contractor of any part of its Estimate for Change Proposal that is unacceptable and request the contractor to review its estimate  (c) advise the contractor that the procuring entity does not intend to proceed with the Change.  39.2.3 Upon receipt of the procuring entity’s instruction to proceed under GCC Sub-Clause 39.2.2 (a), the contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GCC Sub-Clause 39.2.1.  39.2.4 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the contract. If such rates and prices are inequitable, the parties thereto shall agree on specific rates for the valuation of the Change.  39.2.5 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith and with all other Change Orders that have already become binding upon the contractor under this GCC Clause 39 would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price) of the Contract Agreement by more than fifteen percent (15%), the contractor may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If the procuring entity accepts the contractor’s objection, the procuring entity shall withdraw the proposed Change and shall notify the contractor in writing thereof.  The contractor’s failure to so object shall neither affect its right to object to any subsequent requested Changes or Change Orders herein, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the contract Price that any Change not objected to by the contractor represents.  39.2.6 Upon receipt of the Change Proposal, the procuring entity and the contractor shall mutually agree upon all matters therein contained. Within fourteen (14) days after such agreement, the procuring entity shall, if it intends to proceed with the Change, issue the contractor with a Change Order.  If the procuring entity is unable to reach a decision within fourteen (14) days, it shall notify the contractor with details of when the contractor can expect a decision.  If the procuring entity decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the contractor accordingly. Under such circumstances, the contractor shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the contractor in its Estimate for Change Proposal submitted in accordance with GCC Sub-Clause 39.2.2.  39.2.7 If the procuring entity and the contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, or any other matters identified in the Change Proposal, the procuring entity may nevertheless instruct the contractor to proceed with the Change by issue of a “Pending Agreement Change Order.”  Upon receipt of a Pending Agreement Change Order, the contractor shall immediately proceed with effecting the Changes covered by such Order. The parties shall thereafter attempt to reach agreement on the outstanding issues under the Change Proposal.  If the parties cannot reach agreement within sixty (60) days from the date of issue of the Pending Agreement Change Order, then the matter may be referred to the Adjudicator in accordance with the provisions of GCC Sub-Clause 6.1.  39.3 Changes Originating from contractor  39.3.1 If the contractor proposes a Change pursuant to GCC Sub-Clause 39.1.2, the contractor shall submit to the Project Manager a written “Application for Change Proposal,” giving reasons for the proposed Change and including the information specified in GCC Sub-Clause 39.2.1. Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in GCC Sub-Clauses 39.2.6 and 39.2.7. However, should the procuring entity choose not to proceed, the contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal. |
| 40. Extension of Time for Completion  40.1 The Time(s) for Completion specified in the PCC shall be extended if the contractor is delayed or impeded in the performance of any of its obligations under the contract by reason of any of the following:  (a) any Change in the Facilities as provided in GCC Clause 39  (b) any occurrence of Force Majeure as provided in GCC Clause 37, unforeseen conditions as provided in GCC Clause 35, or other occurrence of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Sub-Clause 32.2  (c) any suspension order given by the procuring entity under GCC Clause 41 hereof or reduction in the rate of progress pursuant to GCC Sub-Clause 41.2 or  (d) any changes in laws and regulations as provided in GCC Clause 36 or  (e) any default or breach of the contract by the procuring entity, specifically including failure to supply the items listed in the corresponding Appendix (Scope of works and Supply by the procuring entity) to the Contract Agreement, or any activity, act or omission of any other contractors employed by the procuring entity or  (f) any delay on the part of a sub-contractor, provided such delay is due to a cause for which the contractor himself would have been entitled to an extension of time under this sub-clause, or  (g) delays attributable to the procuring entity or caused by customs or  (h) any other matter specifically mentioned in the contract  by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the contractor.  40.2 Except where otherwise specifically provided in the contract, the contractor shall submit to the Project Manager a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the procuring entity and the contractor shall agree upon the period of such extension. In the event that the contractor does not accept the procuring entity’s estimate of a fair and reasonable time extension, the contractor shall be entitled to refer the matter to the Dispute Board, pursuant to GCC Sub-Clause 6.1.  40.3 The contractor shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the contract. |
| 41. Suspension  41.1 The procuring entity may request the Project Manager, by notice to the contractor, to order the contractor to suspend performance of any or all of its obligations under the contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefor. The contractor shall thereupon suspend performance of such obligation (except those obligations necessary for the care or preservation of the Facilities) until ordered in writing to resume such performance by the Project Manager.   1. If, by virtue of a suspension order given by the Project Manager, other than by reason of the contractor’s default or breach of the contract, the contractor’s performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the contractor may give a notice to the Project Manager requiring that the procuring entity shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GCC Clause 39, excluding the performance of the suspended obligations from the contract. 2. If the procuring entity fails to do so within such period, the contractor may, by a further notice to the Project Manager, elect to treat the suspension, where it affects a part only of the Facilities, as a deletion of such part in accordance with GCC Clause 39 or, where it affects the whole of the Facilities, as termination of the contract under GCC Sub-Clause 42.1.   41.2 If:  (a) the procuring entity has failed to pay the contractor any sum due under the contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the corresponding Appendix (Terms and Procedures of Payment) to the contract Agreement, or commits a substantial breach of the contract, the contractor may give a notice to the procuring entity that requires payment of such sum, with interest thereon as stipulated in GCC Sub-Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the procuring entity to remedy the same, as the case may be. If the procuring entity fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the contractor’s notice or  (b) the contractor is unable to carry out any of its obligations under the contract for any reason attributable to the procuring entity, including but not limited to the procuring entity’s failure to provide possession of or access to the Site or other areas in accordance with GCC Sub-Clause 10.2, or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities,  then the contractor may by fourteen (14) days’ notice to the procuring entity suspend performance of all or any of its obligations under the contract, or reduce the rate of progress.  41.3 If the contractor’s performance of its obligations is suspended or the rate of progress is reduced pursuant to this GCC Clause 41, then the Time for Completion shall be extended in accordance with GCC Sub-Clause 40.1, and any and all additional costs or expenses incurred by the contractor as a result of such suspension or reduction shall be paid by the procuring entity to the contractor in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the contractor’s default or breach of the contract.  41.4 During the period of suspension, the contractor shall not remove from the Site any Plant and Equipment, any part of the Facilities or any contractor’s Equipment, without the prior written consent of the procuring entity. |
| 42. Termination  42.1 Termination for procuring entity’s Convenience  42.1.1 The procuring entity may at any time terminate the contract for any reason by giving the contractor a notice of termination that refers to this GCC Sub-Clause 42.1.  42.1.2 Upon receipt of the notice of termination under GCC Sub-Clause 42.1.1, the contractor shall either immediately or upon the date specified in the notice of termination  (a) cease all further work, except for such work as the procuring entity may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition  (b) terminate all subcontracts, except those to be assigned to the procuring entity pursuant to paragraph (d) (ii) below  (c) remove all contractor’s Equipment from the Site, repatriate the contractor’s and its Subcontractors’ personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition  (d) In addition, the contractor, subject to the payment specified in GCC Sub-Clause 42.1.3, shall  (i) deliver to the procuring entity the parts of the Facilities executed by the contractor up to the date of termination  (ii) to the extent legally possible, assign to the procuring entity all right, title and benefit of the contractor to the Facilities and to the Plant and Equipment as of the date of termination, and, as may be required by the procuring entity, in any subcontracts concluded between the contractor and its Subcontractors  (iii) deliver to the procuring entity all non-proprietary drawings, specifications and other documents prepared by the contractor or its Subcontractors as at the date of termination in connection with the Facilities.  42.1.3 In the event of termination of the contract under GCC Sub-Clause 42.1.1, the procuring entity shall pay to the contractor the following amounts:  (a) the Contract Price, properly attributable to the parts of the Facilities executed by the contractor as of the date of termination  (b) the costs reasonably incurred by the contractor in the removal of the contractor’s Equipment from the Site and in the repatriation of the contractor’s and its Subcontractors’ personnel  (c) any amounts to be paid by the contractor to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges  (d) costs incurred by the contractor in protecting the Facilities and leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 42.1.2  (e) the cost of satisfying all other obligations, commitments and claims that the contractor may in good faith have undertaken with third parties in connection with the contract and that are not covered by paragraphs (a) through (d) above.  42.2 Termination for contractor’s Default  42.2.1 The procuring entity, without prejudice to any other rights or remedies it may possess, may terminate the contract forthwith in the following circumstances by giving a notice of termination and its reasons to the contractor, referring to this GCC Sub-Clause 42.2:  (a) if the contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the contractor is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the contractor takes or suffers any other analogous action in consequence of debt  (b) if the contractor assigns or transfers the contract or any right or interest therein in violation of the provision of GCC Clause 43.  (c) if the contractor, in the judgment of the procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the contract.  For the purpose of this Sub-Clause:  “corrupt practice” means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.  “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the procuring entity, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.  “collusive practice” means a scheme or arrangement between two or more bidders, with or without the knowledge of the Borrower, designed to establish bid prices at artificial, non competitive levels; and;  “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of a contract  42.2.2 If the Contractor:  (a) has abandoned or repudiated the contract.  (b) has without valid reason failed to commence work on the Facilities promptly or has suspended (other than pursuant to GCC Sub-Clause 41.2) the progress of contract performance for more than twenty-eight (28) days after receiving a written instruction from the procuring entity to proceed.  (c) persistently fails to execute the contract in accordance with the contract or persistently neglects to carry out its obligations under the contract without just cause.  (d) refuses or is unable to provide sufficient materials, services or labor to execute and complete the Facilities in the manner specified in the program furnished under GCC Sub-Clause 18.2 at rates of progress that give reasonable assurance to the procuring entity that the contractor can attain Completion of the Facilities by the Time for Completion as extended,  then the procuring entity may, without prejudice to any other rights it may possess under the contract, give a notice to the contractor stating the nature of the default and requiring the contractor to remedy the same. If the contractor fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the procuring entity may terminate the contract forthwith by giving a notice of termination to the contractor that refers to this GCC Sub-Clause 42.2.  42.2.3 Upon receipt of the notice of termination under GCC Sub-Clauses 42.2.1 or 42.2.2, the contractor shall, either immediately or upon such date as is specified in the notice of termination,  (a) cease all further work, except for such work as the procuring entity may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition  (b) terminate all subcontracts, except those to be assigned to the procuring entity pursuant to paragraph (d) below  (c) deliver to the procuring entity the parts of the Facilities executed by the contractor up to the date of termination  (d) to the extent legally possible, assign to the procuring entity all right, title and benefit of the contractor to the Facilities and to the Plant and Equipment as of the date of termination, and, as may be required by the procuring entity, in any subcontracts concluded between the contractor and its subcontractors  (e) deliver to the procuring entity all drawings, specifications and other documents prepared by the contractor or its Subcontractors as of the date of termination in connection with the Facilities.  42.2.4 The procuring entity may enter upon the Site, expel the contractor, and complete the Facilities itself or by employing any third party. The procuring entity may, to the exclusion of any right of the contractor over the same, take over and use with the payment of a fair rental rate to the contractor, with all the maintenance costs to the account of the procuring entity and with an indemnification by the procuring entity for all liability including damage or injury to persons arising out of the procuring entity’s use of such equipment, any contractor’s Equipment owned by the contractor and on the Site in connection with the Facilities for such reasonable period as the procuring entity considers expedient for the supply and installation of the Facilities.  Upon completion of the Facilities or at such earlier date as the procuring entity thinks appropriate, the procuring entity shall give notice to the contractor that such contractor’s Equipment will be returned to the contractor at or near the Site and shall return such contractor’s Equipment to the contractor in accordance with such notice. The contractor shall thereafter without delay and at its cost remove or arrange removal of the same from the Site.  42.2.5 Subject to GCC Sub-Clause 42.2.6, the contractor shall be entitled to be paid the Contract Price attributable to the Facilities executed as of the date of termination, the value of any unused or partially used Plant and Equipment on the Site, and the costs, if any, incurred in protecting the Facilities and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 42.2.3. Any sums due the procuring entity from the contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the contractor under this contract.  42.2.6 If the procuring entity completes the Facilities, the cost of completing the Facilities by the procuring entity shall be determined.  If the sum that the contractor is entitled to be paid, pursuant to GCC Sub-Clause 42.2.5, plus the reasonable costs incurred by the procuring entity in completing the Facilities, exceeds the Contract Price, the contractor shall be liable for such excess.  If such excess is greater than the sums due the contractor under GCC Sub-Clause 42.2.5, the contractor shall pay the balance to the procuring entity, and if such excess is less than the sums due the contractor under GCC Sub-Clause 42.2.5, the procuring entity shall pay the balance to the contractor.  The procuring entity and the contractor shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.  42.3 Termination by contractor  42.3.1 If  (a) the procuring entity has failed to pay the contractor any sum due under the contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the corresponding Appendix (Terms and Procedures of Payment) of the contract Agreement, or commits a substantial breach of the contract, the contractor may give a notice to the procuring entity that requires payment of such sum, with interest thereon as stipulated in GCC Sub-Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the procuring entity to remedy the same, as the case may be. If the procuring entity fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the contractor’s notice, or  (b) the contractor is unable to carry out any of its obligations under the contract for any reason attributable to the procuring entity, including but not limited to the procuring entity’s failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities,  then the contractor may give a notice to the procuring entity thereof, and if the procuring entity has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the contractor is still unable to carry out any of its obligations under the contract for any reason attributable to the procuring entity within twenty-eight (28) days of the said notice, the contractor may by a further notice to the procuring entity referring to this GCC Sub-Clause 42.3.1, forthwith terminate the contract.  42.3.2 The contractor may terminate the contract forthwith by giving a notice to the procuring entity to that effect, referring to this GCC Sub-Clause 42.3.2, if the procuring entity becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the procuring entity takes or suffers any other analogous action in consequence of debt.  42.3.3 If the contract is terminated under GCC Sub-Clauses 42.3.1 or 42.3.2, then the contractor shall immediately  (a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition.  (b) terminate all subcontracts, except those to be assigned to the procuring entity pursuant to paragraph (d) (ii)  (c) remove all contractor’s Equipment from the Site and repatriate the contractor’s and its Subcontractors’ personnel from the Site.  (d) In addition, the contractor, subject to the payment specified in GCC Sub-Clause 42.3.4, shall:  (i) deliver to the procuring entity the parts of the Facilities executed by the contractor up to the date of termination  (ii) to the extent legally possible, assign to the procuring entity all right, title and benefit of the contractor to the Facilities and to the Plant and Equipment as of the date of termination, and, as may be required by the procuring entity, in any subcontracts concluded between the contractor and its Subcontractors  (iii) deliver to the procuring entity all drawings, specifications and other documents prepared by the contractor or its Subcontractors as of the date of termination in connection with the Facilities.  42.3.4 If the contract is terminated under GCC Sub-Clauses 42.3.1 or 42.3.2, the procuring entity shall pay to the contractor all payments specified in GCC Sub-Clause 42.1.3, and reasonable compensation for all loss, except for loss of profit, or damage sustained by the contractor arising out of, in connection with or in consequence of such termination.  42.3.5 Termination by the contractor pursuant to this GCC Sub-Clause 42.3 is without prejudice to any other rights or remedies of the contractor that may be exercised in lieu of or in addition to rights conferred by GCC Sub-Clause 42.3.  42.4 In this GCC Clause 42, the expression “Facilities executed” shall include all work executed, Installation Services provided, and all Plant and Equipment acquired (or subject to a legally binding obligation to purchase) by the contractor and used or intended to be used for the purpose of the Facilities, up to and including the date of termination.  42.5 In this GCC Clause 42, in calculating any monies due from the procuring entity to the contractor, account shall be taken of any sum previously paid by the procuring entity to the contractor under the contract, including any mobilization payment paid pursuant to the corresponding Appendix (Terms and Procedures of Payment) to the Contract Agreement. |
| 43. Assignment  43.1 Neither the procuring entity nor the contractor shall, without the express prior written consent of the other party (which consent shall not be unreasonably withheld), assign to any third party the contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder, except that the contractor shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the contract. |
| 44. Export Restriction  44.1 In case the conclusion of the contract is prevented by any export restrictions attributable to the Purchaser, to the country of the Purchaser or to the use of the products/goods or systems to be supplied in particular by sanctions arising from trade regulations from a country supplying those products/goods, systems or services, the supplier shall not be bound by its bid, always provided, however, that the supplier can demonstrate to the satisfaction of the Purchaser that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the delivery of the products/goods, systems or services under the terms of the contract.  44.2 Notwithstanding any obligation under the contract to complete all export formalities, any export restrictions attributable to the Purchaser, to the country of the Purchaser or to the use of the products/goods, systems or services to be supplied, in particular any export restrictions arising from trade regulations from a country supplying those products/goods, systems or services, that substantially impede the supplier from meeting its obligations under the contract shall release the supplier from the obligation to provide deliveries or services, always provided, however, that the supplier can demonstrate to the satisfaction of the purchaser that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the delivery of the products/goods, systems or services under the terms of the contract. |

* 1. Claims, Disputes and Arbitration

|  |
| --- |
| 1. contractor’s Claims    1. If the contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the contractor shall submit a notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the contractor became aware, or should have become aware, of the event or circumstance.   If the contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the contractor shall not be entitled to additional payment, and the procuring entity shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.  The contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.  The contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the procuring entity’s liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the contractor to keep further contemporary records. The contractor shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.  Within 42 days after the contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the contractor and approved by the Project Manager, the contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:   1. this fully detailed claim shall be considered as interim; 2. the contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Project Manager may reasonably require; and 3. the contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the contractor and approved by the Project Manager.   Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the contractor, the Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.  Each Payment Certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.  The Project Manager shall agree with the contractor or estimate: (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with GCC Clause 40, and/or (ii) the additional payment (if any) to which the contractor is entitled under the Contract.  The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.  In the event that the contractor and the procuring entity cannot agree on any matter relating to a claim, either Party may refer the matter to the Dispute Board pursuant to GCC46 hereof. |
| 1. Disputes and Arbitration    1. Appointment of the Dispute Board   Disputes shall be referred to a DB for decision in accordance with GCC Sub-Clause 46.3. The Parties shall appoint a DB by the date stated in the PCC.  The DB shall comprise, as stated in the PCC, either one or three suitably qualified persons (“the members”), each of whom shall be fluent in the language for communication defined in the Contract and shall be a professional experienced in the type of activities involved in the performance of the Contract and with the interpreta­tion of contractual documents. If the number is not so stated and the Parties do not agree otherwise, the DB shall comprise three persons, one of whom shall serve as chairman.  If the Parties have not jointly appointed the DB 21 days before the date stated in the PCC and the DB is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman.  However, if a list of potential members is included in the PCC, the members shall be selected from those on the list, other than anyone who is unable or unwilling to accept appointment to the DB.  The agreement between the Parties and either the sole member or each of the three members shall incorporate by reference the General Conditions of Dispute Board Agreement contained in the Appendix to these General Conditions, with such amendments as are agreed between them.  The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the DB consults, shall be mutually agreed upon by the Parties when agreeing the terms of appointment of the member or such expert (as the case may be). Each Party shall be responsible for paying one-half of this remuneration.  If a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Sub-Clause.  The appointment of any member may be terminated by mutual agreement of both Parties, but not by the procuring entity or the contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DB (including each member) shall expire when the Operational Acceptance Certificate has been issued in accordance with GCC Sub-Clause 25.3.   * 1. Failure to Agree on the Composition of the Dispute Board   If any of the following conditions apply, namely:  the Parties fail to agree upon the appointment of the sole member of the DB by the date stated in the first paragraph of GCC Sub-Clause 46.1,  either Party fails to nominate a member (for approval by the other Party) of a DB of three persons by such date,  the Parties fail to agree upon the appointment of the third member (to act as chairman) of the DB by such date, or  the Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,  then the appointing entity or official **named in the PCC** shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.   * 1. Obtaining Dispute Board’s Decision   If a dispute (of any kind whatsoever) arises between the Parties in connection with the performance of the Contract, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Project Manager, either Party may refer the dispute in writing to the DB for its decision, with copies to the other Party and the Project Manager. Such reference shall state that it is given under this Sub-Clause.  For a DB of three persons, the DB shall be deemed to have received such reference on the date when it is received by the chairman of the DB.  Both Parties shall promptly make available to the DB all such additional information, further access to the Site, and appropriate facilities, as the DB may require for the purposes of making a decision on such dispute. The DB shall be deemed to be not acting as arbitrator(s).  Within 84 days after receiving such reference, or within such other period as may be proposed by the DB and approved by both Parties, the DB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the contractor shall continue with the performance of the Facilities in accordance with the Contract.  If either Party is dissatisfied with the DB’s decision, then either Party may, within 28 days after receiving the decision, give notice to the other Party of its dissatisfaction and intention to commence arbitration. If the DB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give notice to the other Party of its dissatisfaction and intention to commence arbitration.  In either event, this notice of dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in GCC Sub-Clauses 46.6 and 46.7, neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Sub-Clause.  If the DB has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after it received the DB’s decision, then the decision shall become final and binding upon both Parties.   * 1. Amicable Settlement   Where notice of dissatisfaction has been given under GCC Sub-Clause 46.3 above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the fifty-sixth day after the day on which notice of dissatisfaction and intention to commence arbitration was given, even if no attempt at amicable settlement has been made.   * 1. Arbitration   Unless **indicated otherwise in the PCC,** any dispute not settled amicably and in respect of which the DB’s decision (if any) has not become final and binding shall be finally settled by arbitration. Unless otherwise agreed by both Parties, arbitration shall be conducted as follows:  (a) For contracts with foreign contractors:  (i) international arbitration with proceedings administered by the international arbitration institution **appointed in the PCC,** in accordance with the rules of arbitration of the appointed institution,  (ii) the place of arbitration shall be the city where the headquarters of the appointed arbitration institution is located or such other place selected in accordance with the applicable arbitration rules; and  (iii) the arbitration shall be conducted in the language for communications defined in Sub-Clause 5.3; and  (b) For contracts with domestic contractors, arbitration with proceedings conducted in accordance with the laws of the procuring entity’s Country.  The arbitrator(s) shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, and any decision of the DB, relevant to the dispute. Nothing shall disqualify the Project Manager from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute.  Neither Party shall be limited in the proceedings before the arbitrator(s) to the evidence or arguments previously put before the DB to obtain its decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the DB shall be admissible in evidence in the arbitration.  Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Project Manager and the DB shall not be altered by reason of any arbitration being conducted during the progress of the Works.   * 1. Failure to Comply with Dispute Board’s Decision   In the event that a Party fails to comply with a DB decision which has become final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under GCC Sub-Clause 46.5. GCC Sub-Clauses 46.3 and 46.4 shall not apply to this reference.   * 1. Expiry of Dispute Board’s Appointment   If a dispute arises between the Parties in connection with the performance of the Contract, and there is no DB in place, whether by reason of the expiry of the DB’s appointment or otherwise:  (a) GCC Sub-Clauses 46.3 and 46.4 shall not apply, and  (b) the dispute may be referred directly to arbitration under GCC Sub-Clause 46.5 |

**APPENDIX A**

**General Conditions of Dispute Board Agreement**

1. Definitions

Each “Dispute Board Agreement” is a tripartite agreement by and between:

the “procuring entity”;

the “contractor”; and

the “Member” who is defined in the Dispute Board Agreement as being:

(i) the sole member of the “DB” and, where this is the case, all references to the “Other Members” do not apply, or

(ii) one of the three persons who are jointly called the “DB” (or “dispute board”) and, where this is the case, the other two persons are called the “Other Members”.

The procuring entity and the contractor have entered (or intend to enter) into a contract, which is called the “Contract” and is defined in the Dispute Board Agreement, which incorporates this Appendix. In the Dispute Board Agreement, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract.

2. General Provisions

Unless otherwise stated in the Dispute Board Agreement, it shall take effect on the latest of the following dates:

(a) the Commencement Date defined in the Contract,

(b) when the procuring entity, the contractor and the Member have each signed the Dispute Board Agreement, or

(c) when the procuring entity, the contractor and each of the Other Members (if any) have respectively each signed a dispute board agreement.

This employment of the Member is a personal appointment. At any time, the Member may give not less than 70 days’ notice of resignation to the procuring entity and to the contractor, and the Dispute Board Agreement shall terminate upon the expiry of this period.

3. Warranties

The Member warrants and agrees that he/she is and shall be impartial and independent of the procuring entity, the contractor and the Project Manager. The Member shall promptly disclose, to each of them and to the Other Members (if any), any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.

When appointing the Member, the procuring entity and the contractor relied upon the Member’s representations that he/she is:

(a) experienced in the work which the contractor is to carry out under the Contract,

(b) experienced in the interpretation of contract documentation, and

(c) fluent in the language for communications defined in the Contract.

4. General Obligations of the Member

The Member shall:

(a) have no interest financial or otherwise in the procuring entity, the contractor or the Project Manager, nor any financial interest in the Contract except for payment under the Dispute Board Agreement;

(b) not previously have been employed as a consultant or otherwise by the procuring entity, the contractor or the Project Manager, except in such circumstances as were disclosed in writing to the procuring entity and the contractor before they signed the Dispute Board Agreement;

(c) have disclosed in writing to the procuring entity, the contractor and the Other Members (if any), before entering into the Dispute Board Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the procuring entity, the contractor or the Project Manager, and any previous involvement in the overall project of which the Contract forms part;

(d) not, for the duration of the Dispute Board Agreement, be employed as a consultant or otherwise by the procuring entity, the contractor or the Project Manager, except as may be agreed in writing by the procuring entity, the contractor and the Other Members (if any);

(e) comply with the annexed procedural rules and with GCC Sub-Clause 46.3;

(f) not give advice to the procuring entity, the contractor, the procuring entity’s Personnel or the contractor’s Personnel concerning the conduct of the Contract, other than in accordance with the annexed procedural rules;

(g) not while a Member enter into discussions or make any agreement with the procuring entity, the contractor or the Project Manager regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Board Agreement;

(h) ensure his/her availability for all site visits and hearings as are necessary;

(i) become conversant with the Contract and with the progress of the Facilities (and of any other parts of the project of which the Contract forms part) by studying all documents received which shall be maintained in a current working file;

(j) treat the details of the Contract and all the DB’s activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the procuring entity, the contractor and the Other Members (if any); and

(k) be available to give advice and opinions, on any matter relevant to the Contract when requested by both the procuring entity and the contractor, subject to the agreement of the Other Members (if any).

5. General Obligations of the procuring entity and the contractor

The procuring entity, the contractor, the procuring entity’s Personnel and the contractor’s Personnel shall not request advice from or consultation with the Member regarding the Contract, otherwise than in the normal course of the DB’s activities under the Contract and the Dispute Board Agreement. The procuring entity and the contractor shall be responsible for compliance with this provision, by the procuring entity’s Personnel and the contractor’s Personnel respectively.

The procuring entity and the contractor undertake to each other and to the Member that the Member shall not, except as otherwise agreed in writing by the procuring entity, the contractor, the Member and the Other Members (if any):

(a) be appointed as an arbitrator in any arbitration under the Contract;

(b) be called as a witness to give evidence concerning any dispute before arbitrator(s) appointed for any arbitration under the Contract; or

(c) be liable for any claims for anything done or omitted in the discharge or purported discharge of the Member’s functions, unless the act or omission is shown to have been in bad faith.

The procuring entity and the contractor hereby jointly and severally indemnify and hold the Member harmless against and from claims from which he is relieved from liability under the preceding paragraph.

Whenever the procuring entity or the contractor refers a dispute to the DB under GCC Sub-Clause 46.3, which will require the Member to make a site visit and attend a hearing, the procuring entity or the contractor shall provide appropriate security for a sum equivalent to the reasonable expenses to be incurred by the Member. No account shall be taken of any other payments due or paid to the Member.

6. Payment

The Member shall be paid as follows, in the currency named in the Dispute Board Agreement:

(a) a retainer fee per calendar month, which shall be considered as payment in full for:

(i) being available on 28 days’ notice for all site visits and hearings;

(ii) becoming and remaining conversant with all project developments and maintaining relevant files;

(iii) all office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties; and

(iv) all services performed hereunder except those referred to in sub-paragraphs (b) and (c) of this Clause.

The retainer fee shall be paid with effect from the last day of the calendar month in which the Dispute Board Agreement becomes effective; until the last day of the calendar month in which the Taking-Over Certificate is issued for the whole of the Works.

With effect from the first day of the calendar month following the month in which Taking-Over Certificate is issued for the whole of the Works, the retainer fee shall be reduced by one third This reduced fee shall be paid until the first day of the calendar month in which the Member resigns or the Dispute Board Agreement is otherwise terminated.

(b) a daily fee which shall be considered as payment in full for:

(i) each day or part of a day up to a maximum of two days’ travel time in each direction for the journey between the Member’s home and the site, or another location of a meeting with the Other Members (if any);

(ii) each working day on site visits, hearings or preparing decisions; and

(iii) each day spent reading submissions in preparation for a hearing.

(c) all reasonable expenses including necessary travel expenses (air fare in less than first class, hotel and subsistence and other direct travel expenses) incurred in connection with the Member’s duties, as well as the cost of telephone calls, courier charges, faxes and telexes: a receipt shall be required for each item in excess of five percent of the daily fee referred to in sub-paragraph (b) of this Clause;

(d) any taxes properly levied in the Country on payments made to the Member (unless a national or permanent resident of the Country) under this Clause 6.

The retainer and daily fees shall be as specified in the Dispute Board Agreement. Unless it specifies otherwise, these fees shall remain fixed for the first 24 calendar months, and shall thereafter be adjusted by agreement between the procuring entity, the contractor and the Member, at each anniversary of the date on which the Dispute Board Agreement became effective.

If the Parties fail to agree on the retainer fee or the daily fee the appointing entity or official named in the PCC shall determine the amount of the fees to be used.

The Member shall submit invoices for payment of the monthly retainer and air fares quarterly in advance. Invoices for other expenses and for daily fees shall be submitted following the conclusion of a site visit or hearing. All invoices shall be accompanied by a brief description of activities performed during the relevant period and shall be addressed to the contractor.

The contractor shall pay each of the Member’s invoices in full within 56 calendar days after receiving each invoice and shall apply to the procuring entity (in the Statements under the Contract) for reimbursement of one-half of the amounts of these invoices. The procuring entity shall then pay the contractor in accordance with the Contract.

If the contractor fails to pay to the Member the amount to which he/she is entitled under the Dispute Board Agreement, the procuring entity shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the DB; and without prejudice to the procuring entity’s rights or remedies. In addition to all other rights arising from this default, the procuring entity shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in accordance with GCC Sub-Clause 12.3.

If the Member does not receive payment of the amount due within 70 days after submitting a valid invoice, the Member may (i) suspend his/her services (without notice) until the payment is received, and/or (ii) resign his/her appointment by giving notice under Clause 7.

7. Termination

At any time: (i) the procuring entity and the contractor may jointly terminate the Dispute Board Agreement by giving 42 days’ notice to the Member; or (ii) the Member may resign as provided for in Clause 2.

If the Member fails to comply with the Dispute Board Agreement, the procuring entity and the contractor may, without prejudice to their other rights, terminate it by notice to the Member. The notice shall take effect when received by the Member.

If the procuring entity or the contractor fails to comply with the Dispute Board Agreement, the Member may, without prejudice to his other rights, terminate it by notice to the procuring entity and the contractor. The notice shall take effect when received by them both.

Any such notice, resignation and termination shall be final and binding on the procuring entity, the contractor and the Member. However, a notice by the procuring entity or the contractor, but not by both, shall be of no effect.

8. Default of the Member

If the Member fails to comply with any of his obligations under Clause 4 concerning his impartiality or independence in relation to the procuring entity or the contractor, he/she shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the procuring entity and the contractor for any fees and expenses received by the Member and the Other Members (if any), for proceedings or decisions (if any) of the DB which are rendered void or ineffective by the said failure to comply.

9. Disputes

Any dispute or claim arising out of or in connection with this Dispute Board Agreement, or the breach, termination or invalidity thereof, shall be finally settled by institutional arbitration. If no other arbitration institute is agreed, the arbitration shall be conducted under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with these Rules of Arbitration.

**Annex A**

**DISPUTE BOARD GUIDELINES**

1. Unless otherwise agreed by the procuring entity and the contractor, the DB shall visit the site at intervals of not more than 140 days, including times of critical construction events, at the request of either the procuring entity or the contractor. Unless otherwise agreed by the procuring entity, the contractor and the DB, the period between consecutive visits shall not be less than 70 days, except as required to convene a hearing as described below.

2. The timing of and agenda for each site visit shall be as agreed jointly by the DB, the procuring entity and the contractor, or in the absence of agreement, shall be decided by the DB. The purpose of site visits is to enable the DB to become and remain acquainted with the progress of the Works and of any actual or potential problems or claims, and, as far as reasonable, to prevent potential problems or claims from becoming disputes.

3. Site visits shall be attended by the procuring entity, the contractor and the Project Manager and shall be coordinated by the procuring entity in co-operation with the contractor. The procuring entity shall ensure the provision of appropriate conference facilities and secretarial and copying services. At the conclusion of each site visit and before leaving the site, the DB shall prepare a report on its activities during the visit and shall send copies to the procuring entity and the contractor.

4. The procuring entity and the contractor shall furnish to the DB one copy of all documents which the DB may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the performance of the Contract. All communications between the DB and the procuring entity or the contractor shall be copied to the other Party. If the DB comprises three persons, the procuring entity and the contractor shall send copies of these requested documents and these communications to each of these persons.

5. If any dispute is referred to the DB in accordance with GCC Sub-Clause 46.3, the DB shall proceed in accordance with GCC Sub-Clause 46.3 and these Guidelines. Subject to the time allowed to give notice of a decision and other relevant factors, the DB shall:

(a) act fairly and impartially as between the procuring entity and the contractor, giving each of them a reasonable opportunity of putting his case and responding to the other’s case, and

(b) adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.

6. The DB may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the procuring entity and the contractor be presented to it prior to or at the hearing.

7. Except as otherwise agreed in writing by the procuring entity and the contractor, the DB shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the procuring entity, the contractor and the Project Manager, and to proceed in the absence of any Party who the DB is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.

8. The procuring entity and the contractor empower the DB, among other things, to:

(a) establish the procedure to be applied in deciding a dispute,

(b) decide upon the DB’s own jurisdiction, and as to the scope of any dispute referred to it,

(c) conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Guidelines,

(d) take the initiative in ascertaining the facts and matters required for a decision,

(e) make use of its own specialist knowledge, if any,

(f) decide upon the payment of financing charges in accordance with the Contract,

(g) decide upon any provisional relief such as interim or conservatory measures,

(h) open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute, and

(i) appoint, should the DB so consider necessary and the Parties agree, a suitable expert at the cost of the Parties to give advice on a specific matter relevant to the dispute.

9. The DB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DB shall make and give its decision in accordance with GCC Sub-Clause 46.3, or as otherwise agreed by the procuring entity and the contractor in writing. If the DB comprises three persons:

(a) it shall convene in private after a hearing, in order to have discussions and prepare its decision;

(b) it shall endeavor to reach a unanimous decision: if this proves impossible the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the procuring entity and the contractor; and

(c) if a Member fails to attend a meeting or hearing, or to fulfil any required function, the other two Members may nevertheless proceed to make a decision, unless:

(i) either the procuring entity or the contractor does not agree that they do so, or

(ii) the absent Member is the chairman and he/she instructs the other Members to not make a decision.

# Section VII. Particular Conditions of Contract

The following Particular Conditions of Contract (PCC) shall supplement the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC. The corresponding clause number of the GCC is indicated in parentheses.

|  |  |
| --- | --- |
| **GCC 1.1 (g)** | The contractor is: *[Name, address, and telephone, cable and facsimile numbers]* |
| **GCC 1.1 (i)** | The contractor’s Representative is: *[Name, address, and telephone, cable and facsimile numbers]* |
| **GCC 1.1 (n)** | The procuring entity is: *[Name, address, and telephone, cable and facsimile numbers]* |
| **GCC 1.1 (w)** | The Project Manager is*: [Name, address, and telephone, cable and facsimile numbers]* |
| **GCC 1.1 (aa)** | Time for Completion:  ***Sample Provision***  Time for Completion for all Facilities: *[The time shall be specified in days, weeks or months, as appropriate, and shall be written in words and figures.]*, or  Time for Completion for parts of the Facilities:  **Description Time for Completion**  *[Each part of the Facilities subject to a specific Time for Completion shall be listed and briefly described with its respective Time for Completion specified in days, weeks or months, as appropriate, in words and figures.]* |
| **GCC 3.1.1** | Ruling language shall be: **English** |
| **GCC 3.1.2** | Language for communications shall be: **English** |
| **GCC 4.1** | For **notices**, the procuring entity’s address shall be:  Attention: *[ insert full name of person, if applicable]*  Street Address: *[insert street address and number]*  Floor/ Room number*: [insert floor and room number, if applicable]*  City: *[insert name of city or town]*  ZIP Code: *[insert postal ZIP code, if applicable]*  Jamaica  Telephone: *[include telephone number, including country and city codes]*  Facsimile number: *[insert facsimile number, including country and city codes]*  Electronic mail address*: [insert e-mail address, if applicable]*  **contractor’s address for notice purposes:**  Attention: *[ insert full name of person, if applicable]*  Street Address: *[insert street address and number]*  Floor/ Room number*: [insert floor and room number, if applicable]*  City: *[insert name of city or town]*  ZIP Code: *[insert postal ZIP code, if applicable]*  Country: *[insert name of country]*  Telephone: *[include telephone number, including country and city codes]*  Facsimile number: *[insert facsimile number, including country and city codes]*  Electronic mail address*: [insert e-mail address, if applicable]* |
| **GCC 5.1** | ***Sample Provision***  The contract shall be interpreted in accordance with the laws of Jamaica. |
| **GCC 7.3** | The contractor agrees to supply spare parts for a period of years: *[A reasonable number of years should be specified in words and figures.]*  ***Sample Clause***  The contractor shall carry sufficient inventories to ensure an ex-stock supply of consumable spares for the plant and equipment. Other spare parts and components shall be supplied as promptly as possible, but at the most within six (6) months of placing the order and opening the letter of credit. In addition, in the event of termination of the production of spare parts, advance notification will be made to the procuring entity of the pending termination, with sufficient time to permit the procuring entity to procure the needed requirement. Following such termination, the contractor will furnish to the extent possible and at no cost to the procuring entity the blueprints, drawings and specifications of the spare parts, if requested. |
| **GCC 8.1** | The contractor shall commence work on the Facilities from the Effective Date for determining Time for Completion as specified in the Contract Agreement. |
| **GCC 8.2** | The Completion of the Facilities shall be attained within \_\_\_\_\_\_ *[weeks or months in words and figures].* *[Parts and times for respective Completions shall be specified where applicable.]* |
| **GCC 11.2** | ***Sample Provision***  The Contract Price shall be adjusted in accordance with the provisions of the corresponding Appendix (Price Adjustment) to the Contract Agreement [*to be inserted only if Contract Price is subject to adjustment].* |
| **GCC 13.3.1** | The amount of performance security, as a percentage of the Contract Price for the Facility or for the part of the Facility for which a separate time for Completion is provided, shall be: *[The amount should not exceed ten percent (10%) in any case.]* |
| **GCC 13.3.2** | The performance security shall be in the form of the *[insert either Conditional Guarantee or Unconditional Guarantee]* attached hereto in the section on Sample Forms and Procedures.  *[The following provision should be used when the Facilities have warranty obligations beyond the Defect Liability Period, pursuant to the provisions in the PCC under GCC Clause 12.]* |
| **GCC 13.3.3** | The performance security shall be reduced to ten percent (10%) of the value of the component covered by the extended warranty to cover the contractor’s extended warranty in accordance with the provision in the PCC, pursuant to GCC Sub-Clause 27.10. *[To be inserted only when an extended warranty is requested.]* |
| **GCC 18.2** | The form of the program of performance of the contract shall be: *[Program of performance shall usually be in the form of the critical path method (CPM), the PERT network, or other internationally used programs.]* |
| **GCC 25.2.2** | The Guarantee Test of the Facilities shall be successfully completed within \_\_\_\_\_\_ *[days or weeks, written in words and figures]* from the date of Completion. *[Parts and separate times for the respective Guarantee Tests shall be specified where applicable.]* |
| **GCC 26.2** | Applicable rate for liquidated damages:  Maximum deduction for liquidated damages: *[The applicable rate shall not exceed one-half percent (0.5%) per week, and the maximum shall not exceed ten percent (10%) of the Contract Price.]*  ***Sample Clause***  The above rate and maximum apply to the price of the part of the Facilities, as quoted in the Price Schedule, for that part for which the contractor fails to achieve Completion within the particular Time for Completion. *[The above provision may be used where separate Times for Completion have been prescribed for parts of the Facilities.]* |
| **GCC 26.3** | Applicable (amount or rate) for the bonus for early Completion:  Maximum bonus: *[Where bonus is applicable, insert appropriate amount or rate as a percentage of the Contract Price, or part thereof, in words and figures, per week of early Completion of the Facilities or part thereof, in accordance with the Time for Completion specified in the PCC, with a corresponding reference in GCC 1. The amount of the bonus and the minimum should be related to the benefit the procuring entity will gain in operating the Facilities, or part thereof, earlier than anticipated.]*  *(For a contract without a bonus, the following provision should be used.)*  No bonus will be given for earlier Completion of the Facilities or part thereof. |
| **GCC 27.10** | *[The procuring entity should not extend the Defect Liability Period beyond the period prescribed in GCC Sub-Clause 27.2, except where it is commercial practice for that type of Facilities, and in which case the relevant period shall be specified in the PCC under GCC Sub-Clause 27.10.]*  The critical components covered under the extended warranty are *[the components should either be mentioned herein or a reference should be made to the related paragraph in the Technical Specifications], and the period shall be [number of years, which shall not exceed five (5) years*] (to be inserted only when an extended warranty is requested). |
| **GCC Clauses 24.3 and 25.2** | ***Sample Provision***  1. In the event that the contractor is unable to proceed with the Precommissioning of the Facilities pursuant to Sub-Clause 24.3, or with the Guarantee Test pursuant to Sub-Clause 25.2, for reasons attributable to the procuring entity either on account of nonavailability of other facilities under the responsibilities of other contractor(s), or for reasons beyond the procuring entity’s control, the provisions leading to “deemed” completion of activities such as Completion, pursuant to GCC Sub-Clause 24.6, and Operational Acceptance, pursuant to GCC Sub-Clause 25.3.4, and contractor’s obligations regarding Defect Liability Period, pursuant to GCC Sub-Clause 27.2, Functional Guarantee, pursuant to GCC Clause 28, and Care of Facilities, pursuant to GCC Clause 32, and GCC Clause 41.1, Suspension, shall not apply. In this case, the following provisions shall apply.  2. When the contractor is notified by the Project Manager that he will be unable to proceed with the activities and obligations pursuant to above para. 1, the contractor shall be entitled to the following:  (a) the Time of Completion shall be extended for the period of suspension without imposition of liquidated damages pursuant to GCC Sub-Clause 26.2;  (b) payments due to the contractor in accordance with the provision specified in the corresponding Appendix (Terms and Procedures of Payment) to the Contract Agreement, which would not have been payable in normal circumstances due to non-completion of the subject activities, shall be released to the contractor against submission of a security in the form of a bank guarantee of equivalent amount acceptable to the procuring entity, and which shall become null and void when the contractor will have complied with its obligations regarding those payments, subject to the provision of para.3 below;  (c) the expenses towards the above security and extension of other securities under the contract, of which validity needs to be extended, shall be reimbursed to the contractor by the procuring entity;  (d) the additional charges towards the care of the Facilities pursuant to GCC Sub-Clause 32.1 shall be reimbursed to the contractor by the procuring entity for the period between the notification mentioned above and the notification mentioned in para.4 below. The provision of GCC Sub-Clause 33.2 shall apply to the Facilities during the same period.  3. In the event that the period of suspension under above para.1 actually exceeds one hundred eighty (180) days, the procuring entity and contractor shall mutually agree to any additional compensation payable to the contractor.  4. When the contractor is notified by the Project Manager that the plant is ready for Precommissioning, the contractor shall proceed without delay in performing all the specified activities and obligations under the contract.  *[The above paras. 1 through 4 may be used when performance of Precommissioning activities and/or Functional Guarantees will be tied to the completion of other facilities which are not under the responsibilities of the contractor (e.g., completion of transmission lines to connect to the grid a power plant constructed under the contract).]* |
| PCC 30. Limitation of Liability | **Sample Clause**  PCC 30.1 (b) The multiplier of the Contract Price is: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |
| PCC 39. Value Engineering | PCC 39.1.2 If the value engineering proposal is approved by the procuring entity the amount to be paid to the contractor shall be \_\_\_% (insert appropriate percentage. The percentage is normally up to 50%) of the reduction in the Contract Price |
| PCC46. Disputes and Arbitration | PCC 46.1 The DB shall be appointed within [28 days] after the Effective Date.  PCC 46.1 The DB shall be:  *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  *or*  *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  PCC 46.1 List of potential DB members is: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  PCC 46.2 Appointment (if not agreed) to be made by:  PCC 46.5 Procedure to settle disputes in respect of DB’s decisions: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  (a) Appointed arbitration institution |

# 

# Section VIII. Contract Forms

[Letter of Acceptance 164](#_Toc472606220)

[Contract Agreement 165](#_Toc472606221)

[Performance Security 181](#_Toc472606222)

[Option 2: Performance Bond 183](#_Toc472606223)

[Advance Payment Security 185](#_Toc472606224)

**Notification of Award**

**Letter of Acceptance**

*[Ltter Head of the procuring entity]*

*[date]*

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

This is to notify you that your bid dated *[insert date]* for execution of the *[insert name of the contract and identification number, as given in the BDS]* for the Accepted Contract Amount of *[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Bidders, is hereby accepted by [insert name of the procuring entity].

You are requested to furnish the performance security within 28 days in accordance with the Conditions of contract, using for that purpose the performance security form*s* included in Section IX, Annex to the Particular Conditions - contract Forms, of the bidding document

Authorized Signature:

Name and Title of Signatory:

Name of Agency:

**Attachment: Contract Agreement**

|  |
| --- |
| **Contract A****greement** |

THIS AGREEMENT is made the \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_,

BETWEEN

(1) *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*, a corporation incorporated under the laws of \_\_\_\_\_\_\_\_\_\_\_ and having its principal place of business at *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* (hereinafter called “the procuring entity”), and (2) *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*, a corporation incorporated under the laws of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* and having its principal place of business at *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* (hereinafter called “the contractor”).

WHEREAS the procuring entity desires to engage the contractor to design, manufacture, test, deliver, install, complete and commission certain Facilities, viz. *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* (“the Facilities”), and the contractor has agreed to such engagement upon and subject to the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:

|  |  |
| --- | --- |
| **Article 1. Contract Documents** | 1.1 Contract Documents (Reference GCC Clause 2)  The following documents shall constitute the Contract between the procuring entity and the contractor, and each shall be read and construed as an integral part of the Contract:  (a) This Contract Agreement and the Appendices hereto  (b) Letter of Bid and Price Schedules submitted by the contractor  (c) Particular Conditions  (d) General Conditions  (e) Specification  (f) Drawings  (g) Other completed bidding forms submitted with the Bid  (h) Any other documents forming part of the procuring entity’s Requirements  (i) Any other documents shall be added here  1.2 Order of Precedence (Reference GCC Clause 2)  In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above.  1.3 Definitions (Reference GCC Clause 1)  Capitalized words and phrases used herein shall have the same meanings as are ascribed to them in the General Conditions. |
| **Article 2. Contract Price and Terms of Payment** | 2.1 Contract Price (Reference GCC Clause 11)  The procuring entity hereby agrees to pay to the contractor the Contract Price in consideration of the performance by the contractor of its obligations hereunder. The Contract Price shall be the aggregate of: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*, *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* as specified in Price Schedule No. 5 (Grand Summary), and*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*, *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*, or such other sums as may be determined in accordance with the terms and conditions of the Contract.  2.2 Terms of Payment (Reference GCC Clause 12)  The terms and procedures of payment according to which the procuring entity will reimburse the contractor are given in the Appendix (Terms and Procedures of Payment) hereto.  The procuring entity may instruct its bank to issue an irrevocable confirmed documentary credit made available to the contractor in a bank in the country of the contractor. The credit shall be for an amount of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*; and shall be subject to the Uniform Customs and Practice for Documentary Credits 2007 Revision, ICC Publication No. 600.  In the event that the amount payable under Schedule No. 1 is adjusted in accordance with GCC 11.2 or with any of the other terms of the Contract, the procuring entity shall arrange for the documentary credit to be amended accordingly. |
| **Article 3. Effective Date** | 3.1 Effective Date (Reference GCC Clause 1)  The Effective Date from which the Time for Completion of the Facilities shall be counted is the date when all of the following conditions have been fulfilled:  (a) This Contract Agreement has been duly executed for and on behalf of the procuring entity and the contractor;  (b) The contractor has submitted to the procuring entity the Performance Security and the mobilization payment guarantee;  (c) The procuring entity has paid the contractor the mobilization payment  (d) The contractor has been advised that the documentary credit referred to in Article 2.2 above has been issued in its favor.  Each party shall use its best efforts to fulfill the above conditions for which it is responsible as soon as practicable.  3.2 If the conditions listed under 3.1 are not fulfilled within two (2) months from the date of this Contract notification because of reasons not attributable to the contractor, the Parties shall discuss and agree on an equitable adjustment to the Contract Price and the Time for Completion and/or other relevant conditions of the Contract. |
| **Article 4. Communications** | 4.1 The address of the procuring entity for notice purposes, pursuant to GCC 4.1 is: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*.   * 1. The address of the contractor for notice purposes, pursuant to GCC 4.1 is: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.* |
| **Article 5. Appendices** | 5.1 The Appendices listed in the attached List of Appendices shall be deemed to form an integral part of this Contract Agreement.   * 1. Reference in the Contract to any Appendix shall mean the Appendices attached hereto, and the Contract shall be read and construed accordingly. |

IN WITNESS WHEREOF the procuring entity and the contractor have caused this Agreement to be duly executed by their duly authorized representatives the day and year first above written.

Signed by, for and on behalf of the procuring entity

*[Signature]*

*[Title]*

in the presence of

Signed by, for and on behalf of the contractor

*[Signature]*

*[Title]*

in the presence of

APPENDICES

Appendix 1 Terms and Procedures of Payment

Appendix 2 Price Adjustment

Appendix 3 Insurance Requirements

Appendix 4 Time Schedule

Appendix 5 List of Major Items of Plant and Installation Services and List of Approved Subcontractors

Appendix 6 Scope of Works and Supply by the procuring entity

Appendix 7 List of Documents for Approval or Review

Appendix 8 Functional Guarantees

**Appendix 1. Terms and Procedures of Payment**

In accordance with the provisions of GCC Clause 12 (Terms of Payment), the procuring entity shall pay the contractor in the following manner and at the following times, on the basis of the Price Breakdown given in the section on Price Schedules. Payments will be made in the currencies quoted by the bidder unless otherwise agreed between the Parties. Applications for payment in respect of part deliveries may be made by the contractor as work proceeds.

TERMS OF PAYMENT

Schedule No. 1. Plant and Equipment Supplied from Abroad

In respect of plant and equipment supplied from abroad, the following payments shall be made:

Ten percent (10%) of the total CIP amount as an mobilization payment against receipt of invoice and an irrevocable mobilization payment security for the equivalent amount made out in favor of the procuring entity. The mobilization payment security may be reduced in proportion to the value of the plant and equipment delivered to the site, as evidenced by shipping and delivery documents.

Eighty percent (80%) of the total or pro rata CIP amount upon Incoterm “CIP”, upon delivery to the carrier within forty-five (45) days after receipt of documents.

Five percent (5%) of the total or pro rata CIP amount upon issue of the Completion Certificate, within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata CIP amount upon issue of the Operational Acceptance Certificate, within forty-five (45) days after receipt of invoice.

Schedule No. 2. Plant and Equipment Supplied from within the procuring entity’s Country

In respect of plant and equipment supplied from within the procuring entity’s Country, the following payments shall be made:

Ten percent (10%) of the total EXW amount as an mobilization payment against receipt of invoice, and an irrevocable mobilization payment security for the equivalent amount made out in favor of the procuring entity. The mobilization payment security may be reduced in proportion to the value of the plant and equipment delivered to the site, as evidenced by shipping and delivery documents.

Eighty percent (80%) of the total or pro rata EXW amount upon Incoterm “Ex-Works,” upon delivery to the carrier within forty-five (45) days after receipt of invoice and documents*.*

Five percent (5%) of the total or pro rata EXW amount upon issue of the Completion Certificate, within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata EXW amount upon issue of the Operational Acceptance Certificate, within forty-five (45) days after receipt of invoice.

Schedule No. 3. Design Services

In respect of design services for both the foreign currency and the local currency portions, the following payments shall be made:

Ten percent (10%) of the total design services amount as an mobilization payment against receipt of invoice, and an irrevocable mobilization payment security for the equivalent amount made out in favor of the procuring entity.

Ninety percent (90%) of the total or pro rata design services amount upon acceptance of design in accordance with GCC Clause 20 by the Project Manager within forty-five (45) days after receipt of invoice.

Schedule No. 4. Installation Services

In respect of installation services for both the foreign and local currency portions, the following payments shall be made:

Ten percent (10%) of the total installation services amount as an mobilization payment against receipt of invoice, and an irrevocable mobilization payment security for the equivalent amount made out in favor of the procuring entity. The mobilization payment security may be reduced in proportion to the value of work performed by the contractor as evidenced by the invoices for installation services.

Eighty percent (80%) of the measured value of work performed by the contractor, as identified in the said Program of Performance, during the preceding month, as evidenced by the procuring entity’s authorization of the contractor’s application, will be made monthly within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata value of installation services performed by the contractor as evidenced by the procuring entity’s authorization of the contractor’s monthly applications, upon issue of the Completion Certificate, within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata value of installation services performed by the contractor as evidenced by the procuring entity’s authorization of the contractor’s monthly applications, upon issue of the Operational Acceptance Certificate, within forty-five (45) days after receipt of invoice.

In the event that the procuring entity fails to make any payment on its respective due date, the procuring entity shall pay to the contractor interest on the amount of such delayed payment at the rate of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]*percent (\_\_%) per month for period of delay until payment has been made in full.

PAYMENT PROCEDURES

The procedures to be followed in applying for certification and making payments shall be as follows:

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

**Appendix 2. Price Adjustment**

|  |
| --- |
| Where the Contract Period (excluding the Defects Liability Period) exceeds eighteen (18) months, it is normal procedure that prices payable to the contractor shall be subject to adjustment during the performance of the Contract to reflect changes occurring in the cost of labor and material components. In such cases the bidding document shall include in this Appendix 2 a formula of the following general type, pursuant to GCC Sub-Clause 11.2.  Where Contracts are of a shorter duration than eighteen (18) months or in cases where there is to be no Price Adjustment, the following provision shall not be included. Instead, it shall be indicated under this Appendix 2 that the prices are to remain firm and fixed for the duration of the Contract. |

**Sample Price Adjustment Formula**

If in accordance with GCC 11.2, prices shall be adjustable, the following method shall be used to calculate the price adjustment:

Prices payable to the contractor, in accordance with the Contract, shall be subject to adjustment during performance of the Contract to reflect changes in the cost of labor and material components, in accordance with the following formula:





in which:

*P*1 = adjustment amount payable to the contractor

*P*0 = Contract price (base price)

*a* = percentage of fixed element in Contract price (*a* = %)

*b* = percentage of labor component in Contract price (*b*= %)

*c* = percentage of material and equipment component in Contract price (*c*= %)

*L*0, *L*1 = labor indices applicable to the appropriate industry in the country of origin on the base date and the date for adjustment, respectively

*M*0, *M*1= material and equipment indices in the country of origin on the base date and the date for adjustment, respectively

N.B. a+b+c= 100%.

**Conditions Applicable To Price Adjustment**

The bidder shall indicate the source of labor and materials indices, source of exchange rates and the base date indices in its Bid.

Item Source of Indices Used Base Date Indices

The base date shall be the date twenty-eight (28) days prior to the Bid closing date.

The date of adjustment shall be the mid-point of the period of manufacture or installation of component or Plant.

The following conditions shall apply:

1. No price increase will be allowed beyond the original delivery date unless covered by an extension of time awarded by the procuring entity under the terms of the Contract. No price increase will be allowed for periods of delay for which the contractor is responsible. The procuring entity will, however, be entitled to any price decrease occurring during such periods of delay.
2. If the currency in which the Contract price, P0, is expressed is different from the currency of the country of origin of the labor and/or materials indices, a correction factor will be applied to avoid incorrect adjustments of the Contract price. The correction factor shall be: Z0 / Z1, where,

Z0  = the number of units of currency of the origin of the indices which equal to one unit of the currency of the Contract Price P0 on the Base date, and

Z1 = the number of units of currency of the origin of the indices which equal to one unit of the currency of the Contract Price P0 on the Date of Adjustment.

1. No price adjustment shall be payable on the portion of the Contract price paid to the contractor as an mobilization payment.

**Appendix 3. Insurance Requirements**

**Insurances to be Taken Out by the contractor**

In accordance with the provisions of GCC Clause 34, the contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified. The identity of the insurers and the form of the policies shall be subject to the approval of the procuring entity, such approval not to be unreasonably withheld.

(a) Cargo Insurance

Covering loss or damage occurring, while in transit from the supplier’s or manufacturer’s works or stores until arrival at the Site, to the Facilities (including spare parts therefor) and to the construction equipment to be provided by the contractor or its Subcontractors.

Amount Deductible limits Parties insured From To

(b) Installation All Risks Insurance

Covering physical loss or damage to the Facilities at the Site, occurring prior to completion of the Facilities, with an extended maintenance coverage for the contractor’s liability in respect of any loss or damage occurring during the defect liability period while the contractor is on the Site for the purpose of performing its obligations during the defect liability period.

Amount Deductible limits Parties insured From To

(c) Third Party Liability Insurance

Covering bodily injury or death suffered by third parties (including the procuring entity’s personnel) and loss of or damage to property (including the procuring entity’s property and any parts of the Facilities that have been accepted by the procuring entity) occurring in connection with the supply and installation of the Facilities.

Amount Deductible limits Parties insured From To

(d) Automobile Liability Insurance

Covering use of all vehicles used by the contractor or its Subcontractors (whether or not owned by them) in connection with the supply and installation of the Facilities. Comprehensive insurance in accordance with statutory requirements.

(e) Workers’ Compensation

In accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

(f) procuring entity’s Liability

In accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

(g) Other Insurances

The contractor is also required to take out and maintain at its own cost the following insurances:

Details:

Amount Deductible limits Parties insured From To

The procuring entity shall be named as co-insured under all insurance policies taken out by the contractor pursuant to GCC Sub-Clause 34.1, except for the Third Party Liability, Workers’ Compensation and procuring entity’s Liability Insurances, and the contractor’s Subcontractors shall be named as co-insureds under all insurance policies taken out by the contractor pursuant to GCC Sub-Clause 34.1, except for the Cargo, Workers’ Compensation and procuring entity’s Liability Insurances. All insurer’s rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.

**Insurances To Be Taken Out By The procuring entity**

The procuring entity shall at its expense take out and maintain in effect during the performance of the Contract the following insurances.

Details:

Amount Deductible limits Parties insured From To

**Appendix 4. Time Schedule**

**Appendix 5. List of Major Items of Plant and Installation Services and List of Approved Subcontractors**

A list of major items of Plant and Installation Services is provided below.

The following Subcontractors and/or manufacturers are approved for carrying out the items of the Facilities indicated below. Where more than one Subcontractor is listed, the contractor is free to choose between them, but it must notify the procuring entity of its choice in good time prior to appointing any selected Subcontractor. In accordance with GCC Sub-Clause 19.1, the contractor is free to submit proposals for Subcontractors for additional items from time to time. No Subcontracts shall be placed with any such Subcontractors for additional items until the Subcontractors have been approved in writing by the procuring entity and their names have been added to this list of Approved Subcontractors.

|  |  |  |
| --- | --- | --- |
| Major Items of Plant and Installation Services | Approved Subcontractors/Manufacturers | Nationality |
|  |  |  |
|  |  |  |
|  |  |  |

**Appendix 6. Scope of Works and Supply by the procuring entity**

The following personnel, facilities, works and supplies will be provided/supplied by the procuring entity, and the provisions of GCC Clauses 10, 21 and 24 shall apply as appropriate.

All personnel, facilities, works and supplies will be provided by the procuring entity in good time so as not to delay the performance of the contractor, in accordance with the approved Time Schedule and Program of Performance pursuant to GCC Sub-Clause 18.2.

Unless otherwise indicated, all personnel, facilities, works and supplies will be provided free of charge to the contractor.

Personnel Charge to contractor (if any)

Facilities Charge to contractor (if any)

Works Charge to contractor (if any)

Supplies Charge to contractor (if any)

**Appendix 7. List of Documents for Approval or Review**

Pursuant to GCC Sub-Clause 20.3.1, the contractor shall prepare, or cause its Subcontractor to prepare, and present to the Project Manager in accordance with the requirements of GCC Sub-Clause 18.2 (Program of Performance), the following documents for

A. Approval

1.

2.

3.

B. Review

1.

2.

3.

**Appendix 8. Functional Guarantees**

1. General

This Appendix sets out

(a) the functional guarantees referred to in GCC Clause 28 (Functional Guarantees)

(b) the preconditions to the validity of the functional guarantees, either in production and/or consumption, set forth below

(c) the minimum level of the functional guarantees

(d) the formula for calculation of liquidated damages for failure to attain the functional guarantees.

2. Preconditions

The contractor gives the functional guarantees (specified herein) for the facilities, subject to the following preconditions being fully satisfied:

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

3. Functional Guarantees

Subject to compliance with the foregoing preconditions, the contractor guarantees as follows:

3.1 Production Capacity

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

**and/or**

3.2 Raw Materials and Utilities Consumption

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

4. Failure in Guarantees and Liquidated Damages

4.1 Failure to Attain Guaranteed Production Capacity

If the production capacity of the facilities attained in the guarantee test, pursuant to GCC Sub-Clause 25.2, is less than the guaranteed figure specified in para. 3.1 above, but the actual production capacity attained in the guarantee test is not less than the minimum level specified in para. 4.3 below, and the contractor elects to pay liquidated damages to the procuring entity in lieu of making changes, modifications and/or additions to the Facilities, pursuant to GCC Sub-Clause 28.3, then the contractor shall pay liquidated damages at the rate of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* for every complete one percent (1%) of the deficiency in the production capacity of the Facilities, or at a proportionately reduced rate for any deficiency, or part thereof, of less than a complete one percent (1%).

4.2 Raw Materials and Utilities Consumption in Excess of Guaranteed Level

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

If the actual measured figure of specified raw materials and utilities consumed per unit (or their average total cost of consumption) exceeds the guaranteed figure specified in para. 3.2 above (or their specified average total cost of consumption), but the actual consumption attained in the guarantee test, pursuant to GCC Sub-Clause 25.2, is not more than the maximum level specified in para. 4.3 below, and the contractor elects to pay liquidated damages to the procuring entity in lieu of making changes, modifications and/or additions to the Facilities pursuant to GCC Sub-Clause 28.3, then the contractor shall pay liquidated damages at the rate of *[amount in the contract currency]* for every complete one percent (1%) of the excess consumption of the Facilities, or part thereof, of less than a complete one percent (1%).

4.3 Minimum Levels

Notwithstanding the provisions of this paragraph, if as a result of the guarantee test(s), the following minimum levels of performance guarantees (and consumption guarantees) are not attained by the contractor, the contractor shall at its own cost make good any deficiencies until the Facilities reach any of such minimum performance levels, pursuant to GCC Sub-Clause 28.2:

(a) production capacity of the Facilities attained in the guarantee test: ninety-five percent (95%) of the guaranteed production capacity (the values offered by the contractor in its Bid for functional guarantees represents 100%).

**and/or**

(b) average total cost of consumption of all the raw materials and utilities of the Facilities: one hundred and five percent (105%) of the guaranteed figures (the figures offered by the contractor in its Bid for functional guarantees represents 100%).

4.4 Limitation of Liability

Subject to para. 4.3 above, the contractor’s aggregate liability to pay liquidated damages for failure to attain the functional guarantees shall not exceed \_\_\_\_\_\_ percent ( \_\_\_ %) of the Contract price.

|  |
| --- |
| **Performance Security** |

**Option 1: (Demand Guarantee)**

*[The bank, as requested by the successful bidder, shall fill in this form in accordance with the instructions indicated]*

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Bank’s Name, and Address of Issuing Branch or Office]*

**Beneficiary:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[Name and Address of* procuring entity*]*

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

Ref No. and title*: [insert no. and title of bidding process]*

**PERFORMANCE GUARANTEE No.:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

We have been informed that *[insert complete name of contractor]* (hereinafter called "the contractor") has entered into contract No. *[insert reference number of the contract]* dated *[insert day and month], [insert year]* with you, for the execution of *[insert 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 *[insert name of Bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures][insert amount in words]*,[[15]](#footnote-15)1 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 cavil or argument, or your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the *[insert number]* day of [*insert month], [insert year]* [[16]](#footnote-16)2, and any demand for payment under it must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
*[signature(s)]*

*Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.*

**Option 2: Performance Bond**

*[The Surety shall fill in this Bid Bond Form in accordance with the instructions indicated.]*

BOND NO. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By this Bond *[insert name of contractor]* as Principal (hereinafter called “the contractor”) and *[insert name, legal title and address of Surety]* authorized to transact business in Jamaica, as Surety (hereinafter called “the Surety”), are held and firmly bound unto *[insert name of procuring entity]* as Obligee (hereinafter called “the procuring entity”) in the amount of *[insert amount of bond] [amount in words]*, for the payment of which sum well and truly to be made in the types and proportions of currencies in which the contract Price is payable, the contractor and the Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the contractor has entered into a written Agreement with the procuring entity dated the *[insert date]* day of *[insert month]*, *[insert year]*, for the construction of [insert name of contract] in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the contract.

NOW, THEREFORE, the Condition of this Obligation is such that, if the contractor shall promptly and faithfully perform the said contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the contractor shall be, and declared by the procuring entity to be, in default under the contract, the procuring entity having performed the procuring entity’s obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

(1) complete the contract in accordance with its terms and conditions; or

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

(3) pay the procuring entity the amount required by procuring entity to complete the contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

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

Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking-Over Certificate.

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

In testimony whereof, the contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this day of \_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_.

SIGNED ON \_\_\_\_\_\_\_\_ behalf of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_ in the capacity of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

In the presence of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SIGNED ON on behalf of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By in the capacity of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

In the presence of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |
| --- |
| **Mobilization Payment Security** |

**Demand Guarantee**

*[The bank, as requested by the successful bidder, shall fill in this form in accordance with the instructions indicated.]*

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

Ref No. and title: *[insert number and title of bidding process]*

*[Bank’s letterhead]*

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Bank’s Name, and Address of Issuing Branch or Office]*

**Beneficiary:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[Name and Address of* procuring entity*]*

**MOBILIZATION PAYMENT GUARANTEE No.:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Furthermore, we understand that, according to the conditions of the contract, an mobilization payment is to be made against an mobilization payment guarantee.

At the request of the contractor, we *[insert name of Bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures] [insert amount in words][[17]](#footnote-17)1* upon receipt by us of your first demand in writing accompanied by a written statement stating that the contractor is in breach of its obligation under the contract because the contractor;

* + 1. has used the mobilization payment for purposes other than the costs of mobilization in respect of the works; or
    2. has failed to repay the mobilization payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

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

The maximum amount of this guarantee shall be progressively reduced by the amount of the mobilization payment repaid by the contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that eighty (80) percent of the contract Price has been certified for payment, or on the *[insert day]* day of *[insert month], [insert year]*,[[18]](#footnote-18)2 whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
*[signature(s)]*

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

1. Non performance, as decided by the Employer, shall include all contracts where (a) non performance was not challenged by the contractor, including through referral to the dispute resolution mechanism under the respective contract, and (b) contracts that were so challenged but fully settled against the contractor. Non performance shall not include contracts where Employers decision was overruled by the dispute resolution mechanism. Non performance 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. [↑](#footnote-ref-1)
2. This requirement also applies to contracts executed by the bidder as JV member. [↑](#footnote-ref-2)
3. The bidder shall provide accurate information on the related Bid Form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the last five years. A consistent history of awards against the bidder or any member of a joint venture may result in failure of the bid. [↑](#footnote-ref-3)
4. Substantial completion shall be based on 80% or more works completed under the contract. [↑](#footnote-ref-4)
5. For contracts under which the Bidder participated as a joint venture member or sub-contractor, only the Bidder’s share, by value, shall be considered to meet this requirement

   6 In the case of JV, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single entity. In determining whether the JV meets the requirement of total number of contracts, only the number of contracts completed by all members each of value equal or more than the minimum value required shall be aggregated. [↑](#footnote-ref-5)
6. [↑](#footnote-ref-6)
7. Volume, number or rate of production of any key activity can be demonstrated in one or more contracts combined if executed during same time period.  [↑](#footnote-ref-7)
8. The minimum experience requirement for multiple contracts will be the sum of the minimum requirements for respective individual contracts. [↑](#footnote-ref-8)
9. If the most recent set of financial statements is for a period earlier than 12 months from the date of Bid, the reason for this should be justified. [↑](#footnote-ref-9)
10. If applicable [↑](#footnote-ref-10)
11. The amount of the Bond shall be denominated in the currency of Jamaica or the equivalent amount in a freely convertible currency. [↑](#footnote-ref-11)
12. Costs shall be in the currencies of the Contract. [↑](#footnote-ref-12)
13. Costs shall be in the currencies of the Contract. [↑](#footnote-ref-13)
14. 2 Specify where necessary. [↑](#footnote-ref-14)
15. *1 The Guarantor shall insert an amount representing the percentage of the Contract Price specified in the contract and denominated either in the currency (cies) of the contract or a freely convertible currency acceptable to the procuring entity.* [↑](#footnote-ref-15)
16. *2 Insert the date twenty-eight days after the expected completion date. The procuring entity should note that in the event of an extension of the time for completion of the contract, the procuring entity 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 procuring entity might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the procuring entity’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”* [↑](#footnote-ref-16)
17. 1 *The Guarantor shall insert an amount representing the amount of the mobilization payment and denominated either in the currency(ies) of the mobilization payment as specified in the contract, or in a freely convertible currency acceptable to the procuring entity.* [↑](#footnote-ref-17)
18. 2 *Insert the expected expiration date of the Time for Completion. The procuring entity should note that in the event of an extension of the time for completion of the contract, the procuring entity 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 procuring entity might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the procuring entity’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”* [↑](#footnote-ref-18)