Standard Bidding Document: Procurement of Design-Build

with Pre-qualification



June 1, 2020

**Foreword**

This Standard Bidding Document for Procurement of Design-Build (“SBD-DB”) has been prepared by the Millennium Challenge Corporation (“MCC”) for use by Millennium Challenge Account Entities (“MCA Entities”) when procuring works which are to be designed largely by the Contractor who will then construct the works in accordance with the approved designs, through Competitive Bidding (“CB”) procedures in projects that are financed in whole or in part by MCC. This document is consistent with the April 2. 2020, MCC Program Procurement Guidelines[[1]](#footnote-1) (“MCC PPG”) and subsequent amendments and interim notices and will be amended as necessary to comply with subsequent amendments or revisions to the MCC PPG. This Document is intended for projects involving works having a value of USD 10 million or greater, but may be used for lower value works procurements with prior MCC approval.

Although this SBD-DB is based upon the World Bank Standard Bidding Documents for Procurement of Works,[[2]](#footnote-2) it has been adapted with numerous revisions to reflect MCC policies and procedures set out in the MCC PPG and other documents.

This SBD-DB assumes that pre-qualification has taken place before bidding.

**Summary Description**

**Standard Bidding Document for Procurement of Design-Build**

**PART 1 – BIDDING PROCEDURES**

**Definitions:** This section lists and defines terms that are used in Part 1 and appear in initial capitalization.

**Section I Instructions to Bidders (ITB)**

This section provides information to help Bidders prepare their Bids and describes the procedures for the submission, opening, and evaluation of Bids and the award of Contracts. **The text of the clauses in this section shall not be modified.**

**Section II Bid Data Sheet (BDS)**

This section sets out the particular requirements for the specific procurement and supplements the information included in Section I, Instructions to Bidders.

**Section III Bid Review, Evaluation Criteria, and Bidder Post-Qualification**

This section describes the criteria and requirements to determine the lowest evaluated responsive Bid and the qualifications of the Bidder to perform the Contract.

**Section IV Bidding Forms**

This section provides the forms which are to be completed by the Bidder and submitted as part of its Bid.

**PART 2 – EMPLOYER’S REQUIREMENTS**

**Section V Employer’s Requirements**

This section contains the volumes of information that more fully describe the Works to be designed and constructed and includes the following sub-sections:

***Schedule of Prices***

This sub-section, which may include one or more Schedules of Prices, contains an itemized description and listing of the quantities of Works to be performed or listing of the milestones to be completed. The quantities given in the Schedule of Prices are estimated and provisional, based on the Employer’s Requirements and the Drawings and are given to enable Bidders to prepare priced Bids. When the contract has been entered into, the priced Schedule of Prices will be used in the periodic valuation of Works executed.

***Employer’s Requirements***

This sub-section describes the scope of the Works to be designed and constructed and presents a clear statement of the required outputs of the completed Works and standards for materials, plant, supplies, and workmanship to be provided. The Employer’s Requirements also present the environmental, social, health and safety requirements to be satisfied by the contractor in designing and executing the Works. The Employer’s Requirements should reference applicable standards and codes. Where applicable, the Employer’s Requirements should specify the performance-based indicators to be achieved by the completed Works. Please note that the winning Contractor shall be required to prepare a site-specific “Contractor’s Environmental & Social Management Plan” (“CESMP”) and a site-specific “Health and Safety Management Plan” (“HSMP”) based on the relevant environmental, social, health and safety specifications found in the Employer’s Requirements and applicable country laws and regulations. Additional environmental, social, health and safety analyses and documents may be provided as reference to help Bidders understand what will be required to implement the environmental and social mitigation measures associated with the project.

***Drawings***

This sub-section contains drawings, noting approximate completion level, to allow Bidders to understand the type and complexity of the work involved and to price their Bids.

**PART 3 – CONDITIONS OF CONTRACT AND CONTRACT FORMS**

**Section VI Contract Notices and Agreement**

This section contains the notices (Notice of Intent to Award and Letter of Acceptance) to be sent to the Contractor and the Agreement to be entered into between MCA Entity and the Contractor.

**Section VII General Conditions of Contract (*GCC*)**

This section contains the form of Contract to be entered into by MCA Entities for the design and construction of Design-Build projects. The General Conditions of Contract that shall be used with this Standard Bidding Document are the FIDIC Conditions of Contract for Plant and Design-Build, First Edition, 1999, prepared and copyrighted by the International Federation of Consulting Engineers (*Fédération Internationale des Ingénieurs-Conseils*, or “FIDIC”) and licensed to MCC.  **The text of the clauses in this section shall not be modified.**

**Section VIII Particular Conditions of Contract (*PCC*)**

This section contains particular conditions of contract that have been developed by MCC to supplement the GCC and that shall be used by MCA Entities in contracting for Design-Build. The section also includes provisions that are a part of the Government’s and the MCA Entity’s obligations under the Compact and related documents which, under the terms of the Compact and related documents, are required to be transferred onto any Contractor or subcontractor who partakes in any MCC-funded procurement. The text of the clauses in this section must not be modified except in limited circumstances and only where noted in the introduction to Section VII, and then only with the prior approval of MCC. Additional project-specific conditions may be developed by the MCA Entity, with the approval of MCC, to the extent necessary.

**Section IX Contract Notices**

This section contains annexes and forms which, once completed, will be part of the Contract. These include the forms for Letter of Acceptance, Contract Agreement, Compliance with Sanctions Certification Form, Self-Certification Form, Performance Security, Advance Payment Security, and Retention Money Guarantee, as required.

**BIDDING DOCUMENT**

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

**[MCA Entity]**

**On Behalf of:**

**The Government of [Country]**

**[Millennium Challenge Account Entity]**

**Program**

**Funded by**

**THE UNITED STATES OF AMERICA**

**Through**

**THE MILLENNIUM CHALLENGE CORPORATION**

**for**

**Procurement of**

*[insert identification of the Design-Build]*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

**CB No:** *[insert CB number]*

**Invitation for Bids with Pre-qualification**

**[City, Country]**

**[Month, Day, Year]**

Re: [**insert name and ID number of procurement**]

Dear Madam/Sir:

The United States of America, acting through the Millennium Challenge Corporation (“MCC”), and the government of **[Country]** (the “Government” or “**[Go\_\_]**”), have entered into a Millennium Challenge Compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in **[Country]** (the “Compact”) in the amount of approximately **[amount]** USD (“MCC Funding”). The Government, acting through **[full legal name of the MCA Entity]** (the "MCA Entity" or the “Employer”) intends to apply a portion of the MCC Funding to eligible payments under a contract associated with this Invitations for Bids. Any payments made by the Employer under the proposed contract will be subject, in all respects, to the terms and conditions of the Compact and related documents, including restrictions on the use and distribution of MCC Funding. No party other than the Government and the Employer shall derive any rights from the Compact or have any claim to the proceeds of MCC Funding. The Compact and its related documents can be found on the MCC website ([www.mcc.gov](http://www.mcc.gov)) and on the website of the Employer.

The Compact Program includes **[provide the best available brief description of the general and specific goals and strategies of the Compact Program, the general areas of focus and the specific projects proposed, the expected duration, and other background information that would be helpful to potential Bidders]**.

The Employernowrequests interested Bidders to submit sealed Bids for the execution and completion of **[insert name of the contract]**, which is being offered based on the Schedule of Prices.

This Invitation to Bid has been addressed to the following pre-qualified Bidders:

**[insert list of pre-qualified Bidders]**

Only pre-qualified Bidders are invited to apply. It is not permissible to transfer this invitation to any other firm. Pre-qualified Bidders may associate with other firms only if specifically provided for in the Instructions to Bidders. The selection process, as described, includes a post qualification review to ensure that the winning Bidder continues to meet the qualification requirements.

A Contractor will be selected using the Competitive Biddingprocedures as described in the Bidding Document accompanying this Invitation for Bids. Bidders are advised that these procedures are governed by MCC Program Procurement Guidelines which can be found on the MCC website. Although these procedures are similar to those set out in the World Bank Standard Bidding Documents for Procurement of Works,[[3]](#footnote-3) there are several significant differences and firms are advised to review these instructions carefully.

Please note that a pre-Bid conference **[insert will/will not]** beheld as described in the Bid Data Sheet **(“BDS”),** Section II of this Bidding Document.

All Bids must be accompanied by a Bid Security in the form and amount specified in the BDS at ITB 20.1. Bids must be delivered to the address and in the manner specified in the BDSat ITB 23.1,no later than **[insert local time and date]**. Bids will be opened immediately thereafter in a public Bid opening at the address and time specified in the BDS at ITB 26.1.

Submissions from Bidders will be evaluated by a qualified bid review panel. The evaluation will include an assessment of the Bidders’ ability to carry out both the design and construction of the works and also of the Bidders’ proposed prices, all in accordance with Section III, Bid Review, Evaluation Criteria, and Bidder Post-Qualification.

Bidders should be aware that distance and customs formalities may require longer than expected delivery time. Late Bids will not be accepted under any circumstances and will be returned unopened at the written request and cost of the Bidder.

Please note that electronic Bids **[shall/shall not]** be accepted.

Yours sincerely,

**[Procurement Agent],**

**[For the Employer/MCA Entity]**

**[Address]**

**[Telephone number]**

**[Fax number]**

**[Email address]**

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**PART 1**

**BIDDING PROCEDURES**

**Section I Instructions to bidders**

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|  | | | **General**  *In Parts 1 (Bidding Procedures) and 2 (Employer’s Requirements) of this Bidding Document, the following words and expressions shall have the meanings stated. These definitions shall not apply to any words or expressions in the sections that make up Part 3 (Conditions of Contract and Contract Forms) of this Bidding Document, in which such words and expressions shall have the meanings stated in GCC Sub-Clauses 1.1 and 1.2 unless otherwise specified.*   1. “Addendum” or “Addenda” means a modification to this Bidding Document issued by the Employer. 2. “Appendix to Bid” means the completed pages of the form with the heading “Appendix to Bid” included in Section IV (Bidding Forms) which are made a part of the Bidder’s Bid. 3. “Associate” means any entity that forms the Bidder or Contractor. A Subcontractor is not an Associate. 4. “Association” or “association” or “Joint Venture” or “joint venture” means an association of entities that forms the Bidder, with or without a legal status distinct from that of its members. 5. “BDS” or “Bid Data Sheet” means the Bid Data Sheet in Section II (Bid Data Sheet) of this Bidding Document used to reflect specific requirements and/or conditions. 6. “Bid” means a bid for the provision of the Works submitted by a Bidder in response to this Bidding Document. 7. “Bid Security” means the security a Bidder may be required to furnish as part of its Bid in accordance with ITB Clause 20. 8. “Bidder” means any eligible entity or person, including any associate of such eligible entity or person that submits a Bid. 9. “Bidding Document” means this document, including any Addenda that may be made by the Employer. 10. “CESMP” means the Contractor’s Environmental & Social Management Plan prepared by the Contractor and approved by the Engineer under the Contract. 11. “Compact” means the Millennium Challenge Compact **identified in the BDS**.. 12. “Competitive Bidding” or “CB” means the competitive bidding procedures set out in the MCC Program Procurement Guidelines. 13. “Contract” means the contract proposed to be entered into between the Employer and the Contractor, including all of the documents specified in GCC Sub-Clause 1.1.1.1 and any attachments, appendices, and all documents incorporated by reference therein. 14. “Contract Agreement” means the completed form with the heading “Form of Contract Agreement” included in Section IX (Annex to the Particular Conditions – Contract Forms) which will be issued by the Employer with the Letter of Acceptance. 15. “Contract Price” means the price defined in GCC Sub-Clause 14.1 and includes adjustments in accordance with the Contract. 16. “Contractor” means the entity(ies) or person(s), which is responsible for providing the Works to the Employer under the Contract. 17. “CPPRS” or “Contractor Past Performance Reporting System” means MCC’s Contractor Past Performance Reporting System maintained and utilized in accordance with Part 2 of MCC’s Program Procurement Guidelines. 18. “Design Proposal” means the document titled Design Proposal, which is made part of the Bidder’s Bid. 19. “Employer” means the entity referenced in ITB 1.1, the party with which the Contractor signs the Contract for the provision of the Works. 20. “Engineer” means the person appointed by the Employer to act as the Engineer for the purposes of the Contract. 21. “Force Account” has the definition given in the MCC Program Procurement Guidelines. 22. “General Conditions of Contract” or “GCC” means the Conditions of Contract for Plant and Design-Build, First Edition, 1999, prepared and copyrighted by the International Federation of Consulting Engineers (*Fédération Internationale des Ingénieurs-Conseils*) and licensed to MCC. 23. “Government” means the government **identified in the BDS** 24. “Government-Owned Enterprise” or “GOE” has the definition given the term in the MCC Program Procurement Guidelines. 25. “HSMP” means the Health and Safety Management Plan prepared by the Contractor and approved by the Engineer under the Contract. 26. “Instructions to Bidders” or “ITB” means Section I (Instructions to Bidders) of this Bidding Document, including any Addenda, which provides Bidders with information needed to prepare their Bids. 27. “IFC Performance Standards” means the International Finance Corporation’s Performance Standards on Environmental and Social Sustainability. 28. “Letter of Acceptance” means the completed form with the heading “Form of Letter of Acceptance” included in Section IX (Annex to the Particular Conditions – Contract Forms) which will be issued by the Employer with the Contract Agreement. 29. “Letter of Bid” means the completed form with the heading “Form of Letter of Bid” included in Section IV (Bidding Forms) which are made a part of the Bidder’s Bid. 30. “Millennium Challenge Account Entity” or “MCA Entity” means the accountable entity designated by the Government to implement the Compact. 31. “Millennium Challenge Corporation” or “MCC” means the Millennium Challenge Corporation, a United States Government corporation, acting on behalf of the United States Government. 32. “MCC’s AFC Policy” means the policy identified in ITB Clause 3. 33. “MCC Counter-Trafficking in Persons Policy” means the policy identified in ITB Clause 4.3. 34. “MCC Funding” means the funding MCC has made available to the Government under the terms of the Compact. 35. “MCC Program Procurement Guidelines” or “MCC PPG” means the MCC Program Procurement Guidelines and its amendments posted from time to time on the MCC website at www.mcc.gov. 36. “Notice of Intent to Award” means the completed form with the heading “Notice of Intent to Award” included in Section VIII, Form of Notice of Intent to Award, which will be issued by the Employer in accordance with ITB 39.1. 37. “Performance Security” means the security the Contractor must furnish in accordance with GCC Sub-Clause 4.2. 38. “Provisional Sums” means an amount (if any) which may be specified by the Employer as a provisional estimate in cases in which the full extent or nature of the work is not yet known for the proposed execution of any part of the Works or for the supply of plant, materials or services as may be instructed by the Engineer under GCC Sub-Clause 13.5. 39. “Schedule of Prices” means a schedule which may include one or more Bills of Quantities, and shall contain an itemized description and listing of the quantities of Works to be performed or listing of the milestones to be completed. 40. “Site” means the place(s) identified in the Employer’s Requirements where the Works are to be executed. 41. “Social and Gender Integration Plan” means the Employer’s plan to maximize the positive social impacts of the Compact projects, and address cross-cutting social and gender issues such as human trafficking, child and forced labor, sexual harassment and HIV/AIDS. 42. “Taxes” has the meaning given the term in the Compact. 43. “Technical Offer” means the technical information provided as part of the Bidder’s Bid in accordance with ITB 17.1. 44. “Trafficking in Persons” or “TIP” has the definition given the term in the MCC Program Procurement Guidelines, and as set forth in ITB 4.1. 45. “Works” means what the Contract requires the Contractor to construct, install, and turn over to the Employer. | |
| 1. **Scope of Bid** | | | * 1. The Employer as **identified in the BDS** has issued an Invitation for Bids along with this Bidding Document for the procurement of the design and construction of Works as specified in Part 2, Employer’s Requirements. The winner will be selected according to Competitive Bidding procedures as set out in the MCC Program Procurement Guidelines in accordance with Section III, Bid Review, Evaluation Criteria, and Bidder Post-Qualification. The name, identification, and number of lots of this procurement are **provided in the BDS**.   2. The Employer will timely provide, at no cost to the Contractor, the inputs and facilities **specified in the BDS**, assist the firm in obtaining licenses and permits needed to carry out the Works, and make available relevant project data and reports. No other inputs will be provided. Therefore, a Bidder shall plan to cover all incurred expenses that may be foreseen to initiate and sustain the Works in a timely manner, including but not limited to office space, communication, insurance, office equipment, travel, etc. not otherwise **specified in the BDS**. | |
| 1. **Source of Funds** | | | 2.1 The United States of America, acting through the Millennium Challenge Corporation, and the Government have entered into the Compact. The Government, acting through the Employer, intends to apply a portion of the MCC Funding to eligible payments under the Contract. Any payments made under the Contract with MCC Funding will be subject, in all respects, to the terms and conditions of the Compact and related documents, including restrictions on the use and distribution of MCC Funding. No party other than the Government and the Employer shall derive any rights from the Compact or have any claim to any proceeds of MCC Funding. The Compact and its related documents can be found on the MCC website ([www.mcc.gov](http://www.mcc.gov)) or on the website of the Employer. | |
| 1. **Corruption and Fraud** | | | 3.1 MCC requires that all beneficiaries of MCC Funding, including the MCA Entity and any applicants, Bidders, Suppliers, contractors, Subcontractors, consultants, and sub-consultants under any MCC-funded contracts, to observe the highest standards of ethics during the procurement and execution of such contracts. MCC’s Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations (“MCC’s AFC Policy”) is applicable to all procurements and contracts involving MCC Funding and can be found on the MCC website. MCC’s AFC Policy requires that companies and entities receiving MCC Funding acknowledge notice of MCC’s AFC Policy and certify to the MCA Entity that they have acceptable commitments and procedures in place to address the potential for fraud and corruption.   1. For the purposes of these provisions, the terms set forth below are defined as follows:    1. ***“coercion”*** means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party, to improperly influence the actions of a party in connection with the implementation of any contract supported, in whole or in part, with MCC Funding, including such actions taken in connection with a procurement process or the execution of a contract;    2. ***“collusion”*** means a tacit or explicit agreement between two or more parties to engage in coercion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or a prohibited practice, including any such agreement designed to fix, stabilize, or manipulate prices or to otherwise deprive the MCA Entity of the benefits of free and open competition;    3. ***“corruption”*** means The offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of a public official, MCA Entity staff, MCC staff, consultants, or employees of other entities engaged in work supported, in whole or in part, with MCC Funding, including such work involving taking or reviewing selection decisions, otherwise advancing the selection process or contract execution, or the making of any payment to any third party in connection with or in furtherance of a contract;    4. ***“fraud”*** means any act or omission, including any misrepresentation, that knowingly or recklessly misleads or attempts to mislead a party in order to obtain a financial or other benefit in connection with the implementation of any contract supported, in whole or in part, with MCC Funding, including any act or omission designed to improperly influence (or attempt to influence) a selection process or the execution of a contract, or to avoid (or attempt to avoid) an obligation;    5. ***“obstruction of investigation into allegations of fraud or corruption”***means any act taken in connection with the implementation of any contract supported, in whole or in part, with MCC Funding: (a) that results in the deliberate destroying, falsifying, altering or concealing of evidence or making false statement(s) to investigators or any official in order to impede an investigation into allegations of coercion, collusion, corruption, fraud, or a prohibited practice; or (b) that threatens, harasses, or intimidates any party to prevent him or her from either disclosing his or her knowledge of matters relevant to an investigation or from pursuing the investigation; or (c) that is intended to impede the conduct of an inspection and/or the exercise of audit rights of MCC and/or the Office of the Inspector General (OIG) responsible for MCC provided under a Compact, Threshold Program agreement, or related agreements.    6. ***“prohibited practice”*** means any action that violates Section E (Compliance with Anti-Corruption Legislation), Section F (Compliance with Anti-Money Laundering Legislation), and Section G (Compliance with Terrorist Financing Legislation and Other Restrictions) of the Annex of Additional Provisions that will be made a part of MCC-funded contracts. 2. The Employer will reject a Bid (and MCC will deny approval of a proposed Contract award) if it determines that the Bidder recommended for award has, directly or through an agent, engaged in coercion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices in competing for the Contract. 3. MCC and the Employer have the right to sanction a Bidder or Contractor, including declaring the Bidder or Contractor ineligible, either indefinitely or for a stated period of time, to be awarded any MCC-funded contract if at any time either MCC or the Employer determines that the Bidder or Contractor has, directly or through an agent, engaged in coercion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices in competing for, or in executing, such a contract. 4. MCC and the Employer have the right to require that a provision be included in the Contract requiring the selected Bidder or Contractor to permit the Employer, MCC, or any designee of MCC, to inspect the Bidder’s or Contractor’s, or any of the Contractor’s suppliers or subcontractors on the Contract, accounts, records and other documents relating to the submission of its Bid or performance of the Contract and to have such accounts, records and other documents audited by auditors appointed by MCC or by the Employer with the approval of MCC. 5. In addition, MCC has the right to cancel any portion or all of the MCC Funding allocated to the Contract if it determines at any time that any representative of a beneficiary of MCC Funding engaged in coercion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices during the selection process or the execution of any MCC-funded contract, without the Employer having taken timely and appropriate action satisfactory to MCC to remedy the situation. | |
| 1. **Environmental and Social Requirements**   **Trafficking in Persons** | | | 4.1 MCC has a zero tolerance policy with regard to Trafficking in Persons. Trafficking in Persons (“TIP”) is the crime of using force, fraud and/or coercion to exploit another person. TIP can take the form of domestic servitude, peonage, forced labor, sexual servitude, bonded labor, and the use of child soldiers. This practice deprives people of their human rights and freedoms, increases global health risks, fuels growing networks of organized crime, and can sustain levels of poverty and impede development. MCC is committed to working with Partner countries to ensure appropriate steps are taken to prevent, mitigate, and monitor TIP risks in the countries it partners with and projects it funds.  4.2 The Employer’s Requirements set forth in Section V, Employer’s Requirements, of this Bidding Document may set out certain prohibitions, Contractor requirements, remedies and other provisions that will be made a binding part of any Contract that may be entered into. As such, those provisions, if included, should be given careful consideration.  4.3 Additional information on MCC’s requirements aimed at combating TIP can be found in the MCC Counter-Trafficking in Persons Policy that can be found on MCC’s website (<https://www.mcc.gov/resources/doc/policy-counter-trafficking-in-persons-policy>). All contracts funded by MCC are required to comply with the Policy’s Counter-TIP Minimum Compliance Requirements. Contracts for projects categorized by MCC as high-risk for TIP are required to implement a TIP Risk Management Plan (which is to be developed by the MCA Entity and implemented by the corresponding contractor). | |
| **MCC Environmental Guidelines and** **IFC Performance Standards** | 4.4 The Bidder and Contractor shall ensure that its activities, including any activities carried out by its subcontractors, under the Contract comply with MCC’s Environmental Guidelines (as such term is defined in the Compact or related agreement, which are available at <http://www.mcc.gov>), and are not ‘likely to cause a significant environmental, health, or safety hazard’ as defined in such MCC Environmental Guidelines. The Bidder and Contractor are also required to comply with the IFC Performance Standards for the purposes of the Contract. Additional information on the Performance Standards can be found here: <http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards> | |
| 1. **Eligibility** | | |  | |
| **Eligible Bidders** | | | 5.1 The eligibility criteria set out in this ITB will apply to the Bidder, including all parties constituting the Bidder, for any part of the Contract, including related services.  5.2 A Bidder may be a private entity, certain government-owned entities (in accordance with MCC’s Program Procurement Guidelines as described in ITB 5.4), or any combination of such entities supported by a letter of intent to enter into an agreement or under an existing agreement in association in the form of a joint venture or other association.  5.3 A Bidder, all parties constituting the Bidder, and any subcontractors and suppliers for any part of the Contract, including related services, may have the nationality of any country, subject to the nationality restrictions specified in this Section 5. An entity will be deemed to have the nationality of a country if such entity is constituted, incorporated, or registered in, and operates in conformity with, the provisions of the laws of that country. | |
| **Government-Owned Enterprises** | | | 5.4 Government-Owned Enterprises (“GOEs”) are not eligible to compete for MCC-funded contracts for goods or works. GOEs (a) may not be party to any MCC-funded contract for goods or works procured through an open solicitation process, limited bidding, direct contracting, or sole source selection; and (b) may not be prequalified or shortlisted for any MCC-funded contract for goods or works anticipated to be procured through these means. This prohibition does not apply to Government-owned Force Account units owned by the Government of the Employer’s country, or Government-owned educational institutions and research centers, any statistical, mapping or other technical entities not formed primarily for a commercial or business purpose, or where a waiver is granted by MCC in accordance with Part 7 of MCC’s Program Procurement Guidelines. All Bidders must certify their status as part of their Bid submission. | |
| **Joint Venture or Association** | | | 5.5 In the case where a Bidder is, or proposes to be, a joint venture or other association (a) all members of the joint venture or association must satisfy the legal, financial, litigation and other requirements set out in this Bidding Document; (b) all members of the joint venture or association will be jointly and severally liable for the execution of the Contract; and (c) the joint venture or association will nominate a representative who will have the authority to conduct all business for and on behalf of any and all the members of the joint venture or the association during the bidding process and, in the event the joint venture or association is awarded the Contract, during Contract performance. | |
| **Conflicts of Interest** | | | 5.6 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified, unless the conflict of interest has been mitigated and the mitigation is approved by MCC. The Employer requires that Bidders and Contractors hold the Employer’s interests paramount at all times, strictly avoid conflicts of interest, including conflicts with other assignments or their own corporate interests, and act without any consideration for future work. Without limitation on the generality of the foregoing, a Bidder or Contractor, including all parties constituting the Bidder, or Contractor and any subcontractors and suppliers for any part of the Contract, including related services, and their respective personnel and affiliates, may be considered to have a conflict of interest and (i) in the case of a Bidder may be disqualified or (ii) in the case of a Contractor, the Contract may be terminated if they:   * 1. have at least one controlling partner in common with one or more other parties in the process contemplated by this Bidding Document; or   2. have the same legal representative as another Bidder for purposes of this Bid; or   3. have a relationship, directly or through common third parties, that puts them in a position to have access to information about or influence over the Bid of another Bidder, or influence the decisions of the Employer regarding the selection process for this procurement; or   4. participate in more than one Bid in this process; participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which the party is involved; however, this provision does not limit the inclusion of the same subcontractor in more than one Bid; or   5. are, or have been associated in the past, with a person or entity, or any of their affiliates, which has been engaged to provide consulting services for the preparation of the preliminary design, requirements, or other documents to be used for the procurement and provision of the Works under the Contract; or   6. any of their affiliates have been hired (or are proposed to be hired) by the Employer as the Engineer for the Contract; or   7. are themselves, or have a business or family relationship with, (i) a member of the Employer’s board of directors or staff, (ii) the project’s Implementing Entity’s staff, or (iii) the Procurement Agent, Fiscal Agent, or Auditor (as defined in the Compact or related agreements) hired by the Employer in connection with the Compact, any of whom is directly or indirectly involved in any part of (A) the preparation of this Bidding Document, (B) the selection process for this procurement, or (C) supervision of the Contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to MCC; or   8. any of their affiliates have been or, at present, are engaged by the Employer in the capacity of the Implementing Entity, Procurement Agent, Fiscal Agent, or Auditor under the Compact.   Bidders and the Contractor have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of the Employer, or that may be reasonably perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Bidder or Contractor or the termination of the Contract. | |
| **Ineligibility** | | | 5.7 A Bidder, all parties constituting the Bidder, and any subcontractors and suppliers for any part of the Contract, including related services, and their respective personnel and affiliates, will not be any person or entity under (a) a declaration of ineligibility for engaging in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices, as contemplated by ITB 3.1 above, or (b) that has been declared ineligible for participation in a procurement in accordance with the procedures set out in Part 10 of MCC’s Program Procurement Guidelines (Eligibility Verification Procedures) that can be found on MCC’s website. This would also remove from eligibility for participation in procurement any entity that is organized in or has its principal place of business or a significant portion of its operations in any country that is subject to sanctions or restrictions by law or policy of the United States.  5.8 A Bidder or Contractor, all parties constituting the Bidder or Contractor, and any subcontractors and suppliers for any part of the Contract, including related services, and their respective personnel and affiliates not otherwise made ineligible for a reason described in this ITB 5 will nonetheless be excluded if:   1. as a matter of law or official regulation, the Government prohibits commercial relations with the country of the Bidder or Contractor (including any associates, subcontractors, and suppliers and any respective affiliates); or 2. by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Government prohibits any import of goods from the country of the Bidder or Contractor (including any associates, subcontractors, and suppliers and any respective affiliates) or any payments to entities in such country; or 3. such Bidder or Contractor, any parties constituting the Bidder or Contractor, any subcontractor or supplier or their respective personnel or affiliates are otherwise deemed ineligible by MCC pursuant to any policy or guidance that may, from time to time, be in effect as posted on MCC’s website.   5.9 Bidders or Contractors must also satisfy all other eligibility criteria contained in the MCC Program Procurement Guidelines. In the case where a Bidder or Contractor intends to join with an associate, then such associate will also be subject to the eligibility criteria set forth in this Bidding Document and the MCC Program Procurement Guidelines. | |
| **Evidence of Continued Eligibility** | | | 5.10 Bidders and the Contractor shall provide such evidence of their continued eligibility in a manner satisfactory to the Employer, as the Employer shall reasonably request. | |
| **Commissions and Gratuities** | | | 5.11 A Bidder will furnish information on commissions and gratuities, if any, paid or to be paid relating to this procurement or its Bid and during performance of the Contract if the Bidder is awarded the Contract, as requested in this Bidding Document. | |
| 1. **Eligible Materials, Equipment, and Services** | | | 6.1 The materials, equipment, and services to be supplied under the Contract may have their origin in any country subject to the same restrictions specified for Bidders and their associates and personnel set forth in ITB 5.3 above. At the Employer’s request, Bidders will be required to provide evidence of the origin of materials, equipment, and services.  6.2 For purposes of ITB 6.1 above, “origin” means the place where the materials and equipment are mined, grown, cultivated, produced, manufactured, or processed, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized article results that differs substantially in its basic characteristics, purposes or utility from its underlying components.  6.3 The origin of materials, equipment, and services is distinct from the nationality of the Bidder.  6.4 Country of origin for major items of plant, materials, goods, and services provided under the Contract must be indicated in the Appendix to Bid included in Section IV, Bidding Forms. During the Contract implementation, the sources used will be verified by the Employer’s Engineer. | |
|  | | | **B. Contents of Bidding Document** | |
| 1. **Sections of Bidding Document** | | | 7.1 This Bidding Document consists of Parts 1, 2, and 3, which include all the sections indicated below and should be read in conjunction with any Addenda issued in accordance with ITB 9.  **PART 1 Bidding Procedures**   * Section I. Instructions to Bidders * Section II. Bid Data Sheet * Section III. Bid Review, Evaluation Criteria, and Bidder Post-Qualification * Section IV. Bidding Forms   **PART 2 Employer’s Requirements**   * Section V. Employer’s Requirements   **PART 3 Conditions of Contract and Contract Forms**   * Section VI. Contract Notices and Agreement * Section VII. General Conditions of Contract * Section VIII. Particular Conditions of Contract * Section IX. Contract Annexes | |
|  | | | 7.2 The Invitation for Bids issued by the Employer is not part of this Bidding Document.  7.3 The Employer is not responsible for the completeness of this Bidding Document and its Addenda if they were not obtained directly from the source stated by the Employerin the Invitation for Bids.  7.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in this Bidding Document. Failure to furnish all information or documentation required by this Bidding Document may result in the rejection of the Bid. | |
| 1. **Clarification of Bidding Document, Site Visit, Pre-Bid Conference** | | | 8.1 A prospective Bidder requiring any clarification of this Bidding Document shall contact the Employer in writing at the Employer’s address as **indicated in the BDS** or raise its inquiry during the pre-Bid conference if provided for in accordance with the BDS. The Employer will respond in writing to any request for clarification, provided that such request is received no later than the number of days as **specified in the BDS** prior to the deadline for submission of Bids. The Employer shall post the responses on its website, including a description of the inquiry but without identifying its source by no later than the number of days as **specified in the BDS** prior to the deadline for submission of Bids. Should the clarification result in changes to the essential elements of this Bidding Document, the Employer shall amend this Bidding Document following the procedure under ITB 9 and ITB 23.2.  8.2 The Bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself, on its own responsibility, all information that may be necessary for preparing the Bid and entering into a Contract for design and construction of the Works. The costs of visiting the Site shall be at the Bidder’s own expense. If a Site visit is organized by the Employer, this shall be **indicated in the BDS**.  8.3 The Bidder and any of its personnel or agents will be granted permission by the Employer to enter its premises and lands for the purpose of such visit upon the express condition that the Bidder, its personnel, and agents shall release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.  8.4 The Bidder’s designated representative is invited to attend a pre-Bid conference, **if provided for in the BDS**. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.  8.5 The Bidder is requested, as far as possible, to submit any questions in writing, to reach the Employer no later than the number of days before the pre-Bid conference as **specified in the BDS**.  8.6 Minutes of the pre-Bid conference, including the text of the questions and answers raised at the pre-Bid conference, without identifying the source, will be posted on the Employer’s website as **indicated in the BDS**. Any modification to this Bidding Document that may become necessary as a result of the pre-Bid conference shall be made by the Employer exclusively through the issue of an Addendum and not through the minutes of the pre-Bid conference.  8.7 Nonattendance at the pre-Bid conference or the site visit will not be a cause for disqualification of a Bidder and will not be taken into consideration during review of its Bid. | |
| 1. **Amendment of Bidding Document** | | | 9.1 At any time prior to the deadline for submission of Bids, the Employer may amend this Bidding Document by issuing Addenda.  9.2 All Addenda issued shall be part of this Bidding Document, shall be communicated in writing to all pre-qualified Bidders, and shall be posted on the Employer’s website.  9.3 To give prospective Bidders reasonable time in which to take an Addendum into account in preparing their Bids, the Employer may extend the deadline for the submission of Bids at its sole discretion. | |
|  | | | **C. Preparation of Bids** | |
| 1. **Cost of Bidding** | | | 10.1 Except as otherwise **provided in the** **BDS**, the Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process. | |
| 1. **Language of Bid** | | | 11.1 The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Employer, shall be written in English. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in English in which case, the English version shall govern. | |
| 1. **Documents Comprising the Bid** | | | 12.1 The Bid shall comprise the following:   1. Letter of Bid and Appendix to Bid; 2. All Bid forms in accordance with Section IV, Bidding Forms, including priced Schedule of Prices, in accordance with ITB 13 and 15; 3. Bid Security, in accordance with ITB 20; 4. Written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 21.2; 5. Technical Offer (including Design Proposal) in accordance with ITB 17; 6. Completed and certified Certification of Compliance with Sanctions Certification Form (Form TECH-8); and 7. Any other document **required in the** **BDS**;   and shall be signed in accordance with ITB 21.2.  12.2 If a pre-qualified Bidder considers that it may enhance its ability to perform the Design-Build by associating with another firm in a JV or other association, it may associate with either (a) a non-pre-qualified firm, or (b) a pre-qualified firm if so **indicated in the BDS,** a pre-qualified Bidder must first obtain the approval of the Employer if it wishes to enter into a joint venture or other association with a non-pre-qualified firm or a pre-qualified Bidder. In the case of association with a non-pre-qualified firm, the pre-qualified firm shall act as an association with a non-pre-qualified firm, the pre-qualified firm shall act as association leader. In the case of a JV, all partners shall be jointly and severally liable and the pre-qualified Bidder shall act as the leader of the JV. If the Employer has granted approval of the JV or other association, in addition to the requirements above, Bids submitted by a JV or other association shall include a copy of the JV/Association agreement entered into by all members. Alternatively, a letter of intent to execute a JV/Association agreement shall be signed by all members and submitted with the Bid, together with a copy of the proposed agreement.  12.3 If there is a change in the legal structure of the Bidder after the Bid submission, the Bidder is required to immediately inform the Employer. However, any change of legal structure shall not be used to satisfy a qualification requirement that was not satisfied as of the deadline of Applications for Pre-Qualification. | |
| 1. **Letter of Bid and Schedules** | | | 13.1 The Letter of Bid and Schedules, including the Schedule of Prices*,* shall be prepared using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested. | |
| 1. **No Alternative Bids** | | | 14.1 Alternative Bids shall not be considered. | |
| 1. **Bid Prices and Discounts** | | | 15.1 The prices and discounts quoted by the Bidder in the Letter of Bid and in the Schedule of Prices shall conform to the requirements specified below Discounts, if any, shall be considered if so **specified in the BDS**.  15.2 Unless otherwise **specified in the BDS**, Bidders shall quote for the entire scope of the Works 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 Document in respect of the design, manufacture, including procurement and subcontracting (if any), delivery, construction, installation and completion of the Works. This includes all requirements under the Contractor’s responsibilities for testing, pre-commissioning and commissioning of the Works and, where so required by the Bidding Document, 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 Document, all in accordance with the requirements of the General Conditions. Items against which no price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed to be covered by the prices for other items.  15.3 Bidders are required to quote the price for the commercial, contractual and technical obligations outlined in the Bidding Document. The price to be quoted in the Letter of Bid, in accordance with ITB 13.1, shall be the total price of the Bid, excluding any discounts offered.  15.4 The Bidder shall quote any unconditional discounts and the methodology for their application in the Letter of Bid, in accordance with ITB 13.1.  15.5 Bidders shall give a breakdown of the prices in the manner and detail called for in the Price Schedules included in Section IV, Bidding Forms.  15.6 In the Schedules, Bidders shall give the required details and a breakdown of their prices as follows:   * + - 1. Plant, Goods and Equipment to be supplied from abroad shall be quoted on CIP-named place of destination basis, or **as specified in the BDS**.       2. Plant, Goods and Equipment to be supplied from within the Employer’s Country shall be quoted on an EXW Incoterm basis (such as “ex-works,” “ex-factory,” “ex-warehouse” or “off-the-shelf,” as applicable), or **as specified in the BDS**.       3. Installation Services shall include rates or prices for local transportation to named place of final destination **as specified in the BDS**, insurance and other services incidental to delivery of the Works, 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 Document, as necessary for the proper execution of the installation and other services, taxes, duties, levies and charges not exempt under the MCC Compact agreements, payable in the Employer’s country as of twenty-eight (28) days prior to the deadline for submission of bids.   15.7 The current edition of Incoterms, published by the International Chamber of Commerce, shall govern.  15.8 The prices shall be either fixed or adjustable **as specified in the BDS**.  15.9 In the case of Fixed Price, prices quoted by the Bidder shall be fixed during the Bidder’s performance of the Contract and not subject to variation on any account. A bid submitted with an adjustable price quotation will be treated as non-responsive and rejected.  15.10 In the case of Adjustable Price, prices quoted by the Bidder shall be subject to adjustment during performance of the Contract to reflect changes in the cost elements such as labor, material, transport and Contractor’s equipment in accordance with the procedures specified in the corresponding Appendix to the Contract Agreement. A bid submitted with a fixed price quotation will not be rejected, but the price adjustment will be treated as zero. Bidders are required to indicate the source of labor and material indices in the corresponding Form in Section IV, Bidding Forms, so as to justify the indices and weightings  15.11 If so **specified in the BDS**, Bids are being invited for individual lots or for any combination of lots (packages). Bidders wishing to offer any price reduction for the award of more than one lot shall specify in their Bid the price reductions applicable to each package, or, alternatively, to individual lots within the package. Price reductions or discounts shall be submitted in accordance with ITB 15.4, provided the Bids for all lots are submitted and opened at the same time.  15.12 Clause 21 of Part 3, Section VII, Particular Conditions of Contract, sets forth the tax provisions of the Contract. Bidders should review this clause carefully in preparing their Bid. | |
| 1. **Currencies of Bid and Payment** | | | 16.1 The currency(ies) of the Bid and the currency(ies) of payments shall be as **specified in the BDS***.* | |
| 1. **Documents Comprising the Technical Offer** | | | 17.1 The Bidder shall furnish a Technical Offer including a Design Proposal, a statement of work methods, equipment, personnel, schedule, and any other information as stipulated in Section IV, Bidding Forms, in sufficient detail to demonstrate the adequacy of the Bidder’s Technical Offer to meet the design and construction of the Employer’s Requirements and the completion time. | |
| 1. **Documents Confirming the Qualifications of the Bidder** | | | 18.1 In accordance with Section III, Bid Review, Evaluation Criteria, and Bidder Post-Qualification, to establish that the Bidder continues to meet the criteria used at the time of pre-qualification, the Bidder shall provide all information, requested in the corresponding information sheets and forms included in Section IV, Bidding Forms. | |
| 1. **Period of Validity of Bids** | | | 19.1 Bids shall remain valid for the period **specified in the BDS** after the Bid submission deadline date prescribed by the Employer. A Bid valid for a shorter period may be rejected by the Employer as non-responsive.  19.2 In exceptional circumstances, prior to the expiration of the Bid validity period, the Employer may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. If a Bid Security is requested, it shall also be extended for twenty-eight (28) days beyond the deadline of the extended validity period. 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, except as provided in ITB 19.3.  19.3 If the award is delayed by a period exceeding eighty four (84 days) beyond the expiry of the initial Bid validity, the following conditions shall apply:   1. Rates quoted by Bidders in their priced Schedule of Prices shall be adjusted by the factor **specified in the BDS**; and 2. Bid evaluation shall be based on the Bid price without taking into consideration any adjustment applied pursuant to paragraph (a) above. 3. If any of the Key Personnel become unavailable for the extended validity period, the Bidder shall provide a written adequate justification and evidence satisfactory to the Employer together with the substitution request. In such case, a replacement Key Personnel shall have equal or better qualifications and experience than those of the originally proposed Key Personnel. The technical evaluation, however, will remain to be based on the evaluation of the CV of the original Key Personnel. 4. If the Bidder fails to provide a replacement Key Personnel with equal or better qualifications, or if the provided reasons for the replacement or justification are unacceptable to the Employer, such Bid may be rejected. | |
| 1. **Bid Security** | | | 20.1 **If so required in the BDS**, the Bidder shall furnish, as part of its Bid, a Bid Security in original form. If a Bidder is bidding on multiple lots, the Bid security required shall be as specified in ITB 20.2.  20.2 The Bid Security shall be in the amount and currencies **specified in the BDS** and shall:   * 1. at the Bidder’s option, be in the form of either an unconditional bank guarantee substantially in the format of Form of Bid Security (Bank Guarantee) included in Section IV. Bid Forms, or another type of security **specified in the BDS**;   2. be issued by a reputable institution selected by the Bidder and located in any eligible country (as determined in accordance with ITB Clause 5). If the Bid Security is issued by a financial institution located outside the Employer’s country, the Bid Security must be confirmed by a correspondent financial institution located in the Employer’s country, satisfactory to the Employer, to make the Bid Security enforceable. In the case of a bank guarantee, the Bid Security shall be submitted either using the Bid Security Form included in Section IV, Bidding Forms, or another substantially similar format approved by the Employer prior to Bid submission. In either case, the form must include the complete name of the Bidder and identify the correspondent financial institution if the financial institution is located outside the Employer’s country.   3. be payable promptly upon written demand by the Employer in case the conditions listed in this ITB Clause 20.2 are invoked;   4. be submitted in its original form; copies will not be accepted;   5. remain valid for a period of twenty-eight (28) days beyond the original validity period of Bids, or beyond any period of extension subsequently requested under ITB Clause 20.2. | |
|  | | |  | |
|  | | | 20.3 Any Bid not accompanied by an enforceable and compliant Bid Security (if required) shall be rejected by the Employer as non-responsive. Bidders are advised that a Bid-securing Declaration or a Bid Bond is not an acceptable form of Bid Security, and if a bid-securing declaration or a bid bond is provided as Bid Security, the Bid shall be deemed non-responsive and rejected.  20.4 The Bid Security of unsuccessful Bidders shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required Performance Security.  20.5 The Bid Security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required Performance Security.  20.6 The Bid Security of a JV or other association shall be in the name of the association that submits the Bid. If the association has not been legally constituted at the time of bidding, the Bid Security shall be in the names of all future partners as named in the letter of intent referred to in ITB 12.2. | |
|  | | | 20.7 A Bid Security may be forfeited, in the Employer’s sole discretion:   1. if a Bidder withdraws its Bid during the period of Bid validity specified by the Bidder in the Letter of Bid form, except as provided under ITB 19.2 in case of Bid extension, or 2. if the successful Bidder fails to sign the Contract in accordance with ITB 41, or fails to furnish a Performance Security in accordance with GCC Sub-Clause 4.2, as described in ITB 42. | |
| 1. **Format and Signing of Bid** | | | 21.1 The Bidder shall prepare one original of the documents comprising the Bid as described in ITB 12 and clearly mark it Original. In addition, the Bidder shall submit copies of the Bid, in the number **specified in the BDS** and clearly mark each one Copy. In the event of any discrepancy between the original and the copies, the original shall prevail.  21.2 The original and all copies of the Bid shall be typed and shall be signed by a person duly authorized to sign on behalf of the Bidder. A letter of authorization shall consist of a written confirmation as **specified in the BDS** and shall be attached to the Bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Bid where entries or amendments have been made shall be signed or initialed by the person(s) signing the Bid.  21.3 A Bid submitted by a JV or other association shall comply with the following requirements:   1. be signed so as to be legally binding on all partners; and 2. include the Contractor’s representatives’ authorization and be signed by those legally authorized to sign on behalf of the JV or association.   21.4 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid. | |
|  | | | **D. Submission and Opening of Bids** | |
| 1. **Sealing and Marking of Bids** | | | 22.1 The Bidder shall enclose the original and all copies of the Bid, 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 outer envelope.  22.2 The inner and outer envelopes shall:   1. bear the name and address of the Bidder; 2. be addressed to the Employer; 3. bear the specific identification of this bidding process **specified in the BDS** **1.1**; and 4. bear a warning not to open before the time and date for Bid opening.   22.3 If all envelopes are not sealed and marked as required, the Employer will assume no responsibility for the misplacement or premature opening of the Bid. | |
| 1. **Deadline for Submission of Bids** | | | 23.1 Bids must be received by the Employer at the address and no later than the date and time **specified in the BDS**. Bids may be received electronically if **specified in the BDS.**  23.2 The Employer may, at its discretion, extend the deadline for the submission of Bids by amending this Bidding Document in accordance with ITB 9, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended. | |
| 1. **Late Bids** | | | 24.1 The Employer shall not consider any Bid that arrives after the deadline for submission of Bids, in accordance with ITB 23. Any Bid received by the Employer after the deadline for submission of Bids shall be declared late, rejected, and returned unopened at the Bidder’s expense to the Bidder, if so requested by the Bidder. | |
| 1. **Withdrawal, Substitution, and Modification of Bids** | | | 25.1 A Bidder may withdraw, substitute, or modify its Bid after it has been submitted, but before the deadline for submission of Bids, by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 21.2 (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Bid must accompany the respective written notice. All notices must be:   1. prepared and submitted in accordance with ITB 21 and ITB 22 (except that withdrawal notices do not require copies), and, in addition, the respective envelopes shall be clearly marked “Withdrawal,” “Substitution,” “Modification;” and 2. received by the Employer prior to the deadline prescribed for submission of Bids, in accordance with ITB 23. | |
|  | | | 25.2 Bids requested to be withdrawn in accordance with ITB 25.1 shall be returned unopened at the expense of the Bidder, if so requested by the Bidder.  25.3 No Bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of Bids and the expiration of the period of Bid validity specified by the Bidder on the Letter of Bid or any extension thereof. | |
| 1. **Bid Opening** | | | 26.1 The Employer shall open the Bids in public at the address, date and time **specified in the BDS.** Anyone may attend that Bid opening including representatives of the Bidders and members of the general public.  26.2 First, envelopes marked Withdrawal shall be opened and read out and the envelope with the corresponding Bid shall not be opened, but returned to the Bidder. No Bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Bid opening. Next, envelopes marked Substitution shall be opened and read out and exchanged with the corresponding Bid being substituted; the substituted Bid shall not be opened, but returned to the Bidder at the Bidder’s expense, if so requested by the Bidder. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Bid opening. Envelopes marked Modification shall be opened and read out with the corresponding Bid. No Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Bid opening. Only Bids that are opened and read out at Bid opening shall be considered further.  26.3 All other envelopes shall be opened one at a time, and the official shall read aloud: the name of the Bidder and whether there is a modification; the Bid price(s), including any discounts; the presence of a Bid Security, if required; and any other details as the Employer may consider appropriate. Only discounts read out at Bid opening shall be considered for evaluation. No Bid shall be rejected at Bid opening except for late Bids, in accordance with ITB 24.1.  26.4 The Employer shall prepare a record of the Bid opening that shall include, at a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid price, per lot if applicable, including any discounts; and the presence or absence of a Bid Security, if one was required. The Bidder’s representatives who are present shall be required to sign the record. The omission of any signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be posted on the Employer’s website. | |
|  | | | **E. Evaluation and Comparison of Bids** | |
| 1. **Confidentiality** | | | 27.1 From the time Bids are opened to the time the Contract is awarded, Bidders may not contact the Employer on any matter related to its Bid. Information relating to the evaluation of Bids and recommendations of Contract award shall not be disclosed to Bidders or any other persons not officially concerned with such process until publication of the award to the successful Bidder has been announced pursuant to ITB 43.1. The undue use by any Bidder or by any other individual of confidential information related to the process may result in the rejection of its Bid or may invalidate the entire procurement process.  27.2 Any attempt or effort by a Bidder to influence the Employer in the evaluation of Bids or Contract award decisions may result in the rejection of its Bid and may subject the Bidder to the provisions of the Government’s, the Employer’s, and MCC’s anti-fraud and corruption policies and the application of other sanctions and remedies to the extent applicable.  27.3 Notwithstanding the above, from the time of Bid opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the bidding process, it may do so in writing, at the address **specified in the BDS**. | |
| 1. **Clarification of Bids** | | | 28.1 To assist in the examination, evaluation, and comparison of the Bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its Bid. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer’s request for clarification and the Bidder’s response shall be in writing. 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 Employer in the evaluation of the Bids, in accordance with ITB 32.  28.2 If a Bidder does not provide clarifications of its Bid by the date and time set in the Employer’s request for clarification, its Bid may be rejected. | |
| 1. **Deviations, Reservations, and Omissions** | | | 29.1 During the evaluation of Bids, the following definitions apply:   1. *“deviation”* is a departure from the requirements specified in this Bidding Document; 2. *“reservation”* is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in this Bidding Document; and 3. *“omission”* is the failure to submit part or all of the information or documentation required in this Bidding Document. | |
| 1. **Bid Review, Evaluation of Bids, and Post-Qualification** | | | 30.1 The Employer’s review of the Bid is to be based on the contents of the Bid itself, as defined in ITB 12, and will involve the following processes as detailed further in Section III, Bid Review, Evaluation Criteria, and Bidder Qualification Requirements.   1. **Administrative review** is conducted to determine that the Bid is complete, including all required documents and forms. The Bidder may be requested to submit additional information or documentation and/or to correct nonmaterial nonconformities in the Bid related to documentation requirements. Failure of the Bidder to comply with the request to respond to a request within the deadline stated in the request may result in rejection of its Bid. 2. **Responsiveness determination** is conducted to determine the responsiveness of the Bid, as detailed in ITB 31. This process will include a detailed technical review. The Employer may request any Bidder to clarify its Bid according to the procedures set out in ITB 28. The Employer reserves the right at its sole discretion to conduct this responsiveness determination in sequence, beginning with the lowest priced Bid. If a Bid is not substantially responsive to the requirements of this Bidding Document, it shall be rejected and may not subsequently be made responsive by correction of a material deviation, reservation, or omission. 3. **Qualification review** shall be conducted to determine if the Bidder continues to satisfy the qualification requirements as described in ITB 5, 6, 18.1, and 34 and Section III, Bid Review, Evaluation Criteria, and Bidder Post-Qualification. The determination shall be based upon an examination of the documentary evidence of the Bidder’s qualifications submitted by the Bidder, pursuant to ITB 18.1, the Bidder’s record of past performance, a review of references, and any other source at the Employer’s discretion. An affirmative determination of qualification shall be a prerequisite for award of the Contract to the Bidder.   Bidders shall provide such evidence of their continued qualification to perform the Works (including any changes in their litigation history) in a manner satisfactory to the Employer, as the Employer shall reasonably request at any time prior to the award of contract.   1. **Price review** is conducted to review the price forms for arithmetical errors, omissions or clarifications and to rank the Bids from lowest to highest price. The procedures for correcting arithmetical errors are set out in ITB 32.1. Bid prices shall also be reviewed for price reasonableness as required by the MCC Program Procurement Guidelines.   **Sequence of review:** The Employer reserves the right to carry out the review process in any sequence and the right not to review higher priced Bids unless a lower priced Bid is rejected. | |
| 1. **Determination of Responsiveness and Nonmaterial Nonconformities** | | | 31.1 The Employer’s determination of a Bid’s responsiveness is to be based on the contents of the Bid itself, as defined in ITB 12.  31.2 A substantially responsive Bid is one that meets the requirements of this Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,   1. if accepted, would: 2. affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or 3. limit in any substantial way, inconsistent with this Bidding Document, the Employer’s rights or the Bidder’s obligations under the proposed Contract; or 4. if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Bids.   31.3 The Employer shall examine the technical aspects of the Bid submitted in accordance with ITB 17, Technical Offer including Design Proposal, in particular, to confirm that all requirements of Part II, Employer’s Requirements, have been met without any material deviation, reservation or omission.  31.4 If a Bid is not substantially responsive to the requirements of this Bidding Document, it shall be rejected by the Employer and may not be subsequently made responsive by correction of the material deviation, reservation or omission.  31.5 Provided that a Bid is substantially responsive, the Employer may waive any nonconformities in the Bid that do not constitute a material deviation, reservation or omission.  31.6 Provided that a Bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the Bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.  31.7 Provided that a Bid is substantially responsive, the Employer shall rectify quantifiable nonmaterial nonconformities related to the Bid price. To this effect, the Bid price 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 Section III, Bid Review, Evaluation Criteria, and Bidder Qualification Requirements. | |
| 1. **Correction of Arithmetical Errors** | | | 32.1 During the price review as per ITB 30.1(d), the Employer shall correct arithmetical errors on the following basis:   1. 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 theEmployer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected; 2. if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and 3. 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 arithmetical error, in which case the amount in figures shall prevail subject to (a) and (b) above.   32.2 If the Bidder does not accept the correction of errors, its Bid shall be rejected. | |
| 1. **Conversion to Single Currency** | | | 33.1 For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted into a single currency as **specified in the BDS**. | |
| 1. **Price Reasonableness** | | | 34.1 If the price reasonableness analysis suggests that a Bid is significantly unbalanced or front loaded, the Employer may require the Bidder to produce a detailed price analysis for any or all items of the Schedule of Prices that demonstrates the internal consistency of prices with the construction methods and schedule proposed.  34.2 After the evaluation of the information and detailed price analyses presented by the Bidder, the Employer may as appropriate:  (a)   accept the Bid; or  (b)  require that the total amount of the Performance Security be increased at the expense of the Bidder to a level not exceeding the percentage **specified in the BDS**; or  (c)   reject the Bid.  A negative determination of price reasonableness (either unreasonably high or unreasonably low) may be a reason for rejection of the Bid at the discretion of the Employer. The Bidder shall not be permitted to revise its Bid after this determination. | |
| 1. **No Margin of Preference** | | | 35.1 In accordance with the MCC Program Procurement Guidelines, a margin of preference for domestic Bidders shall not be used. | |
| 1. **Past Performance and Reference Check** | | | 36.1 In accordance with the MCC Program Procurement Guidelines, the Bidder’s performance on earlier contracts will be considered a factor in the Employer’s qualification of the Bidder.  The Employer reserves the right to check the performance references provided by the Bidder or to use any other source at the Employer’s discretion. If the Bidder (including any of its associates or joint venture/association members) is or has been a party to an MCC-funded contract (either with MCC directly or with any Millennium Challenge Account Entity, anywhere in the world), whether as a lead contractor, affiliate, associate, subsidiary, subcontractor, or in any other role, the Bidder must identify the contract in its list of references submitted with its Bid using Bidding Form REF1: References of MCC Funded Contracts. Failure to include any such contracts may be used to form a negative determination by the Employer on the Bidder’s record of performance in prior contracts. However, the failure to list any contracts because the Bidder (including any of its associates or joint venture/association members) has not been a party to any such contract will not be grounds for a negative determination by the Employer on the Bidder’s record of performance in prior contracts. That is, prior performance in connection with an MCC-funded contract is not required. The Employer will check the references, including the Bidder’s past performance reports filed in MCC’s Contractor Past Performance Reporting System (“CPPRS”). A negative determination by the Employer on the Bidder’s record of performance in prior contracts may be a reason for disqualification of the Bidder at the discretion of the Employer. | |
| 1. **Employer’s Right to Accept Any Bid, and to Reject Any or All Bids** | | | 37.1 The Employer reserves the right to accept or reject any Bid, and to annul the bidding process and reject all Bids at any time prior to Contract award, without thereby incurring any liability to Bidders. In case of annulment, all Bids submitted and specifically, Bid Securities, shall be promptly returned to the Bidders at the Employer’s expense. If all Bids are rejected, the Employer shall review the causes justifying the rejection and consider making revisions to the conditions of Contract, design and specifications, scope of the Contract, or a combination of these, before inviting new Bids. The Employer reserves the right to cancel the procurement if this is no longer in the interest of the Employer. Rejection of all Bids and canceling the procurement requires prior approval by MCC. | |
|  | | | **F. Award of Contract** | |
| 1. **Award Criteria** | | | 38.1 Subject to ITB 37.1, the Employer shall award the Contract to the Bidder whose Bid has been determined to be the lowest evaluated Bid and is substantially responsive to this Bidding Document, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily. | |
| 1. **Notice of Intent to Award** | | | 39.1 Prior to the expiration of the period of Bid validity, the Employer shall send the Notice of Intent to Award to the successful Bidder. The Notice of Intent to Award shall include a statement that the Employer shall issue a formal Letter of Acceptance and draft Contract Agreement after expiration of the period for filing a Bid challenge and the resolution of any Bid challenges that are submitted. Delivery of the Notice of Intent to Award **shall not constitute the formation of a contract** between the Employer and the successful Bidder and no legal or equitable rights will be created through the delivery of the Notice of Intent to Award.  39.2 At the same time it issues the Notice of Intent to Award, the Employer shall also notify, in writing, all other Bidders of the results of the bidding. The Employer shall promptly respond in writing to any unsuccessful Bidder who, after receiving notification of the bidding results, makes a written request for a debriefing as provided in the MCC Program Procurement Guidelines, or submits a formal Bid challenge. | |
| 1. **Bid Challenges[[4]](#footnote-4)** | | | 40.1 Bidders may challenge the results of a procurement only according to the rules established in the Bid Challenge System developed by the Employer and approved by MCC. The rules and provisions of the Bid Challenge System are as published on the Employer’s website **indicated in the BDS.** | |
| 1. **Signing of Contract** | | | 41.1 Upon expiration of the period for timely filing of Bid challenges and the resolution of any Bid challenges that are submitted, the Employer shall send the Letter of Acceptance to the successful Bidder. The Letter of Acceptance shall specify the sum that the Employer will pay the Contractor in consideration of the design, execution, and completion of the Works and the requirement for the Contractor to remedy any defects therein as prescribed by the Contract. Until a formal Contract is prepared and executed, the Letter of Acceptance shall constitute a binding Contract between the Employer and the Contractor.  41.2 The Letter of Acceptance shall include the Contract Agreement for the review and signature of the successful Bidder.  41.3 Within twenty-eight (28) days of issuance from the Employer of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Employer, along with a Performance Security as per ITB 42, the completed Compliance with Sanctions Certification Form included in Section IX, Annex to the Particular Conditions of Contract, and the completed Self-Certification Form for Contractors included in Section IX, Annex to the Particular Conditions of Contract..  41.4 If any negotiations or clarifications are required either by the Employer or by the successful Bidder, they shall be completed within the same twenty-eight (28) days of receipt of the Letter of Acceptance by the successful Bidder, unless otherwise agreed in writing by both parties. Failure to conclude negotiations/clarifications does not excuse the successful Bidder from timely submission of the Performance Security as described in ITB 42.1, submission of the Compliance with Sanctions Certification Form, or submission of the Self-Certification Form for Contractors as described in ITB 42.1. | |
| 1. **Performance Security** | | | 42.1 Within twenty-eight (28) days of the receipt ofthe Letter of Acceptance, the successful Bidder shall furnish the Performance Security pursuant to Sub-Clause 4.2 of the Contract, using for that purpose the Form of Performance Security included in Section IX, Annex to the Particular Conditions of Contract – Contract Forms, or another form acceptable tothe Employer. A foreign institution providing a Performance Security shall have a correspondent financial institution located in the Employer’s country**.** The Bidder shall also furnish the completed Compliance with Sanctions Certification Form and Contractor Self-Certification Form.  42.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or to sign the Contract within twenty-eight (28) days of the receipt of the Letter of Acceptance shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security. In that event the Employer may award the Contract to the next lowest evaluated Bid that is substantially responsive and whose Bidder is determined by the Employer to be qualified to perform the Contract satisfactorily. | |
| 1. **Posting of Award Notice** | | | 43.1 Upon receipt of the signed Contract Agreement and a valid Performance Security, the Employer shall return the Bid Securities of unsuccessful Bidders and shall publish in *UNDBOnline,* in *dgMarket* and on the Employer’s website and other places as MCC may specify and in accordance with MCC’s Program Procurement Guidelines, the results identifying the Bid and lot numbers, if applicable, and the following information:   1. the name of the winning Bidder; 2. the price of the winning Bid and the price of Contract award if different; and 3. the duration and the summary scope of the Contract awarded. | |
| 1. **Inconsistencies with MCC Program Procurement Guidelines** | | | 44.1 The procurement that is the subject of this Bidding Document is being conducted in accordance with and is subject in all respects to MCC’s Program Procurement Guidelines. In the event of any conflict between any section or provision of this Bidding Document (including any Addenda that may be issued to this Bidding Document) and the MCC Program Procurement Guidelines, the terms and requirements of the MCC Program Procurement Guidelines shall prevail, unless MCC has granted a waiver of the guidelines. | |
| 1. **Applicable Compact Conditions** | | | 45.1 Bidders are advised to examine and consider carefully the provisions that are set forth in Annex A (Additional Provisions) attached to and made part of the Particular Conditions of the Contract, as these are part of the Government’s and the Employer’s obligations under the Compact and related documents which, under the terms of the Compact and related documents, are required to be transferred onto any Bidder, Contractor or subcontractor who partakes in procurement or subsequent contracts in which MCC Funding is involved. | |
| 1. **Contractor Past Performance Reporting System** | | | 46.1 During the performance of the Contract, the Employer shall maintain a performance record of the Contractor in accordance with MCC’s Contractor Past Performance Reporting System as described on MCC’s website. | |

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| **Section II Bid Data Sheet** | |
| **A. Introduction** | |
| **ITB**  **Definitions** | (k) “Compact” means the Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Government, entered into on **[date]**, as may be amended from time to time.  (w) “Government” means the government of **[country]**. |
| **ITB 1.1** | Name of Employer: **[insert name]** |
| **ITB 1.1** | Name of this procurement is: **[insert name]**  Identification numberof this procurement is **[insert number]**  The lotscomprising this procurement are: **[insert information]** |
| **ITB 1.2** | The Employer will provide the following inputs and facilities:  **[Insert List or “None”]**  *[if there are any specific requirements for local registration of foreign Contractor working in the Country of MCA Entity, please provide details of such requirements]* |
| **B. Bidding Document** | |
| **ITB 8.1** | To request clarification of this Bidding Document only, the Employer’s address is:  Attention:  Street Address:  Floor/Room number:  City:  Country:  Telephone:  Facsimile number:  Electronic mail address: |
| **ITB 8.1** | The minimum number of days prior to the deadline for submission of Bids to receive any request for clarification is **[insert** **number]** days.  The minimum number of days prior the submission of Bids the Employer will respond is **[insert** **number**] days by posting the responses on the Employer’s website. |
| **ITB 8.2** | A Site visit organized by the Employer **[insert** **shall** or **shall not]** take place at the following date, time and place:  Date:  Time:  Place: |
| **ITB 8.4** | A pre-Bid conference **[insert** **shall** or **shall not]** take place at the following date, time and place:  Date:  Time:  Place: |
| **ITB 8.5** | Questions should be submitted to the Employer in writing not later than **[insert** **number]** days prior to the date of the pre-Bid conference. |
| **ITB 8.6** | Minutes of pre-Bid conference shall be posted on Employer’s website **[insert** **web address**] |
| **C. Preparation of Bids** | |
| **ITB 10.1** | If Employer shall pay any costs of the site visit, those are listed below. **[insert** **list of expenses that Employer will cover or state NONE]** |
| **ITB 12.1 (g)** | The Bidder shall submit with its Bid the following additional documents:  **[insert details]** |
| **ITB 12.2** | Prequalified Bidders **[insert shall or shall not]** be allowed to form a JV or association after pre-qualification **[with other pre-qualified Bidders] [and with non-pre-qualified firms]** for the purpose of submitting a Bid. |
| **ITB 15.1** | Discounts **[insert shall or shall not]** be considered.  The requirements for allowable discounts, if any, are defined in Part 2, Employer’s Requirements. If discounts are permitted, the evaluation method is specified in Section III, Bid Review, Evaluation Criteria and Bidder Qualification Requirements. |
| **ITB 15.2** | The Bid **[insert shall or shall not]** be all-inclusive for all of the Works and Installation Services on a “single responsibility” basis. |
| **ITB 15.6(a)** | The prices for Plant, Goods and Equipment to be supplied from abroad **[insert shall or shall not]** be quoted on a CIP Basis. If not on a CIP Basis, the prices shall be on **[insert Incoterms 2010 Basis]** |
| **ITB 15.6(b)** | If not on an EXW basis, the prices for Plant, Goods and Equipment to be supplied from within the Employer's country **[insert shall or shall not]** be quoted **[insert Incoterms 2010 Basis]** |
| **ITB 15.6(c)** | The named final destination **shall be …….** |
| **ITB 15.8** | The prices quoted by the Bidder **[insert shall or shall not]** be subject to adjustment. |
| **ITB 15.11** | Bids are being invited for lots (or packages) as follows:  **[insert lot/package information or state “Not applicable”]** |
| **ITB 16.1** | The currency(ies) of the Bid shall be as follows: **[insert details here].**  The currency(ies) of the payment shall be as follows: **[insert details here].** |
| **ITB 19.1** | The Bid validity period shall be **[insert number]** days, until **[insert date]** |
| **ITB 19.3 (a)** | The Bid price may be adjusted by the following factor: **[insert percentage].** |
| **ITB 20.1** | Bid Security **[is/is not]** required to be submitted with a Bid. |
| **ITB 20.2** | The Bid Security shall be in the amount of US$ **[insert total amount in USD, or amount per Lot as applicable]** or Employer’s local currency equivalent only.  The Bid Security shall be in the form of an unconditional bank guarantee or **[insert other form or type of applicable bid security]** |
| **ITB 21.1** | In addition to the original of the Bid, the number of required copies is: **[insert number].** |
| **ITB 21.2** | The written confirmation of authorization to sign on behalf of the Bidder shall consist of: **[insert details]**. |
| **D. Submission and Opening of Bids** | |
| **ITB 22.1**  **And 23.1** | Bids **[may/may not]** be submitted electronically  **[include the following only if Bids are allowed to be submitted electronically, otherwise delete]**  **Bidders have the option of submitting their Bids electronically.**  Annex 1 to this Section II (Bid Data Sheet) delineates the full procedure for electronic submission.  Any Bid submitted electronically must be received at the address specified in Annex 1 to this Section II (Bid Data Sheet) before the deadline for submission of Bids specified in ITB Sub-Clause 23.1.  Bidders are advised that the Employer is not responsible for any delays or defects in the receipt or download of any Bid submitted electronically.  For **Bid submission purposes in hard copy**, the Employer’s address is :  Attention:  Street Address:  Floor/Room number:  City:  Country:  **The deadline for Bid submission is:**  Date:  Time: |
| **ITB 26.1** | The Bid opening shall take place at:  Street Address:  Floor/Room number:  City :  Country:  Date:  Time: |
| **E. Evaluation and Comparison of Bids** | |
| **ITB 27.3** | All correspondence must be addressed to the Employer at: **[insertaddress]*.*** |
| **ITB 33.1** | The currency that shall be used for Bid evaluation and comparison is: **[insert details here]**.  The basis for conversion shall be: **[Specify the source for the exchange rate, such as the Central Bank rate, a published rate that is widely available, etc.]**  The date for the exchange rate shall be [**the date that is twenty eight (28) days prior to the Bid submission]** |
| **ITB 34.2** | The total amount of the Performance Security may be increased to a level not exceeding **[insert a percentage up to 20%]** of the Accepted Contract Amount. |
| **F. Award of Contract** | |
| **ITB 40.1** | The Employer’s Bid Challenge System is provided on the Employer’s website **[insert web address].** |

**Annex 1 to Section II – Bid Data Sheet**

**Procedure for Electronic Submission of Bids**

1. Each Bidder will be provided a File Request Link (via email), an electronic link to upload its submission when it requests the IFB. The Bidder shall use this, and only this, link to submit its Bid.
2. The Bid shall be submitted via the File Request Link only. Bids submitted by email shall not be accepted. Also, the Bid shall be submitted by the Bid submission deadline. A Bidder who submits only part of their Bid via the File Request Link and any other required parts of their Bid via email or hard copy shall have its Bid rejected.
3. The File Request Link shall automatically expire on the Bid submission deadline, specified in ITB 25.1. No extension shall be provided after the expiry.
4. All submitted documents are required to be in pdf or Microsoft Word or Excel formats as appropriate. No compressed files or folders are accepted, thus documents submitted in any archived and/or compressed format (compressed by WinZip - including any application of the zip family-, WinRAR, 7z, 7zX, or any other similar formats) shall not be accepted.
5. Bidders should use the filename framework for their Bids as follows: ***[Bidder Name]*** - IFB# ***[insert IFB number]***
6. All submitted documents are REQUIRED TO BE password-protected so that file(s) cannot be opened without the password.
7. Instructions on how to password-protect pdfs in Adobe Acrobat can be accessed from: <https://helpx.adobe.com/acrobat/using/securing-pdfs-passwords.html>. (If you only have Adobe Reader, it is advised that a free program like PDFMate be downloaded and installed. Instructions on how to password-protect pdfs in PDFMate can be accessed from: <http://www.pdfmate.com/feature-encrypt.html>)
8. Instructions on how to password-protect a Microsoft Word (or Excel) document can be found at: https://support.office.com/en-us/article/add-or-remove-protection-in-your-document-workbook-or-presentation-05084cc3-300d-4c1a-8416-38d3e37d6826.
9. *[****Instruction to MCA-Entity****: The following text to be edited before the release of the bidding document. “The password for the Bid should be sent no earlier than* ***[insert date one day before the Bid submission deadline date]*** *and no later than* ***[insert time 15 minutes earlier than the Bid submission deadline time]*** *local* ***[MCA-Entity]*** *time on* ***[insert Bid submission deadline date]*** *to the following email address:* ***[insert PA’s email address]****.”]* A Bid shall not be formally opened and the Bid shall be rejected if the password reaches the afore-stated email after the stated date and time. It should be noted that the password is deemed submitted at the time and date when it is received at the email address, not when it is sent. Bidders are therefore encouraged to send the password well before the Bid submission deadline. If a Bidder provides an incorrect password and fails to provide the correct password by the end of the formal Bid Opening, their Bid shall be rejected. Case-sensitive passwords should be sent as is, with the cases obvious.
10. Each uploaded document (either as part, or whole, of the Bid) shall not exceed 10GB each.
11. Bidders are informed that the capability of their internet bandwidth will determine the speed at which their Bids are uploaded via the File Request Link. Bidders are therefore advised to commence the process of uploading their Bids via the File Request Link in good time before the bid submission deadline. As noted above, this link will expire at the bid closing time, and cannot be reopened under any circumstances.

# Section III Bid Review, Evaluation Criteria, and Bidder Post-Qualification

**1.0 Process**

This Section contains all the criteria that the Employer shall use to review Bids, post-qualify Bidders and select the winning Bid. In accordance with ITB 30, 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. This review shall be based on the information provided by the Bidder in these forms plus the Bidder’s record of past performance, other references and any other sources at the Employer’s discretion to confirm and verify the Bidder’s qualifications and representations in its Bid.

The Employer may conduct the following review in any sequence, as considered appropriate by the Employer.

1. **Bid Review.**

*A1. Administrative Review.* This review is conducted to determine that the Bid is complete, all required documents are included and all forms are included and are completed. The Bidder may be requested to submit additional information or documentation within a reasonable period of time and/or to correct nonmaterial nonconformities in the Bid related to documentation requirements. Determinations made during this review include:

* Determine if the Bid is sealed and signed as per the requirements of ITB 21 and ITB 22;
* Determine if the Bid Security in the correct format is enclosed;
* Determine eligibility of Bidder, in accordance with ITB 5;
* Determine if GOE certification is enclosed and completed; and
* Determine if all required forms are included and completed.

*A2. Responsiveness Determination*.This review will beconducted to determine if the Bid is substantially responsive as explained in ITB 31. A substantially responsive Bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission in accordance with ITB 31.2. If a Bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Employer and may not be subsequently made responsive by correction of the material deviation, reservation, or omission. However, the Employer may request any Bidder to clarify its Bid according to the procedures set out in ITB 28. The Employer may determine responsiveness of Bids, beginning with the Bid that is determined to be the lowest Evaluated Bid Price after the Price Review is conducted. At its sole discretion, the Employer may elect not to review higher priced Bids for responsiveness after a lower priced Bid is determined to be substantially responsive. Responsiveness determination is based upon a detailed technical review according to the details given below.

Technical Review for Responsiveness Determination:

*Documents Comprising Technical Offer*. The Bidder shall furnish a Technical Offer including a Design Proposal, statement of work methods, equipment, personnel, schedule, and other information as stipulated in Section IV (Forms Tech 1-8), in sufficient detail to demonstrate the adequacy of the Bidder’s Bid to meet the work requirements and the completion time.

*Assessment of Adequacy of Technical Offer*. Review of the Bidder’s Technical Offer will include an assessment of the Bidder’s preliminary design and technical method and approach to mobilize key equipment and personnel for the Contract consistent with the requirements stipulated in Part 2, Employer’s Requirements. The review of the Technical Offer will also include an assessment of the Bidder’s personnel, method and approach to satisfy the environmental, social, gender, health and safety requirements as called for in Part 2, Employer’s Requirements.

1. **Evaluation Criteria.**

*B1. Price Review.* This review is conducted to determine the Evaluated Bid Price of each Bid. Only price and price-related criteria shall be the basis of award. The evaluation criteria to determine the winning Bid shall be the lowest Evaluated Bid Price, among the responsive Bids submitted by qualified Bidders.

The “Evaluated Bid Price” shall be the Bid price adjusted as follows:

* The Evaluated Bid Price excludes Provisional Sums, but includes daywork items, where priced competitively;
* The Evaluated Bid Price does not include the estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract;
* The Evaluated Bid Price does not include the estimated effect of the price adjustment to rates due to extensions of the Bid validity period in accordance with ITB 19.3;
* The Evaluated Bid Price includes adjustment for correction of arithmetical errors, omissions, clarifications, etc., in accordance with ITB 32.1; and
* The Evaluated Bid Price includes adjustment due to discounts offered in accordance with ITB 15. If this Bidding Document allows Bidders to quote separate prices for different lots (contracts), and the award to a single Bidder of multiple lots (contracts), the Employer will award lots (contracts) based on the least cost responsive combination of all lots (contracts).

After the above adjustments and corrections are made, the Employer will convert the Evaluated Bid Price to a single currency in accordance with ITB 33.

*B2. Price Reasonableness Determination*.

Price Review also includes a determination of price reasonableness in accordance with ITB 34.

After determining the Evaluated Bid Price of each Bid, the Employer will rank the Bids from the lowest to the highest.

1. **Qualification Review.**

*C1. Qualification Review*. This process will be conducted to determine if the Bidder continues to satisfy the qualification requirements as listed in ITB 30.1(c), used at the time of pre-qualification. The determination shall be based upon an examination of the documentary evidence of the Bidder’s qualifications submitted by the Bidder as requested in Section IV, Bidding Forms, plus the Bidder’s record of past performance and a review of references and any other source at the Employer’s discretion. All qualification requirements shall be considered on a pass/fail basis. An affirmative determination of qualification shall be a prerequisite for award of the Contract to a Bidder.

*Multiple lots (contracts)*. If a Bidder submits successful (lowest evaluated responsive) Bids for multiple lots (contracts), the qualification review will also include an assessment of the Bidder’s capacity to meet the aggregate qualification requirements.

*C2. References and Past Performance Review*. In accordance with ITB 36, the Bidder’s performance on earlier contracts will be considered in determining if the Bidder is qualified for award of the Contract. The Employer reserves the right to check the performance references provided by the Bidder or to use any other source at the Employer’s discretion. If the Bidder (including any of its associates or joint venture/association members) is or has been a party to an MCC-funded contract (either with MCC directly or with any Millennium Challenge Account Entity, anywhere in the world), whether as a lead contractor, affiliate, associate, subsidiary, subcontractor, or in any other role, the Bidder must identify the contract in its lists of references submitted with its Bid using Bidding Form REF1: References of MCC Funded Contracts. Failure to include any such contracts may be used to form a negative determination by the Employer on the Bidder’s record of performance in prior contracts. However, the failure to list any contracts because the Bidder (including any of its associates or joint venture/association members) has not been a party to any such contract will not be grounds for a negative determination by the Employer on the Bidder’s record of performance in prior contracts. That is, prior performance in connection with an MCC-funded contract is not required. The Employer will check the references, including the Bidder’s past performance reports filed in MCC’s Contractor Past Performance Reporting System.

The Employer reserves the right to contact the Forms REF-1 and REF-2 References as well as other sources to check references and past performance.

**Recommended Spare Parts**

The price of recommended spare parts quoted in Price Schedule shall not be considered for evaluation. This is because such spare parts would normally be used after long time durations beyond the MCC Compact end date, and could not be financed from the Compact funds. Still the recommended spare parts may be financed directly by the government.

**Work, services, facilities, etc., to be provided by the Employer**

Where bids include the undertaking of work or the provision of services or facilities by the Employer in excess of the provisions called for in the Bidding Document, the Employer 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 Price Schedule for evaluation.

**2.0 Qualification**

**Documents Establishing the Qualifications of the Bidder**

The Bidder shall provide the information requested in the corresponding information sheets included in Section IV, Bidding Forms, to establish that the Bidder meets the requirements established below.

| **Factor** | 2.1 Eligibility | | | | | |
| --- | --- | --- | --- | --- | --- | --- |
|  | Requirement | Bidder | | | | Documentation Required |
| **Single Entity** | Joint Venture or Association | | |
| **All members combined** | Each Member | **At least one member** |
| Nationality | Nationality in accordance with ITB 5.3. | Must meet requirement | Existing or intended Joint Venture or other association must meet requirement | Must meet requirement | N/A | Form ELI–1, with attachments |
| Conflict of Interest | No conflicts of interests as described in ITB 5.6. | Must meet requirement | Existing or intended Joint Venture or other association must meet requirement | Must meet requirement | N / A | Letter of Bid |
| Ineligibility | Not having been declared ineligible based on any of the criteria set forth in ITB 5. | Must meet requirement | Existing or intended Joint Venture or other association must meet requirement | Must meet requirement | N/A | Letter of Bid |
| Government-Owned Enterprise | Compliance with conditions of ITB 5.4 | Must meet requirement | Existing or intended Joint Venture or other association must meet requirement | Must meet requirement | N/A | Form ELI–2 |

| **Factor** | 2.2 Historical Contract Non-Performance | | | | | |
| --- | --- | --- | --- | --- | --- | --- |
|  | Requirement | Bidder | | | | **Documentation Required** |
| **Single Entity** | Joint Venture or Association | | |
| **All members combined** | **Each member** | **At least one member** |
| History of non-performing contracts | Non-performance of a contract (including contracts terminated for cause) did not occur within the last five (5) years prior to the deadline for Bid submission, determined using all information on fully settled proceedings, litigation, arbitrations, actions, claims, investigations or disputes. A fully settled proceeding, litigation, arbitration, action, claim, investigation or dispute is one that has been resolved in accordance with the dispute resolution mechanism under the respective contract, and where all appeal instances available to the Bidder have been exhausted. | Must meet requirement by itself, including as member of past or existing Joint Venture or other association (not mandatory if in the past was as a member of a Joint Venture or other association with less than 20% role in the contract). | N/A | Must meet requirement by itself or as member of past or existing Joint Venture, or other association (not mandatory if in the past was as a member of a Joint Venture or other association with less than 20% role in the contract). | N/A | Form CON –1 |
| **2.2.2 Failure to Sign a Contract** | Failure to sign a contract after receiving a notice of award has not occurred in the past five years. Any deviation should be explained in the enclosed Contract Non-Performance form. | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Form CON-1 |
| 2.2.3 Pending Litigation | All pending proceedings, litigation, arbitrations, actions, claims, investigations or disputes, in total, shall not represent more than ten percent (10%) of the Bidder’s net worth. | Must meet requirement by itself, including as member of past or existing Joint Venture or other association (not mandatory if in the past was as a member of a Joint Venture or other association with less than 20% role in the contract). | N/A | Must meet requirement by itself or as member of past or existing Joint Venture, or other association (not mandatory if in the past was as a member of a Joint Venture or other association with less than 20% role in the contract). | N/A | Form CON-1 |

| **Factor** | | 2.3 Financial Situation[[5]](#footnote-5)/[[6]](#footnote-6) | | | | | |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Sub-Factor** | | Criteria | | | | | Documentation Required |
| Requirement | Bidder | | | |
| **Single Entity** | Joint Venture | | |
| **All members combined** | **Each member** | **At least one**  **member** |
| 2.3.1 Historical Financial Performance | | Submission of audited financial statements, including balance sheets, income statements and cash flow statements, or, if not required by the law of the Bidder’s country, other financial statements acceptable to the Employer, for the last five (5) years to demonstrate the current soundness of the Bidder’s financial position and its prospective long term profitability and to demonstrate:   1. Average coefficient of Current ratio (Current Assets / Current Liabilities) ≥ **[insert ratio]** 2. Average coefficient of Debt ratio (Total Debt / Total Assets) ≤ **[insert ratio]** | Must meet requirement | N/A | Must meet requirement | N/A | Form FIN-1 with attachments |
| 2.3.2 Annual Average Turnover | | 1. Minimum average annual construction turnover of [INSERT VALUE], calculated as total certified payments received for contracts in progress or completed, within the last five (5) years. Values to determineAnnual construction turnover are to be demonstrated in the audited financial statements (income statements) of the last five (5) years and are to be considered to be indicative.2. Minimum average annual design turnover of [INSERT VALUE], calculated as total certified payments received for contracts in progress or completed, within the last five (5) years. Values to determine annual design turnover are to be demonstrated in the audited financial statements (income statements) of the last five (5) years and are to be considered to be indicative. | Must meet requirement  Must meet requirement | Must meet requirement  N/A | Must meet  twenty-five percent (25%) of the requirement  N/A | Must meet  fifty-five percent (55%) of the requirement  Must meet requirement | Form FIN-2 |
| 2.3.3 Financial Resources | 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 advance payments to meet:(i) the following cash-flow requirement:[INSERT VALUE]and(ii) the overall cash flow requirements for this Contract and its current commitments. | | Must meet requirement | Must meet requirement | Must meet  twenty-five percent (25%) of the requirement | Must meet  fifty-five percent (55%) of the requirement | Forms FIN-3 & Form FIN-4 |

**2.4 Equipment**

The Bidder must demonstrate that it has, at the minimum, access to (own or rent) the key equipment listed hereafter or propose alternative equipment that satisfy the requirements of the contract:

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

The Bidder shall provide further details of proposed items of equipment using Form TECH-7 in Section IV, Bidding Forms.

Bidders shall provide information in the methodology and work-program section of the Bid forms how this equipment shall be utilized if the Bidder wins more than one lot. The Employer reserves the right to ask for replacement or addition of equipment in case of awarding multiple lots.

**2.6 Key Personnel**

###### The Bidder must demonstrate that it has, at the minimum, the key personnel as follows:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Nr. | Key Personnel | Number | Minimum Qualification | Minimum Experience |
| 1 |  |  |  |  |
| 2 |  |  |  |  |
| 3 |  |  |  |  |
|  |  |  |  |  |

For Key Personnel, Bidders should include a copy of the Curriculum Vitae of each key personnel, signed by the employee concerned, filling for these purposes Form TECH-8.

The MCA Entity retains the right to request and check references for each key personnel listed.

**2.7 References and Past Performance Review**

In accordance with ITB 36, the Bidder’s performance on earlier contracts has been considered in determining if the Bidder is qualified for award of the Contract. The Employer reserves the right to check the performance references provided by the Bidder or to use any other source at the Employer’s discretion. If the Bidder (including any of its associates or joint venture/association members) is or has been a party to an MCC-funded contract (either with MCC directly or with any Millennium Challenge Account Entity, anywhere in the world), whether as a lead contractor, affiliate, associate, subsidiary, subcontractor, or in any other role, the Bidder must identify the contract in its lists of references submitted with its Bid using Bidding Form REF1: References of MCC Funded Contracts. Failure to include any such contracts may be used to form a negative determination by the Employer on the Bidder’s record of performance in prior contracts. However, the failure to list any contracts because the Bidder (including any of its associates or joint venture/association members) has not been a party to any such contract will not be grounds for a negative determination by the Employer on the Bidder’s record of performance in prior contracts. That is, prior performance in connection with an MCC-funded contract is not required. The Employer will check the references, including the Bidder’s past performance reports filed in MCC’s Contractor Past Performance Reporting System.

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1. **Bid Submission Forms**

**Letter of Bid**

Invitation for Bid No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Contract: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Lot #: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

To: The Employer/Procurement Agent

Address:

Ladies and Gentlemen:

We, the undersigned, declare and certify that:

1. We have examined and we have no reservations to the Bidding Document, including addenda thereto issued in accordance with the Instructions to Bidders.
2. In accordance with the Conditions of Contract, Employer’s Requirements and Schedule of Prices and Addenda Nos. **[insert Addenda Nos.]**for the execution of the above-named Works, we offer to design, construct and install such Works and remedy any defects therein in conformity with the Conditions of Contract, Employer’s Requirement’s, Schedule of Prices, and Addenda for the sum of **[insert amount in numbers and words] [as specified in the Appendix to Bid or such other sums as may be ascertained in accordance with the conditions].**
3. In case we are awarded another lot in addition to this lot, we will provide a discount of **[insert amount of discount in numbers and words]** to be applied as follows:**[describe the methodology for applying the discount.]**
4. We acknowledge that the Appendix to Bid forms part of our Bid.
5. We undertake, if our Bid is accepted, to obtain a Performance Security in accordance with the Bidding Document, and commence the Works as soon as is reasonably possible after the receipt of the Engineer’s notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix to Bid.
6. Our Bid shall be valid for a period of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ days from the date fixed for the bid submission deadline in accordance with the Bidding Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
7. Unless and until a formal Contract is prepared and executed, this Bid, together with your written acceptance thereof in the form of a signed Letter of Acceptance delivered by you to us, shall constitute a binding contract between us.
8. We understand that you are not bound to accept the lowest or any Bid you may receive.
9. We comply with the requirements of ITB Clause 5 of the Bidding Document, as applicable.
10. Any subcontractors and suppliers do or will comply with the requirements of ITB Clause 5 of the Bidding Document, as applicable.
11. Weare not participating, as a Bidder or as a subcontractor, in more than one Bid in this bidding process in accordance with ITB Clause 5.6 (d).
12. We have taken steps to ensure that no person acting for us or on our behalf has engaged in corruption or frauddescribed in ITB Clause 3.
13. Commissions or gratuities, if any, paid or to be paid by us to agents relating to this Bid, and to Contract execution if we are awarded the Contract, are listed below:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Name and address of agent |  | Amount and currency |  | Purpose of commission or gratuity |
|  |  |  |  |  |
|  |  |  |  |  |
| (if none, state “none”) | | | | |

1. We have taken steps to ensure that no person acting for us or on our behalf will engage in bribery.
2. We are not engaged in, facilitating, or allowing any of the prohibited activities described in the MCC Counter-Trafficking in Persons Policy and will not engage in, facilitate, or allow any such prohibited activities for the duration of the Contract. Further, we hereby provide our assurance that the prohibited activities described in the MCC Counter-Trafficking in Persons Policy will not be tolerated on the part of our employees, or any subcontractor or supplier, or their respective employees. Finally, we acknowledge that engaging in such activities is cause for suspension or termination of employment or of the Contract.
3. We understand and accept without condition that, in accordance with ITB Clause 40.1 any challenge or protest to the process or results of this procurement may be brought only through the Employer’s Bid Challenge System (BCS).
4. We acknowledge that our digital/digitized signature is valid and legally binding.

Dated this day of 20

Signature In the capacity of

Duly authorized to sign Bids for and on behalf of

**[in block letters or typed]**

Address:

Witness:

Address:

Occupation:

**Appendix to Bid**

The Employer should insert relevant data prior to the issue of the Bidding Document. Bidders should fill in the remaining blank spaces. Bidders are required to sign each page of the Appendix to Bid. The Appendix to Bid of the successful Bidder shall become Annex B to the Particular Conditions.

**Conditions of Contract Sub-Clause**

|  |  |  |
| --- | --- | --- |
| Parties and Persons | 1.1.2.2 | Employer is: MCA-**[insert name of country]**. |
|  | 1.1.2.4 | Engineer is: **[insert]**. |
| Dates, Tests, Periods and Completion  Defects Notification Period | 1.1.3.3  1.1.3.7 | Time for completion from the Commencement Date is: **[insert months -------------days -----------]**.  The Defects Notification Period will be **[insert duration]** **[( )]** months following the issuance of the Taking Over Certificate. |
| Works and Goods | 1.1.5.6 | Sections of the Works shall be as follows:  **[Describe]**. |
| Interpretation | 1.2 | Profit shall be: **[insert]** percent of the Cost. |
| Communications | 1.3(a) | Agreed systems of electronic transmission are: **[insert email addresses of the persons nominated as being authorized to represent the respective party]**. |
|  | 1.3(b) | Address of the Employer is: **[insert**] |
|  | 1.3(b) | Address of the Engineer is: **[insert]** |
|  | 1.3(b) | Address of the Contractor is:  To be completed after the Contract will be awarded. |
| Law and Language | 1.4 | Law in force governing the Contract is that of the **[insert name of country]** |
|  | 1.4 | Ruling language of the Contract is: English. |
|  | 1.4 | Language for communication is: English. |
| Right of Access to the Site | 2.1 | Employer shall give the Contractor access to the Site within:  **[insert]** days after the Commencement Date except in those areas listed below **[insert reference as appropriate]**, where access will be granted by the Employer to the Contractor after completion of the resettlement activities no later than **[insert reference here]**. |
| Engineer’s Duties and Authority | 3.1(i) | Engineer’s authority to instruct a Variation is limited to: up to **[insert percentage]** percent **[( %)]** of the quantity of such individual items, which are included in the Schedule of Prices or other Schedule, or up to **[insert percentage]** percent **[( %)]** of the Accepted Contract Amount, whichever is less, subject to a cumulative ceiling of **[insert dollar value].** |
|  | 3.1(ii) | Engineer’s authority to approve a proposal for Variation submitted by the Contractor is limited to: up to **[insert percentage]** percent **[( %)]** of the quantity of such individual items, which are included in the Schedule of Prices or other Schedule, or up to **[insert percentage]** percent **[( %)]** of the Accepted Contract Amount, whichever is less, subject to a cumulative ceiling of **[insert dollar value].** |
| Performance Security | 4.2 | Performance Security will be in a form acceptable to Employer in the amount of: **[insert percentage]** percent **[( %)]** of the Accepted Contract Amount, payable in US Dollars. |
| Working Hours | 6.5 | Normal working hours are: **[insert]** local time in Country.  Locally recognized days of rest: **[insert]** (such as Saturdays, Sundays and all Government of Country recognized public holidays). |
| Delay Damages | 8.7 | The damages for delays shall be as follows  USD [insert] per day.  Maximum amount of delay damages shall be:  **[insert]** number of days. |
| Provisional Sums | 13.5(b)(ii) | Percentage for overhead charges and profit for adjustment of Provisional Sums shall be: **[insert percentage]** percent **[( %)]**. |
| Adjustment for Changes in Cost | 13.8 | Adjustment shall be made for the first time at the end of month **[insert number of months into the Contract]** following the Commencement Date and **[insert frequency]** months thereafter. Any such adjustment will be applicable to work performed on or after the date the adjustment is made. |
|  |  | In the Schedule of Adjustment Data below, the Bidder shall (a) indicate the proposed weighting of local and foreign currency, (b) indicate the proposed source and base values of indices for the different input elements, and (c) derive their proposed weightings. In the case of very large and/or complex works contracts, it may be necessary to specify several families of price adjustment formulae corresponding to the different works involved. |

**Schedule of Adjustment Data**

**Table A. Local Currency**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| *Index code* | *Index description* | *Source of index* | *Base value and date* | *Related source currency in type/amount* | *Proposed Weighting* |
|  | Nonadjustable | — | — | — | A: \_\_\_\_\_\*\*  B:  C:  D:  E: |
|  |  |  |  | Total | 1.00 |

**Table B. Foreign Currency**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| *Index code* | *Index description* | *Source of index* | *Base value and date* | *Related source currency in type/amount* | *Proposed Weighting* |
|  | Nonadjustable | — | — | — | A: \*\*  B:  C:  D:  E: |
|  |  |  |  | Total | 1.00 |

|  |  |  |
| --- | --- | --- |
| Advance Payment | 14.2 | Total advance payment shall be: **[insert percentage]** percent **[( %)]** of the Accepted Contract Amount less Provisional Sums and shall be payable in the currencies and proportions in which the Accepted Contract Amount is payable.  The advance payment shall be certified by the Engineer after (a) execution of the Contract Agreement by the parties thereto; (b) presentation by the Contractor of a Statement (under Sub-Clause 14.3 [*Application for Interim Payment* Certificates]) for the same; (c) provision by the Contractor of the Performance Security in accordance with Sub-Clause 4.2 [*Performance Security*]; and (d) provision by the Contractor of the advance payment guarantee for the full advance payment amount in accordance with Sub-Clause 14.2 [*Advance Payment*] and in the form included in Section IX of the Bidding Document or another substantially similar form approved by the Employer. |
|  | 14.2 (a) | Repayment of the advance payment shall start after **[insert percentage]** percent **[( %)]** of the Accepted Contract Amount. |
|  | 14.2 (b) | Amortization rate shall be **[insert percentage]** percent **[( %)]**. Advance payment shall be recovered in full prior to the time when **[insert percentage]** percent **[( %)]** of the Accepted Contract Amount has been certified for payment. |
| Application for Interim Payment Certificates | 14.3(c) | Amount to be retained shall be: **[[insert percentage]** percent **[( %)]** of Interim Payment Certificates. |
|  | 14.3(c) | Limit of retention money shall be: **[insert percentage]** percent **[( %)]** of the Contract Price. |
| Plant and Materials intended for the Works | 14.5(b)(i)  14.5(c)(i) | In the table of Plant and Materials immediately below, Bidders shall indicate the major items of Plant and Materials and the proposed country of origin for each. |

**Table of Plant and Materials**

|  |  |
| --- | --- |
| Item | Country of Origin |
| For payment when shipped: |  |
| Plant (list all major items) |  |
| Material (list all major items) |  |
| For payment when delivered to Site: |  |
| Plant (list all major items) |  |
| Material (list all major items) |  |

|  |  |  |
| --- | --- | --- |
| Issue of Interim Payment Certificates | 14.6 | Minimum amount of an Interim Payment Certificates shall be: USD **[insert]**, with no more than one (1) submission per month. |

|  |  |  |
| --- | --- | --- |
| Payment | 14.7 | Contractor’s nominated account(s) is/are:  For US Dollars: **[insert account number]**  For Local Currency: **[insert account number]** |
| Delayed Payment | 14.8 | Financing charges shall be: For US Dollars, London Inter-bank Lending Rate (LIBOR) plus **[insert percentage]** percent **[( %)]** and for local currency, Base rate of the National Bank of **[insert Country]**. |
| Currencies of Payment | 14.15 | Currencies of payment shall be: the currency(ies) of the Accepted Contract Amount. |
| General Requirements for Insurances | 18.1(a) | Insuring Party shall submit evidence of insurance: on or prior to the Commencement Date. Insuring Party shall submit copies of insurance policies: on or prior to the Commencement Date. |
| Insurance for Works and Contractor’s Equipment | 18.2 | Deductibles per occurrence shall not exceed:  USD **[insert]** per occurrence. |
| Insurance against Injury to Persons and Damage to Property | 18.3 | Limit per occurrence shall not be less than:  USD **[insert]** per occurrence. |
| Appointment of the Dispute Adjudication Board | 20.2 | Appointment of the DAB: Within twenty eight (28)days after the Commencement Date.  DAB shall comprise: **[insert]** members. |
| Failure to Agree Dispute Adjudication Board | 20.3 | Appointing entity shall be: **[insert]** |
| Arbitration | 20.6(a)(i) | International arbitration institution shall be:  A tribunal established in accordance with UNCITRAL arbitration rules.  The location of the arbitration proceedings shall be: **[insert]** |

**Form of Bid Security (Bank Guarantee)**

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

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

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

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

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

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 **[insert amount in figures]** (**[insert 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:

(a) has withdrawn its Bid after the Bid submission deadline, but during the period of Bid validity specified by the Bidder in the Letter of Bid; or

(b) having been notified of the acceptance of its Bid by the Employer during the period of Bid validity, (i) fails or refuses to execute the Contract, or (ii) fails or refuses to furnish the performance security, in accordance with the terms of the Letter of Acceptance and other applicable Conditions of Contract.

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; or (b) if the Bidder is not the successful Bidder, upon the earlier of (i) our receipt of a copy of your notification that the successful Bidder has signed the Contract and furnished the required performance security; or (ii) twenty-eight (28) days after the expiration of the Bidder’s Bid validity period.

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

[***Issuing Bank to delete whichever is not applicable***]. We confirm that [we are a financial institution legally authorized to provide this guarantee in the Employer’s country] **[OR]** [we are a financial institution located outside the Employer’s country but have a correspondent financial institution located in the Employer’s country that will ensure the enforceability of this guarantee. The name of our correspondent bank and contact information is as follows: **[provide name, address, phone number, and email address]**.

This guarantee is subject to the Uniform Rules for Demand Guarantees, 2010 Revision, ICC Publication No. 758, except as may otherwise be stated above.

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

**B. Bidder’s Post-Qualification Forms**

To establish its qualifications to perform the Contract in accordance with the qualification requirements set out in Section III, Bid Review, Evaluation Criteria and Post-Qualification, the Bidder shall provide the information requested in the following forms.

## Form ELI-1: Bidder Information Sheet

Each Bidder must fill in this form.

|  |  |
| --- | --- |
| **Bidder’s legal name** |  |
| **In case of Joint Venture or other Association, legal name of each partner** |  |
| **Bidder’s country of constitution** |  |
| **Bidder’s year of constitution** |  |
| **Bidder’s legal address in country of constitution** |  |
| **Bidder’s authorized representative**  (name, address, telephone numbers, fax numbers, e-mail address) |  |
| **Attached are copies of the following original documents.**   * 1. In case of single entity, articles of incorporation or constitution of the legal entity named above, in accordance with ITB 5. * 2. Authorization to represent the firm or joint venture named in above, in accordance with ITB 21.2 and 21.3. * 3. In case of Joint Venture or other Association, letter of intent to form Joint Venture or other Association or Joint Venture/Association agreement, in accordance with ITB 5.2. * 4. Government-Owned Enterprise Certification Form [ELI-3] | |

**Form ELI-2: JV/Association/Sub-Contractor Information Sheet**

Each member of a JV/Association making up a Bidder and each known subcontractor must fill in this form.

|  |  |
| --- | --- |
| **JV /association/subcontractor Information** | |
| **Bidder’s legal name** |  |
| **JV Partner’s or Subcontractor’s legal name** |  |
| **JV Partner’s or Subcontractor’s country of constitution** |  |
| **JV Partner’s or Subcontractor’s year of constitution** |  |
| **JV Partner’s or Subcontractor’s legal address in country of constitution** |  |
| **JV Partner’s or Subcontractor’s authorized representative information**  **(name, address, telephone numbers, fax numbers, e-mail address)** |  |
| **Attached are copies of the following original documents.**   * 1. Articles of incorporation or constitution of the legal entity named above, in accordance with ITB 5. * 2. Authorization to represent the firm named above, in accordance with ITB 21.2 and 21.3. * 3. Government-Owned Enterprise Certification Form [ELI-3]. | |

**Form ELI-3: Government-Owned Enterprise Certification Form[[7]](#footnote-7)**

Government-Owned Enterprises (“GOEs”) are not eligible to compete for MCC-funded contracts for goods or works. Accordingly, GOEs (i) may not be party to any MCC-funded contract for goods or works procured through an open solicitation process, limited bidding, direct contracting, or sole source selection; and (ii) may not be pre-qualified or shortlisted for any MCC-funded contract for goods or works anticipated to be procured through these means.

This prohibition does not apply to Government-owned Force Account units owned by the Government of the MCA Entity’s country, or Government-owned educational institutions and research centers, or any statistical, mapping or other technical entities not formed primarily for a commercial or business purpose, or where a waiver is granted by MCC in accordance with Part 7 of MCC’s Program Procurement Guidelines. The full policy is available for your review on the Compact Procurement Guidelines page at the MCC Website (www.mcc.gov). As part of the eligibility verification for this procurement, please fill in the form below to indicate the status of your entity.

For purposes of this form, the term “Government” means one or more governments, including any agency, instrumentality, subdivision or other unit of government at any level of jurisdiction (national or subnational).

**CERTIFICATION**

Full Legal Name of Bidder: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Full Legal Name of Bidder in Language and Script of Country of Formation (if different from above):

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

Address of Principal Place of Business or Chief Executive Office of Bidder:

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

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

Full Name of Three (3) Highest Ranking Officials of Bidder (for any Bidder that is an entity):

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

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

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

Full Legal Name(s) of Parent Entity or Entities of Bidder (if applicable; if Bidder has no parent, please so state):

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

Full Legal Name(s) of Parent Entity or Entities of Bidder in Language and Script of Country of Formation (if applicable and if different from above):

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

Address(es) of Principal Place of Business or Chief Executive Office of Parent Entity or Entities of Bidder (if applicable):

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

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

1) Does a Government own a majority or controlling interest (whether by value or voting interest) of your shares or other ownership interest (whether directly or indirectly and whether through fiduciaries, agents or other means)?

Yes  No 

2) If your answer to question 1 was yes, are you a Government-owned:

1. Educational institution Yes  No 
2. Research center Yes  No 
3. Statistical entity Yes  No 
4. Mapping entity Yes  No 
5. Other technical entities not formed primarily for a commercial or business purpose Yes  No 

3) Regardless of how you answered question 1, please answer the following:

1. Do you receive any subsidy or payment (including any form of subsidized credit) or any other form of assistance (financial or otherwise) from a Government?

Yes  No 

If yes, describe: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Has a Government granted to you any special or exclusive legal or economic rights or benefits that may alter the competitiveness of your goods, works or services or otherwise influence your business decisions? Yes  No 

If yes, describe: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Does a Government have the ability to direct or decide any of the following with respect to you:
2. any reorganization, merger, or dissolution of you or the formation or acquisition of any subsidiary or other affiliate by you? Yes  No 
3. any sale, lease, mortgage, pledge, or other transfer of any of your principal assets, whether tangible or intangible and whether or not in the ordinary course of business? Yes  No 
4. the closing, relocation, or substantial alteration of the production, operational, or other material activities of your business? Yes  No 
5. your execution, termination, or non-fulfillment of material contracts?

Yes  No 

1. the appointment or dismissal of your managers, directors, officers or senior personnel or otherwise participate in the management or control of your business? Yes  No 

4) Have you ever been Government-owned or controlled? Yes  No 

5) If your answer to question 4 was yes, please answer the following questions:

1. How long were you Government-owned? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. When were you privatized? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
3. Do you receive any subsidy or payment (including any form of subsidized credit) or any other form of assistance (financial or otherwise) from a Government?

Yes  No 

If yes, describe: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Even though not majority or controlling, does a Government continue to hold any ownership interest or decision making authority in you or your affairs?

Yes  No 

If yes, describe: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Do you send any funds to a Government other than taxes and fees in the ordinary course of your business in percentages and amounts equivalent to other non-Government-owned enterprises in your country that are engaged in the same sector or industry? Yes  No 

If yes, describe: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Participants are advised that:

1. Prior to announcing the winning bidder or consultant or any list of pre-qualified Bidders or shortlisted consultants for this procurement, the MCA Entity will verify the eligibility of such bidder(s) or consultant(s) with MCC. MCC will maintain a database (internally, through subscription services, or both) of known GOEs and each winning or pre-qualified bidder and winning or shortlisted consultant subject to this provision will be compared against the database and subject to such further due diligence as MCC may determine necessary under the circumstances.
2. Any misrepresentation by any entity submitting a bid or proposal for this procurement may be deemed to be “fraud” for purposes of the MCC Program Procurement Guidelines and any other applicable MCC policy or guidance, including MCC’s Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations.
3. Any entity that is determined by MCC to have organized itself, subcontracted any part of its MCC-funded contract, or otherwise associated itself with any other entity for the purpose of, or with the actual or potential effect of, avoiding or otherwise subverting the provisions of the MCC Program Procurement Guidelines may be deemed to be a GOE for all purposes of those Guidelines.
4. Any credible accusation that any entity submitting a bid or proposal for this procurement is a GOE ineligible to submit a bid or proposal in accordance with the MCC Program Procurement Guidelines will be subject to review in a bid challenge in accordance with those Guidelines and the MCA Entity’s Bid Challenge System.

I hereby certify that the information provided above is true and correct in all material respects and understand that any material misstatement, misrepresentation or failure to provide the information requested in this certification may be deemed to be“fraud” for purposes of the MCC Program Procurement Guidelines and other applicable MCC policy or guidance, including MCC’s Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations.

Authorized Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name of Signatory:

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

**Form CON–1  
Historical Contract Non-Performance**

The following table shall be filled in for the Bidder and for each member of a joint venture or other association that is a party to the Bidder.

Bidder’s Legal Name: **[insert full name**]

Date: **[insert day, month, year]**

Bidder’s Party’s Legal Name: **[insert full name]**

Page **[insert page number]** of **[insert total number]** pages

|  |  |  |  |
| --- | --- | --- | --- |
| **Non-Performing Contracts in accordance with Section III, Bid Review, Evaluation Criteria and Bidder Post-Qualification** | | | |
| 🞎 Contract non-performance did not occur during the five years prior to the deadline for Bid submission in accordance with **Section III, Bid Review, Evaluation Criteria and Bidder Post-Qualification)**, Sub-Factor 2.2.1.  **OR**  🞎 Contract(s) not performed during the five years prior to the deadline for Bid submission in accordance with **Section III, Bid Review, Evaluation Criteria and Bidder Post-Qualification)**, Sub-Factor 2.2.1. | | | |
| **Year** | **Non performed portion of contract** | **Contract Identification** | **Total Contract Amount (current value, US$ equivalent)** |
| **[insert year]** | **[insert amount and percentage]** | Contract identification: **[indicate complete contract name, number, and any other identification]**  Name of institution: **[insert full name]**  Address of institution: **[insert street/city/country]**  Reason(s) for non-performance: **[indicate main reason(s)]** | **[insert amount]** |

|  |
| --- |
| **Failure to Sign a Contract, in accordance with Section III, Bid Review, Evaluation Criteria and Bidder Post-Qualification** |
| No failure to sign a contract in accordance with Sub-Factor 2.2.2 of **Section III, Bid Review, Evaluation Criteria and Bidder Post-Qualification**  OR   * Failure to sign a contract in accordance with Sub-Factor 2.2.2 of **Section III, Bid Review, Evaluation Criteria and Bidder Post-Qualification** |
| Failure to Sign Contract  In the event of failure to sign a contract, clarify/explain your situation according to Sub-Factor 2.2.2 of Section III, Bid Review, Evaluation Criteria and Bidder Post-Qualification |

|  |  |  |  |
| --- | --- | --- | --- |
| **Year** | **Claim as Percentage of Total Assets** | **Contract Identification** | **Total Contract Amount (current value, US$ equivalent)** |
| **[insert year]** | **[insert percentage]** | Contract identification: **[indicate complete contract name, number, and any other identification]**  Name of institution: **[insert full name]**  Address of institution: **[insert street/city/country]**  Matter in dispute: **[indicate main issues in dispute]** | **[insert amount]** |

|  |  |  |
| --- | --- | --- |
| **Current and Past Proceedings, Litigation, Arbitration, Actions, Claims, Investigations and Disputes, the process or outcome of which the Employer could reasonably interpret may impact or have the potential to impact the financial or operational condition of the Bidder in a manner that may adversely affect the Bidder’s ability to satisfy any of its obligations under the Contract**  **in accordance with Section III, Bid Review, Evaluation Criteria and Bidder Post-Qualification**  (each member of a JV/association making up a Bidder must complete this table) | | |
| The Bidder, or a related company or entity, is currently, or within the past five (5) years has been, involved in any proceeding, litigation, arbitration, action, claim, investigation or dispute the process or outcome of which the Employer could reasonably interpret may impact or have the potential to impact the financial condition of the Bidder in a manner that may adversely affect the Bidder’s ability to satisfy any of its obligations under the Contract: | | |
| 🞎 No  **OR** 🞎 Yes  **If Yes, Describe:** | | |
| **Year:** | **Matter in Dispute:** | **Value of Award (Actual or Potential) Against Consultant in US$ Equivalent:** |  |  |

## Form CON-2: Compliance with Sanctions Certification Form

As part of their Bid, each Bidder shall complete and submit the Compliance with Sanctions Certification Form as per Section IX. *Contract Annexes..* Detailed instructions on how to complete this Form are also provided in the same Section.

**Form FIN-1: Financial Situation**

Each Bidder or member of a JV/Association making up a Bidder must fill in this form.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **Financial Data for Previous 5 Years [US$ Equivalent]** | | | | |
|  | **Year 1:** | **Year 2:** | **Year 3:** | **Year 4:** | **Year 5:** |

**Information from Balance Sheet**

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

**Information from Income Statement**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Total Revenues** |  |  |  |  |  |
| **Profits Before Taxes** |  |  |  |  |  |
| **Profits After Taxes** |  |  |  |  |  |

|  |
| --- |
| * Attached are copies of financial statements (balance sheets including all related notes and income statements) for the last 5 years, as indicated above, complying with the following conditions. * All such documents reflect the financial situation of the Bidder or member of a JV or other association, and not sister or parent companies. * Historic financial statements must be audited by a certified accountant. * Historic financial statements must be complete, including all notes to the financial statements. * Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted). |

**Financial Ratios**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Current Ratio** |  |  |  |  |  |
| **Debt Ration** |  |  |  |  |  |

\*Bidders to fill this table. The Employer will verify during the review process**.**

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

Each Bidder or member of a JV/Association making up a Bidder must fill in these forms.

|  |  |  |  |
| --- | --- | --- | --- |
| **Annual Turnover Data for the Last 5 Years (Construction only)** | | | |
| **Year** | **Amount**  **Currency** | **Exchange**  **Rate** | **US$**  **Equivalent** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
| **Average Annual Construction Turnover** | | |  |

The information supplied should be the annual construction turnover of the Bidder or each member of a JV/Association making up a Bidder in terms of the amounts billed to clients for each year for work in progress or completed, converted to USD at the rate of exchange at the end of the period reported.

|  |  |  |  |
| --- | --- | --- | --- |
| **Annual Turnover Data for the Last 5 Years (Design only)** | | | |
| **Year** | **Amount**  **Currency** | **Exchange**  **Rate** | **US$**  **Equivalent** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
| **Average Annual Design Turnover** | | |  |

The information supplied should be the annual design turnover of the Bidder or each member of a JV/Association making up a Bidder in terms of the amounts billed to clients for each year for work in progress or completed, converted to USD at the rate of exchange at the end of the period reported.

**Form FIN-3: Financial Resources**

Each Bidder or member of a JV/Association making up a Bidder must fill in this form, specifying proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject Contract or contracts as indicated in **Section III, Bid Review, Evaluation Criteria and Bidder Post-Qualification**.

|  |  |  |
| --- | --- | --- |
| **No.** | **Source of Financing** | **Amount (USD equivalent)** |
| 1 |  |  |
| 2 |  |  |
| 3 |  |  |
| 4 |  |  |

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

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

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Name of Contract** | **Employer, contact address/tel/fax** | **Value of outstanding work (current USD equivalent)** | **Estimated completion date** | **Average monthly invoicing over last six months (USD/month)** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

## Form REF-1: References of MCC-Funded Contracts

Each Bidder or member of a Joint Venture/Association making up a Bidder must fill in this form and include information about any and all MCC-funded contracts (either with MCC directly or with any Millennium Challenge Account Entity, anywhere in the world) to which the Bidder or member of a Joint Venture/Association making up a Bidder is or has been a party whether as a lead contractor, affiliate, associate, subsidiary, subcontractor, or in any other role.

|  |  |  |  |
| --- | --- | --- | --- |
| **Contracts with MCC** | | | |
| **Contract Name and Number** | **Role in Contract** | **Total Contract Amount** | **Employer Name and Address** |
|  |  |  |  |
|  |  |  |  |
| **Contracts with an MCA Entity** | | | |
| **Contract Name and Number** | **Role in Contract** | **Total Contract Amount** | **Employer Name and Address** |
|  |  |  |  |
|  |  |  |  |

## Form REF-2: References for Contracts Not Funded by MCC

Each Bidder or member of a Joint Venture/Association making up a Bidder must provide contact information for at least three (3) references that can provide substantial input about:

1. The type of work performed
2. Confirm the quality of the work experience listed in the following Forms as submitted as part of the Bidder’s pre-qualification documents:

EXP-1: General Design Experience

EXP-2: General Construction Experience

EXP-3: Similar Design Experience

EXP-4: Similar Construction Experience

EXP-5: Specific Design Experience

EXP-6: Specific Construction Experience

EXP-7: Environmental and Social (E&S) Management Experience

EXP-8: Health and Safety (H&S) Management Experience

The MCA Entity reserves the right, at its sole discretion, to contact other sources as well as to check references and past performance. For each reference, list a contact individual, their title, address, facsimile, phone and e-mail address**.**

**[Maximum 5 pages]**

1. **Technical Offer Forms**

**Form TECH-1: Design Proposal[[8]](#footnote-8)**

## The Bidder shall prepare the following documents that will form the Design Proposal:

1. Preliminary Design of all elements of the Works. The Preliminary Design shall comprise drawings and technical specifications. Drawings scales shall range from 1:100 to 1:500, or as otherwise specified in the Employer’s Requirements.
2. Commentary on the Employer's Requirements, including status of the information available and relevant design issues for the Works, detailing how the critical requirements will be achieved.
3. Discussion of how the Bidder proposes to develop the design at key stages, including a commentary on any necessary mapping and/or survey work and the proposed design methodology for key elements of the Works.
4. Discussion of how the Bidder proposes to incorporate environmental and social considerations, including the prevention and management of negative impacts, avoidance of resettlement, and inclusion of mitigation measures and health and safety concerns into the design, including proposed methods for coordinating design work with concurrent environmental and social management plans and any resettlement planning and implementation activities being carried out by others.[[9]](#footnote-9)
5. Name, qualifications, and particulars of the design company and designers in charge of the design of the Works.
6. Proposed names of suppliers and details for all essential equipment items, including but not limited to such items as ***[insert list as may be appropriate]***. Specifications shall be accompanied by manufacturers' brochures and details of the main items and equipment, especially those listed above, and indication of availability when needed in the general project timeframe, respectively.
7. Comments on any errors or defects noted in the Employer’s Requirements, along with details of any exceptions taken to the Employer's Requirements.
8. ***[Insert anything else, as may be appropriate.]***

**Form TECH-2: Method Statement[[10]](#footnote-10)**

The adequacy of the Bidder’s Technical Offer to meet the Employer’s Requirements and Time for Completion is important to determine if the Bid is substantially responsive as defined **at Section III, Bid Review, Evaluation Criteria and Bidder Qualification Requirements.**

The Technical Offer shall, therefore, include a Method Statement for execution of the Works, which shall demonstrate the adequacy of the Bid to meet the Employer’s Requirements and for achieving the Employer’s objective with regards to performance under the Employer’s Requirements and to complete the whole of the Works in accordance with the stated requirements in the Conditions of Contract. In this context, it is necessary for Bidders to demonstrate a complete understanding of the scope, nature and resource needs for execution of the Works and the necessary sequencing of the different elements and associated activities comprising the Works to be executed, all within the Time for Completion stated in the Appendix to Bid, as calculated from the Commencement Date (Sub-Clause 8.1).

The Method Statement shall, therefore, include, but shall not necessarily be limited to, the following:

1. Description of the Bidder’s proposed programming and sequencing of all main activities, identifying those for which timing may be critical within the Time for Completion.
2. Description of the measures included in the Bid which will be implemented to achieve the quality of execution required under the Contract.
3. Statement demonstrating Bidder’s appreciation and recognition of current conditions within the limits of site and any arrangements needed and included in the Bid to minimize disruption during the execution of the Works.
4. Description of the risks to safety within the limits of site and surrounding areas created by the execution of the Works and the measures included in the Bid to mitigate risk to all personnel involved with the Works and including the general public.
5. Description of the approach which the Bidder intends to adopt and has included in the Bid to acquire and develop a site for the Contractor’s and Engineer’s facilities, given the nature of the surrounding areas.
6. Description of arrangements which the Bidder proposes and has included in the Bid to address the activities undertaken by others (if any) on behalf of the Employer adjacent to and within the limits of site as described in the Contract, including the contractors appointed by the Employer for purpose of [**insert as may be relevant**] and, therefore, the need to program the execution of the Works accordingly within the Time for Completion and within the Accepted Contract Amount.
7. Description of arrangements which the Bidder proposes to adopt to address the need for phased relocation of peoples and properties located within the limits of site and phased right of access to, and possession of the Site as described in the Contract and, therefore, the need to program the execution of the Works accordingly within the Time for Completion. **[Use if relevant]**
8. Description of arrangements which the Bidder proposes to adopt and has included in the Bid to ensure compliance with the environmental, social, gender, health and safety requirements called for in the Employer’s Requirements.
9. Description of arrangements which the Bidder proposes to adopt and has included in the Bid to ensure compliance with the gender requirements called for in the Employer’s Requirements, including Trafficking in Persons (“TIP”) prohibitions. It is understood that this type of expertise and experience may be outside of the normal experience of some Bidders, and thus call special attention to the importance of an adequately inter-disciplinary offer and staffing plan.
10. Description of arrangements which the Bidder proposes and has included in the Bid to address the geotechnical and hydrological nature of the existing ground and methods for undertaking excavation, filling and any necessary dewatering requirements included in the Bid. **[Use if relevant]**
11. Description of arrangements which the Bidder proposes to adopt and has included in the Bid for testing and testing upon completion, as may be called for in the Employer’s Requirements.
12. Description of arrangements which the Bidder proposes to adopt and has included in the Bid for handover, including completion of as-built drawings, and any additional matters.

**Form TECH-3: Environmental, Social, Gender, Health & Safety Staffing Methodology[[11]](#footnote-11)**

Bidders must provide the information below to show that they have in place sufficient environmental, social, gender, health and safety staffing and methodology to be able to perform the Contractor’s responsibilities under the Contract in accordance with MCC Environmental Guidelines, the MCC Gender Policy, the Employer’s Social and Gender Integration Plan, the Employer’s country’s environmental laws and regulations, and in a safe and workmanlike manner.

Note: MCC has adopted the International Finance Corporation’s Performance Standards on Environmental and Social Sustainability (“IFC Performance Standards”) as part of its approach to risk management promoting sound environmental and social performance, and improving implementation of the MCC Environmental Guidelines. The successful Bidder must ensure that its activities under the Contract comply with the IFC Performance Standards.

Note: The successful Bidder will be required to carry out the Works in accordance with the site- specific Contractor’s Environmental and Social Management Plan (“CESMP”) and the site-specific Health and Safety Management Plan (“HSMP”), to be prepared by it following Contract award, and approved by the Engineer. The site-specific CESMP and HSMP shall be prepared based on the contents of Section V, Employer’s Requirements and the Employer’s Environmental & Social Management Plan. This includes requirements on community engagement and gender integration incorporated into the CESMP, gender analysis, the Employer’s Social and Gender Integration Plan, and TIP requirements of MCC and the Employer’s country’s laws and regulations. [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

The Bidder shall demonstrate in a narrative section of their Technical Offer that it possesses an appropriate level of environmental, social, health, safety, and gender management expertise and can successfully manage the environment, social, health, safety and gender risks associated with the implementation of the proposed Works (including any goods, works, or services provided by subcontractors to the Bidder), as follows:

1. Describe proposed environmental, social, health, safety, and gender staffing, roles and responsibilities, and management structure.
2. Describe the proposed approach to systematically managing environmental, social, health, safety, and gender risks and impacts during implementation of this project, including a description of the mitigation measures that will be used and international environmental, social, health, safety, and gender standards that may be applicable. Note appropriate mechanisms for monitoring performance, reporting, grievance redress, and taking corrective actions as appropriate. The approach should also apply to the works of any Subcontractors. Provide enough detail to demonstrate an understanding of the critical environmental, social, health, safety, and gender issues related to the project.

**Form TECH-4: Program[[12]](#footnote-12)**

The adequacy of the Bidder’s Technical Offer to meet the Employer’s Requirements and Time for Completion is important to determine if the Bid is substantially responsive as defined at **Section III, Bid Review, Evaluation Criteria and Bidder Qualification Requirements.**

The Bidders shall, therefore, include as part of the Technical Offer a Program which shall form the basis of the Contractor’s detailed time program to be submitted under Sub-Clause 8.3 *[Programme]* of the Conditions of Contract and which includes a schedule of key activities for execution of the Works, including estimated start and finish dates for individual activities, identifying those activities for which timing may be critical within the Time for Completion. The Bidders shall also provide, in case of the critical and other main activities, calculations of required outputs and anticipated levels of resources in terms of equipment and material production necessary to complete within the Time for Completion.

The Program shall, therefore, include, but shall not necessarily be limited to the following:

1. Details of the proposed schedule for preparation of the work program, site-specific Contractor’s Environmental and Social Management Plan, site-specific Health and Safety Management Plan, Quality Assurance Plan, and designs, including design reviews and approval by the Engineer.
2. Details of the proposed schedule to complete mobilization in preparation for carrying out the Works.
3. Details of the proposed timeline for carrying out the Works within the Time for Completion, in the form of a bar chart showing notably the critical path.
4. Details of the resource requirements (personnel, equipment and materials) to complete the Works within the Time for Completion.
5. Details of the proposed timeline for the testing, commissioning and handing over of the completed Works.

**Form TECH-5: Cash Flow Projection[[13]](#footnote-13)**

Each Bidder shall set out details of the Cash Flow Projection indicating quarterly projected expenditure throughout the duration of the Contract, both the percent of the Accepted Contract Amount and the cumulative percentage of the Accepted Contract Amount by quarter. The Cash Flow Projection shall address the following, taking into consideration payment of the advance payment, amortization of the advance payment, minimum payments, and the retention:

Lump – Sum Payments (default standard method of payment for the Contract)

1. The lump sum payments by the deliverables against the timing milestones for the completion of the mobilization.
2. The lump sum payments based on deliverables and timing milestones set out in the Contract. Alternatively, the periodic payments should be based on measurements for the construction of the Works according to the proposed construction time schedule.

Progress Payments based on Measurements of the Breakdowns of Price Schedules (alternative method of payment for the Contract)

1. The periodic payments based on measurements of progress for the completion of the mobilization.
2. The periodic payments should be based on measurements of the breakdown of prices in the Price Schedules for the construction of the Works according to the proposed construction time schedule (per lot, if applicable).

***[Note: The Employer should enter within Section V, Employers’ Requirements the time schedule and outputs for the lump sum payment schedule that is the standard method of Payment for the included FIDIC Design-Build Contract (referred to as ‘Yellow Book”)]***

**Form TECH-6: Project Management Organization[[14]](#footnote-14)**

The Bidder shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key personnel listed in Part 2, Employer’s Requirements. At a minimum, CVs must be provided for the Key Personnel for the following positions, using the forms provided for that purpose:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **No.** | **Position** | **Name** | **Total Work Similar**  **Experience (years)** | **In Similar Works Experience**  **(years)** |
| 1 | Project Manager |  |  |  |
| 2 | Designer |  |  |  |
| 3 | **[insert others as appropriate]** |  |  |  |
| 4 |  |  |  |  |
| 5 | Environmental and Social Manager |  |  |  |
| 6 | Health and Safety Manager |  |  |  |
| 7 | Gender Specialist, as appropriate based on the technical specifications |  |  |  |

In addition, the Bidder shall provide information on:

1. Organizational chart showing lines of communications as well as communications plan for managing communications with key stakeholders.
2. Plans for subcontracting any parts of the Works and the services to be carried out by specialized Subcontractors.
3. Completed Subcontractor Information Sheets for all such identified specialized Subcontractors.
4. Quality management system, describing the basis and operation of the proposed quality management system, including testing, management reviews, procedural audits, checking, procedures for monitoring, reporting and dealing with nonconformities, corrective actions, and feedback.

Please note that, during Contract negotiations, the Employer will not consider substitution of any Key Personnel unless both parties agree that undue delay in the selection process makes such substitution unavoidable or for reasons such as death or medical incapacity of one of the Key Personnel. Notwithstanding the above, the substitution of Key Personnel at the negotiations may be considered if due solely to circumstances outside the reasonable control of and not foreseeable by the Contractor, including but not limited to death or medical incapacity, and or if so requested by the Employer as a result of the Bid review process. In such a case, the Bidder shall offer a substitute Key Personnel within the period of time specified by the Employer who shall have equivalent or better qualifications and experience than the original candidate.

**Form TECH-7: Construction Equipment**

The Bidder shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Part 2, Employer’s Requirements. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Bidder.

|  |  |  |
| --- | --- | --- |
| Item of proposed 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 TECH-8: CVs of Key Personnel**

|  |
| --- |
| Name of Bidder |

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

Summarize professional experience over the last 15 years, in reverse chronological order. Indicate particular technical and managerial experience listed under Section III.

| **From** | **To** | **Company / Project / Position / Relevant technical and management experience** |
| --- | --- | --- |
|  |  |  |
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**PART 2**

**EMPLOYER’S REQUIREMENTS**

**Section V Employer’s Requirements**

**[Insert Employer’s Requirements here]**

**Note: The Employer should enter within the Section V, Employers’ Requirements the time schedule and outputs for the lump sum payment schedule that is the standard method of Payment for the included FIDIC Design-Build Contract (referred to as “Yellow Book”).**

*[Notes on Preparing Employer’s Requirements:*

*These Notes for preparing Employer’s Requirements are intended as a guide for the Employer or the person drafting the bidding documents and should not be included in the final document.*

*In the traditional approach the Employer employs an Architect/Engineer to design the Works. From this design, a detailed technical specification is drawn up for bidders to bid on.*

*In a Design-Build approach, the design is to be done by the Contractor. No detailed technical specification as is normally recognized is developed at the pre-bid stage. However, the Employer does and must know what it wants and must communicate its needs to the bidders. Hence, this section on Employer’s Requirements replaces the usual Technical Specifications of a more traditional approach.*

*To enable bidders to submit responsive bids and, subsequently, for the bids received to be evaluated in a fair and equitable manner, the Employer must state its requirements as clearly and as precisely as possible. The Employer’s Requirements must therefore, specify exactly the particular requirements of the completed Works including scope and quality. Where the performance of the completed Works could be measured in quantitative terms (e.g. production output of a manufacturing plant or maximum generating capacity of a power station) the Employer’s Requirements should not only clearly specify the desired output/capacity but also the upper and lower acceptable limits of deviation from the desired capacity and how such deviations (if any) will be evaluated. It will also be necessary to specify the tests that will be carried out on completion of the Works to verify compliance with the requirements specified. The Employer’s Requirements should also clearly specify what associated or incidental services and goods must be supplied by the Contractor. For example, the Contractor may be required to train the Employer’s personnel and to supply consumable or spare parts as listed in a Schedule.*

*While this section of the bidding documents should endeavor to define the Employer’s Requirements as precisely as possible care must be taken to avoid over specifying details to the extent that the flexibility and potential benefits associated with a Design-Build contract are seriously eroded or threatened. This section on Employer’s Requirements should, therefore, be carefully prepared on behalf of the Employer by suitably-qualified professionals who are familiar with the requirements and with the technical aspect of the required Works. Since design is the Contractor’s responsibility, the Employer should provide the criteria to which it expects the design to conform. The functional and performance specifications may specify the details of the completed work and any limitations which the Employer may impose.*

*For major and complex projects, the Design-Build Contract will have to be subject to international competitive bidding and the Employer’s Requirements must be drawn up to permit the widest possible competition and, at the same time, present a clear statement of the required standards of workmanship, materials and performance of the Works. Only if this is done will the objectives of economy and efficiency and equality in procurement be realized, responsiveness of bids be ensured and the subsequent task of bid evaluation facilitated. The Employer’s Requirements should stipulate that all goods and materials to be incorporated in the Works are new, unused, of the most recent or current models and incorporate all recent improvements in design and materials.*

*As for the drafting of Technical Specifications, care must be taken when drafting the Employer’s Requirements to ensure that the requirements are not restrictive. In the specification of standards of goods, materials and workmanship recognized international standards should be used as much as possible. 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”.*

*In addition to stating the requirements of the completed Works clearly, the Employer Requirements Section should also include matters related to the execution of the Works to enable the bidders to gauge the extent of responsibility and to price the bid accordingly. The matters referred to in some of the following Sub-Clause (FIDIC Part I) may be included:*

*1.9 Number of copies (and required extent) of Construction Documents.*

*4.1 Design criteria and calculations (if any) to be checked by the Contractor and confirmed to be correct with the bid.*

*4.4 Other contractors and organization (and others) on site to whom the Contractor should afford reasonable opportunities for them to carry out their work.*

*4.7 Setting-out points, lines and levels of reference to be used.*

*4.8 Quality Assurance system details.*

*4.12 Access routes particularly if such routes are within existing facilities.*

*4.13 Periods for preconstruction reviews and for any submission, approvals and consents.*

*4.20 Employer’s machinery and materials.*

*5.1 Qualification criteria of design personnel.*

*5.2 Extent of and procedures for submission and preconstruction reviews of Construction documents.*

*5.5 List of samples and procedure for submission for preconstruction testing and review of data.*

*5.6 Form and number of As-built drawings and records of the works to be submitted and approval process.*

*5.7 Timing and number of copies of Operation and Maintenance Manuals to be submitted and approval process.*

*6.6 Facilities to be provided on site by the Contractor for the Employer and the Employer’s Representative and its personnel.*

*7.4 Tests to be carried out during manufacture and/or construction.*

*9.1 Tests to be carried out in Completion before Taking-Over to demonstrate completion. If the works are to be tested and taken over in stages, the test requirements and special arrangements must be detailed.*

*11.1 Test to be carried out after Taking-Over to verify that the Works fulfill the performance requirements.*

*11.4 Minimum performance criteria acceptable below which works failing to pass tests after completion will be rejected.]*

**PART 3 -** **CONDITIONS OF CONTRACT**

**AND CONTRACT FORMS**

**Section VI Contract Notices and Agreement**

This Section contains the Notice of Intent to Award, the Letter of Acceptance and the Agreement.

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**Form of Notice of Intent to Award**

[**letterhead paper of the Employer**]

[**date**]

**THIS IS NOT A NOTICE OF AWARD OR LETTER OF ACCEPTANCE.**

**THE EMPLOYER INTENDS NO CONTRACT TO BE FORMED**

**WITH THIS NOTICE.**

To: **[insert name and address of the successful Bidder]**

As provided in the Bidding Document (ITB 37.1) in connection with **[insert name of the Contract and identification number, as given in the Bidding Document]**, this notice is to inform you that we have selected you as the successful Bidder in the procurement associated with such Bidding Document and, following the expiration of the period for filing a bid challenge and the resolution of any bid challenges that are submitted in accordance with our bid challenge system as more fully described in the Bidding Document, we anticipate issuing to you a formal Letter of Acceptance and Contract Agreement.

While we are providing you with this Notice of Intent to Award, it does NOT constitute the formation of a contract between you and us. You shall not acquire any legal or equitable rights and we do not extend and shall not accept any legal or equitable rights or obligations until and unless such time as you receive from us an executed Letter of Acceptance, together with a form of Contract Agreement, and the requirements set forth in such Letter of Acceptance have been fulfilled in a manner acceptable to us. We reserve the right to cancel this Notice of Intent to Award at any time prior to Contract award, without thereby incurring any liability.

Thank you for participating in the bidding process. For information about this notice, please contact the undersigned.

Authorized Signature:

Name and Title of Signatory:

**[insert proper name of the Employer]**

**Form of Letter of Acceptance**

[**letterhead paper of the Employer**]

[**date**]

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

This is to notify you that your Bid dated **[date]** for execution of the **[insert name of the Contract and identification number, as given in the Bidding Document]** for the Accepted Contract Amount of the equivalent of **[insert amount in numbers and words] [insert name of currency]**, as corrected and modified in accordance with the Instructions to Bidders, is hereby accepted by us in our capacity as Employer under the Contract.

Within 28 days of your receipt of this Letter of Acceptance and the attached Contract Agreement you are hereby instructed to (a) sign and return the attached Contract Agreement in accordance with Sub-Clause 1.6 of the General Conditions of Contract and; (b) complete and return the Compliance with Sanctions Certification Form included in Section IX, Annex to the Particular Conditions – Contract Forms, (c) complete and return the Supplier Self-Certification Form included in Section IX, Annex to the Particular Conditions – Contract Forms, and (d) forward the Performance Security in accordance with Sub-Clause 4.2 of the General Conditions of Contract, using for that purpose the Form of Performance Bank Guarantee included in Section IX, Annex to the Particular Conditions – Contract Forms, or another form acceptable to us.

Authorized Signature:

Name and Title of Signatory:

**[insert proper name of the Employer]**

**Attachment: Contract Agreement**

**Form of Contract Agreement**

CONTRACT AGREEMENT

THIS CONTRACT AGREEMENT made the day of 20

between of

(hereinafter called “the Employer”) of the one part and

of (hereinafter called “the Contractor”) of the other part.

WHEREAS, the Millennium Challenge Corporation and the Government of **[insert Country]** have entered into a Millennium Challenge Compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in **[insert Country]** in the amount of approximately **[insert Amount]** USD (“MCC Funding”).

WHEREAS, the Government, acting through the Employer,intends to apply a portion of the proceeds of MCC Funding to eligible payments under the Contract.

WHEREAS, the terms of the Contract, including payments by the Employerand restrictions on the use of MCC Funding, will be subject, in all respects, to the terms and conditions of the Compact and related documents.

WHEREAS, no party other than the Government, the Employer, and MCC shall derive any rights from the Compact or have any claim to the proceeds of MCC Funding.

WHEREAS, the Employer is desirous that certain Works should be executed by the Contractor, viz., , and has accepted a Bid by the Contractor for the execution and completion of such Works and the remedying of any defects therein.

NOW THIS CONTRACT AGREEMENT WITNESSETH as follows:

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

2. The documents identified in Sub-Clause 1.5 of the General Conditions of Contract and the Particular Conditions of Contract shall be deemed to form and be read and construed together as part of the Contract and the priority of such documents shall be as provided in such Sub-Clause 1.5.

3. In consideration of the payments to be made by the Employer to the Contractor as provided in the Contract, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.

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

IN WITNESS whereof, the parties hereto have caused this Contract Agreement to be executed the day and year first before written.

The Common Seal of was hereunto affixed in the presence of:

or

Signed, sealed, and delivered by the said

In the presence of:

Binding Signature of Employer

Binding Signature of Contractor

**Section VII General Conditions of Contract**

**General Conditions of Contract**[[15]](#footnote-15)

[**MCA ENTITY]**

**[TITLE OF DESIGN-BUILD PROJECT]**

**CONDITIONS OF CONTRACT**

**GENERAL CONDITIONS**

The Conditions of Contract, Part 1: General Conditions shall be those forming the General Conditions of the “Conditions of Contract for Plant and Design-Build,” First Edition, 1999, as prepared by the Fédération Internationale des Ingénieurs-Conseils (“FIDIC”). These General Conditions are subject to the variations and additions set out in the section of this Contract entitled “Particular Conditions of Contract.” The General Conditions of Contract can be received from the Employer through the following means: ***[to be inserted by the Employer.]***

**Section VIII Particular Conditions of Contract**

**Particular Conditions of Contract [[16]](#footnote-16)**

The following Particular Conditions of Contract (“PCCs”), including Annex A and Annex B, shall supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the Particular Conditions of Contract shall prevail over the General Conditions of Contract.

|  |  |
| --- | --- |
| **1. General Provisions** | |
| **Sub-Clause 1.1.1**  **The Contract** | Amend Subpara. 1.1.1.1 (“Contract”) by adding the following at the end:  “The words ‘Agreement’ and ‘Contract’ are used interchangeably.”  Amend Subpara. 1.1.1.8 (“Tender”) by adding the following at the end:  “The word ‘tender’ is synonymous with ‘Bid,’ and the words ‘Letter of Tender’ with ‘Letter of Bid’, and the words ‘Appendix to Tender’ with ‘Appendix to Bid,’ and the words ‘tender documents’ with ‘Bidding Documents.’” |
| **Sub-Clause 1.1.2**  **Parties and Persons** | Add as Subpara. 1.1.2.11 a defined term to read as follows:  “ ‘MCC’ means the Millennium Challenge Corporation, the United States Government Corporation with the same name, responsible for providing funds under the terms of the Compact to the Government.” |
|  | Add as Subpara. 1.1.2.12 a defined term to read as follows:  “ ‘Compact’ means the Millennium Challenge Compact between the Government and the United States of America, acting through MCC, executed on **[insert date of Compact]** that sets forth the general terms and conditions on which MCC will provide funding of up to US$ **[insert dollar amount of Compact]** to the Government for a Millennium Challenge Account program to advance economic growth and reduce poverty in **[insert name of MCA country]**.” |
|  | Add as Subpara 1.1.2.13 a defined term to read as follows:  “ ‘MCC Funding’ means the funding provided by MCC in accordance with the terms of the Compact.” |
|  | Add as Subpara 1.1.2.14 a defined term to read as follows:  “ ‘Government’ means the Government of **[insert formal name of the country]**.”  Add as Subpara 1.1.2.15 a defined term to read as follows:  “ ‘Eligible Entity’ means an entity that meets the requirements for eligibility to receive MCC Funding established by the Compact, MCC Program Procurement Guidelines, and Annex A (Additional Provisions) to the Particular Conditions of Contract.” |
|  | Add as Subpara 1.1.2.16 a defined term to read as follows:  “ ‘MCC Gender Policy’ means the MCC Gender Policy and its amendments posted from time to time on the MCC website at [www.mcc.gov](http://www.mcc.gov).”  Add as Subpara. 1.1.2.17 a defined term to read as follows:  “ ‘Primary Suppliers’ means any person or legal entity who provides goods or materials essential for the Contract (as set out in the Bill of Quantity).” |
| **Sub-Clause 1.1.3**  **Dates, Tests, Periods and Completion** | Amend Subpara. 1.1.3.6 (“Tests after Completion”) by replacing “provisions of the Particular Conditions” with “Employer’s Requirements.” |
|  | Amend Subpara. 1.1.3.7 (“Defects Notification Period”) by inserting the following after the reference to Sub-Clause 11.1:  “which extends over twelve months except as otherwise stated in the Appendix to Bid”. |
| **Sub-Clause 1.1.6**  **Other Definitions** | Add as Subpara. 1.1.6.10 a defined term to read as follows:  “ ‘Contractor’s Environmental & Social Management Plan’ or ‘CESMP’ means the plan the Contractor shall develop, deliver, and implement in accordance with Particular Condition Sub-Clause 4.18.”    Add as Subpara. 1.1.6.11 a defined term to read as follows:  “ ‘Health and Safety Management Plan’ or ‘HSMP’ means the plan the Contractor shall develop, deliver, and implement in accordance with Particular Condition Sub-Clause 4.8.” |
| **Sub-Clause 1.2**  **Interpretation** | Amend Sub-Clause 1.2 by adding the following after item (d):  “(e) “labour” and “labor” are synonymous.”  Amend Sub-Clause 1.2 by adding the following at the end:  “In Contract provisions including the expression "Cost plus reasonable profit" require this profit to be one-twentieth (5%) of this Cost unless otherwise indicated in the Appendix to Bid.” |
| **Sub-Clause 1.5**  **Priority of Documents** | Amend Sub-Clause 1.5 by adding the following at the end of item (d) the Particular Conditions:  “including the provisions set out in Annex A (Additional Provisions) attached to the Particular Conditions (which provisions shall apply to Subcontractors as well as to the Contractor) and any other attachments to the Particular Conditions.” |
| **Sub-Clause 1.7**  **Assignment** | Replace the text of Sub-Clause 1.7 with the following:  “Neither Party shall assign the whole or any part of the Contract, or any benefit or interest in or under the Contract; provided that, the Employer may assign the whole or any part of the Contract, or any benefit or interest in or under the Contract, to another person or entity of the Government (or another entity designated by the Government) without the consent of the Contractor at any time concurrent with or after the expiration of the Compact.  The Employer shall notify the Engineer and the Contractor within 10 days of any such assignment.  “In the event of any assignment of the Contract by the Employer in accordance with the immediately preceding paragraph:   1. the Contractor shall obtain a replacement Performance Security according to the terms of Sub-Clause 4.2 [*Performance Security*] in an amount equal to that of the then currently issued Performance Security naming the Employer’s assignee as beneficiary, and shall deliver this replacement Performance Security to the Employer on or before the date the assignment becomes effective at which time the Employer shall concurrently return the original Performance Security to the Contractor; 2. in the event any Retention Money guarantee is outstanding at the time of assignment, the Contractor shall obtain a replacement Retention Money guarantee according to the terms of Sub-Clause 14.9 [*Payment of Retention Money*] in an amount equal to that of the then currently issued Retention Money guarantee naming the Employer’s assignee as beneficiary, and shall deliver this replacement Retention Money guarantee to the Employer on or before the date the assignment becomes effective at which time the Employer shall concurrently return the original Retention Money guarantee to the Contractor. 3. in the event any advance payment guarantee is outstanding at the time of assignment, the Contractor shall obtain a replacement advance payment guarantee according to the terms of Sub-Clause 14.2 [*Advance Payment*] in an amount equal to that of the then currently issued advance payment guarantee naming the Employer’s assignee as beneficiary, and shall deliver this replacement advance payment guarantee to the Employer on or before the date the assignment becomes effective at which time the Employer shall concurrently return the original advance payment guarantee to the Contractor. 4. in the event any other guarantee, bond, insurance or other instruments have been obtained by the Contractor to cover the Employer against risks or liabilities associated with the performance of the Contract and remain outstanding or otherwise in effect at the time of assignment, the Contractor shall obtain a replacement guarantee, bond, insurance or other such instrument according to the terms of the Contract under which it was originally posted, purchased or otherwise became effective in an amount equal to that of the then currently issued guarantee, bond, insurance or other instrument naming the Employer’s assignee as beneficiary or payee, and shall deliver this replacement guarantee, bond, insurance or other instrument to the Employer on or before the date the assignment becomes effective at which time the Employer shall concurrently return the original guarantee, bond, insurance or other instrument to the Contractor.   “In addition, either Party:   1. may assign the whole or any part of the Contract, or any benefit or interest in or under the Contract, at any time with the prior agreement of the other Party, at the sole discretion of such other Party, and 2. may, as security in favor of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.” |
| **Sub-Clause 1.9**  **Errors in the Employer’s Requirements** | Amend Sub-Clause 1.9 by replacing the third paragraph with the following:  “After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] and Sub-Clause 20.1 [*Contractor’s Claims*] to agree or determine (i) whether and (if so) to what extent the error could not reasonably have been discovered, and (ii) the matters described in sub-paragraphs (a) and (b) above related to this extent.” |
| **Sub-Clause 1.12**  **Confidential Details** | Replace the text of Sub-Clause 1.12 with the following:    “The Contractor’s and the Employer’s Personnel shall disclose all such confidential and other information as may be reasonably required in order to verify the Contractor’s compliance with the Contract and allow its proper implementation; provided that the requirements of this Sub-Clause 1.12 shall not be construed to require the disclosure of any information by MCC or any authorized representatives of MCC, the Inspector General, the U.S. Government Accounting Office, or any auditor identified in the Compact.  “Each of the Parties shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any particulars of the Works prepared by the other Party without the previous agreement of the other Party. However, the Contractor shall be permitted to disclose any publicly available information, or, with the prior consent of the Employer, information otherwise reasonably required to establish its qualifications to compete for other projects. If any dispute arises as to the necessity of any publication or disclosure of the details of the Contract, the same shall be referred to the Employer whose determination shall be final. The Contractor shall ensure that the requirements imposed on the Contractor by this Sub-Clause apply equally to each Subcontractor.” |
| **Sub-Clause 1.13**  **Compliance with Laws** | Amend Sub-Clause 1.13(b) by adding the following at the end:  “unless the Contractor is impeded to accomplish these actions and shows evidence of its diligence.” |

**2. The Employer**

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| **Sub-Clause 2.1**  **Right of Access to the Site** | Replace the third thru fifth paragraphs of Sub-Clause 2.1 with the following:  “If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time, and giving due consideration to the phased implementation of resettlement activities as described in the Appendix to Tender or in a notice from the Engineer, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [*Contractor’s Claims*] to:   1. an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and 2. payment of any such Cost plus reasonable profit, which shall be included in the Contract Price.   “However, if and to the extent that the Employer’s failure to give right or possession to site within the agreed upon time was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor’s Documents, the Contractor shall not be entitled to such extension of time, Cost, or profit.”  Amend Sub-Clause 2.1 by adding the following at the end:  “As part of the implementation of resettlement activities associated with the Contract, certain structures existing in the right-of-way associated with the Site may be retained. In a case in which structures existing in the right-of-way are to be retained, the Engineer shall provide instructions regarding which structures the Contractor shall demolish, and which structures the Contractor shall protect from destruction or damage. The Contractor shall not demolish, damage, or affect in any way the structures identified in the Engineer’s instructions as being permitted to remain within the right-of-way associated with the Site.  “Failure to abide by the Employer’s instructions regarding right of access to the site may result in the Engineer instructing the Contractor to suspend progress on part or all of the Works. In any such event, the suspension of work will be deemed the responsibility of the Contractor subject to Sub-Clause 8.8 [*Suspension of Work*].” |
| **Sub-Clause 2.4**  **Employer’s Financial Arrangements** | Replace Sub-Clause 2.4 with the following:  “The Employer shall submit, within 28 days after receiving any request from the Contractor, reasonable evidence that financial arrangements have been made and are being maintained which will enable the Employer to pay the Final Contract Price (as estimated at that time and as agreed and confirmed by the Engineer) in accordance with Clause 14 [*Contract Price and Payment*]. If the Employer intends to make any material change to his financial arrangements, the Employer shall give notice to the Contractor with detailed particulars.  “In addition, if MCC has notified the Employer that it has suspended disbursements under the Compact which finances the execution of the Works, the Employer shall give notice of such suspension to the Contractor with detailed particulars, including the date of such notification, with a copy to the Engineer, within 7 days of having received the suspension notification from MCC. If alternative funds will be available in appropriate currencies to the Employer to continue making payments to the Contractor beyond a date 28 days after the date of MCC notification of the suspension, the Employer shall provide reasonable evidence in such notice of the extent to which such funds will be available.  “For the avoidance of doubt, in no event shall any MCC Funding be subject to any type of co-financing, joint financing or similar arrangement that would violate the terms of the Compact.” |

**3. The Engineer**

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| **Sub-Clause 3.1**  **Engineer’s Duties**  **and Authority** | Amend Sub-Clause 3.1 by replacing the word “may” in the first sentence of the third paragraph with the word “shall”.  Amend Subpara. (b) of Sub-Clause 3.1 by deleting the word “and” at the end.  Amend Subpara. (c) of Sub-Clause 3.1 by replacing the period at the end with “; and”. |
|  | Amend Sub-Clause 3.1 by adding the following at the end:  “(d) any act by the Engineer in response to a Contractor’s request except otherwise expressly specified shall be notified in writing to the Contractor within 28 days of receipt.  “The following provisions also shall apply:  “The Engineer shall obtain the specific approval of the Employer before taking action under the-following Sub-Clauses of these Conditions:   * + - 1. Sub-Clause 4.12 [*Unforeseeable Physical Conditions*]: Agreeing to or determining an extension of time and/or additional cost.       2. Sub-Clause 8.4 [*Extension of Time for Completion*]: Approving an extension of time under Sub-Clause 20.1.       3. Sub-Clause 8.6 [*Rate of Progress*]: Instructing the Contractor to submit a revised programme, under Sub-Clause 8.3 [*Programme*], to expedite progress.   (iv) Sub-Clause 13.1 [*Right to Vary*]: Instructing a Variation, except if such a Variation would increase the Accepted Contract Amount by less than the percentage specified in the Appendix to Bid.  (v) Sub-Clause 13.3 [*Variation Procedure*]: Approving a proposal for Variation submitted by the Contractor in accordance with Sub-Clause 13.1 [*Right to Vary*], 13.2 [*Value Engineering*] or 13.3 [*Variation Procedure*], except if such a Variation would increase the Accepted Contract Amount by less than the percentage specified in the Appendix to Bid.  (vi) Sub-Clause 13.4 [*Payment in Applicable Currencies*]: Specifying the amount payable in each of the applicable currencies.  “Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties and responsibility under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of the Employer, with any such instruction of the Engineer. Within 7 days of having issued such emergency instructions, the Engineer shall submit written documentation of such instructions to the Employer. The Engineer shall determine an addition to the Contract Price, in respect of such instruction, in accordance with Clause 13 [*Variations and Adjustments*] and shall notify the Contractor accordingly, with a copy to the Employer.” |
| **Sub-Clause 3.4**  **Replacement of**  **Engineer** | Amend Sub-Clause 3.4 by replacing the number “42” in the first sentence with the number “28.” |
| **Sub-Clause 3.5**  **Determinations** | Amend Sub-Clause 3.5 by adding the following to the end of the second paragraph:  “In the event a Party disagrees with any agreement or determination and intends to seek a revision under Clause 20, that Party must give notice of such disagreement to the Engineer and the other Party within 28 days of receiving the relevant agreement or determination. Failing to provide such notice of disagreement within 28 days shall bar the Party from later seeking any revision of the agreement or determination.” |

**4. The Contractor**

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| **Sub-Clause 4.1**  **Contractor’s General Obligations** | Amend Sub-Clause 4.1 by adding the following at the end:  “The Contractor and its Subcontractors and suppliers, including their respective affiliates, shall at all times during the term of the Contract be an Eligible Entity.  “All Equipment, Materials, Plant and any services to be incorporated in or required for the Works shall have an Eligible Entity as their origin and, at the Employer’s request, the Contractor shall provide evidence of such origin.  “For the purpose of this Sub-Clause 4.1, “origin” means the place where the Equipment, Materials or Plant have been mined, grown, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics, purposes or utility from its underlying components. With respect to any services, the term “origin” means the place from which the services are provided.” |
| **Sub-Clause 4.2**  **Performance Security** | Amend Sub-Clause 4.2 by adding the following at the end:  “Without limitation to the other provisions of this Sub-Clause 4.2, whenever the Engineer determines an addition to the Contract Price as a result of a change in cost and/or legislation or as a result of a Variation amounting to more than 25 percent of the portion of the Contract Price payable in a specific currency, the Contractor, at the Engineer’s written request, shall promptly increase the value of the Performance Security in the applicable currency by an equal percentage.  “The Performance Security of a joint venture or other association shall be issued so as to commit fully all members of the joint venture or other association. If the joint venture or other association has not been legally constituted at the time the Performance Security is provided, the Performance Security shall be in the name of all future members of the proposed joint venture or other association.” |
| **Sub-Clause 4.3**  **Contractor’s Representative** | Amend Sub-Clause 4.3 by adding the following at the end:  “If the Engineer determines that the Contractor’s Representative or any of these persons are not fluent in the said language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Engineer.” |
| **Sub-Clause 4.4**  **Subcontractors** | Amend Sub-Clause 4.4 by adding at the end before the period the following:  "(d) each subcontract shall include (i) provisions which would entitle the Employer to require the subcontract to be assigned to the Employer if the Subcontractor's obligations extend beyond the expiry date of the relevant Defects Notification Period and the Engineer, prior to this date, instructs the Contractor to assign the benefit of such obligations to the Employer, or in case of termination under Sub-Clause 15.2 (Termination by Employer), and (ii) each of the provisions set forth in Annex A (Additional Provisions) attached to the Particular Conditions of Contract.  In case of (i), the Contractor shall not bear any responsibility to the Employer for works done by the Subcontractor after the date such assignment comes into force”.  Amend Sub-Clause 4.4 by adding the following at the end:  “The consent of the Engineer shall not be required if the subcontract is less than one percent (1%) of the Contract Price with a maximum limit of US$100,000. If the cumulative value of all subcontracts issued to un-approved subcontractors attains US$250,000, each subsequent use of a non-approved subcontractor shall require the prior consent of the Engineer.” |
| **Sub-Clause 4.8**  **Safety Procedures** | Amend Sub-Clause 4.8 by adding the following at the end:  “The Contractor shall submit a detailed, site-specific Health and Safety Management Plan (or “HSMP”) based on all relevant health and safety provisions found in the Employer’s Requirements and Schedules and applicable Laws to the Engineer within 28 days after receiving the notice under Sub-Clause 8.1 [*Commencement of Work*]. The HSMP must be approved by the Engineer prior to commencement of the execution of the Works.  “Unless the Engineer, within 21 days after receiving the Health and Safety Management Plan, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the Health and Safety Management Plan.  “The Contractor shall also implement the health and safety requirements of the approved HSMP and comply with instructions issued as a result of periodic inspections to be undertaken as part of the supervisory role required of the Engineer.  “The Contractor shall be responsible for ensuring that all Subcontractor’s and Contractor’s Personnel understand and operate in accordance with the principles and requirements of the HSMP.  “If, at any time, the Engineer gives notice to the Contractor that all or any portion of the Health and Safety Management Plan fails (to the extent stated) to comply with the Contract, the Contractor shall submit a revised Health and Safety Management Plan to the Engineer in accordance with this Sub-Clause.    “The Contractor shall notify the Engineer, the Employer, and MCC within 24 hours or as soon as reasonably possible after the occurrence of any accident which has resulted in damage or loss of property, disability or loss of human life, or which has or which could reasonably be foreseen to have a material impact on the environment and shall submit to the Engineer, the Employer, and MCC no later than 7 days after the occurrence of such an event, a summary report thereof.  The Contractor shall monitor its Primary Suppliers on an ongoing basis and, where there is a high risk of significant life-threatening situations related to the Primary Suppliers’workers, the Contractor will introduce procedures and mitigation measures to ensure that Primary Suppliers are taking steps to prevent or to correct such life-threatening situations. Where a remedy is not possible, the Contractor shall shift its Primary Suppliers from which it obtains supplies for this Contract. Additional summary guidance may be found here: <https://www.mcc.gov/resources/doc/guidance-on-supply-chains>. |
| **Sub-Clause 4.18**  **Protection of the Environment** | Amend Sub-Clause 4.18 by replacing the title of this sub-clause with “Protection of the Environment and Social Sustainability”  Amend Sub-Clause 4.18 by adding the following at the end:  “The Contractor shall submit a detailed, site-specific Contractor’s Environmental & Social Management Plan (or “CESMP) in respect of safety, security, and management of the environmental and social impacts based on all relevant provisions found in the Employer’s Requirements and Schedules and applicable Laws to the Engineer within 28 days after receiving the notice under Sub-Clause 8.1 [*Commencement of Work*]. The CESMP must be approved by the Engineer prior to commencement of the execution of the Works.  “Unless the Engineer, within 21 days after receiving the CESMP, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the CESMP.    “If, at any time, the Engineer gives notice to the Contractor that all or any portion of the CESMP fails (to the extent stated) to comply with the Contract, the Contractor shall submit a revised CESMP to the Engineer in accordance with this Sub-Clause.  “The Contractor shall ensure that its activities under the Contract comply with MCC’s Environmental Guidelines (as such term is defined in the Compact or related agreement, which are available at http://www.mcc.gov), and are not ‘likely to cause a significant environmental, health, or safety hazard’ as defined in such Environmental Guidelines.  “The Contractor shall request written confirmation from the Engineer that actions requiring completion by the approved Resettlement Action Plan (“RAP”) have been completed before the commencement of the execution of the Works or each Section (as the case may be). The Contractor shall also immediately notify the Engineer of any land acquisition or resettlement needs resulting from the design or Works that have not been addressed by the RAP. No work shall commence in any such newly identified area without the approval of the Engineer.  “The Contractor shall implement environmental and social requirements of the approved CESMP and instructions issued as a result of periodic inspections to be undertaken as part of the supervisory role required of the Engineer, to ensure compliance with the requirements of the CESMP.  ““The Contractor shall comply with the IFC Performance Standards and the Contractor shall be responsible for ensuring that all Subcontractor’s and Contractor’s Personnel understand and operate in accordance with the principles and requirements of the environmental, social, health and safety impacts provisions of this Sub-Clause and that similar standards apply to the Subcontractor’s environmental, social, health and safety impacts management systems and environmental and social impacts performance.  “The Contractor’s programme submitted, maintained and implemented in accordance with Sub-Clause 8.3 [Programme] shall demonstrate clearly the procedures and methods of working that the Contractor and its Subcontractors shall utilize to comply with the environmental and social impacts requirements of this Sub-Clause.  “The Contractor shall ensure the adequate disposal of construction and excavation wastes in accordance with MCC’s Environmental Guidelines and applicable Laws. This includes identifying the presence of hazardous materials and developing plans, approved by the Engineer, for proper handling and disposal of such materials.  “The Contractor shall restore the Site to original conditions or to a state as set out in the Specifications after the completion of the Works.” |
| **Sub-Clause 4.21**  **Progress Reports** | Amend Sub-Clause 4.21 by adding the following at the end:  “Within 7 days of the submission by the Contractor of each monthly progress report, the Engineer and the Employer shall meet with the Contractor to discuss the progress of the Works.” |
| **Sub-Clause 4.25**  **Gender** | Add the following Sub-Clause 4.25:  “The Contractor shall prepare and implement a plan, in form and substance satisfactory to the Employer and MCC, to ensure that its activities under the Contract comply with the MCC Gender Policy and the Employer’s Social and Gender Integration Plan. The Contractor shall specifically address social and gender inequalities to ensure opportunities for the participation and benefits of women and vulnerable groups under this Contract including opportunities for project related employment, as well as to ensure that its activities do not cause significant negative social and gender impacts as defined in the above policy and plan, and the Specifications. The Contractor shall be responsible for ensuring that all Subcontractor’s and Contractor’s Personnel understand and operate in accordance with the principles and requirements of the plan. The Employer understands that the Contractor is not responsible for the social and gender impacts of the Works, to the extent that such impacts result directly from completion of the Works as designed by the Employer.” |

**5. Design**

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| **Sub-Clause 5.4**  **Technical Standards and Regulations** | Amend Sub-Clause 5.4 by inserting the following at the end of the first paragraph:  “ and MCC’s Environmental Guidelines (as such term is defined in the Compact).” |

**6. Staff and Labor**

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| **Sub-Clause 6.1**  **Engagement of Staff and Labour** | | | Amend Sub-Clause 6.1 by adding the following at the end:  “The Contractor shall adopt and implement human resources policies and procedures appropriate to its size and workforce that set out its approach to managing the Contractor’s Personnel. At a minimum, the Contractor shall provide all Contractor’s Personnel with documented information that is clear and understandable regarding their rights under all the relevant labour Laws applicable to the Contractor’s Personnel and any applicable collective agreements, including their rights related to their employment, health, safety, welfare, immigration and emigration upon beginning the working relationship and when any material changes occur.  “The Contractor shall adopt recruitment, hiring and retention practices that support the employment of women and staff from diverse backgrounds.”  “The Contractor shall ensure that the employment terms and conditions of migrant workers (see also Sub-Clause 6.12) are not influenced by their migrant status.  “The Contractor shall be responsible for monitoring compliance of Subcontractors and Primary Suppliers to the labour and working conditions outlined in the IFC Performance Standards in force from time to time.” |
| **Sub-Clause 6.6**  **Facilities for Staff and Labour** | Amend Sub-Clause 6.6 by adding the following at the end:  “Where accommodation or welfare facilities are provided to Contractor’s Personnel or Employer’s Personnel, the Contractor shall put in place and implement policies on the quality and management of such accommodation and the provision of such welfare facilities (including as regards minimum space, supply of water, adequate sewage and garbage disposal systems, appropriate protection against heat, cold, damp, noise, fire and disease carrying animals, adequate sanitary and washing facilities, separate breastfeeding/pumping facilities, ventilation, cooking and storage facilities and natural and artificial lighting, and all reasonable precautions to maintain the health and safety of the Contractor’s Personnel and Employer’s Personnel as provided in Sub-Clause 6.7 [*Health and Safety*]). The accommodation and welfare facilities shall be provided in a manner consistent with the principles of non-discrimination and equal opportunity. Accommodation arrangements shall not restrict freedom of movement or of association, save that separate facilities should be provided for men and women. Sanitary and washing facilities should be provided in a manner that allows individuals’ privacy and safety”  Additional summary guidance may be found here: <https://www.mcc.gov/resources/doc/guidance-accommodation-welfare-staff-and-labor>  When submitting its CESMP, the Contractor shall include its proposed specifications related to any facilities that will be provided for staff and labor. The proposed facilities must comply with requirements of IFC Performance Standard-2 and be approved by the Engineer.”  For further guidance on standards for workers’ accommodation see: “Workers’ accommodation: processes and standards, A guidance note by IFC and the EBRD” in particular its Part II:, Subsection I. Standards for workers’ accommodation, available at:  <https://www.ifc.org/wps/wcm/connect/60593977-91c6-4140-84d3-737d0e203475/workers_accomodation.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE-60593977-91c6-4140-84d3-737d0e203475-jqetNIh>.” | | |
| **Sub-Clause 6.7**  **Health and Safety** | Amend Sub-Clause 6.7 by adding the following at the end:  “The Contractor shall conduct an HIV-AIDS awareness program in the project areas as required by the approved CESMP and/or HSMP via an approved service provider, and shall undertake such other measures as are specified in the Contract to reduce the risk of the transfer of the HIV virus between and among the Contractor’s Personnel and the local community, to promote early diagnosis and to assist affected individuals.” | | |
| **Sub-Clause 6.8**  **Contractor’s Superintendence** | Amend Sub-Clause 6.8 by adding the following at the end:  “If the Engineer determines that the Contractor’s Personnel providing superintendence have inadequate knowledge of such language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Engineer.” | | |
| **Sub-Clause 6.12**  **Foreign Personnel** | Add the following Sub-Clause 6.12:  “The Contractor may bring in to the Country any foreign personnel who are necessary for the execution of the Works to the extent allowed by the applicable Laws. The Contractor shall ensure that these personnel are provided with the required residence visas and work permits. The Employer will, if requested by the Contractor, use his best 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.  “The Contractor shall be responsible for the return of these personnel to the place where they were recruited or to their domicile. In the event of the death in the Country of any of these personnel or members of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for their return or burial.” | | |
| **Sub-Clause 6.13**  **Prohibition of Forced or Compulsory Labour** | Add the following Sub-Clause 6.13:  “The Contractor shall not employ "forced or compulsory labour" in any form. “Forced or compulsory labour" consists of all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.”  “The Contractor shall monitor its Primary Suppliers on an ongoing basis in order to identify any significant changes in these Primary Suppliers. If new risks or incidents of forced or compulsory laboor are identified, the Contractor shall take appropriate steps to remedy them.” | | |
| **Sub-Clause 6.14**  **Prohibition of Harmful Child Labour** | Add the following Sub-Clause 6.14:  “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.”  “Where applicable Law does not specify a minimum age or specifies a minimum age below fifteen (15) years old for employment, the Contractor shall ensure that children aged below fifteen (15) are not employed to perform work under this Contract. Where applicable Law specifies a minimum age of fifteen (15) or above, such minimum age requirement shall apply. Notwithstanding any allowances provided under applicable Law to the contrary, under no circumstance shall children under the age of eighteen (18) be employed in hazardous work. All work of persons under the age of eighteen (18) will be subject to an appropriate risk assessment and regular monitoring of health, working conditions, and hours of work. Additional guidance may be found here: <https://www.mcc.gov/resources/doc/guidance-on-supply-chains>”  “The Contractor shall monitor its Primary Suppliers on an ongoing basis in order to identify any significant changes in these Primary Suppliers. If new risks or incidents of child labor are identified, the Contractor shall take appropriate steps to remedy them.”  Additional summary guidance may be found here: https://www.mcc.gov/resources/doc/guidance-on-supply-chains | | |
| **Sub-Clause 6.15**  **Employment Records of Workers** | Add the following Sub-Clause 6.15:  “The Contractor shall maintain an updated record of staff and labour employed at the site, full time and part-time, directly or by the Sub-Contractor(s); and shall keep complete and accurate records, including the name, age, gender, hours worked, and wages paid for all workers. These records shall be available for inspection by auditors during normal working hours. The Contractor shall report on a monthly basis to the Engineer and Employer the following records: hours worked by all employees and monthly payments made to the different levels of managers/professionals, administrative workers, skilled workers; unskilled workers; each disaggregated by sex and age. These records will be used to monitor compliance with child labor prohibitions. These records shall be included in the details to be submitted by the Contractor under Sub-Clause 6.10 [*Records of Contractor’s Personnel and Equipment*].” | | |
| **Sub-Clause 6.16**  **Combatting Trafficking in Persons** | | Add the following Sub-Clause 6.16:  “MCC, along with other United States Government entities, has adopted a zero tolerance policy with regard to trafficking in persons (“TIP”) through its Counter-Trafficking in Persons Policy (“C-TIP Policy”). In pursuance of this policy:   1. **Defined Terms.** For purposes of the application and interpretation of this Sub-Clause 6.16:    1. The terms “coercion,” “commercial sex act,” “debt bondage,” “employee,” “forced labor,” “fraud,” “involuntary servitude,” and “sex trafficking” have the meanings given such terms in the MCC Counter-Trafficking in Persons Policy (“MCC C-TIP Policy”) and such definitions are incorporated by reference into this Sub-Clause; and    2. “Trafficking in Persons” means (a) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; (b) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. 2. **Prohibition**. The Contractor, the Contractor’s Personnel, any Subcontractor or supplier, or any of their respective personnel, or any agent or affiliate of any of the forgoing shall not engage in any form of Trafficking in Persons during the period of performance of any contract funded, in whole or in part, with MCC funding and must also comply with those prohibitions described in U.S. laws and Execute Orders regarding TIP, including using misleading recruitment practices; charging employees recruitment fees; or destroying, concealing, confiscating, or otherwise denying access by an employee to the employee’s identity documents. 3. **Contractor Requirements**. 4. The Contractor (or subcontractor) shall:    * + - 1. notify its employees of the MCC C-TIP Policy and of the actions that will be taken against Personnel for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and          2. take appropriate action, up to and including termination, against Personnel or subcontractors that violate the prohibitions set out in this policy. 5. Each Contractor shall: 6. certify that it is not engaged in, facilitating, or allowing any activities constituting Trafficking in Persons, or related activities also prohibited under this policy, for the duration of the Contract; 7. provide assurances that activities constituting Trafficking in Persons, or related activities also prohibited under this policy, will not be tolerated on the part of its Personnel, subcontractors or Sub-Consultants (as the case may be), or their respective employees; and 8. acknowledge that engaging in such activities is cause for suspension or termination of employment or of the Contract. 9. The Contractor or subcontractor shall inform the MCA Entity within 24 hours of: 10. any information it receives from any source (including law enforcement) that alleges its Personnel, subcontractor, or the employee of a subcontractor, has engaged in conduct that violates this policy; 11. and any actions taken against any Personnel, subcontractor, subcontractor, or the employee of a subcontractor, pursuant to these requirements. 12. **Remedies**. Once the incident has been confirmed and depending on the severity of each case, the MCA Entity will apply remedies, which could include any, all, or any combination of the following: 13. the MCA Entity requiring the Contractor to remove the involved Personnel, Sub-Contractor or any of its involved Personnel, or any involved agent or affiliate; 14. the MCA Entity requiring the termination of a subcontract or sub-award; 15. suspension of Contract payments until the breach is remedied to the satisfaction of the MCA Entity; 16. loss of incentive payment, consistent with the incentive plan set out in the Contract, if any, for the performance period in which the MCA Entity determined non-compliance; 17. the MCA Entity pursuing sanctions against the Consultant, including declaring the Contractor ineligible, either indefinitely or for a stated period of time, to be awarded any MCC-funded contract; 18. termination of the Contract by the MCA Entity for default or cause in accordance with the termination clause of the Contract; and 19. the MCA Entity directing the Contractor to provide reasonable financial support or restitution to the victim(s) of any such incident, in each case in accordance with the Contractor’s applicable TIP risk management plan, and/or based on a final judicial or administrative determination issued pursuant to Applicable Law or the findings of an investigation conducted (directly or through a third party) by the MCA Entity. | |
| **Sub-Clause 6.17 Prohibition of Sexual Harassment** | Add the following Sub-Clause 6.17:    “The Contractor, including all Sub-Contractors and any Personnel, shall prohibit, and refrain from, sexual harassment behaviors directed at Compact beneficiaries, partners, or stakeholders, MCA Entity employees, MCA Entity consultants, MCC personnel, or MCC consultants. Examples of sexual harassment include, but are not limited to, the following behaviors: unwelcome sexual advances; requests for sexual favors; verbal or physical harassment of a sexual nature; or offensive remarks about a person’s sex, sexual orientation or non-conformity with gender stereotypes. The Contractor shall implement a policy prohibiting sexual harassment and put in place an incident referral and reporting plan with respect to the provision of the Services to support a safe and respectful work environment, in form and substance satisfactory to the MCA Entity and MCC. The Contractor shall be responsible for ensuring that all Contractor and Sub-Contractor Personnel understand and operate in accordance the requirements of this Clause in order to assure a safe, respectful, and harassment free work environment. The MCA Entity may investigate (either directly or through a third party) allegations of sexual harassment as it determines appropriate. The Contractor shall fully cooperate with any investigation conducted by the MCA Entity regarding breach of this provision. The Contractor will ensure that any incident of sexual harassment investigated by the MCA Entity has been resolved to the MCA Entity and MCC’s satisfaction.” | | |
| **Sub-Clause 6.18**  **Non-Discrimination and Equal Opportunity** | Add the following Sub-Clause 6.18:  “The Contractor shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. Personal characteristics include sex, race, nationality, ethnic, social and indigenous origin, religion or belief, disability, age, sexual orientation, and gender identity. The Contractor shall base the employment relationship on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline. In countries where the relevant labor Laws provide for non-discrimination in employment, the Contractor shall comply with such Laws. When the relevant labor Laws are silent on non-discrimination in employment, the Contractor shall ensure compliance with this Sub-Clause’s requirements by implementing a policy in form and substance satisfactory to the Employer and MCC. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination.” | | |
| **Sub-Clause 6.19**  **Grievance Mechanism for Contractor and Subcontractor Personnel** | Add the following Sub-Clause 6.19:  “The Contractor shall provide a grievance mechanism for Contractor’s Personnel, including Subcontractor staff, if a separate Subcontractor grievance mechanism does not exist, to raise workplace concerns. The Contractor shall inform its Personnel of the grievance mechanism at the time of recruitment and make it easily accessible to them. The mechanism should involve review by an appropriate level of management and address concerns promptly, using an understandable and transparent process that provides timely feedback to those concerned, without any retribution to Personnel for initiating or participating in a complaint under such mechanism. The mechanism should also allow for anonymous complaints to be raised and addressed. The mechanism should not impede access to other judicial or administrative remedies that might be available under the applicable Law or through existing arbitration procedures, or substitute for grievance mechanisms provided through collective agreements.” | | |

**7. Plant, Materials and Workmanship**

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| **Sub-Clause 7.7**  **Ownership of Plant and Materials** | Amend Sub-Clause 7.7 by replacing Subparas. (a) and (b) with the following:  “(a) when it is incorporated in the Works;  (b) when the Contractor is paid the corresponding value of the Plant and Materials under Sub-Clause 8.10 [*Payment for* *Plant and Materials in Event of Suspension*].” |

**8. Commencement, Delays and Suspension**

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| **Sub-Clause 8.1** **Commencement of Works** | Amend Sub-Clause 8.1 by inserting the following at the end:  “Failure of the Contractor to mobilize all Contractor’s Equipment and Contractor’s Personnel to the Site as set out in the programme approved in accordance with Sub-Clause 8.3 [*Programme*] shall result in an obligation on the part of the Contractor to increase the Performance Security by an amount equal to two percent of the Contract Price (as estimated at that time).” |
| **Sub-Clause 8.3** **Programme** | Amend Sub-Clause 8.3 by inserting the following at the end:  “Failure of the Contractor to submit a revised programme to the Engineer within 28 days of receiving notice from the Engineer in accordance with this Sub-Clause shall result in an obligation on the part of the Contractor to increase the Performance Security by an amount equal to two percent of the Contract Price (as estimated at that time).  “In the event the Contractor submits a revised programme and the Engineer gives notice to the Contractor stating the extent to which such revised programme does not comply with the Contract, all in accordance with this Sub-Clause, and the Contractor fails to submit a further revised programme to the Engineer within 14 days of receiving such notice from the Engineer, the Contractor shall be obligated to increase the Performance Security by an amount equal to two percent of the Contract Price (as estimated at that time).” |
| **Sub-Clause 8.6**  **Rate of Progress** | Amend Sub-Clause 8.6 by inserting the following at the end:  “Additional Costs of revised methods, including acceleration measures, instructed by the Engineer to reduce delays resulting from causes listed under Sub-Clause 8.4 [*Extension of Time for Completion*] shall be paid by the Employer, without generating, however, any other additional payment benefit to the Contractor.” |
| **Sub-Clause 8.12**  **Resumption of Work** | Amend Sub-Clause 8.12 by inserting the following at the end:  “after receiving from the Engineer an instruction to this effect under Clause 13 [*Variations and Adjustments*].” |

**11. Defects Liability**

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| **Sub-Clause 11.3**  **Extension of Defects Notification Period** | Amend Sub-Clause 11.3 by inserting the following at the end of the first sentence of the first paragraph:  “attributable to the Contractor.” |

**13. Variations and Adjustments**

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| **Sub-Clause 13.1**  **Right to Vary** | Amend Sub-Clause 13.1 by inserting the following at the end of the first sentence of the second paragraph:  “or such Variation requires a substantial change in the sequence or progress of the Works.” |
| **Sub-Clause 13.7**  **Adjustments for Changes in Legislation** | Amend Sub-Clause 13.7 by adding the following to the end of the first paragraph:  “, provided, that no such adjustment will be made on account of any change in the Laws of the Country related to taxes as such term is defined and used in Sub-Clause 21.”  Amend Sub-Clause 13.7 by adding the following at the end:  “Notwithstanding the foregoing, the Contractor shall not be entitled to such an extension of time if the same shall already have been taken into account in determining an extension and such Cost shall not be separately paid if the same shall already have been taken into account in the indexing of any inputs to the table of adjustment data in accordance with the provisions of Sub-Clause 13.8 [*Adjustments for Changes in Cost*].” |
| **Sub-Clause 13.8**  **Adjustments for Changes in Cost** | Amend Sub-Clause 13.8 by inserting the following after the first sentence of the second paragraph:  “Adjustment shall be made for the first time and with the frequency as stated in the Appendix to Bid.” |

**14. Contract Price and Adjustment**

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| **Sub-Clause 14.1**  **The Contract Price** | Amend Subpara. (b) of Sub-Clause 14.1 by deleting the phrase “except as stated in Sub-Clause 13.7 [*Adjustments for Changes in Legislation*]”. |
| **Sub-Clause 14.2**  **Advance Payment** | Amend Sub-Clause 14.2 by replacing the fifth paragraph with the following:  “Unless stated otherwise in the Appendix to Bid, the advance payment shall be repaid through percentage deductions from the interim payments certified by the Engineer in accordance with Sub-Clause 14.6 [*Issue of Interim Payment Certificates*], as follows:   1. deductions shall commence in the next Interim Payment Certificate following that in which the total of all interim payments (excluding the advance payment and deductions and repayments of retention) certified to the Contractor has reached the percentage of the Accepted Contract Amount stipulated in the Appendix to Bid less Provisional Sums; and 2. deductions shall be made at the amortization rate stated in the Appendix to Bid of the amount of each Interim Payment Certificate (excluding the advance payment and deductions for its repayments as well as deductions for retention money) in the currencies and proportions of the advance payment until such time as the advance payment has been repaid; always provided that the advance payment shall be completely repaid prior to the time when the percentage of the Accepted Contract Amount less Provisional Sums stipulated in the Appendix to Bid has been certified for payment.” |
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| **Sub-Clause 14.3**  **Application for**  **Interim Payment Certificates** | Amend Sub-Clause 14.3 by adding the following at the end:  “At the same time as submitting the Statement to the Engineer, the Contractor shall send a copy to the Employer at the address in the Appendix to Bid.” |
| **Sub-Clause 14.7**  **Payment** | Amend Sub-Clause 14.7 by replacing the first line with the following:  “The Employer shall pay or cause to be paid to the Contractor:”  Amend Sub-Clause 14.7 by adding the following at the end:  “The bank account(s) nominated by the Contractor shall be as stipulated in the Appendix to Bid.” |
| **Sub-Clause 14.8**  **Delayed Payment** | Amend Sub-Clause 14.8 by replacing the second paragraph with the following:  “These financing charges shall be calculated at the annual rates of interest and shall be paid in the currencies indicated in the Appendix to Bid.” |
| **Sub-Clause 14.9**  **Payment of Retention Money** | Amend Sub-Clause 14.9 by replacing “two-fifths (40%)” in the first and second paragraphs with “one-half (50%)”.  Amend Sub-Clause 14.9 by adding the following at the end:  “When the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified by the Engineer for payment, the Contractor shall be entitled to substitute a guarantee, in the form annexed to the Particular Conditions or in another form approved by the Employer and provided by an entity approved by the Employer, for the second half of the Retention Money. The Contractor shall ensure that the guarantee is in the amounts and currencies of the second half of the Retention Money and is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects, as specified for the Performance Security in Sub-Clause 4.2 [*Performance Security*]. On receipt by the Employer of such guarantee, the Engineer shall certify and the Employer shall pay, or cause to be paid, the second half of the Retention Money. The release of the second half of the Retention Money against such guarantee shall then be *in lieu of* the release under the second paragraph of this Sub-Clause. The Employer shall return the guarantee to the Contractor within 21 days after receiving a copy of the Performance Certificate. |
| **Sub-Clause 14.11**  **Application for Final Payment Certificate** | Amend Sub-Clause 14.11 by inserting the following in the first sentence of the second paragraph after “may reasonably require”:  “within 28 days from receipt of the said draft…” |

**15. Termination by Employer**

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| **Sub-Clause 15.2**  **Termination by Employer** | Amend Subpara. (e) of Sub-Clause 15.2 by deleting the word “or” at the end.  Amend Subpara. (f) of Sub-Clause 15.2 by replacing the period at the end with a comma.  Amend Sub-Clause 15.2 by adding the following immediately after the text of Subpara. (f):  “(g) if the Contractor, in the judgment of the Employer or MCC, fails to perform its obligations relating to the use of funds set out in Annex A (Additional Provisions) attached to the Particular Conditions of Contract, or  “(h) if the Compact expires, is suspended or terminates in whole or in part in accordance with the terms of the Compact.”  Amend Sub-Clause 15.2 by replacing the text of the second sentence of the second paragraph with the following:  “However, in the case of Sub-paragraphs (e), (f), (g) or (h), the Employer may, by notice, terminate the Contract immediately. In the event of Employer termination of the Contract pursuant to Sub-paragraph (g), the Contractor shall be liable to repay any and all funds so misused. In the event of Employer termination of the Contract pursuant to Sub-paragraph (h), the Contractor shall proceed in accordance with Sub-Clause 16.3 [*Cessation of Work and Removal of Contractor’s Equipment*] and shall be paid in accordance with Sub-Clause 19.6 [*Optional Termination, Payment and Release*] in accordance with the terms of the Compact and any related agreements.” |
| **Sub-Clause 15.6**  **Corruption or Fraud** | Add the following Sub-Clause 15.6:    “MCC requires that the Employer and any other beneficiaries of MCC Funding, including bidders, suppliers, contractors, and subcontractors under any MCC-funded contracts, observe the highest standards of ethics during the procurement and execution of such contracts.  MCC’s Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations (“MCC’s AFC Policy”) is applicable to all procurements and contracts involving MCC Funding and can be found on the MCC website. MCC’s AFC Policy requires that companies and entities receiving MCC funds acknowledge notice of MCC’s AFC Policy and certify to the Employer that they have acceptable commitments and procedures in place to address the potential for coercion, collusion, corruption, fraud, and prohibited practices.  Any entity receiving an award (including, but not limited to, both contracts and grants) of MCC Funding of over $500,000 will be required to certify to the Employer that they will adopt and implement a code of business ethics and conduct within ninety (90) days of Contract award. Such entity will also include the substance of this clause in subcontracts that have a value in excess of $500,000. Information regarding the establishment of business ethics and conduct programs can be obtained from numerous sources, including but not limited to:  <http://www.oecd.org/corruption/Anti-CorruptionEthicsComplianceHandbook.pdf>;  <http://cctrends.cipe.org/anti-corruption-compliance-guide/>   1. For purposes of the Contract, the terms set forth below are defined as follows: 2. ***“coercion”*** means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party, to improperly influence the actions of a party in connection with the implementation of any contract supported, in whole or in part, with MCC Funding, including such actions taken in connection with a procurement process or the execution of a contract; 3. ***“collusion”*** means a tacit or explicit agreement between two or more parties to engage in coercion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or a prohibited practice, including any such agreement designed to fix, stabilize, or manipulate prices or to otherwise deprive the MCA Entity of the benefits of free and open competition; 4. ***“corruption”*** means The offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of a public official, the Employer Personnel, MCC staff, consultants, or employees of other entities engaged in work supported, in whole or in part, with MCC Funding, including such work involving taking or reviewing selection decisions, otherwise advancing the selection process or contract execution, or the making of any payment to any third party in connection with or in furtherance of a contract.; 5. ***“fraud”*** means any act or omission, including any misrepresentation, that knowingly or recklessly misleads or attempts to mislead a party in order to obtain a financial or other benefit in connection with the implementation of any contract supported, in whole or in part, with MCC Funding, including any act or omission designed to influence (or attempt to influence) a selection process or the execution of a contract, or to avoid (or attempt to avoid) an obligation; 6. ***“obstruction of investigation into allegations of fraud or corruption”***means any act taken in connection with the implementation of any contract supported, in whole or in part, with MCC Funding: (a) that results in the deliberate destroying, falsifying, altering or concealing of evidence or making false statement(s) to investigators or any official in order to impede an investigation into allegations of coercion, collusion, corruption, fraud, or a prohibited practice; or (b) that threatens, harasses, or intimidates any party to prevent him or her from either disclosing his or her knowledge of matters relevant to an investigation or from pursuing the investigation; or (c) that is intended to impede the conduct of an inspection and/or the exercise of audit rights of MCC and/or the Office of the Inspector General (OIG) responsible for MCC provided under a Compact, Threshold Program agreement, or related agreements; 7. ***“prohibited practice”*** means any action that violates Section E (Compliance with Anti-Corruption Legislation), Section F (Compliance with Anti-Money Laundering Legislation), and Section G (Compliance with Terrorist Financing Legislation and Other Restrictions) of the Annex of Additional Provisions that will be made a part of MCC-funded contracts   (b) MCC may cancel any portion or all of the MCC Funding allocated to the Contract if it determines at any time that representatives of the Employer, the Contractor or any other beneficiary of the MCC Funding were engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices during the selection process or the performance of the Contract, or another MCC-funded contract, without the Employer, the Contractor or such other beneficiary having taken timely and appropriate action satisfactory to MCC to remedy the situation.  (c) MCC and the Employer may pursue sanction of the Contractor, including declaring the Contractor ineligible, either indefinitely or for a stated period of time, to be awarded any MCC-funded contract if at any time either MCC or the Employer determines that the Contractor has, directly or through an agent, engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices in competing for, or in performance of, the Contract or another MCC-funded contract.  (d) If the Employer or MCC determines that the Contractor, any Subcontractor, any of the Contractor’s Personnel, or any agent or affiliate of any of them has, directly or indirectly, engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices, in competing for or in the performance of the Contract, then the Employer or MCC may, by notice, immediately terminate the Contractor's employment under the Contract and expel him from the Site, and the provisions of Clause 15 [*Termination by Employer*] shall apply as if such expulsion had been made under Sub-Clause 15.2(f).  (e) Should any of the Contractor’s Personnel be determined to have engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices during the competition for or execution of the Contract, but the Employer or MCC determines not to terminate the Contractor’s employment and the Contract in accordance with the immediately preceding sub-paragraph, then the relevant Contractor’s Personnel shall be removed in accordance with Sub-Clause 6.9 [*Contractor’s Personnel*].” |

**16. Suspension and Termination by Contractor**

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| **Sub-Clause 16.2**  **Termination by Contractor** | Amend Subpara. (d) of Sub-Clause 16.2 by adding the following at the end:  “in such manner as to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract,” |

**17. Risk and Responsibility**

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| **Sub-Clause 17.3**  **Employer’s Risks** | Amend Sub-Clause 17.3 by replacing the first line with the following:  “The Employer’s risks, insofar as they directly affect the execution of the Works in the Country where the Permanent Works are to be executed, are:” |
| **Sub-Clause 17.6**  **Limitation of Liability** | Amend Sub-Clause 17.6 by replacing the first paragraph with the following:  “Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than as specifically provided in Sub-Clause 8.7 [*Delay Damages*]; Sub-Clause 11.2 [*Cost of Remedying Defects*]; Sub-Clause 15.4 [*Payment after Termination*]; Sub-Clause 16.4 [*Payment on Termination*]; Sub-Clause 17.1 [*Indemnities*]; Sub-Clause 17.4 (b) [*Consequences of Employer’s Risks*] and Sub-Clause 17.5 [*Intellectual and Industrial Property Rights*].” |

1. **Insurance**

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| **Sub-Clause 18.1**  **General Requirements for Insurance**  **Sub-Clause 18.5**  **Requirements for Professional Liability Insurance** | Amend Sub-Clause 18.1 by adding the following at the end:  “The insuring Party shall be entitled to place all insurance relating to the Contract (including, but not limited to the insurance referred to Clause 18 [*Insurance*]) with insurers from any Eligible Entity.”  Add the following Sub-Clause 18.5:    “The Contractor shall effect and maintain professional liability insurance in an amount no less than the total liability of the Contractor to the Employer calculated in accordance with Sub-Clause 17.6 [*Limitation of Liability*].” |

**19. Force Majeure**

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| **Sub-Clause 19.4**  **Consequences of Force Majeure** | Amend Sub-Clause 19.4 by inserting the following at the end of Subpara. (b):  “, including the costs of rectifying or replacing the Works and/or Goods damaged or destroyed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in Sub-Clause 18.2 [*Insurance for Works and Contractor’s Equipment*].” |

**20. Claims, Disputes and Arbitration[[17]](#footnote-17)**

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| **Sub-Clause 20.1**  **Contractor’s Claims** | Amend Sub-Clause 20.1 by inserting the following as a new paragraph between subparagraphs 6 and 7:  “Within the above defined period of 42 days, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [*Extension of Time for Completion*], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.” |
|  | Amend Sub-Clause 20.1 by deleting paragraph 8 (in the order of paragraphs prior to the amendment made above) and replacing it with the following new paragraph:  “If the Engineer does not respond within the timeframe defined in this Sub-Clause, either Party may consider that the claim is rejected by the Engineer and either Party may refer such claim to the DAB in accordance with Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board’s Decision*].” |
| **Sub-Clause 20.2**  **Appointment of the Dispute Adjudication Board** | Amend Sub-Clause 20.2 by inserting the following at the end of the first sentence of the second paragraph:  “, 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 construction involved in the Works and with the interpreta­tion of contractual documents.” |
|  | Amend Sub-Clause 20.2 by replacing the fifth paragraph with the following:  “The agreement between the Parties and either the sole member (“adjudicator”) or each of the three members shall:   1. incorporate by reference the General Conditions of Dispute Adjudication Agreement contained in the Appendix to these General Conditions; and 2. be in the form annexed to the Particular Conditions or in another form approved by the Employer.” |
| **Sub-Clause 20.6**  **Arbitration** | Amend Sub-Clause 20.6 by replacing the first paragraph with the following:  “Any dispute not settled amicably and in respect of which the DAB’s decision (if any) has not become final and binding shall be finally settled by arbitration. Unless otherwise agreed by both Parties:   1. For contracts with foreign contractors, 2. international arbitration shall be conducted with proceedings administered by the international arbitration institution appointed in the Appendix to Tender, in accordance with the rules of arbitration of the appointed institution, if any, or in accordance with UNCITRAL arbitration rules, at the choice of the appointed institution; 3. 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 4. the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [*Law and Language*], and 5. For contracts with domestic contractors, arbitration shall be conducted with proceedings in accordance with the Laws of the Employer’s Country.”   Amend Sub-Clause 20.6 by adding the following at the end:  “MCC has the right to be an observer to any arbitration proceeding hereunder, at its sole discretion, but does not have the obligation to participate in any arbitration proceeding in any capacity. Whether or not MCC is an observer to any arbitration hereunder, the Parties shall provide MCC with all pleadings, correspondence, and other documents related in any way to the proceedings or hearings, as well as written English transcripts of any arbitration proceedings or hearings and a copy of the reasoned written award within ten (10) days after (a) each such proceeding or hearing or (b) the date on which any such award is issued. MCC may enforce its rights under the Contract in an arbitration conducted in accordance with this provision or by bringing an action in any court that has jurisdiction. The acceptance by MCC of the right to be an observer to the arbitration shall not constitute consent to the jurisdiction of the courts or any other body of any jurisdiction or to the jurisdiction of any arbitral panel.” |
| **Sub-Clause 20.7**  **Failure to Comply with Dispute Adjudication Board’s Decision** | Replace the text of Sub-Clause 20.7 with the following:  “In the event that a Party fails to comply with any decision of the DAB, whether binding or final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under Sub-Clause 20.6 [*Arbitration*] for summary or other expedited relief, as may be appropriate. Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board’s Decision*] and Sub-Clause 20.5 [*Amicable Settlement*] shall not apply to this reference.” |

**Add the following Clauses and Sub-Clauses**

**21. Taxes**

|  |  |
| --- | --- |
| **Sub-Clause 21.1**  **Certain Forms of Local Taxation** | “As provided for under the terms of the Compact, most services performed under and activities undertaken in furtherance of the Contract, including in connection with the execution of the Works, are exempt from taxes, duties, levies, contributions or other charges imposed under Laws currently or hereafter in effect in the Employer’s Country (separately “tax” and collectively “taxes”) during the effective term of the Compact, including, without limitation:  (a) income taxes, withholding taxes, and other profit or business taxes imposed on individuals, organizations, or enterprises (other than nationals or permanent residents of the Employer’s Country);  (b) customs duties, tariffs, import and export taxes or other taxes imposed on import, usage and re-export of goods, (including Contractor’s Equipment and spare parts thereof, Plant, Materials and supplies imported into the Employer’s Country for purposes of the Contract), services or personal items (including personal automobiles) to be used in connection with the execution of the Works or for usage by the Contractor’s Personnel (or their family members) who are not nationals or permanent residents of the Employer’s Country and are in the Employer’s Country for the purpose of the execution of the Works; and  (c) sales tax, valued added tax, excise tax, property (real or personal) transfer tax, taxes on the ownership, possession or use of property (real or personal), and other similar charges on any transactions involving goods, works or services.  “In the case of imports of goods for personal usage, the written information shall indicate that the goods shall be used for personal usage by Contractor’s Personnel (or their family members) who are neither nationals nor permanent residents of the Employer’s Country and who are in the Employer’s Country for the purpose of executing the Works.  “The Employershall use reasonable efforts to ensure that the Government provides the Contractor, any Subcontractor and any Contractor’s Personnel the exemptions from taxation applicable to such persons or entities, in accordance with the terms of the Compact or related agreements.” |
| **Sub-Clause 21.2**  **Income Taxes on Local Staff** | “As provided for under the terms of the Compact, the Contractor’s local staff and labour (nationals or permanent residents of the Employer’s Country) will be liable to pay personal income taxes in the Employer’s Country in respect of such of their salaries and wages 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.” |
| **Sub-Clause 21.3**  **Obligation to Pay Taxes** | “The Contractor, each Subcontractor and their respective personnel shall pay all taxes levied under applicable Laws. In no event shall the Employer be responsible for the payment of any taxes.  “If the Contractor, any Subcontractor or Contractor’s Personnel is required to pay taxes that are exempt under the Compact or a related agreement, the Contractor shall promptly notify the Employer of any such taxes paid, and shall cooperate with, and take such actions as may be requested by the Employer, MCC, or either of their agents or representatives, in seeking the prompt and proper reimbursement of such taxes.” |
| **22. General Provisions of Compact and Other Provisions** | |
| **Sub-Clause 22.1**  **Provisions a Part of the Contract** | The provisions set forth in Annex A (Additional Provisions) attached to the Particular Conditions of Contract form an integral part of the Contract. For the avoidance of doubt, the Parties agree and understand that the provisions set forth in Annex A reflect certain requirements of the Government and the Employer under the terms of the Compact that are required to be transferred onto any contractor or subcontractor who partakes in procurement or subsequent contracts in which MCC Funding is involved and that, as with the other clauses under the Contract, the provisions of Annex A are binding obligations under the Contract.” |
| **Sub-Clause 22.2**  **Flow Through Provisions**  **Sub-Clause 22.3**  **Contractor Past**  **Performance**  **Reporting System** | “In any subcontract or sub-award entered into by the Contractor, as permitted by the terms of the Contract, the Contractor shall ensure the inclusion of all the provisions contained in Annex A (Additional Provisions) attached to the Particular Conditions of Contract in any agreement related to such subcontract or sub-award.”  “The Contractor acknowledges that during the performance of the Contract the Employer shall maintain a performance record of the Contractor in accordance with MCC’s Contractor Past Performance Reporting System, as described on MCC’s website. The Contractor shall provide timely information or input to, and otherwise respond to requests for input or information from, the MCA Entity to enable the MCA Entity to comply with MCC requirements related to this Contractor Past Performance Reporting System.” |

**Section IX Contract Annexes**

**Annex A: Additional Provisions**

The additional provisions of contract can be found on the MCC website: <https://www.mcc.gov/resources/doc/annex-of-general-provisions>

NB: These provisions must be printed out and attached to the Contract prior to signature

**Annex B: Appendix to Bid[[18]](#footnote-18)**

The Particular Conditions of Contract, including Annex A and this Annex B, shall supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in these Particular Conditions of Contract, including Annex A and this Annex B, shall prevail over the General Conditions of Contract.

**Annex C: Compliance with Sanctions Certification Form**

In satisfaction of clause G of the Additional Provisions at Annex A of the Contract, this form is to be completed by the Bidder upon submission of the Bid and, if selected, by the Contractor initially, within 28 days of receipt of Letter of Acceptance and Contract Agreement, and subsequently thereafter on the last business day prior to the last day of each quarter (March 31, June 30, September 30, December 31) after the signature of an MCC-Funded Contract[[19]](#footnote-19), for the duration of the Contract.

The form is to be submitted to the MCA Procurement Agency at the time of Bid submission, and to the MCA Entity Fiscal Agent thereafter [*email addresses for MCA Entity Procurement and Fiscal Agents to be inserted here*] with a copy to MCC at [sanctionscompliance@mcc.gov](mailto:sanctionscompliance@mcc.gov).

For the avoidance of doubt, pursuant to the MCC Program Procurement Guidelines, reporting the provision of material support or resources (as defined below) to an individual or entity on the enumerated lists will not necessarily result in the disqualification of a Bidder or cancellation of the Contract. However, **failure** to report such provision, or any similar material misrepresentation, whether intentional or without due diligence, would be grounds for disqualifying the Bidder or canceling the Contract, and such Bidder or Contract may also be subject to potential criminal, civil, or administrative remedies as appropriate under U.S. law.

Instructions for completing this form are provided below.

**Full Legal Name of Contractor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Full Name and Number of Contract: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**MCA Entity with which Contract Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

|  |
| --- |
| * All eligibility verifications have been completed in accordance with **Annex A “Additional Provisions,” Paragraph G “Compliance with Terrorist Financing Legislation and Other Restrictions”,** including (without limiting the scope of paragraph G):   + The Bidder or Contractor, to the best of its current knowledge, has not provided, at any time within the previous ten years or currently, any material support or resources (including without limitation, any MCC Funding[[20]](#footnote-20)), directly or indirectly to, or knowingly permitted any funding (including without limitation any MCC Funding) to be transferred to, any individual, corporation or other entity that the Bidder or Contractor knew, or had reason to know, commits, attempts to commit, advocates, facilitates, or participates in any terrorist activity, or has committed, attempted to commit, advocated, facilitated or participated in any terrorist activity, including, but not limited to, the individuals and entities on the enumerated lists described below (including the Bidder or Contractor itself).   **OR**   * All eligibility verifications have been completed in accordance with  **Annex A “Additional Provisions,” Paragraph G “Compliance with Terrorist Financing Legislation and Other Restrictions,”** and the following results were obtained (information to be provided for each result): * Name of individual, corporation or other entity: * Eligibility verification source(s) where listed ineligible: * Position (if individual), or goods or services provided (if corporation or other entity): * Estimated value of work performed as of certification date: |

I hereby certify that the information provided above is true and correct in all material respects and understand that any material misstatement, misrepresentation or failure to provide the information requested in this certification may be deemed to be “fraud” for purposes of the ITB or Contract, the MCC Program Procurement Guidelines, and other applicable MCC policy or guidance, including MCC’s Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations.

**Authorized Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Printed Name of Signatory: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**INSTRUCTIONS FOR COMPLETING FORM:**

The Bidder/Contractor shall perform the following procedures to verify the eligibility of firms, key personnel, subcontractors, vendors, suppliers, and grantees, in accordance with **Annex A “Additional Provisions,” Paragraph G “Compliance with Terrorist Financing Legislation and Other Restrictions,”** provided below.

The Bidder/Contractor shall verify that any individual, corporation, or other entity that has access to or is (or would be) a recipient of MCC Funding, including Bidder/Contractor staff, consultants, sub-contractors, vendors, suppliers, and grantees, is not listed on any of the following (or, in the case of #4 below, is not a national of, or associated in, any country appearing on such list):

1. System for Award Management (SAM) - <https://www.sam.gov/portal/SAM/#1>
2. World Bank Debarred List -  <https://www.worldbank.org/en/projects-operations/procurement/debarred-firms>
3. US Government Consolidated Screening List - <https://2016.export.gov/ecr/eg_main_023148.asp>
4. US State Sponsors of Terrorism List - <https://www.state.gov/j/ct/list/c14151.htm>

In addition to these lists, before providing any material support or resources to an individual or entity, the Bidder/Contractor will also consider all information about that individual or entity of which it is aware and all public information that is reasonably available to it or of which it should be aware.

Documentation of the process takes two forms. The Bidder/Contractor should prepare a table listing each staff member, consultant, sub-contractor, vendor, supplier, and grantee working on the contract, such as the form provided below.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Name | Date Checked | | | | Eligible (Y/N) |
| SAM | World Bank Debarred List | US Government Consolidated Screening List | US State Sponsors of Terrorism List |
| Contractor (the firm itself) |  |  |  |  |  |
| Staff Member #1 |  |  |  |  |  |
| Staff Member #2 |  |  |  |  |  |
| Consultant #1 |  |  |  |  |  |
| Consultant #2 |  |  |  |  |  |
| Sub-Contractor #1 |  |  |  |  |  |
| Sub-Contractor #2 |  |  |  |  |  |
| Vendor #1 |  |  |  |  |  |
| Supplier #1 |  |  |  |  |  |
| Grantee #1 |  |  |  |  |  |

The Bidder/Contractor should list the date on which the search was conducted using each eligibility verification source, and whether the staff member, consultant, sub-contractor, vendor, supplier, or grantee was determined to be eligible – that is, did not show up on any of the eligibility verification sources.

In addition, as all three lists are searchable databases that return a positive or negative search results page upon submission of a name to be searched, in order to document the eligibility, the Bidder/Contractor should print out and retain for each staff member, consultant, sub-contractor, vendor, supplier, or grantee the search results page for each eligibility verification source, which should read, *“Has Active Exclusion? No”* (in the case of SAM), *“No Matching Records found!”* (in the case of World Bank Debarred List), or *“No result”* (in the case of the US Government Consolidated Screening List).

If an adverse record(s) has/have been found for one or more individuals or entities, including for the Bidder/Contractor itself, the Bidder/Contractor must conduct additional research to determine whether the finding is a “false positive.” If it is a false positive, the Bidder/Contractor will mark the staff member, consultant, sub-contractor, vendor, supplier, or grantee as eligible, and retain the research confirming that eligibility.

If, on the other hand, any of the Bidder’s/Contractor’s personnel, consultants, sub-contractors, vendors, suppliers, or grantees are found to be ineligible at this stage, the MCA Entity will determine whether it is possible under the circumstances to allow the Bidder/Contractor to make a substitution. This determination will be made on a case by case basis and will require approval by MCC regardless of the estimated value of the proposed contract.

In addition, in accordance with MCC Program Procurement Guidelines P1.A.1.9(d), the Bidder/Contractor must ensure that MCC Funding is not used for goods or services from a country, or from a firm that is organized in or has its principal place of business or a significant portion of its operations in a country, that is subject to sanction or restriction by law or policy of the United States, including U.S. designated State Sponsors of Terrorism (<https://www.state.gov/j/ct/list/c14151.htm>).

All of these documents must be retained by the Bidder/Contractor as part of the overall record of the Contract for the duration of the Contract, and for the further period after the contract expiration that is required for document retention under the Contract (typically five years after the expiration date of the Compact Program or Threshold Program). Access to these documents must be provided to the MCA Entity, MCC, or their designees in accordance with the access provisions of the Contract.

**Annex A “Additional Provisions,” Paragraph G “Compliance with Terrorist Financing Legislation and Other Restrictions”**

1. The Contract Party, to the best of its current knowledge, did not provide, within the previous ten years, and will take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources (as defined below) directly or indirectly to, or knowingly permit any funding (including without limitation MCC Funding) to be transferred to, any individual, corporation or other entity that such Party knows, or has reason to know, commits, attempts to commit, advocates, facilitates, or participates in any terrorist activity, or has committed, attempted to commit, advocated, facilitated or participated in any terrorist activity, including, but not limited to, the individuals and entities (i) on the master list of Specially Designated Nationals and Blocked Persons maintained by the U.S. Department of Treasury’s Office of Foreign Assets Control, which list is available at [www.treas.gov/offices/enforcement/ofac](http://www.treas.gov/offices/enforcement/ofac), (ii) on the consolidated list of individuals and entities maintained by the “1267 Committee” of the United Nations Security Council, (iii) on the list maintained on [www.sam.gov](http://www.sam.gov), or (iv) on such other list as the MCA Entity may request from time to time.

For purposes of this provision:

1. “material support and resources” includes currency, monetary instruments or other financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.
2. “Training" means instruction or teaching designed to impart a specific skill, as opposed to general knowledge.
3. “Expert advice or assistance" means advice or assistance derived from scientific, technical, or other specialized knowledge.
4. The Contract Party shall ensure that its activities under this Agreement comply with all applicable U.S. laws, regulations and executive orders regarding money laundering, terrorist financing, U.S. sanctions laws, restrictive trade practices, boycotts, and all other economic sanctions promulgated from time to time by means of statute, executive order, regulation or as administered by the Office of Foreign Assets Control of the United States Treasury Department or any successor governmental authority, including, 18 U.S.C. Section 1956, 18 U.S.C. Section 1957, 18 U.S.C. Section 2339A, 18 U.S.C. Section 2339B, 18 U.S.C. Section 2339C, 18 U.S.C. Section 981, 18 U.S.C. Section 982, Executive Order 13224, 15 C.F.R. Part 760, and those economic sanctions programs enumerated at 31 C.F.R. Parts 500 through 598 and shall ensure that its activities under the Contract comply with any policies and procedures for monitoring operations to ensure compliance, as may be established from time to time by MCC, the MCA Entity, the Fiscal Agent, or the Bank, as may be applicable. The Contract Party shall verify, or cause to be verified, appropriately any individual, corporation or other entity with access to or recipient of funds, which verification shall be conducted in accordance with the procedures set out in Part 10 of the MCC Program Procurement Guidelines (Eligibility Verification Procedures) that can be found on MCC’s website at www.mcc.gov. The Contract Party shall (A) conduct the monitoring referred to in this paragraph on at least a quarterly basis, or such other reasonable period as the MCA Entity or MCC may request from time to time and (B) deliver a report of such periodic monitoring to the MCA Entity with a copy to MCC.
5. Other restrictions on the Contract Party shall apply as set forth in Section 5.4(b) of the Compact with respect to drug trafficking, terrorism, sex trafficking, prostitution, fraud, felony, any misconduct injurious to MCC or the MCA Entity, any activity contrary to the national security interests of the United States or any other activity that materially and adversely affects the ability of the Government or any other party to effectively implement, or ensure the effective implementation of, the Program or any Project or to otherwise carry out its responsibilities or obligations under or in furtherance of the Compact or any Supplemental Agreement or that materially and adversely affects the Program Assets or any Permitted Account.

**Annex D: Self-Certification Form**

The below self-certification form should be signed by the Contractor as part of the Contract. This self-certification declares that the Contractor will only procure goods and materials essential for the Contract (as set out in the Bill of Quantity), from suppliers that are free of forced and child labor and provide their direct workers with a safe and hygienic workplace.

---------------------------------------------------------------------------------------------------------------------

As stipulated in the Contract, the Contractor must comply with the International Finance Corporation’s *Performance Standards on Environmental and Social Sustainability* regarding labor standards and protections (e.g., PS-2). In turn, the Contractor must ensure that its Primary Suppliers, i.e., any person or legal entity who provides goods or materials essential for the Contract, do not use forced and child labor in the production of such goods and materials, and provide their direct workers with a safe and hygienic workplace.

In acknowledgement of my understanding, I certify that with respect to this contract:

* + I understand the requirements in the contract with the MCA-[Name of Country].
  + [Name of Contractor] will ensure that all operations undertaken are done in accordance with the IFC Performance Standards].
  + [Name of Contractor] does not and will not use forced or child labor, and provides workers with a safe and hygienic workplace.
  + [Name of Contractor] does not and will not procure material or goods from suppliers that employ forced or child labor.
  + [Name of Contractor] will only procure material or goods from suppliers that provide a safe and hygienic working place for all laborers.
  + [Name of Contractor] has a system in place to monitor our suppliers, identify any new and emerging risks. This system also allows [Name of Contractor] to effectively remedy any risks.
  + Where remedy is not possible for any new risks or incidents, [Name of Contractor] commits to severing ties with these suppliers.

Record any exceptions to the above here:

|  |
| --- |
|  |

*I hereby certify that the information provided above is true and correct in all material respects and understand that any material misstatement, misrepresentation or failure to provide the information requested in this certification may be deemed TO BE “fraud” for purposes of the CONTRACT. I CONFIRM THAT I DULY REPRESENT [Name of Contractor] AND HAVE THE LEGAL AUTHORITY TO SIGN.*

Authorized Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name of Signatory:

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

**Annex E: Code of Business Ethics and Conduct Certification Form**

*In satisfaction of clause 15.6 of the Particular Conditions of Contract, this form is to be completed by the Contractor and submitted for any MCC-Funded Contract with a value in excess of $500,000. This form is to be completed by the Contractor and submitted together with the signed Contract Agreement.*

*If the original certification, submitted along with the signed Contract Agreement, is that the Contractor “has adopted and implemented,” then further submissions will not be required, except as applicable for subcontracts. If the original certification is that the Contractor “will adopt and implement,” then a subsequent submission will be required when the Contractor “has adopted and implemented.”*

*The form is to be submitted to the MCA Entity Procurement Agent* ***[email address for MCA Entity Procurement Agent to be inserted here]****, together with a copy of the Supplier’s code of business ethics and conduct.*

*If the Contractor is a joint venture or association, each Member of the joint venture or association must complete and submit this form, together with their respective code of business ethics and conduct.*

**Code of Business Ethics and Conduct Certification Form**

**Full Legal Name of Contractor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Full Name and Number of Contract: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**MCA Entity with which Contract Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

As stipulated in PCC 15.6 of the Contract, the **Contractor** must certify to the MCA Account Entity that they will adopt and implement a code of business ethics and conduct within ninety (90) days of Contract award. The **Contractor** must also include the substance of this clause in subcontracts that have a value in excess of $500,000.

In satisfaction of this requirement, pursuant to PCC 15.6 of the Contract, I certify that with respect to this contract:

* + **[Name of Contractor]** has adopted and implemented a code of business ethics and conduct, a copy of which is hereby submitted together with this certification form.

**OR**

* + **[Name of Contractor]** will adopt and implement a code of business ethics and conduct within ninety (90) days after the date of Contract signature. **[Name of Contractor]** will resubmit this certification, together with a copy of the **Contractor**’scode of business ethics and conduct, when such code has been adopted and implemented.
  + **[Name of Contractor]** will include the substance of this requirement in all subcontracts having a value in excess of $500,000 and will forward all resulting certifications to **[Name of MCA Entity]**.

I hereby certify that the information provided above is true and correct in all material respects and understand that any material misstatement, misrepresentation or failure to provide the information requested in this certification may be deemed “fraud” for purposes of the Contract between the **Contractor** and the MCA Entity, the MCC Program Procurement Guidelines, and other applicable MCC policy or guidance, including MCC’s Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations.

**Authorized Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Printed Name of Signatory: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Annex F: Securities**

**Forms of** **Performance Security,**

**Advance Payment Guarantee**

**and Retention Money Guarantee**

Samples of acceptable forms of the Performance Security, the advance payment guarantee and the retention money guarantee follow. Bidders should not complete these forms at this time. Only the successful Bidder will be required to provide performance security and a bank guarantee for advance payment in accordance with the samples, or in similar forms acceptable to the Employer**.**

**Annex F1: Form of Performance Bank Guarantee**

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

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

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

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

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

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

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

This guarantee shall expire no later than twenty-one (21) days following the date of issuance of the Performance Certificate in accordance with the terms of the Contract, calculated based on a copy of such Performance Certificate which shall be provided to us; or on the \_\_\_ day of \_\_\_\_\_\_, 2\_\_\_, whichever occurs first, unless the date specified is extended in accordance with the following paragraph.

We have been informed that you may require the Contractor to extend this guarantee if the Performance Certificate under the Contract has not been issued by the date twenty-eight (28) days prior to the date specified in the paragraph above (the \_\_\_ day of \_\_\_\_\_\_\_\_, 2\_\_\_\_). We undertake to extend the expiry date of this guarantee upon receipt by us, within such period of twenty-eight (28) days, of your demand in writing and your written statement that the Performance Certificate has not been issued and that the Contractor remains obligated to provide the Performance Security pursuant to the conditions of the Contract.

Any demand for payment under this guarantee must be received by us at this office on or before the date of its expiry as may be extended in accordance with the terms set forth above.

[***Issuing Bank to delete whichever is not applicable***] We confirm that [we are a financial institution legally authorized to provide this guarantee in the Beneficiary’s country] **[OR]** [we are a financial institution located outside the Beneficiary’s country but have a correspondent financial institution located in the Beneficiary’s country that will ensure the enforceability of this guarantee. The name of our correspondent bank and contact information is as follows: (provide name, address, phone number, and email address].

This guarantee is subject to the Uniform Rules for Demand Guarantees, 2010 Revision, ICC Publication No. 758, except that the supporting statement requirement of Article 15(a) is hereby excluded and as may otherwise be stated above.

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

**Annex F2: Form of Bank Guarantee for Advance Payment**

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

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

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

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

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

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum **[amount in figures]****[amount in words]** is to be made against an advance payment guarantee.

At the request of the Contractor, we **[name of Bank]** hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of **[amount in figures]****[amount in words]** upon receipt by us of your first demand in writing accompanied by a written statement stating:

(a) that the Contractor has failed to repay the advance payment, in full or in part, in accordance with the terms of the Contract, and

(b) the amount of the advance payment the Contractor has failed to repay.

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

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the Interim Payment Certificate indicating that [ ][[21]](#footnote-21) percent of the Contract Price has been certified for payment, or on the \_\_\_ day of \_\_\_\_\_, 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.

[***Issuing Bank to delete whichever is not applicable***] We confirm that [we are a financial institution legally authorized to provide this guarantee in the Beneficiary’s country] **[OR]** [we are a financial institution located outside the Beneficiary’s country but have a correspondent financial institution located in the Beneficiary’s country that will ensure the enforceability of this guarantee. The name of our correspondent bank and contact information is as follows: (provide name, address, phone number, and email address].

This guarantee is subject to the Uniform Rules for Demand Guarantees, 2010 Revision, ICC Publication No. 758, except that the supporting statement requirement of Article 15(a) is hereby excluded and as may otherwise be stated above.

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

**Annex F3: Form of Retention Money Guarantee**

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

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

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

**RETENTION MONEY GUARANTEE No.:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Furthermore, we understand that, according to the conditions of the Contract, the Contractor is to receive early payment of [part of] the Retention Money with such payment being made against a retention money guarantee.

At the request of the Contractor, we **[name of Bank]** hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of **[amount in figures]****[amount in words]**, such sum being payable in the currency in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating:

(a) that the Contractor has failed to carry out is obligation(s) to rectify certain defect(s) for which it is responsible under the Contract;

1. the nature of such defect(s); and

(c) the amount necessary to rectify such defect(s).

At any time, our liability under this guarantee shall not exceed the total amount of Retention Money released to the Contractor by you, as evidenced by your notices issued pursuant to the conditions of Contract, with a copy being passed to us.

This guarantee shall expire no later than twenty-one (21) days following the date of issuance of the Performance Certificate in accordance with the terms of the Contract, calculated based on a copy of such Performance Certificate which shall be provided to us; or on the \_\_\_ day of \_\_\_\_\_\_, 2\_\_\_, whichever occurs first, unless the date specified is extended in accordance with the following paragraph.

We have been informed that you may require the Contractor to extend this guarantee if the Performance Certificate under the Contract has not been issued by the date twenty-eight (28) days prior to the date specified in the paragraph above (the \_\_\_ day of \_\_\_\_\_\_\_\_, 2\_\_\_\_). We undertake to extend the expiry date of this guarantee upon receipt by us, within such period of twenty-eight (28) days, of your demand in writing and your written statement that the Performance Certificate has not been issued and that the Contractor remains obligated to provide the retention money guarantee pursuant to the conditions of the Contract.

Any demand for payment under this guarantee must be received by us at this office on or before the date of its expiry as may be extended in accordance with the terms set forth above.

[***Issuing Bank to delete whichever is not applicable***] We confirm that [we are a financial institution legally authorized to provide this guarantee in the Beneficiary’s country] **[OR]** [we are a financial institution located outside the Beneficiary’s country but have a correspondent financial institution located in the Beneficiary’s country that will ensure the enforceability of this guarantee. The name of our correspondent bank and contact information is as follows: (provide name, address, phone number, and email address].

This guarantee is subject to the Uniform Rules for Demand Guarantees, 2010 Revision, ICC Publication No. 758, except as may otherwise be stated above.

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

1. MCC Program Procurement Guidelines can be found at: http://www.mcc.gov [↑](#footnote-ref-1)
2. WB copyright <http://www.worldbank.org> [↑](#footnote-ref-2)
3. WB copyright http://www.worldbank.org [↑](#footnote-ref-3)
4. For solicitation documents issued prior to the adoption (in accordance with PPG Part 5) of a Bid Challenge System, the existing text of this clause is deleted in its entirety and replaced with the full text of the Interim Bid Challenge System approved by MCC. [↑](#footnote-ref-4)
5. The financial information provided by a Bidder shall be reviewed in its entirety to allow a truly informed judgment about the capacity of the Bidder to undertake the contract, and will not be limited strictly to substantiate the financial ratios indicated here. [↑](#footnote-ref-5)
6. For Bids consisting of more than one lot, Bidders are required to provide information to demonstrate their financial capacity to carry out more than one lot. [↑](#footnote-ref-6)
7. Each member of a JV should fill out and sign [↑](#footnote-ref-7)
8. The Bidder who proposes for more than one lot must take this into account by responding to Form TECH-1 by

   including the information required for each of the lots for which it is submitting a Bid. [↑](#footnote-ref-8)
9. For the avoidance of doubt, resettlement of any persons pursuant to any applicable resettlement action plan shall be the responsibility of the Employer. [↑](#footnote-ref-9)
10. The Bidder who proposes for more than one lot must take this into account by responding to Form TECH-2 by

    including the information required for each of the lots for which it is submitting a Bid. [↑](#footnote-ref-10)
11. The Bidder who proposes for more than one lot must take this into account by responding to Form TECH-3 by

    including the information required for each of the lots for which it is submitting a Bid. [↑](#footnote-ref-11)
12. The Bidder who proposes for more than one lot must take this into account by responding to Form TECH-4 by

    including the information required for each of the lots for which it is submitting a Bid. [↑](#footnote-ref-12)
13. The Bidder who proposes for more than one lot must take this into account by responding to Form TECH-5 by

    including the information required for each of the lots for which it is submitting a Bid. [↑](#footnote-ref-13)
14. The Bidder who proposes for more than one lot must take this into account by responding to Form TECH-6 by

    including the information required for each of the lots for which it is submitting a Bid. [↑](#footnote-ref-14)
15. The General Conditions of Contract that shall be used with this Standard Bidding Document are the Conditions of Contract for Plant and Design-Build for Electrical and Mechanical Plant, and for Building and Engineering Works Designed by the Contractor, prepared and copyrighted by the International Federation of Consulting Engineers (*Fédération Internationale des Ingénieurs-Conseils*, or “FIDIC”), First Edition 1999.  This publication is exclusive for the use of MCC and MCA Entities as provided under a License Agreement between the Millennium Challenge Corporation (“MCC”) and FIDIC, and, consequently, no part of this publication may be reproduced, translated, adapted, stored in a retrieval system or communicated, in any form or by any means, whether mechanical, electronic, magnetic, photocopying, recording or otherwise, without prior permission in writing from FIDIC, except by MCC and the Employer and only then for the exclusive purpose of providing the terms of contract to qualified Bidders preparing Bids in respect to this Bidding Document. Copies of these FIDIC Conditions of Contract for Construction can be obtained from the Employer. [↑](#footnote-ref-15)
16. The Particular Conditions of Contract (“PCCs”) represent amendments and additions to the General Conditions of Contract. These Particular Conditions of Contract have been developed by MCC for use by MCA Entities using MCC Funding. These PCCs are to be used in their entirety as standard provisions of contracts for design and construction of works funded by MCC and for which the MCA Entity serves as the Employer under the contract. [↑](#footnote-ref-16)
17. See Guidance Paper for further details [↑](#footnote-ref-17)
18. The completed Appendix to Bid of the successful Bidder (the form of which is provided in Section IV, Bidding Forms) shall be appended to the Particular Conditions of the Contract as Annex B. [↑](#footnote-ref-18)
19. “MCC-Funded Contract” is defined as a contract signed by an MCA Entity or Core Team, as opposed to a contract signed by MCC, under the provisions of MCC’s Program Procurement Guidelines, and using funding provided by MCC, through a Compact Program, a Threshold Program, or 609(g) funding. [↑](#footnote-ref-19)
20. “MCC Funding” is defined as funding provided by MCC, through a Compact Program, a Threshold Program, or 609(g) funding [↑](#footnote-ref-20)
21. See Guidance Document for further details [↑](#footnote-ref-21)