

**Standard Bidding Documents: Procurement of Small Works**

**June 1, 2020**

**Foreword**

This Standard Bidding Document for the Procurement of Small Works (“SBD-SW”) has been prepared by the Millennium Challenge Corporation (“MCC”) for use by the Millennium Challenge Account Entities (“MCA Entities”) when procuring an admeasurement (unit price or rate) type or lump sum type works contracts through Competitive Bidding (“CB”) procedures in projects that are financed in whole or in part by MCC. The main text refers to admeasurement contracts where a bill of quantities is used. Alternative clauses are supplied for use with lump sum contracts where priced activity schedules are used.[[1]](#footnote-1) This SBD is consistent with the April 2, 2020, MCC Program Procurement Guidelines[[2]](#footnote-2) (“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 Small Works (which are defined as construction contracts having a value of less than USD 10 million) designed by the Employer. This document is not appropriate for use in design-build projects, for which different Standard Bidding Documents can be found on MCC’s website.

This SBD-SW assumes that pre-qualification has NOT taken place before bidding. However, it can also be used with pre-qualification, with relatively minor modifications. When pre-qualification is adopted, the process of pre-qualification shall follow the procedure indicated in *Standard Bidding Document: Pre-qualification for Procurement of Works*, issued by MCC.

**Summary Description**

**Standard Bidding Document for Procurement of Small Works**

**PART 1 – BIDDING PROCEDURES**

**Definitions:** This section lists and defines terms that are used in Part 1 and Part 2 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 Qualification Requirements**

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

**PART 2 – WORKS REQUIREMENTS**

**Section V Works Requirements**

This section contains the description the Works to be procured and includes the following sub-sections:

 ***Bill of Quantities or Activity Schedule***

This sub-section contains an itemized list of the quantities of Works or of the Activities to be performed and priced by Bidders. The quantities given in the Bill of Quantities are estimated and provisional, based upon the Technical Specifications and Drawings, and are given to enable Bidders to prepare priced Bids. The priced Bill of Quantities will be used in the periodic valuation of Works executed after the Contract execution. Similarly, the activities indicated in the Activity Schedule describe the main work steps to be completed and are given to enable Bidders to prepare fixed price Bids.

 ***Technical Specifications and Performance Requirements***

This sub-section describes the scope of the Works and presents a clear statement of the required standards for materials, plant, supplies, and workmanship to be provided. The Technical Specifications and Performance Requirements also reference applicable standards and codes, key personnel requirements, and environmental, social, health, and safety requirements to be satisfied by the Contractor in executing the 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 Technical Specifications, the Bill of Quantities or Activities Schedule, Drawings, 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 construction drawings in sufficient detail to allow Bidders to understand the type and complexity of the work involved and to price the Bill of Quantities or Activity Schedule.

**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 in by MCA Entities for the construction of Small Works. **The text of the clauses in this section shall not be modified.**

**Section VIII Form of Particular Conditions of Contract (“PCC”)**

This section contains the form of those clauses of the Contract that supplement the GCC and that are to be completed by MCA Entities for each procurement of Small Works. This section also includes an Annex to the Contract (Annex A: Additional Provisions) that contains 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 and clauses of Annex A to the form of contract may not be modified.**

 **Section IX Contract Annexes**

This section contains annexes and forms which, once completed, will be part of the Contract. These include the Additional Provisions, 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 Works]*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

**Table of Contents**

[May 1, 2020 i](#_Toc39090905)

[Section I. Instructions to Bidders 1](#_Toc39090906)

[A. General 1](#_Toc39090907)

[1. Scope of Bid 4](#_Toc39090908)

[2. Source of Funds 4](#_Toc39090909)

[3. Corruption and Fraud 5](#_Toc39090910)

[4. Environmental and Social Requirements 7](#_Toc39090911)

[5. Eligibility 8](#_Toc39090912)

[6. Eligible Materials, Equipment, and Services 12](#_Toc39090913)

[B. Contents of Bidding Document 12](#_Toc39090914)

[7. Sections of Bidding Document 12](#_Toc39090915)

[8. Clarification of Bidding Document, Site Visit, Pre-Bid conference 13](#_Toc39090916)

[9. Amendment of Bidding Document 14](#_Toc39090917)

[C. Preparation of Bids 14](#_Toc39090918)

[10. Cost of Bidding 14](#_Toc39090919)

[11. Language of Bid 14](#_Toc39090920)

[12. Documents Comprising the Bid 15](#_Toc39090921)

[13. Letter of Bid and Schedules 15](#_Toc39090922)

[14. No Alternative Bids 15](#_Toc39090923)

[15. Bid Prices and Discounts 15](#_Toc39090924)

[16. Currencies of Bid and Payment 17](#_Toc39090925)

[17. Documents Comprising the Technical Offer 17](#_Toc39090926)

[18. Documents Establishing the Qualifications of the Bidder 17](#_Toc39090927)

[19. Period of Validity of Bids 17](#_Toc39090928)

[20. Bid Security 18](#_Toc39090929)

[21. Format and Signing of Bid 19](#_Toc39090930)

[D. Submission and Opening of Bids 20](#_Toc39090931)

[22. Sealing and Marking of Bids 20](#_Toc39090932)

[23. Deadline for Submission of Bids 20](#_Toc39090933)

[24. Late Bids 20](#_Toc39090934)

[25. Withdrawal, Substitution, and Modification of Bids 21](#_Toc39090935)

[26. Bid Opening 21](#_Toc39090936)

[27. Confidentiality 22](#_Toc39090937)

[E. Evaluation and Comparison of Bids 22](#_Toc39090938)

[28. Clarification of Bids 22](#_Toc39090939)

[29. Deviations, Reservations, and Omissions 23](#_Toc39090940)

[30. Bid Review, Evaluation of Bids, and Qualification of Bidders 23](#_Toc39090941)

[31. Determination of Responsiveness 24](#_Toc39090942)

[32. Correction of Arithmetic Errors 25](#_Toc39090943)

[33. Conversion to Single Currency 26](#_Toc39090944)

[34. Price Reasonableness 26](#_Toc39090945)

[35. No Margin of Preference 26](#_Toc39090946)

[36. Past Performance and Reference Check 26](#_Toc39090947)

[37. Employer’s Right to Accept any Bid and to Reject any or all Bids 27](#_Toc39090948)

[F. Award of Contract 27](#_Toc39090949)

[38. Award Criteria 27](#_Toc39090950)

[39. Notice of Intent to Award 27](#_Toc39090951)

[41. Signing of Contract 28](#_Toc39090952)

[42. Performance Security 28](#_Toc39090953)

[43. Posting of Award Notice 29](#_Toc39090954)

[44. Inconsistencies with MCC Program Procurement Guidelines 29](#_Toc39090958)

[45. Applicable Compact Conditions 29](#_Toc39090959)

[46. Advance Payment and Security 30](#_Toc39090960)

[47. Adjudicator 30](#_Toc39090961)

[48. Contractor Past Performance Reporting System 30](#_Toc39090962)

[Section II. Bid Data Sheet 31](#_Toc39090963)

[Section III. Bid Review, Evaluation Criteria, and Bidder Qualification Requirements 37](#_Toc39090964)

[Section IV. Bid Submission Forms 51](#_Toc39090967)

[A. Bid Submission Forms 52](#_Toc39090968)

[Letter of Bid 52](#_Toc39090969)

[Form of Bid Security (Bank Guarantee) 55](#_Toc39090970)

[Technical Offer 57](#_Toc39090971)

[B. Bidder’s Qualification Forms 59](#_Toc39090972)

[Form ELI-1: Bidder Information Sheet 60](#_Toc39090973)

[Form ELI-2: Joint Venture/Association/Sub-Contractor Information Sheet 61](#_Toc39090974)

[Form ELI-3: Government-Owned Enterprise Certification Form 62](#_Toc39090975)

[Form CON–1 Historical Contract Non-Performance 66](#_Toc39090976)

[Form FIN-1: Financial Situation 70](#_Toc39090978)

[Form FIN-2: Average Annual Construction Turnover 71](#_Toc39090979)

[Form FIN-3: Financial Resources 72](#_Toc39090980)

[Form FIN-4: Current Contract Commitments / Works in Progress 73](#_Toc39090981)

[Form EXP-1: General Construction Experience 74](#_Toc39090982)

[Form EXP-2: Similar Construction Experience 75](#_Toc39090983)

[Form EXP-3: Specific Construction Experience in Key Activities 76](#_Toc39090984)

[Form EXP-4: Environmental and Social (E&S) Management Experience 77](#_Toc39090985)

[Form EXP-5: Health and Safety (H&S) Management Experience 78](#_Toc39090986)

[Form REF-1: References of MCC-Funded Contracts 79](#_Toc39090987)

[Section V. Works Requirements 81](#_Toc39090988)

[Section VI: Contract Notices and Agreement 83](#_Toc39090992)

[Form of Notice of Intent to Award 84](#_Toc39090993)

[Form of Letter of Acceptance 85](#_Toc39090994)

[Form of Contract Agreement 86](#_Toc39090995)

[Section VII. General Conditions of Contract 88](#_Toc39090996)

[1. Definitions 89](#_Toc39090997)

[2. Interpretation 94](#_Toc39090998)

[3. Language and Law 95](#_Toc39090999)

[4. Engineer’s Decisions 95](#_Toc39091000)

[5. Delegation 95](#_Toc39091001)

[6. Communications 95](#_Toc39091002)

[7. Subcontracting 95](#_Toc39091003)

[8. Other Contractors 95](#_Toc39091004)

[9. Personnel 96](#_Toc39091005)

[10. Employer’s and Contractor’s Risks 96](#_Toc39091006)

[11. Employer’s Risks 96](#_Toc39091007)

[12. Contractor’s Risks 97](#_Toc39091008)

[13. Insurance 97](#_Toc39091009)

[14. Eligibility; Source of Equipment, Material and Services 98](#_Toc39091010)

[15. Queries about the Particular Conditions of Contract 98](#_Toc39091011)

[16. Contractor to Construct the Works 98](#_Toc39091012)

[17. The Works to Be Completed by the Intended Completion Date 98](#_Toc39091013)

[18. Approval by the Engineer 98](#_Toc39091014)

[19. Contractor Access to the Site 99](#_Toc39091015)

[20. Engineer Access to the Site 99](#_Toc39091016)

[21. Instructions, Inspections and Audits 99](#_Toc39091017)

[22. Disputes 99](#_Toc39091018)

[23. Procedure for Disputes 99](#_Toc39091019)

[24. Replacement of Adjudicator 100](#_Toc39091020)

[25. Conflict of Interest 100](#_Toc39091021)

[26. Commissions and Fees 100](#_Toc39091022)

[27. Confidentiality 101](#_Toc39091023)

[28. Entire Agreement 101](#_Toc39091024)

[29. Program 101](#_Toc39091025)

[30. Extension of the Intended Completion Date 102](#_Toc39091026)

[31. Acceleration 102](#_Toc39091027)

[32. Delays Ordered by the Engineer 103](#_Toc39091028)

[33. Management Meetings 103](#_Toc39091029)

[34. Early Warning 103](#_Toc39091030)

[35. Identifying Defects 103](#_Toc39091031)

[36. Tests 103](#_Toc39091032)

[37. Correction of Defects 104](#_Toc39091033)

[38. Uncorrected Defects 104](#_Toc39091034)

[41. Variations 105](#_Toc39091035)

[42. Payments for Variations 105](#_Toc39091036)

[43. Cash Flow Forecasts 106](#_Toc39091037)

[44. Payment Certificates 106](#_Toc39091038)

[45. Payments 106](#_Toc39091039)

[46. Compensation Events 107](#_Toc39091040)

[48. Currencies 109](#_Toc39091041)

[49. Price Adjustment 110](#_Toc39091042)

[50. Retention 110](#_Toc39091043)

[51. Liquidated Damages 111](#_Toc39091044)

[52. Bonus 111](#_Toc39091045)

[53. Advance Payment 111](#_Toc39091046)

[54. Securities 112](#_Toc39091047)

[55. Dayworks 112](#_Toc39091048)

[56. Cost of Repairs 112](#_Toc39091049)

[57. Completion 113](#_Toc39091050)

[58. Taking Over 113](#_Toc39091051)

[59. Final Account 113](#_Toc39091052)

[60. Drawings, Operating and Maintenance Manuals 113](#_Toc39091053)

[61. Termination 113](#_Toc39091054)

[62. Payment upon Termination 115](#_Toc39091055)

[63. Property 115](#_Toc39091056)

[64. Force Majeure 115](#_Toc39091057)

[65. MCC Required Provisions; Flow Through Provisions 117](#_Toc39091058)

[66. Fraud and Corruption Requirements 117](#_Toc39091059)

[67. Combatting of Trafficking in Persons 120](#_Toc39091060)

[68. Safety Procedures 122](#_Toc39091061)

[69. HIV Awareness 123](#_Toc39091062)

[70. Protection of the Environment and Social Sustainability 124](#_Toc39091063)

[71. Staff and Labor 125](#_Toc39091064)

[72. Gender and Social Inclusion 127](#_Toc39091065)

[73. Prohibition of Forced or Compulsory Labor 127](#_Toc39091066)

[74. Prohibition of Harmful Child Labor 127](#_Toc39091067)

[75. Prohibition of Sexual Harassment 128](#_Toc39091068)

[76. Non-Discrimination and Equal Opportunity 128](#_Toc39091069)

[77. Grievance Mechanism for Contractor and Subcontractor Personnel 129](#_Toc39091070)

[78. Contractor Past Performance Reporting System 129](#_Toc39091071)

[Section VIII. Form of Particular Conditions of Contract 131](#_Toc39091072)

[Section IX. Contract Annexes 137](#_Toc39091073)

[Annex A: Additional Provisions 138](#_Toc39091074)

[Annex B: Compliance with Sanctions Certification Form 139](#_Toc39091075)

[Annex C: Self-Certification Form 145](#_Toc39091083)

[Annex D: Code of Business Ethics and Conduct Certification Form 147](#_Toc39091084)

[Annex E: Securities 149](#_Toc39091085)

[Annex E1: Form of Performance Bank Guarantee 150](#_Toc39091086)

[Annex E2: Form of Bank Guarantee for Advance Payment 152](#_Toc39091087)

[Annex E3: Form of Retention Money Guarantee 154](#_Toc39091088)

**Invitation for Bids**

**[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 the **[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 the Millennium Challenge Account-**[\_\_\_] (**the “Employer”), intends to apply a portion of the proceeds of MCC Funding to eligible payments under a contract associated with this Invitation 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 Employer now requests interested Bidders to submit sealed Bids for the execution and completion of **[insert name of the contract]**, which is being offered as a unit price contract based on the Bill of Quantities[[3]](#footnote-3).

All eligible Bidders are encouraged to apply. Please note that no pre-qualification has been undertaken for this procurement. The selection process, as described, includes a qualification step, which shall include a review of past performance, and a reference check and shall be subject to verification prior to the contract award.

A Contractor will be selected using the Competitive Bidding procedures 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 the Procurement of Works[[4]](#footnote-4), 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]** be held 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 BDS at ITB 22, 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 construction of the works and also of the Bidders’ proposed prices, all in accordance with Section III, Bid Review, Evaluation Criteria, and Bidder Qualification Requirements.

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]**

**[E-mail address]**

**PART 1**

**BIDDING PROCEDURES**

Section I. Instructions to Bidders

A. General

*In Parts 1 (Bidding Procedures) and 2 (Works Requirements) of this Bidding Document, the following words and expressions shall have the meanings stated below. 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 case such words and expressions shall have the meanings stated in GCC Clause 1 unless otherwise specified.*

|  |  |
| --- | --- |
|  | 1. [“Activity Schedule” means the priced and completed Activities Schedule forming part of the Bid.][[5]](#footnote-5)
2. “Addendum” or “Addenda” means a modification to this Bidding Document issued by the Employer.
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 any association of entities that forms the Bidder, with or without a legal status distinct from that of its members.
5. “BDS” 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. [“Bill of Quantities” means the priced and completed Bill of Quantities forming part of the Bid.][[6]](#footnote-6)
11. “CESMP” means the Contractor’s Environmental & Social Management Plan prepared by the Contractor and approved by the Engineer under the Contract.
12. “Compact” means the Millennium Challenge Compact **identified in the BDS**.
13. “Competitive Bidding” or “CB” means the competitive bidding procedures set out in the MCC Program Procurement Guidelines.
14. “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 2.3 and any attachments, appendices, and all documents incorporated by reference therein.
15. “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.
16. “Contract Price” means the price defined in GCC Sub-Clause 1.1 (n) and includes adjustments in accordance with the Contract.
17. “Contractor” means the entity(ies) responsible for providing the Works to the Employer under the Contract.
18. “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.
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 named in the PCC (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Engineer under the terms of the Contract) who is responsible for supervising the execution of the Works and administering the Contract.
21. “Force Account” has the definition given the term in the MCC Program Procurement Guidelines.
22. “GCC” means the General Conditions of Contract.
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. “IFC Performance Standards” means the International Finance Corporation’s Performance Standards on Environmental and Social Sustainability
27. “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.
28. “Intended Completion Date” means the date on which it is intended that the Contractor shall complete the Works as **specified in BDS 1.2**.
29. “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.
30. “Letter of Bid” means the completed form with the heading “Form of Letter of Bid” included in Section IV (Bidding Forms) which are made part of the Bidder’s Bid.
31. “Millennium Challenge Account Entity” or "MCA Entity" means the accountable entity designated by the Government to implement the Compact.
32. “Millennium Challenge Corporation” or “MCC” means the Millennium Challenge Corporation, a United States Government corporation, acting on behalf of the United States Government.
33. “MCC’s AFC Policy” means the policy identified in ITB Clause 3.
34. “MCC Counter-Trafficking in Persons Policy” means the policy identified in ITB Clause 4.3.
35. “MCC Funding” means the funding MCC has made available to the Government under the terms of the Compact.
36. “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](http://www.mcc.gov).
37. “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.
38. “PCC” means the Particular Conditions of Contract.
39. “Performance Security” means the Security the Contractor must furnish in accordance with GCC Clause 54.
40. “Site” means the place identified in the Technical Specifications 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 to address the cross-cutting social and gender issues such as human trafficking, child and forced labor 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.
45. “Works” means what the Contract requires the Contractor to construct, install, and turn over to the Employer.
 |
| ****Scope of Bid**** | 1.1 The Employer as **identified in the BDS** has issued an Invitation for Bids along with this Bidding Document for the procurement of Works as specified in Part 2, Works 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 Qualification Requirements. The name, identification, and number of lots of this procurement are **provided in the BDS**.1.2 The successful Bidder shall be expected to complete the Works by the Intended Completion Date **specified in the** **BDS** and PCC 1.1 (cc).1.3. 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**. |
| ****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.  |
| ****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, 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 that they have acceptable commitments and procedures in place to address the potential for fraudulent and corrupt practices.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 influence improperly 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 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 influence (or attempt to influence) improperly 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, collusion, 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, collusion, 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, collusion, 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.
 |
| ****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 Technical Specifications and Performance Requirements set forth in Section V, Works 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 combatting 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 as provided for under the Policy (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 IFC 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>. |
| ****Eligibility**** **Eligible Bidders**  | 5.1 The eligibility criteria set out in this section 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 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 design, Technical Specifications, 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 practice 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 Section 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 and the Contractor 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****Commissions and Gratuities** | 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. 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. |
| ****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

|  |  |
| --- | --- |
| ****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 Qualification Requirements
* Section IV. Bidding Forms

**Part 2 Works Requirements*** Section V. Works 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 the 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 Employer in the Invitation for Bids.7.4 The Bidder is expected to examine all instructions, forms, terms, and Technical 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. |
| ****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 **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 **indicated 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 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 conference 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 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. |
| ****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, and shall be communicated in writing to all prospective Bidders, and shall be posted on the Employer’s website.9.3 If the Employer has followed a pre-registration process, all Addenda shall also be communicated in writing to all pre-registered Bidders, and shall be posted on the Employer’s website. 9.4 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

|  |  |
| --- | --- |
| ****Cost of Bidding********Language of Bid**** | 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.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 translation shall govern. |
| ****Documents Comprising the Bid**** | 12.1 The Bid shall comprise the following:1. The Letter of Bid;
2. All Bid Forms in accordance with Section IV, Bidding Forms, including the Priced Bill of Quantities[[7]](#footnote-7) 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. Documentary evidence of the Bidder’s qualifications to perform the Contract if its Bid is accepted;
6. Technical Offer, in accordance with ITB 17;
7. Compliance with Sanctions Certification Form; and
8. any other materials required to be completed and submitted by Bidders, as **specified in the BDS**.

12.2 In addition to the requirements above, Bids submitted by a Joint Venture or other association shall include a copy of the Joint Venture/Association agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture/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 Bid submission. |
| ****Letter of Bid and Schedules**** | * 1. The Letter of Bid and Schedules, including the Bill of Quantities[[8]](#footnote-8), 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 with the information requested.
 |
| ****No Alternative Bids**** | 14.1 Alternative Bids shall not be considered. |
| ****Bid Prices and Discounts**** | 15.1 The prices and discounts quoted by the Bidder in the Letter of Bid and in the Bill of Quantities shall conform to the requirements specified below. Discounts, if any, shall be considered if so **specified in the BDS**.15.2 The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities.[[9]](#footnote-9) Items against which no rate or price is entered by the Bidder will not be paid for by the Employer, and shall be deemed covered by the rates for other items and prices in the Bill of Quantities.[[10]](#footnote-10) 15.3 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 Unless otherwise **specified in the** **BDS** and the Contract, the rates and prices quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract. In such a case, the Bidder shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data and the Employer may require the Bidder to justify its proposed indices and weightings. 15.6 If so specified in the ITB 1.1, Bids are being invited for individual lots of 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.15.7 GCC 47 sets forth the tax provisions of the Contract. Bidders should review this clause carefully in preparing their Bid. 15.8 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. |
| ****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.**  |
| ****Documents Comprising the Technical Offer**** | 17.1 The Bidder shall furnish a Technical Offer including 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 work requirements and the completion time. |
| ****Documents Establishing the Qualifications of the Bidder**** | 18.1 In accordance with Section III, Bid Review, Evaluation Criteria, and Bidder Qualification Requirements, to establish that the Bidder’s qualifications meet the requirements established in this section, the Bidder shall provide all information requested in the corresponding information sheets and forms included in Section IV, Bidding Forms. |
| ****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 at the discretion of the Employer.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. Unit rates quoted by Bidders in their priced Bill of Quantities[[11]](#footnote-11) 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 (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.
 |
| ****Bid Security****  | 20.1 **If so required in the BDS**, the Bidder shall furnish, as part of its Bid, a Bid Security. 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. Technical and Financial Offer Bid 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 of 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 19.2.

20.3 Any Bid not accompanied by an enforceable and compliant Bid Security 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 Joint Venture 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 The 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 the 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 Clause 54, as described in ITB 42.
 |
| ****Format and Signing of Bid**** | 21.1 The Bidder shall prepare one original of the documents comprising the Bid as described in ITB 17 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 Joint Venture 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 Joint Venture 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

|  |  |
| --- | --- |
| ****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 envelope22.2 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 name and identification number of this bidding process **specified in the BDS section 1.1**; and
4. bear a warning not to open before the specified time and date for Bid opening**.**

22.3 If all envelopes are not sealed and marked as required, the Employer shall assume no responsibility for the misplacement or premature opening of the Bid. |
| ****Deadline for Submission of Bids**** | 23.1 Bids must be delivered to the Employer at its address and no later than the date and time **specified in the** **BDS.** Electronic bids shall be accepted 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 the Bidders previously subject to the original deadline shall thereafter be subject to the new deadline as extended. |
| ****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. |
| ****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 (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 to 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. |
| ****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. 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. 26.4 The Employer prepare a record of the Bid opening that shall include, at a minimum, the name of the Bidder and whether there was a withdrawal, substitution, or modification; the Bid price, per lot if applicable, including any discounts; and the presence or absence of a Bid Security. 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. |
| ****Confidentiality**** | E. Evaluation and Comparison of Bids27.1 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 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**. |
| ****Clarification of Bids****  | 28.1 To assist in the examination, evaluation, and comparison of Bids, the Employer may, at its discretion, ask any Bidder for 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. |
| ****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.
 |
| ****Bid Review, Evaluation of Bids, and Qualification of Bidders**** | 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 the rejection of its Bid.
2. **Responsiveness determination** is conducted to determine responsiveness to 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 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 satisfies the qualification requirements as described in Section III, Bid Review, Evaluation Criteria, and Bidder Qualification Requirements. The determination shall be based upon and 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 price Bid is rejected.  |
| ****Determination of Responsiveness**** | 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 proposal, in particular, to confirm that all requirements of Part II, Works Requirements, have been met without any material deviation, reservation, or omission. 31.4 If a Bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Employer, and may not subsequently be 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 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.  |
| ****Correction of Arithmetic 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 the Employer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;[[12]](#footnote-12)
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 arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.[[13]](#footnote-13)

32.2 If the Bidder does not accept the correction of errors, its Bid shall be rejected. |
| ****Conversion to Single Currency**** | 33.1 For evaluation and comparison purposes, the currency(ies) of the Bids shall be converted into a single currency **as specified in the BDS**.  |
| ****Price Reasonableness**** | 334.1 The Employer shall make a determination of price reasonableness as required in the MCC Program Procurement Guidelines. 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 Bill of Quantities 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 the rejection of the Bid at the discretion of the Employer. The Bidder shall not be permitted to revise its Bid after this determination.  |
| ****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. |
| ****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 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 REF 1: 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.  |
| ****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 Technical 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

|  |  |
| --- | --- |
| ****Award Criteria**** | 38.1 Subject to ITB 37, 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 that the Bidder is determined to be qualified to perform the Contract satisfactorily. |
| ****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**[[14]](#footnote-14)
 | 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.** |
| ****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 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, and the Compliance with Sanctions Certification form and the Self-Certification Form for Contractors.41.4 If any negotiations or clarifications are required either by the Employer or 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 the timely submission of the Performance Security as described in ITB 42.1, submission of the Compliance with Sanctions Certification form and the Self-Certification Form for Contractors. |
| ****Performance Security**** | 42.1 Within twenty-eight (28) days after receipt of the Letter of Acceptance, the successful Bidder shall deliver to the Employer a Performance Security in accordance with the terms of GCC Clause 54, and for the amount **specified in the BDS,** 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 to the Employer. A foreign institution providing the 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 the 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.  |
| ****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 *UNDB Online,* 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 the Contract award if different; and
3. the duration and the summary scope of the Contract awarded.
 |
| ****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. |
| ****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.  |
| ****Advance Payment and Security**** | 46.1 The Employer will provide an Advance Payment on the Contract Price as stipulated in the GCC, subject to a maximum amount, as **stated in the BDS**. The Advance Payment shall be guaranteed by a Security. Section VII, “Security Forms”, provides a Bank Guarantee for Advance Payment form.  |
| ****Adjudicator****Contractor Past Performance Reporting System | 47.1 The Employer proposes the person **named in the BDS** to be appointed as Adjudicator under the Contract, at an hourly fee **specified in the BDS,** plus reimbursable expenses. If the Bidder disagrees with this proposal, the Bidder should so state in the Bid. If, in the Letter of Acceptance, the Employer has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority **designated in the BDS** and the PCC at the request of either party.48.1 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. |

**Section II. Bid Data Sheet**

|  |
| --- |
| A. General |
| **ITB****Definitions** | (l) “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** | The name of the Employer is **[insert full legal name of MCA Entity]**.The Works for which the Bidding Documents have been issued is: **[insert brief description of the Works]** The number and identification of lots (contracts)comprising this IFB is: **[insert information]**. |
| **ITB 1.2** | The Intended Completion Date of the Works is: **[insert date]**.  |
| **ITB 1.3** | 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 Documents |
| **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(h)**  | The Bidder shall submit with its Bid the following additional documents:**[insert details here]** |
| **ITB 15.1** | Discounts **[insert shall or shall not]** be considered.The requirements for allowable discounts, if any, are defined in Part 2, Works Requirements. If discounts are permitted, the evaluation method is specified in Section III, Bid Review, Evaluation Criteria and Bidder Qualification Requirements. |
| **ITB 15.5** | The prices quoted by the Bidder **[insert shall or shall not]** be subject to adjustment.  |
|  |  |
| **ITB 15.8** | The bid **[insert shall or shall not]** be all-inclusive for all of the Works and Installation Services on a “single responsibility” basis. |
| **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 of Bids |
| **ITB 23.1** | For **hard copy** **Bid submission purposes** only, the Employer’s address is :Attention: Street Address: Floor/Room number: City: Country: **The deadline for Bid submission is:**Date: Time:  |
| **ITB 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 Purchaser is not responsible for any delays or defects in the receipt or download of any Bid submitted electronically. |
| E. Bid Opening and Evaluation |
| **ITB 26.1** | The Bid opening shall take place at:Street Address:City:Country:Date:Time:Procedure for electronic opening: |
| **ITB 27.3** | All correspondence must be addressed to the Employer at: **[insert address]**. |
| **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.]** |
| **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 rules and provisions of the Bid Challenge System are as published **[insert details here].** |
| **ITB 42.1** | The form, amount and currency of the Performance Security shall be **[insert details here].** |
| **ITB 47.1** | The Advance Payment shall be limited to **[insert percentage]** percent of the Contract Price. |
| **ITB 48.1** | The Adjudicator proposed by the Employer is **[insert name and address].** The hourly fee for this proposed Adjudicator shall be **[insert amount and currency].** The biographical data of the proposed Adjudicator is as follows: **[provide relevant information, such as education, experience, age, nationality, and present position].**The Appointing Authority is **[insert complete legal name and 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 Qualification Requirements**

### 1. Process

This Section contains all the criteria that the Employer shall use to review Bids, 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.

*A3. Technical Review for Responsiveness Determination*.

*Documents Comprising Technical Offer*. The Bidder shall furnish a Technical Offer including a statement of work methods, equipment, personnel, schedule, and other information as stipulated in Section IV (Bid Submission Forms), 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 technical method and approach to mobilize key equipment and personnel for the Contract consistent with the requirements stipulated in Part 2, Works 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.

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 satisfies the qualification requirements as listed in ITB 30.1(c), and in Section 2.0 below. 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.

### 2. Qualification

|  |  |
| --- | --- |
| **Sub-Factor** | **2.1 Eligibility** |
| **Requirement** | **Bidder** | **Documentation Required** |
| **Single Entity** | **Joint Venture** |
| **All members** | **Each member** | **At least one member** |
| **2.1.1 Nationality** | Nationality in accordance with ITB 5.3. | Must meet requirement | Existing or intended joint venture must meet requirement | Must meet requirement | N/A | Forms ELI-1 and ELI-2, with attachments |
| **2.1.2 Conflict of Interest** | No conflicts of interests as described in ITB 5.6. | Must meet requirement | Existing or intended joint venture must meet requirement | Must meet requirement | N/A | Letter of Bid |
| **2.1.3 Ineligibility** | Not having been deemed ineligible based on any of the criteria set forth in ITB 5 | Must meet requirement | Existing or intended joint venture must meet requirement | Must meet requirement | N/A | Letter of Bid |
| **2.1.4 Government Owned Enterprise** | Compliance with conditions ITB 5.4. | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Form ELI-3 |

| **Sub-Factor** | **2.2 Historical Contract Non-Performance** |
| --- | --- |
| **Requirement** | **Bidder** | **Documentation Required** |
| **Single Entity** | **Joint Venture** |
| **All members** | **Each member** | **At least one member** |
| **2.2.1 History of Non-performing Contracts** | Non-performance of a contract (including contracts terminate for cause) did not occur within 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 or as a member to past or existing Joint Venture or association (not mandatory if in the past was 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 a member to past or existing Joint Venture or association (not mandatory if in the past was 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 (5) 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 10% of the Bidder’s net worth. | Must meet requirement by itself or as a member to past or existing Joint Venture or association (not mandatory if in the past was 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 a member to past or existing Joint Venture or association (not mandatory if in the past was a member of a Joint Venture or other association with less than 20% role in the contract). | N/A | Form CON-1 |

| **Sub-Factor** | **2.3 Financial Situation** |
| --- | --- |
| **Indicative Requirement** | **Bidder** | **Documentation Required** |
| **Single Entity** | **Joint Venture** |
| **All members** | **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 (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 Average Annual Construction Turnover** | Minimum average annual construction turnover of **[insert amount]**[[15]](#footnote-15)calculated as total certified payments received for contracts in progress or completed, within last five (5) years. Values to determine annual 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. | Must meet requirement | Must meet requirement | Must meet twenty-five percent (25%) of the requirement | Must meet fifty-five percent (55%) of the requirement | Form FIN-2 |
| **2.3.3 Financial Resources** | 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 contractual advance payments to meet:1. The following cash-flow requirement: **[insert value]**[[16]](#footnote-16)and
2. 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 | Form FIN-3 |

| **Sub-Factor** | **2.4 Experience** |
| --- | --- |
| **Indicative Requirement** | **Bidder** | **Documentation Required** |
| **Single Entity** | **Joint Venture** |
| **All members** | **Each member** | **At least one member** |
| **2.4.1 General Experience** | Experience under contracts in the role of contractor, subcontractor, or management contractor for at least the last five (5) years prior to the Bid submission deadline, and with activity in at least nine (9) months in each year. | Must meet requirement | N/A | Must meet requirement  | N/A | Form EXP-1 |
| **2.4.2 Similar Experience** | Participation as contractor, management contractor, or subcontractor in at least **[insert number \_\_\_\_\_\_\_\_ ( ) ]** contracts within the last **[ insert number \_\_\_\_\_\_\_ ( ) ]** years, each with a value of at least **[insert number \_\_\_\_\_\_\_\_ ( ) ]**[[17]](#footnote-17)that have been successfully and substantially completed and that are similar to the proposed Works. The similarity shall be based on the physical size, complexity, methods/technology or other characteristics as described in Section V, Works Requirements. | Must meet requirement | N/A | Must meet requirement | N/A | Form EXP-2 |
| **2.4.3 Specific Experience in Key Activities** | For the above or other contracts executed during the period stipulated in 2.4.2 above, a minimum experience in the following key activities:1…………….. 2…………….. | Must meet requirement | Must meet requirement | N/A | For each enumerated activity, at least one member must demonstrate experience at a level equal to at least fifty-five percent (55%) of the required number, volume, or production rate specified. | Form EXP-3 |
| **2.4.4 Environmental and Social Management Experience** | Sufficient experience managing environmental and social impacts in similar projects in the last five (5) years prior to the Bid submission deadline | Must meet requirement | Must meet requirement | N/A | Must meet requirement | Form EXP-4 |
| **2.4.5 Health and Safety Management Experience** | Sufficient experience managing health and safety impacts in the last five (5) years prior to the Bid submission deadline. | Must meet requirement | Must meet requirement | N/A | Must meet requirement | Form EXP-5 |

**2.5. 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 the Technical Offer form 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 (and as more fully described in Section V):

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 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.

The MCA Entity retains the right to request and check references for each Key Personnel listed.

**2.7 References**

In accordance with ITB 36, the Bidder’s performance on earlier contracts is 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

**Section IV. Bid Submission Forms**

1. **Bid Submission Forms**

Letter of Bid 52

Form of Bid Security 55

Technical Offer 57

1. **Bidder’s Qualification Forms**

Form ELI-1: Bidder Information 60

Form ELI-2: Joint Venture/Association/Sub-Contractor Information 61

Form ELI-3: Government-Owned Enterprise Certification 62

Form CON-1: Historical Contract Non-Performance 66

Form CON-2: Compliance with Sanctions Certification 69

Form FIN-1: Financial Situation 70

Form FIN-2: Average Annual Construction Turnover 71

Form FIN-3: Financial Resources 72

Form FIN-4: Current Contract Commitments/Works in Progress 73

Form EXP-1: General Construction Experience 74

Form EXP-2: Similar Construction Experience 75

Form EXP-3: Specific Construction Experience in Key Activities 76

Form EXP-4: Environmental and Social (E&S) Management Experience 77

Form EXP-5: Health and Safety (H&S) Management Experience 78

Form REF-1: References of MCC-Funded Contracts 79

**[date]**

## 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, Technical Specifications, Drawings, and Bill of Quantities and Addenda Nos. **[insert Addenda Nos.]**for the execution of the above-named Works, we offer to construct and install such Works and remedy any defects therein in conformity with the Conditions of Contract, Technical Specifications, Drawings, Bill of Quantities[[18]](#footnote-18), 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 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 by the Intended Completion Date.
5. Our Bid shall be valid for a period of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ days from the date fixed for the bid submission deadline in accordance with the Bidding Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
6. 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.
7. We understand that you are not bound to accept the lowest or any Bid you may receive.
8. We comply with the requirements of ITB Clause 5 of the Bidding Document, as applicable.
9. Any subcontractors and suppliers do or will comply with the requirements of ITB Clause 5 of the Bidding Document, as applicable.
10. 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).
11. We have taken steps to ensure that no person acting for us or on our behalf has engaged in any corruption or fraud described in ITB Clause 3.
12. 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:

###  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 (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)]**

###  Technical Offer[[19]](#footnote-19)

**[The information to be filled in by Bidders in the following pages shall be used for purposes of establishing responsiveness in accordance with ITB Clause 31. With the exception of item 2.1 below, this information shall not be incorporated in the Contract. Attach additional pages as necessary.]**

|  |  |
| --- | --- |
| 1. Program
2. Environmental, Social, Gender, Health and Safety Requirements[[20]](#footnote-20)
 | * 1. Describe the proposed key staffing (technical, environmental, social, health and safety, and gender) roles and responsibilities and the management structure for these activities.
	2. Proposed work program (work method and schedule). Descriptions, drawings, and charts, as necessary to comply with the requirements of the Bidding Document.
	3. Describe the proposed approach to systematically managing the environmental, social, health, and safety risks and impacts during execution of the work, including a description of the mitigation measures that will be used and international environmental, social, health, and safety 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 as appropriate. Provide enough detail to demonstrate an understanding of the critical environmental, social, health, and safety issues related to the project.
	4. Describe arrangements which the Bidder proposes to adopt and has included in the Bid to ensure compliance with the gender requirements called for in the Technical Specifications, 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.
 |
| Resources | * 1. Subcontractors. Provide information on the proposed subcontracts and firms involved. Refer to GCC Clause 7 of the form of Contract in Section V.
 |

|  |  |  |  |
| --- | --- | --- | --- |
| Sections of the Works | Value of sub-contract | Subcontractor(name and address) | Experience in similar work |
| (a)(b) |  |  |  |

|  |  |
| --- | --- |
| Country of Origin | * 1. The country(ies) of origin of major items of plant, materials, goods and services proposed to be provided is(are) as follows:
 |

**Table of Plant and Materials**

|  |  |
| --- | --- |
| Item | Country of Origin |
| Plant (list all major items)  |  |
| Material (list all major items) |  |
| Equipment (list all major items) |  |
| Goods (list all major items)  |  |
| Services (list all major items) |  |

|  |  |
| --- | --- |
| Price Adjustment | * 1. The proposed indices and weightings to be used for the price adjustment formula in accordance with GCC Clause 49 are as follows:
 |

Schedule of Adjustment Data

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Index code | Index description | Source of index | Base value and date | Related source currency in type/amount | Equivalent in USD | Weighting |
|  | NonadjustableAdjustable | -- | -- | -- | -- | A: \*\* . B:  |
|  |  |  |  | Total |  | 1.00 |

##  B. Bidder’s 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 Bidder Qualification Requirements, 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: Joint Venture/Association/Sub-Contractor Information Sheet

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

|  |
| --- |
| **Joint Venture /association/subcontractor Information** |
| **Bidder’s legal name** |  |
| **Joint Venture Partner’s or subcontractor’s legal name** |  |
| **Joint Venture Partner’s or subcontractor’s country of constitution** |  |
| **Joint Venture Partner’s or subcontractor’s year of constitution** |  |
| **Joint Venture Partner’s or subcontractor’s legal address in country of constitution** |  |
| **Joint Venture 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

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; and (ii) may not be pre-qualified for any MCC-funded contract 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 a “fraudulent practice” 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 a “fraudulent practice” 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 Qualification Requirements** |
| 🞎 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 Qualification Requirements)**, 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 Qualification Requirements)**, 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 Qualification Requirements** |
| No failure to sign a contract in accordance with Sub-Factor 2.2.2 of **Section III, Bid Review, Evaluation Criteria and Bidder Qualification Requirements**OR* Failure to sign a contract in accordance with Sub-Factor 2.2.2 of **Section III, Bid Review, Evaluation Criteria and Bidder Qualification Requirements**
 |
| Failure to Sign ContractIn 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 Qualification Requirements |

|  |
| --- |
| **Pending Litigation** |
| **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 Qualification Requirements**(each member of a Joint Venture/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. 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 Joint Venture/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 Joint Venture 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 Construction Turnover

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

|  |
| --- |
| **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 Joint Venture/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 Joint Venture/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 Qualification Requirements**.

|  |  |  |
| --- | --- | --- |
| **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 Joint Venture/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 EXP-1: General Construction Experience

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

| **General Construction Experience** |
| --- |
| **Starting****Month****Year** | **Ending****Month****Year** | **Years** | **Contract Identification and Name****Name, address, telephone number, fax number, and e-mail of Employer****Brief Description of the Works Executed by the Bidder/Member of a Joint Venture/Association making up the Bidder** | **Role of Bidder/Member of a Joint Venture/Association making up the Bidder** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

### Form EXP-2: Similar Construction Experience

Fill in one (1) form per contract.

|  |
| --- |
| **Contract of Similar Size and Nature** |
| **Contract No . . . . . . of . . . . . .** | **Contract Identification** |  |
| **Award Date** |  | **Completion Date** |  |
| **Role in Contract** | * **Contractor**
 | * **Management Contractor**
 | * **Subcontractor**
 |
| **Total Contract Amount** | **US$** |
| **If member of a Joint Venture or other association, or a subcontractor, specify participation of total contract amount** | **Percent of Total** | **Amount** |
| **Employer’s Name****Address****Telephone/Fax Number****E-mail** |  |
| **Description of the similarity with the Works requirements** |
|  |  |

### Form EXP-3: Specific Construction Experience in Key Activities

Fill in one (1) form per contract.

|  |
| --- |
| **Contract with Specific Key Activities** |
| **Contract No . . . . . . of . . . . . .** | **Contract Identification** |  |
| **Award Date** |  | **Completion Date** |  |
| **Role in Contract** | * **Contractor**
 | * **Management Contractor**
 | * **Subcontractor**
 |
| **Total Contract Amount** | **US$** |
| **If member of a Joint Venture or other association, or a subcontractor, specify participation of total contract amount** | **Percent of Total** | **Amount** |
| **Employer’s Name****Address****Telephone Number** **Fax Number****E-mail** |  |
| **Description of the key activities in accordance with the Specific Experience** |
|  |  |

### Form EXP-4: Environmental and Social (E&S) Management Experience

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

| **Starting****Month****Year** | **Ending****Month****Year** | **Contract Identification and Name****Name, address, telephone number, fax number, and e-mail of Employer****Brief Description of the Works Executed by the Bidder, the Types of E&S or Gender Impacts Encountered, and Mitigation Measures Implemented** | **Role of Bidder (i.e. primary contractor or sub-contractor responsible for E&S, Gender issues)** |
| --- | --- | --- | --- |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

### Form EXP-5: Health and Safety (H&S) Management Experience

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

| **Starting****Month****Year** | **Ending****Month****Year** | **Contract Identification and Name****Name, address, telephone number, fax number, and e-mail of Employer****Brief Description of the Works Executed by the Bidder and H&S Measures Implemented** | **Role of Bidder (i.e. primary contractor or sub-contractor responsible for H&S issues)** |
| --- | --- | --- | --- |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

### 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** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**PART 2**

**WORKS REQUIREMENTS**

**Section V. Works Requirements**

**Bill of Quantities**[[21]](#footnote-21)/[[22]](#footnote-22)

**Technical Specifications & Performance Requirements**[[23]](#footnote-23)

**Drawings**[[24]](#footnote-24)

**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.

[Section VI: Contract Notices and Agreement 84](#_Toc31794491)

[Form of Notice of Intent to Award 85](#_Toc31794492)

[Form of Letter of Acceptance 86](#_Toc31794493)

[Form of Contract Agreement 87](#_Toc31794494)

[Section VII. General Conditions of Contract 89](#_Toc31794495)

[Section VIII. Form of Particular Conditions of Contract 132](#_Toc31794571)

[Section IX. Contract Annexes 138](#_Toc31794572)

[Annex A: Additional Provisions 139](#_Toc31794573)

[Annex B: Compliance with Sanctions Certification Form 140](#_Toc31794574)

[Annex C: Self-Certification Form 146](#_Toc31794582)

[Annex D: Code of Business Ethics and Conduct Certification Form 148](#_Toc31794583)

[Annex E: Securities 150](#_Toc31794584)

[Annex E1: Form of Performance Bank Guarantee 151](#_Toc31794585)

[Annex E2: Form of Bank Guarantee for Advance Payment 153](#_Toc31794586)

[Annex E3: Form of Retention Money Guarantee 155](#_Toc31794587)

## Form of Notice of Intent to Award[[25]](#footnote-25)

[**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 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 twenty-eight (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; (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 Self-Certification Form for Contractors 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[[26]](#footnote-26)

A. General

|  |  |
| --- | --- |
| Definitions | Capitalized terms used in this Contract and not otherwise defined have the meanings given such terms in the Compact or related document. Unless the context otherwise requires, the following words whenever used in this Contract have the following meanings:1. “Adjudicator” means the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in GCC Clauses 23 and 24.
2. “Agreement” means that portion of this Contract entitled Agreement that is signed by authorized representatives of the Employer and the Contractor.
3. “Applicable Law” means the laws and any other instruments having the force of law in the Employer’s country, that from time to time are in force and effect.
4. “Associate” means any entity that is a member of the Association that forms the Consultant. A Sub-Consultant is not an Associate.
5. “Association” or “association” or “Joint Venture” or “joint venture” means an association of entities that forms the Consultant, with or without a legal status distinct from its members.
6. “Appointing Authority” means the person or entity identified in PCC Sub-Clause 24.1 and any successor Appointing Authority appointed pursuant to the terms of this Contract.
7. “Bid” means the bid for the construction of the Works submitted by the Contractor and accepted by the Employer and that forms a part of this Contract.
8. “Bill of Quantities” means the priced and completed Bill of Quantities forming part of the Bid.[[27]](#footnote-27)
9. “Certificate of Completion” means the certificate to be issued by the Engineer upon completion of the Works, in accordance with GCC Clause 57.
10. “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;
11. “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.
12. “Compact” has the meaning given such term in the recital clauses to the Agreement.
13. “Compensation Events” means those events defined as such in GCC Clause 46.1.
14. “Completion Date” means the date of completion of the Works as certified by the Engineer, in accordance with GCC Clause 57.
15. “Contract” means this agreement between the Employer and the Contractor to execute, complete, and maintain the Works and consists of the documents listed in GCC Sub-Clause 2.3, as the same may be amended, modified, or supplemented from time to time in accordance with the terms hereof and thereof.
16. “Contract Price” means the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of this Contract.
17. “Contractor” has the meaning given such term in the initial paragraph of the Agreement.
18. “Contractor’s Environmental & Social Management Plan” or “CESMP” means the plan the Contractor shall develop, deliver, and implement in accordance with GCC Clause 70.
19. “corruption”means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of a public official, Employer 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.
20. “day” means a calendar day.
21. “Dayworks” means varied work inputs subject to payment on a time basis for the Contractor’s employees and Equipment, in addition to payments for associated Materials and Plant.
22. “Defect” means any part of the Works not completed in accordance with this Contract.
23. “Defects Liability Certificate” means the certificate issued by the Engineer upon correction of Defects by the Contractor.
24. “Defects Liability Period” means the period specified in PCC Sub-Clause 37.1 and calculated from the Completion Date.
25. “Drawings” means calculations and other information provided or approved by the Engineer for the execution of this Contract.
26. “Employer” has the meaning given such term in the initial paragraph of the Agreement**.**
27. “Engineer” means the person **named in the PCC** (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Engineer) who is responsible for supervising the execution of the Works and administering this Contract.
28. “Equipment” means the Contractor’s machinery and vehicles brought temporarily to the Site to construct the Works.
29. “Force Majeure” has the meaning given such term in GCC Sub-Clause 64.1.
30. “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) improperly a selection process or the execution of a contract, or to avoid (or attempt to avoid) an obligation.
31. “GCC” means the General Conditions of Contract.
32. “Government”has the meaning given such term in the recital clauses to the Agreement.
33. “Health and Safety Management Plan” or “HSMP” means the plan the Contractor shall develop, deliver, and implement in accordance with GCC Clause 68.
34. “IFC Performance Standards” means the International Finance Corporation’s Performance Standards on Environmental and Social Sustainability.
35. “Initial Contract Price” means the Contract Price listed in the Letter of Acceptance.
36. “Intended Completion Date” means the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is **specified in the PCC**. The Intended Completion Date may be revised only by the Engineer by issuing an extension of time or an acceleration order.
37. “Letter of Acceptance” means the letter, dated as **specified in the PCC** from the Employer to the Contractor notifying the Contractor that its Bid has been accepted and that forms an integral part of this Contract.
38. “Materials” means all supplies, including consumables, used by the Contractor for incorporation in the Works.
39. “MCC” has the meaning given such term in the recital clauses to the Agreement.
40. “MCC Funding”has the meaning given such term in the recital clauses to the Agreement.
41. “MCC Gender Policy” means the MCC Gender Policy and its amendments posted from time to time on the MCC website at www.mcc.gov.
42. “month” means a calendar month and “monthly” refers to a calendar month.
43. “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.
44. “Payment Certificate” means the certificate issued by the Engineer in accordance with GCC Clause 44.
45. “Performance Security” means the security to be provided by the Contractor in accordance with GCC Clause 54.
46. “Plant” means any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
47. “Program” has the meaning given such term in GCC Sub-Clause 29.1.
48. *“*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.
49. “PCC” means Particular Conditions of Contract.
50. “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).
51. “Schedule of Key Personnel” means the schedule of key personnel employed by the Contractor, described in GCC Clause 9.
52. “Schedule of Other Contractors” means the schedule of other contractors working on the Site, described in GCC Clause 8.
53. “Site” means the area **defined as such in the PCC**.
54. “Site Investigation Reports” means those that were included in the bidding documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.
55. “Site Possession Dates” means a date on which the Employer is to give possession of all or part of the Site to the Contractor in accordance with GCC Clause 19.
56. **“**Specifications” means the Technical Specifications of the Works included as part of this Contract and any modification or addition made or approved by the Engineer.
57. “Start Date” means the date **specified in the PCC** as the date when the Contractor may commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.
58. “Tax” and “Taxes” have the meanings given such terms in the Compact or related agreement.
59. “Temporary Works” means those works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
60. “Variation” means an instruction given by the Engineer which varies the Works.
61. “Works” means what this Contract requires the Contractor to construct, install, and turn over to the Employer, **as defined in the PCC.**
 |
| Interpretation | 2.1 In interpreting this Contract, unless otherwise indicated:1. “confirmation” means confirmation in writing;
2. “in writing” means communicated in written form (e.g., by mail, e-mail, or facsimile) delivered with proof of receipt;
3. except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular;
4. the feminine means the masculine and vice versa;
5. headings are for convenience only and have no other significance; and
6. the Engineer shall provide instructions clarifying queries about the interpretation of this Contract.

2.2 If sectional completion is **specified in the PCC**, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).2.3 The following documents are each deemed to form an integral part of this Contract and shall be interpreted in the following order of priority:1. Agreement,
2. Letter of Acceptance,
3. Bid,
4. PCC and Annex A to this Contract entitled “Annex A: Additional Provisions,”
5. GCC,
6. Technical Specifications,
7. Drawings,
8. Bill of Quantities,[[28]](#footnote-28) and
9. any other document **listed in the PCC** as forming part of this Contract.
 |
| Language and Law | 3.1 This Contract has been executed in the language(s) **specified in the PCC**. If the Contract is executed in both the English and anotherlanguage, the English language version shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.3.2 This Contract, its meaning and interpretation and the relation between the parties shall be governed by Applicable Law. |
| Engineer’s Decisions | 4.1 Except where otherwise specifically stated, the Engineer shall decide contractual matters between the Employer and the Contractor in the role representing the Employer. |
| Delegation | 5.1 The Engineer may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor. |
| Communica­tions | 6.1 Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Subject to Applicable Law, any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the party to whom the communication is addressed, or when delivered to such party at the address **specified in the PCC**, or sent by confirmed facsimile or confirmed email, in either case if sent during normal business hours of the recipient party.6.2 A party may change its address for receiving notice under this Contract by giving the other party notice in writing of such change to the address **specified in PCC 6.1**. |
| Subcontracting | 7.1 The Contractor may sub-contract with the approval of the Engineer, but may not assign this Contract without the approval of the Employer in writing. Sub-contracting shall not alter the Contractor’s obligations under this Contract. |
| Other Contractors | 8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as **referred to in the PCC.** The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification. |
| Personnel | 9.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as **referred to in the PCC,** to carry out the functions stated in such schedule or other personnel approved by the Engineer. The Engineer shall approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule of Key Personnel.9.2 If the Engineer asks the Contractor to remove a person who is a member of the Contractor’s staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in this Contract. |
| Employer’s and Contractor’s Risks | 10.1 The Employer carries the risks which this Contract states are Employer’s risks, and the Contractor carries the risks which this Contract states are Contractor’s risks. |
| Employer’s Risks | 11.1 From the Start Date until the Defects Liability Certificate has been issued, the following are Employer’s risks:1. The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to

(i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works; or(ii) negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.1. The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in the Employer’s design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.

11.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer’s risk except loss or damage due to1. Defect which existed on the Completion Date,
2. an event occurring before the Completion Date, which was not itself an Employer’s risk, or
3. the activities of the Contractor on the Site after the Completion Date.
 |
| Contractor’s Risks | 12.1 From the Start Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer’s risks are Contractor’s risks. |
| Insurance | 13.1 The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles **stated in the PCC** for the following events which are due to the Contractor’s risks:1. loss of or damage to the Works, Plant, and Materials;
2. loss of or damage to Equipment;
3. loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with this Contract; and
4. personal injury or death.

13.2 Policies and certificates for insurance shall be delivered by the Contractor to the Engineer for the Engineer’s approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.13.3 If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due from the Contractor to the Employer.13.4 Alterations to the terms of an insurance shall not be made without the approval of the Engineer.13.5 Both parties shall comply with any conditions of the insurance policies. |
| Eligibility; Source of Equipment, Material and Services | 14.1 The Contractor and its subcontractors, including their respective personnel and affiliates, shall at all times during the term of this Contract have the nationality of a country or territory eligible, in accordance with the Compact, the MCC Program Procurement Guidelines and Annex A to this Contract (“Eligible Countries”). The Contractor or a subcontractor and their respective personnel and affiliates shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.14.2 All Equipment, Materials, Plant and any services to be incorporate in or required for the Works shall have their origin in Eligible Countries.14.3 For the purpose of this GCC Clause 14, “origin” means the place where the Equipment, Material 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 supplied. |
| Queries about the Particular Conditions of Contract | 15.1 The Engineer shall clarify queries on the PCC. |
| Contractor to Construct the Works | 16.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings. |
| The Works to Be Completed by the Intended Completion Date | 17.1 The Contractor shall commence the execution of the Works as soon as is reasonably practicable after the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Engineer, and shall complete the Works by the Intended Completion Date. |
| Approval by the Engineer | 18.1 The Contractor shall submit Technical Specifications and Drawings showing any proposed Temporary Works to the Engineer, who is to approve them if they comply with the Technical Specifications and Drawings.18.2 The Contractor shall be responsible for the design of any Temporary Works.18.3 The Engineer’s approval shall not alter the Contractor’s responsibility for the design of any Temporary Works.18.4 The Contractor shall obtain approval of third parties to the design of any Temporary Works, where required.18.5 All Drawings prepared by the Contractor for the execution of any Temporary Works or the Works, are subject to prior approval by the Engineer before their use. |
| Contractor Access to the Site | 19.1 The Site Possession Date(s) shall be as **listed in the PCC**, where access will be granted by the Employer to the Contractor after completion of the resettlement activities.  |
| Engineer Access to the Site | 20.1 The Contractor shall allow any person authorized by the Engineer access to the Site and to any place where work in connection with this Contract is being carried out or is intended to be carried out.  |
| Instructions, Inspections and Audits | 21.1 The Contractor shall carry out all instructions of the Engineer which comply with the Applicable Law where the Site is located.21.2 The Contractor shall permit MCC and/or persons appointed by MCC to inspect the Site and/or the accounts and records of the Contractor and any subcontractors relating to the performance of this Contract, and to have such accounts and records audited by auditors appointed by MCC, if so required by MCC in accordance with the provisions of the Annex to this Contract entitled “Additional Provisions.”  |
| Disputes | 22.1 If the Contractor believes that a decision taken by the Engineer was either outside the authority given to the Engineer by this Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Engineer’s decision. |
| Procedure for Disputes | 23.1 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.23.2 The Adjudicator shall be paid by the hour at the rate **specified in the** **PCC,** together with reimbursable expenses of the types **specified in the PCC**, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to arbitration within 14 days of the Adjudicator’s written decision in accordance with GCC Sub-Clause 23.1. If neither party refers the dispute to arbitration within the above 14 days, the Adjudicator’s decision shall be final and binding.23.3 The arbitration shall be conducted in accordance with the terms **specified in the PCC** and the arbitration procedures published by the institution named and in the place **specified in the PCC.**23.4 MCC has the right to be an observer of any arbitration proceeding arising under this Contract, at its sole discretion, but does not have the obligation to observe any arbitration proceeding. Whether or not MCC is an observer to any arbitration arising under this Contract, the Employer shall provide MCC with written English transcripts of any arbitration proceedings or hearings and a copy of the reasoned written award within 14 days after (a) each such proceeding or hearing or (b) the date on which any such award is issued. The acceptance by MCC of the right to be an observer to the arbitration shall not constitute consent by MCC to the jurisdiction of the courts or any other organism of the Employer’s or the Contractor’s countriesor any other jurisdiction or to the jurisdiction of any arbitral panel or other body. |
| Replacement of Adjudicator | 24.1 Should the Adjudicator resign or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of this Contract, a new Adjudicator shall be jointly appointed by the Employer and the Contractor. If the Employer and the Contractor cannot reach agreement as to the appointment of such new Adjudicator within 28 days, either party may then request that the Appointing Authority **designated in the PCC** appoint a new Adjudicator and such replacement Adjudicator shall be designated by the Appointing Authority within 14 days of receipt of such request. |
| Conflict of Interest | 25.1 The Contractor shall not engage, and shall cause its personnel as well as any subcontractors and their personnel not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract. |
| Commissions and Fees | 26.1 TheContractor shall disclose any commissions or fees that may have been paid or, at any time during the execution of this Contract are paid, to agents, representatives, or commission agents with respect to the selection process or performance of this Contract. The information disclosed must include at least the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee. |
| Confidentiality  | 27.1 Each of the parties shall treat the details of this Contract as private and confidential, except to the extent necessary to carry out their respective obligations under this Contract or to comply with Applicable Laws. The parties shall not publish or disclose any particulars of the Works prepared by the other party without the previous agreement of the other. However, the Contractor shall be permitted to disclose any publicly available information, or, with the prior consent of the Employer in writing, 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 this 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 all of its personnel and each subcontractor and its personnel.27.2 The Contractor shall disclose, and shall cause its personnel as well as any subcontractor and its personnel to disclose, all such confidential and other information as may be reasonably required in order to verify the Contractor’s compliance with this Contract and to allow for this Contract’s proper implementation. |
| Entire Agreement | 28.1 This Contract contains all of the covenants, stipulations and provisions agreed to by the parties. No agent or representative of either party has the authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth in this Contract. |

B. Time Control

|  |  |
| --- | --- |
| Program | 29.1 Within the time **stated in the PCC**, after the date of Contract signing, the Contractor shall submit to the Engineer for approval a program showing the general methods, arrangements, order, and timing for all the activities in the Works (the “Program”).29.2 An update of the Program shall be a Program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.29.3 The Contractor shall submit to the Engineer for approval an updated Program at intervals no longer than the period **stated in the PCC.** If the Contractor does not submit an updated Program within this period, the Engineer may withhold the amount **stated in the PCC** from the next Payment Certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted and approved by the Engineer.29.4 The Engineer’s approval of the Program shall not alter the Contractor’s obligations. The Contractor may revise the Program and submit it to the Engineer for approval again at any time. A revised Program shall show the effect of any Variation and Compensation Events. |
| Extension of the Intended Completion Date | 30.1 The Engineer shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work in a manner that would cause the Contractor to incur additional cost. The Engineer shall also extend the Intended Completion Date if it determines an event of Force Majeure has occurred in accordance with GCC Clause 64. Any extensions that extend the original Contract duration by 25 percent or more, individually or in the aggregate, shall require the Employer’s prior approval. 30.2 The Engineer shall decide whether and by how much to extend the Intended Completion Date within 21 days of (a) the Contractor asking the Engineer for a decision upon the effect of a Compensation Event or Variation or (b) the Contractor or the Employer asking the Engineer for a decision on the occurrence of an event of Force Majeure. In each case, such request is to be in writing and shall be supplemented by full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date. |
| Acceleration | 31.1 When the Employer wants the Contractor to finish before the Intended Completion Date as it may have been extended, the Engineer shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Employer and the Contractor.31.2 If the Contractor’s priced proposals for an acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation. |
| Delays Ordered by the Engineer | 32.1 The Engineer may instruct the Contractor to delay the start or progress of any activity within the Works. |
| Management Meetings | 33.1 Either the Engineer or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.33.2 The Engineer shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Engineer either at the management meeting or after the management meeting and stated in writing to all who attended the meeting. |
| Early Warning | 34.1 The Contractor shall warn the Engineer at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Engineer may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.34.2 The Contractor shall cooperate with the Engineer in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Engineer. |

C. Quality Control

|  |  |
| --- | --- |
| Identifying Defects | 35.1 The Engineer shall check the Contractor’s work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor’s responsibilities. The Engineer may instruct the Contractor to search for a Defect and to uncover and test any work that the Engineer considers may have a Defect. |
| Tests | 36.1 If the Engineer instructs the Contractor to carry out a test not specified in the Technical Specifications to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event. |
| Correction of Defects | 37.1 The Engineer shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is **defined in the PCC.** The Defects Liability Period shall be extended for as long as Defects remain to be corrected.37.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Engineer’s notice of Defect. |
| Uncorrected Defects | 38.1 If the Contractor has not corrected a Defect within the time specified in the Engineer’s notice of Defect, the Engineer shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount. |

D. Cost Control

|  |  |
| --- | --- |
| 1. Bill of Quantities**[[29]](#footnote-29)**
 | 39.1 The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.39.2 The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item. |
| 1. Changes in the Quantities**[[30]](#footnote-30)**
 | 40.1 If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds one percent of the Initial Contract Price, the Engineer shall adjust the rate to allow for the change.40.2 Except with the prior approval of the Employer, the Engineer shall not adjust rates from changes in quantities if such change, either individually or in the aggregate, causes the Initial Contract Price increase by either (a) 10 percent or more or (b) US$1 million, whichever is less. 40.3 In the event the cumulative threshold referenced in GCC 40.2 above has is reached, prior Employer approval shall then be required for any subsequent adjustments that cause the Initial Contract Price to be increased by 3 percent or more, either individually or in the aggregate.40.4 If requested by the Engineer, the Contractor shall provide the Engineer with a detailed cost breakdown of any rate in the Bill of Quantities. |
| Variations | 41.1 All Variations shall be included in updated Programs[[31]](#footnote-31) produced by the Contractor. |
| Payments for Variations | 42.1 The Contractor shall provide the Engineer with a quotation for carrying out the Variation when requested to do so by the Engineer. The Engineer shall assess the quotation, which shall be given within seven days of the request or within any longer period stated by the Engineer and before the Variation is ordered.42.2 If the work in the Variation corresponds with an item description in the Bill of Quantities and if, in the opinion of the Engineer, the quantity of work above the limit stated in GCC Sub-Clause 42.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.[[32]](#footnote-32)42.3 If the Contractor’s quotation is unreasonable, the Engineer may order the Variation and make a change to the Contract Price, which shall be based on the Engineer’s own forecast of the effects of the Variation on the Contractor’s costs.42.4 If the Engineer decides that the urgency of varying the work would prevent a quotation from being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.42.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning in accordance with GCC Clause 34. |
| Cash Flow Forecasts | 43.1 When the Program[[33]](#footnote-33) is updated, the Contractor shall provide the Engineer with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in this Contract, converted as necessary using the exchange rates provided for in this Contract. |
| Payment Certificates | 44.1 The Contractor shall submit to the Engineer monthly statements of the estimated value of the work executed less the cumulative amount certified previously.44.2 The Engineer shall check the Contractor’s monthly statement and certify the amount to be paid to the Contractor which certified amount shall be set forth in a Payment Certificate issued by the Engineer.44.3 The value of work executed shall be determined by the Engineer.44.4 The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed.[[34]](#footnote-34)44.5 The value of work executed shall include the valuation of Variations and Compensation Events.44.6 The Engineer may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information. |
| Payments | 45.1 Payments shall be adjusted for deductions for advance payments and retention, if any. The Employer shall pay, or cause to be paid to, the Contractor the amounts certified by the Engineer within 28 days of the date of each Payment Certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the rate of interest for each of the relevant currencies **as indicated in the PCC**.45.2 If an amount certified is increased in a later Payment Certificate or as a result of an award by the Adjudicator or in arbitration in accordance with GCC Clause 23, the Contractor shall be paid interest on the delayed payment. Such interest shall be calculated from the date on which the increased amount would have been paid in the absence of dispute at the rate provided for in GCC Sub-Clause 45.1.45.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.45.4 Items of the Works for which no rate or price has been entered in shall not be paid for by the Employer and shall be deemed covered by other rates and prices in this Contract. |
| Compensation Events | 46.1 The following shall be “Compensation Events”:1. The Employer does not give access to a part of the Site by the Site Possession Date pursuant to GCC Sub-Clause 19.1.
2. The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under this Contract.
3. The Engineer orders a delay or does not issue Drawings, Technical Specifications, or instructions required for execution of the Works on time.
4. The Engineer instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
5. The Engineer unreasonably does not approve a sub-contract to be let.
6. Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
7. The Engineer gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
8. Other contractors (other than subcontractors), public authorities, utilities, or the Employer does not work within the dates and other constraints stated in this Contract, and they cause delay or extra cost to the Contractor.
9. The advance payment is delayed.
10. The effects on the Contractor of any of the Employer’s Risks.
11. The Engineer unreasonably delays issuing a Certificate of Completion.

46.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Engineer shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.46.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor’s forecast cost has been provided by the Contractor, it shall be assessed by the Engineer, and the Contract Price shall be adjusted accordingly. If the Contractor’s forecast is deemed unreasonable, the Engineer shall adjust the Contract Price based on the Engineer’s own forecast. The Engineer shall assume that the Contractor shall react competently and promptly to the event.46.4 The Contractor shall not be entitled to compensation to the extent that the Employer’s interests are adversely affected by the Contractor’s not having given early warning or not having cooperated with the Engineer. |
| 1. Taxes[[35]](#footnote-35)
 | 47.1 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: * + - * 1. 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);
				2. 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
				3. 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.

47.2 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. 47.3 The Employer shall 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.47.4 As provided for under the terms of the Compact, the Contractor’s local staff and labor (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.47.5 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.47.6 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.  |
| Currencies | 48.1 Where payments are made in currencies other than the currency of the Employer’s country **specified in the PCC,** the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor’s Bid. |
| Price Adjustment | 49.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the PCC.** If so provided, the amounts certified in each Payment Certificate, before deducting for the advance payment, if any, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency: Pc = Ac + Bc Imc/Ioc where: Pc is the adjustment factor for the portion of the Contract Price payable in a specific currency “c.” Ac and Bc are coefficients[[36]](#footnote-36) **specified in the PCC,** representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency “c;” and Imc is the index prevailing at the end of the month being invoiced and Ioc is the index prevailing 28 days before Bid opening for inputs payable, both in the specific currency “c.”49.2 Adjustment shall be made for the first time during the term of this Contract at the time **specified in the PCC**.49.3 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next Payment Certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs. |
| Retention | 50.1 The Employer shall retain from each payment due to the Contractor the proportion **stated in the PCC** until completion of the whole of the Works.50.2 On completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Engineer has certified that all Defects notified by the Engineer to the Contractor before the end of the Defects Liability Period have been corrected.50.3 On completion of the whole Works, the Contractor may substitute retention money with an “on demand” bank guarantee in a form and issued by a bank acceptable to the Employer. |
| Liquidated Damages | 51.1 The Contractor shall pay liquidated damages to the Employer at the rate per day **stated in the PCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the PCC.** The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor’s liabilities.51.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Engineer shall correct any overpayment of liquidated damages by the Contractor by adjusting the next Payment Certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC Sub-Clause 51.1. |
| Bonus | **52.1 Reserved. [Provisions with respect to the payment of bonuses may only be included in this Contract with the prior approval of MCC (please refer to MCC Program Procurement Guidelines Part 1, Section 1.A, Paragraph 2.41).][[37]](#footnote-37)** |
| Advance Payment | 53.1 The Employer shall make an advance payment to the Contractor of the amounts **stated in the PCC** by the date **stated in the PCC**, against provision by the Contractor of an unconditional bank guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. Such unconditional bank guarantee shall remain effective until the advance payment has been repaid, but the amount of such guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest shall not be charged on the advance payment.53.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of this Contract. The Contractor shall demonstrate that the advance payment has been used in this way by supplying copies of invoices or other documents to the Engineer in form and substance acceptable to the Engineer.53.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, bonuses, if any, or liquidated damages. |
| Securities | 54.1 The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in the amount **specified in the PCC,** in a form and by a bank acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 days from the date of issue of the Defects Liability Certificate. |
| Dayworks | 55.1 If applicable, the Dayworks rates in the Contractor’s Bid shall be used for small additional amounts of work only when the Engineer has given written instructions in advance for additional work to be paid for in that way.55.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Engineer. Each completed form shall be verified and signed by the Engineer within two days of the work being done.55.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms. |
| Cost of Repairs | 56.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Liability Periods shall be remedied by the Contractor at the Contractor’s cost if the loss or damage arises from the Contractor’s acts or omissions. |

E. Finishing the Contract

|  |  |
| --- | --- |
| Completion | 57.1 The Contractor shall request the Engineer to issue a Certificate of Completion of the Works, and the Engineer shall do so upon deciding that the work is completed. |
| Taking Over | 58.1 The Employer shall take over the Site and the Works within seven days of the Engineer’s issuing a Certificate of Completion. |
| Final Account | 59.1 The Contractor shall supply the Engineer with a detailed account of the total amount that the Contractor considers payable under this Contract before the end of the Defects Liability Period. The Engineer shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor’s account if it is correct and complete. If it is not, the Engineer shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the final account is still unsatisfactory after it has been resubmitted, the Engineer shall decide on the amount payable to the Contractor and issue a Payment Certificate. |
| Drawings, Operating and Maintenance Manuals | 60.1 “As built” Drawings shall be supplied by the Contractor to the Engineer, in form and substance satisfactory to the Engineer, by the date **stated in the PCC.**60.2 If operating and maintenance manuals are required, the Contractor shall supply them to the Engineer, in form and substance satisfactory to the Engineer, by the date **stated in the PCC**.60.3 If the Contractor does not supply the Drawings and/or manuals by the dates **stated in the PCC,** or they do not receive the Engineer’s approval, the Engineer shall withhold the amount **stated in the PCC** from payments due to the Contractor. |
| Termination | 61.1 The Employer or the Contractor may terminate this Contract if the other party causes a fundamental breach of this Contract.61.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:1. the Contractor stops work for 28 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Engineer;
2. the Engineer instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;
3. the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
4. a payment certified by the Engineer is not paid by the Employer to the Contractor within 84 days of the date of the Engineer’s issuance of a Payment Certificate;
5. the Engineer gives notice that failure to correct a particular Defect is a fundamental breach of this Contract and the Contractor fails to correct it within a reasonable period of time determined by the Engineer;
6. the Contractor does not maintain a Performance Security, which is required in accordance with GCC Clause 54;
7. the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as **defined in the PCC**;
8. the Contractor, in the judgment of the Employer, has, directly or through an agent, engaged in any coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices (each as defined in GCC Clause 66) in competing for or in the performance of this Contract or another MCC-funded contract; and
9. 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 to this Contract entitled “Annex: Additional Provisions” (which such termination will obligate the Contractor to repay any and all funds so misused within a maximum of 30 days after termination).

61.3 When either party to this Contract gives notice of a breach of Contract to the Engineer for a cause other than those listed under GCC Sub-Clause 61.2, the Engineer shall decide whether the breach is fundamental or not.61.4 In addition to termination of this Contract for a fundamental breach in accordance with GCC Sub-Clauses 61.1 through 61.3, if the execution of substantially all of the Works in progress is prevented for a continuous period of days as **specified in the PCC** (or for multiple periods that total more than the days as **specified in the PCC** due to the same event) by reason of an event of Force Majeure as determined by the Engineer in accordance with GCC Clause 64, then either party may give the other party a notice of termination of this Contract. In this event, the termination shall take effect seven days after such notice of termination is given and the Contractor shall proceed in accordance with GCC Sub-Clause 61.6.61.5 In addition to termination of this Contract for a fundamental breach in accordance with GCC Sub-Clauses 61.1 through 61.3, or resulting from an event of Force Majeure in accordance with GCC Sub-Clause 61.4, the Employer may terminate this Contract for convenience or upon termination or suspension of the Compact.61.6 If this Contract is terminated for any reason, the Contractor shall (a) stop work immediately, (b) make the Site safe and secure, (c) hand over any Drawings, Technical Specifications, other documents, Materials, Plant, and other work for which the Contractor has received payment (and all Materials, Plant, Equipment, Temporary Works, and Works in accordance with GCC Clause 63), and (d) leave the Site as soon as reasonably possible. |
| Payment upon Termination | 62.1 If this Contract is terminated because of a fundamental breach of Contract by the Contractor, the Engineer shall issue a certificate for the value of the work done and Materials ordered less advance payments, if any, received up to the date of the issue of such certificate and less the percentage to apply to the value of the work not completed, as **indicated in the PCC.** Additional liquidated damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.62.2 If this Contract is terminated for the Employer’s convenience, suspension or termination of the Compact, or because of a fundamental breach of Contract by the Employer, or as the result of an event of Force Majeure, the Engineer shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor’s personnel employed solely on the Works, and the Contractor’s costs of protecting and securing the Works, and less advance payments, if any, received up to the date of the certificate. |
| Property | 63.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer if this Contract is terminated because of the Contractor’s default. |
| Force Majeure | 64.1 For the purposes of this Contract, “Force Majeure” means an event or condition that (a) is not reasonably foreseeable and is beyond the reasonable control of a party, and is not the result of any acts, omissions or delays of the party relying on such Force Majeure (or any third person over whom such party has control, including any subcontractor), (b) is not an act, event or condition the risks or consequence of which such party has expressly agreed to assume under this Contract, (c) could not have been prevented, remedied or cured by such party’s reasonable diligence, and (d) makes such party’s performance of its obligations under this Contract impossible or so impractical as to be considered impossible under the circumstances. Such events may include, but are not restricted to, acts of the Government in its sovereign capacity, wars or revolutions, terrorism, fires, floods, earthquakes, epidemics, quarantine restrictions, freight embargoes, and strike or lockout by persons other than the Contractor, any subcontractor, or any of their personnel.64.2 The failure of a party to fulfill any of its obligations under this Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure; provided that the party affected by such an event has (a) taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, (b) informed the other party as soon as practicable (and in no event later than seven days following the occurrence) about the occurrence of an event giving rise to a claim of Force Majeure, and (c) has made a request to the Engineer with respect to the claim of Force Majeure in accordance with GCC Clause 30.2.64.3 Subject to GCC Sub-Clause 64.6, a party affected by an event of Force Majeure shall continue to perform its obligations under this Contract as far as is reasonably practical, and shall take all reasonable measures to minimize and otherwise mitigate the consequences of any event of Force Majeure.64.4 A party affected by an event of Force Majeure shall provide evidence of the nature and cause of such event in accordance with GCC Clause 30 and GCC Sub-Clause 64.2, and shall similarly give written notice of the restoration of normal conditions as soon as practicable. 64.5 If a party is prevented from performing any of its obligations under this Contract as the result of an event of Force Majeure and is otherwise in compliance with each of its obligations under GCC Clause 30 and this GCC Clause 64, such party shall be entitled to an extension of the Intended Completion Date in accordance with GCC Clause 30.64.6 If any subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this GCC Clause 64, such additional or broader force majeure events, circumstances or provisions shall in no way excuse the Contractor’s non-performance under this Contract or otherwise entitle the Contractor to relief under this GCC Clause 64. **F. Additional Provisions** |
| MCC Required Provisions; Flow Through Provisions | 65.1 The provisions set forth in Annex A (Additional Provisions) form an integral part of this 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 this Contract, the provisions of Annex A are binding obligations under this Contract.65.2 In any sub-contract or sub-award entered into by the Contractor, as permitted by the terms of this Contract, the Contractor shall ensure the inclusion of all the provisions contained in Annex A in any agreement related to such sub-contract or sub-award. |
| Fraud and Corruption Requirements | 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 fraud and corruption. 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>;<https://www.cipe.org/wp-content/uploads/2014/01/CIPE_Anti-Corruption_Compliance_Guidebook.pdf>(a) For purposes of the Contract, 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 influence improperly 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, Employer 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 influence (or attempt to influence) improperly 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.

(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, 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 any 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 any 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 GCC Clause 61 shall apply.(e) Should any of the Contractor’s Personnel be determined to have engaged in any 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 GCC Clause 9. |
| Combatting of Trafficking in Persons | 67.1 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.[[38]](#footnote-38) In pursuance of this policy:1. **Defined Terms.** For purposes of the application and interpretation of this Clause 67:
2. 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
3. “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.
4. **Prohibition**. Contractors, subcontractors, Consultants, Sub-Consultants and any of their respective Personnel 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.
5. **Contractor Requirements.**
6. 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.
7. Each Contractor shall:
8. 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;
9. 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
10. acknowledge that engaging in such activities is cause for suspension or termination of employment or of the Contract.
11. The Contractor or subcontractor shall inform the MCA Entity within 24 hours of:
12. 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; and
13. any actions taken against any Personnel, subcontractor, subcontractor, or the employee of a subcontractor, pursuant to these requirements.
14. **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:
15. 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;
16. the MCA Entity requiring the termination of a subcontract or sub-award;
17. suspension of Contract payments until the breach is remedied to the satisfaction of the MCA Entity;
18. 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;
19. the MCA Entity pursuing sanctions against the Contractor, including declaring the Contractor ineligible, either indefinitely or for a stated period of time, to be awarded any MCC-funded contract;
20. termination of the Contract by the MCA Entity for default or cause in accordance with the termination clause of the Contract; and
21. 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.
 |
| Safety Procedures | 68.1 Within the time **stated in the PCC**, after the date of Contract signing, 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 Technical Specifications and Schedules and Applicable Laws to the Engineer. The HSMP must be approved by the Engineer prior to commencement of the execution of the Works.68.2 Unless the Engineer, within 14 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 HSMP.68.3 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.68.4 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.68.4 If, at any time, the Engineer gives notice to the Contractor that all or any portion of the HSMP fails (to the extent stated) to comply with the Contract, the Contractor shall submit a revised HSMP Plan to the Engineer in accordance with this Sub-Clause.68.5 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.68.7 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 the Contract. |
| HIV Awareness | 69.1 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. |
| Protection of the Environment and Social Sustainability | 70.1 Within the time **stated in the PCC**, after the date of Contract signing, the Contractor shall submit a detailed, site-specific Contractor’s Environmental & Social Management Plan (or “CESMP”) in respect of safety, security, and management of environmental and social impacts in respect of safety, security, and protection of the environment based on all relevant provisions found in the Technical Specifications and Schedules and Applicable Laws to the Engineer. The CESMP must be approved by the Engineer prior to commencement of the execution of the Works.70.2 Unless the Engineer, within 14 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. 70.3 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.70.4 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. 70.5 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.70.6 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.70.7 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.70.8 The Contractor’s program submitted, maintained and implemented in accordance with GCC Clause 29 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 Clause.70.9 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.70.10 The Contractor shall restore the Site to original conditions or to a state as set out in the Technical Specifications after the completion of the Works. |
| Staff and Labor | * 1. 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.
	2. 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.
	3. 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.

71.4 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 Clause 68 [Safety Procedures]). 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 allow individuals’ privacy and safety. Additional summary guidance may be found here: <https://www.mcc.gov/resources/doc/guidance-accommodation-welfare-staff-and-labor>71.5 When submitting their CESMP, the Contractor shall include their proposed specifications related to any facilities that will be provided for staff and labor. The proposed facilities must comply with requirements of IFC Performance Standards 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> |
| Gender and Social Inclusion | 72.1 The Contractor shall ensure that its activities under the Contract comply with the MCC Gender Policy[[39]](#footnote-39) and the MCA Entity’s Social and Gender Integration Plan, as relevant to the activities performed under this Contract. The MCC Gender Policy requires that activities funded by MCC specifically address social and gender inequalities to ensure opportunities for the participation and benefit of women and vulnerable groups, as well as to ensure that its activities do not cause significant negative social and gender impacts. MCC also requires equitable opportunities for women and other disadvantaged groups to participate in and benefit from MCC funded activities, including in project-related employment72.2 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. |
| Prohibition of Forced or Compulsory Labor | 73.1 The Contractor shall not employ "forced or compulsory labor" in any form. “Forced or compulsory labor" consists of all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.73.2 The Contractor shall monitor its Primary Suppliers on an ongoing basis in order to identify any significant changes in these suppliers. If new risks or incidents of forced or compulsory labour are identified, the Contractor shall take appropriate steps to remedy them. |
| Prohibition of Harmful Child Labor | 74.1 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. The Consultant will identify the presence of all persons under the age of eighteen (18). Where Applicable Law does not specify a minimum age, the Consultant shall ensure that children aged below 15 are not employed to perform work under this contract. Where Applicable Law diverges from this specified age standard, the higher age should apply. Children under the age of eighteen (18) will not 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.74.3 The Contractor shall monitor its Primary Suppliers on an ongoing basis in order to identify any significant changes in these 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> |
| Prohibition of Sexual Harassment | 75.1 The Contractor including all Sub-Consultants and any Personnel, shall prohibit, and refrain from, sexual harassment behaviors directed at Compact beneficiaries, partners, 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 Consultant shall 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 Consultant shall be responsible for ensuring that all Consultant and Sub-Consultant 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 Consultant shall fully cooperate with any investigation conducted by the MCA Entity regarding breach of this provision. The Consultant will ensure that any incident of sexual harassment investigated by the MCA Entity has been resolved to the MCA Entity and MCC’s satisfaction.  |
| Non-Discrimination and Equal Opportunity | * 1. 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 further requirements regarding non-discrimination in employment, the Contractor shall comply with such laws in addition to the foregoing. 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.
	2. The Contractor shall adopt recruitment, hiring and retention practices that support the employment of women and staff from diverse backgrounds.
 |
| Grievance Mechanism for Contractor and Subcontractor Personnel |  77.1 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 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 applicable law or through existing arbitration procedures, or substitute for grievance mechanisms provided through collective agreements. |
|  |  |
| Contractor Past Performance Reporting System | 78.1 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. 78.2 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 VIII. Form of Particular Conditions of Contract

The following Particular Conditions of Contract (PCC) shall supplement and / or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

|  |
| --- |
| A. General |
| **GCC 1.1 (y)** | The Engineer is **[insert name, address, and name of Engineer and its authorized representative]**. |
| **GCC 1.1 (hh)** | The Intended Completion Date for the whole of the Works shall be **[insert duration in days or months]** from the Start Date.**[If different durations are specified for completion of the Works by section (“sectional completion” or milestones), these durations from the Start Date should be listed here.]** |
| **GCC 1.1 (ii)** | The date of the Letter of Acceptance is **[insert date of Letter of Acceptance has been signed]** |
| **GCC 1.1 (yy)** | The Site is located at **[insert address of Site ]** and is defined in drawings No. **[insert numbers].** |
| **GCC 1 (ccc)** | The Start Date shall be the date, notified by the Engineer, when the following conditions are met:1. The Program (GCC 29) is approved by the Engineer;
2. The HSMP (GCC 68) is approved by the Engineer;
3. The CESMP (GCC 70) is approved by the Engineer;
4. The Contractor receives written confirmation from the Engineer that actions requiring completion by the approved RAP have been completed (GCC 70.5)
5. ***[insert any other precedent conditions, as applicable]***

**The Start Date shall be prior to, or on the same date as the Site Possession Date.** |
| **GCC 1.1 (ggg)** | The Works consist of **[insert brief summary, including relationship to other contracts under the project]**. |
| **GCC 2.2** | Sectional Completions are: **[insert nature and dates, if appropriate]**.  |
| **GCC 2.3(i)** | The following documents also form an integral part of this Contract: **[list documents, if any]**. |
| **GCC 3.1** | This Contract shall be executed in the English language Yes **[ ]** No **[ ]** and in the **[local language]** Yes **[ ]** No **[ ]**. |
| **GCC 6.1**  | For notices that are served on the Employer, the address shall be:**[insert complete address, including e-mail]**For notices that are served on the Contractor, the address shall be:**[insert complete address, including e-mail]** |
| **GCC 8.1** | Schedule of Other Contractors: **[insert Schedule of Other Contractors, if appropriate]**. |
| **GCC 9.1** | Schedule of Key Personnel: **[insert Schedule of Key Personnel]**. |
| **GCC 13.1** | The minimum insurance amounts and deductibles shall be:1. for the Works, Plant and Materials: **[insert amounts]**.
2. for loss or damage to Equipment: **[insert amounts]**.
3. for loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract **[insert amounts]**.
4. for personal injury or death:

(i) of the Contractor’s employees: [insert amount].(ii) of other people: **[insert amount]**. |
| **GCC 19.1** | The Site Possession Date(s) shall be: **the date on, or after the Start Date, when all conditions stipulated under PCC 1 (ccc) are met.** |
| **GCC 23.2** | Fees and types of reimbursable expenses to be paid to the Adjudicator: **[insert hourly fees and reimbursable expenses]**. |
| **GCC 23.3** | **[For smaller contracts, the institution is usually from the Employer’s country. For larger contracts, and contracts that are likely to be awarded to international contractors, it is recommended that the arbitration procedure of an international institution be adopted.]** The institution whose arbitration procedures shall be used is: **[insert name of arbitration institution selected]**. **[For larger contracts with international contractors, it is recommended to select one institution among those listed below; insert the corresponding wording.]**“***United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules***:Sub-Clause 23.3—Any dispute, controversy, or claim arising out of or relating to this Contract, or breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.”or“***Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC):***Sub-Clause 23.3—All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules.”or“***Rules of Arbitration Institute of the Stockholm Chamber of Commerce***:Sub-Clause 23.3—Any dispute, controversy, or claim arising out of or in connection with this Contract, or the breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.”or“***Rules of the London Court of International Arbitration***:Sub-Clause 23.3—Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity, or termination shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which rules are deemed to be incorporated by reference to this Clause.”The place of arbitration shall be: **[insert city and country]**. |
| **GCC 24.1** | Appointing Authority for the Adjudicator: **[insert name of Appointing Authority]**. |
| B. Time Control |
| **GCC 29.1** | The Contractor shall submit for approval a Program for the Works within **[number]** days from the date of Contract signing. |
| **GCC 29.3** | The period between Program updates is **[insert number]** days.The amount to be withheld for late submission of an updated Program is **[insert amount]**. |
| C. Quality Control |
| **GCC 37.1** | The Defects Liability Period is: **[insert number]** days.[[40]](#footnote-40) |
| D. Cost Control |
| **GCC 45.1** | The interest rate on payments in United States Dollars shall be: **[insert rate]**.The interest rate on payments in the currency of the Employer’s country shall be: **[insert rate]***.* |
| **GCC 47.1** | Copies of the Compact and other agreements relevant to the Tax treatment of MCC Funding may be found at **[insert link to documents on Employer’s website]**. |
| **GCC 48.1** | The currency of the Employer’s country is: **[insert name of currency of the Employer’s country]**. |
| **GCC 49.1** | This Contract **[insert “is” OR “is not”]** subject to price adjustment in accordance with GCC Clause 49. If this Contract is subject to price adjustment, the following information regarding coefficients applies.The coefficients for adjustment of prices are:1. For currency **[insert name of local currency]**:

(i) **[insert percentage]** percent nonadjustable element (coefficient A). (ii) **[insert percentage]** percent adjustable element (coefficient B).1. For United States Dollars:

(i) **[insert percentage]** percent nonadjustable element (coefficient A). (ii) **[insert percentage]** percent adjustable element (coefficient B).The Index I for local currency shall be **[insert index]**.The Index I for United States Dollars shall be **[insert index]**.**[These proxy indices shall be the same as those proposed by the Contractor in the Technical Offer, subject to acceptance by the Employer.]** |
| **GCC 49.2** | Price adjustments shall be made **[insert number of months]** months into this Contract and shall be repeated at **[insert number of months]** month intervals thereafter. |
| **GCC 50.1** | The proportion of payments retained is: **[insert percentage]**.[[41]](#footnote-41) |
| **GCC 51.1** | The liquidated damages for the whole of the Works are **[insert percentage of the final Contract Price]** per day. The maximum amount of liquidated damages for the whole of the Works is **[insert percentage]** of the final Contract Price.[[42]](#footnote-42) |
| **GCC 52.1** | **Reserved.[[43]](#footnote-43)**  |
| **GCC 53.1** | The Advance Payments shall be: **[insert amount(s)]** and shall be paid to the Contractor no later than **[insert date(s)]**.[[44]](#footnote-44)  |
| **GCC 53.3** | Amortization rate shall be: [insert percentage] percent **[( %)]**.Repayment of the advance payment shall start after certification of: **[insert percentage]** percent **[( %)]** of the Contract Price. Recovery of the advance payment shall be in the amount of: **[insert percentage]** percent **[( %)]** of the amount of monthly Interim Payment Certificates. Advance payment shall be recovered in full prior to the time when **[insert]** percent of the Contract Price has been certified for payment. |
| **GCC 54.1** | The Performance Security amount is **[insert amount(s) denominated in the types and proportions of the currencies in which the Contract Price is payable]*[[45]](#footnote-45)***in the form of Unconditional Bank Guarantee. |
| E. Finishing the Contract |
| **GCC 60.1** | The date by which “as built” Drawings are required is **[insert date]**. |
| **GCC 60.2** | The date by which operating and maintenance manuals are required is **[insert date].** |
| **GCC 60.3** | The amount to be withheld for failing to produce “as built” Drawings and/or operating and maintenance manuals by the date required in GCC Sub-Clauses 60.1 and 60.2 is **[insert amount]**. |
| **GCC 61.2 (g)** | The maximum number of days is: **[insert number; consistent with GCC Sub-Clause 51.1 on liquidated damages]***.*  |
| **GCC 61.4** | The number of continuous days is: **[insert number of days].**The number of days (for multiple periods but due to the same event) is: **[insert number of days].** |
| **GCC 62.1** | The percentage to apply to the value of the work not completed, representing the Employer’s additional cost for completing the Works, is **[insert percentage]**. |
| **F. Additional Provisions** |
| **GCC 68.1** | The number of days after the date of Contract signing for the submission of the HSMP shall be: ***[insert number of days]*** |
| **GCC 70.1** | The number of days after the date of Contract signing for the submission of the CESMP shall be: ***[insert number of days]*** |

 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 downloaded and attached to the Contract prior to signature.

## Annex B: 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[[46]](#footnote-46), 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.

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[[47]](#footnote-47)), 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 C: 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 in Sections 70.7 and 71, the Contractor must comply with the International Finance Corporation’s *Performance Standards on Environmental and Social Sustainability* regarding labor standards and protections. 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, as described in Sections 70.7 and 71 of the Contract.
	+ [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 a “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 D: Code of Business Ethics and Conduct Certification Form

*In satisfaction of clause 66 of the General 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 Supplier “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 Contractor’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 Supplier: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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

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

As stipulated in GCC 66 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 Supplier 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 GCC 66 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 Consultant’s code 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 E: Securities

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

**Advance Payment Guarantee**

**and Retention Money Guarantee[[48]](#footnote-48)**

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 E1: 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-eight (28) days following the date of issuance of the Defects Liability Certificate in accordance with the terms of the Contract, calculated based on a copy of such Defects Liability 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 Defects Liability 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 Defects Liability 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 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 that the supporting statement requirement of Article 15(a) is hereby excluded and as may otherwise be stated above.

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

## Annex E2: 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 [ ][[49]](#footnote-49) 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 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 that the supporting statement requirement of Article 15(a) is hereby excluded and as may otherwise be stated above.

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

## Annex E3: 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:

1. that the Contractor has failed to carry out its obligation(s) to rectify certain defect(s) for which it is responsible under the Contract;
2. 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 (28) days following the date of issuance of the Defects Liability Certificate in accordance with the terms of the Contract, calculated based on a copy of such Defects Liability 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 Defects Liability 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 Defects Liability 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 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)]**

1. Lump sum contracts should be used for Works that can be defined in their full physical and qualitative characteristics before bids are called, or where the risks of substantial design variations are minimal—usually construction of buildings or a series of small structures, such as pumps or school blocks. In such lump sum contracts, priced “Activity Schedules” are used, to enable payments to be made as “activities” are completed. Payments can also be made on the basis of percentage completion of each activity. [↑](#footnote-ref-1)
2. MCC Program Procurement Guidelines can be found at: http://www.mcc.gov. [↑](#footnote-ref-2)
3. *In lump sum contracts, delete “Bill of Quantities” and replace with “Activity Schedule.”* [↑](#footnote-ref-3)
4. WB copyright http://www.worldbank.org [↑](#footnote-ref-4)
5. In lump sum contracts, delete “Bill of Quantities” and replace with “Activity Schedule”. When using this definition, delete the definition for “Bill of Quantities”. [↑](#footnote-ref-5)
6. In remeasured contracts, delete “Activity Schedule” and replace with “Bill of Quantities” When using this definition, delete the definition for “Activity Schedule”. [↑](#footnote-ref-6)
7. *In lump sum contracts, delete “priced Bill of Quantities” and replace with “priced Activity Schedule.”* [↑](#footnote-ref-7)
8. *In lump sum contracts, delete “Bill of Quantities” and replace with “Activity Schedule”.* [↑](#footnote-ref-8)
9. *In lump sum contracts, “Bill of Quantities” and replace with “Activity Schedule.”* [↑](#footnote-ref-9)
10. *In lump sum contracts, delete “rate or”; delete “rates and”; delete “Bill of Quantities” and replace with “Activity Schedule.”* [↑](#footnote-ref-10)
11. Change “Bill of Quantities” to “Activity Schedule” where appropriate. [↑](#footnote-ref-11)
12. *In lump sum contracts, delete paragraph (a) and renumber the other paragraphs in this ITB clause accordingly.* [↑](#footnote-ref-12)
13. *In lump sum contracts, delete “and (b)”.* [↑](#footnote-ref-13)
14. For solicitation documents issued prior to the adoption (in accordance with PPG Part 5of 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-14)
15. Insert the appropriate dollar amount [↑](#footnote-ref-15)
16. Insert the appropriate dollar amount [↑](#footnote-ref-16)
17. Insert appropriate number [↑](#footnote-ref-17)
18. Replace “Bill of Quantities” with “Activity Schedule” where appropriate. [↑](#footnote-ref-18)
19. The Bidder who proposes for more than one lot must take this into account by including the information required for each of the lots for which it is submitting a Bid. [↑](#footnote-ref-19)
20. 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, Works 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. [↑](#footnote-ref-20)
21. In lump sum contracts, the “Bill of Quantities” is prepared for information; it is not contractual. The contractual document prepared by the Bidder shall be a “Schedule of Activities.” [↑](#footnote-ref-21)
22. Insert the Bill of Quantities. The objectives of the Bill of Quantities are: (a) to provide sufficient information on the quantities of Works to be performed to enable Bids to be prepared efficiently and accurately; and (b) when a Contract has been entered into, to provide a priced Bill of Quantities for use in the periodic valuation of Works executed. In order to attain these objectives, Works should be itemized in the Bill of Quantities in sufficient detail to distinguish between the different classes of Works, or between Works of the same nature carried out in different locations or in other circumstances which may give rise to different considerations of cost. [↑](#footnote-ref-22)
23. Insert here a list of the Specifications. The actual Specifications and Performance Requirements should be attached to this section or annexed in a separate volume. A set of precise and clear Specifications is a prerequisite for Bidders to respond realistically and competitively to the requirements of the Employer without qualifying or conditioning their Bids. In the context of Competitive Bidding, the Specifications must be drafted to present a clear statement of the required standards of workmanship, materials, and performance of the works, goods and services to be procured, as well as required plant, supplies, key personnel, applicable standards and codes, and environmental, social, health, and safety requirements to be satisfied by the Contractor in executing the Works. [↑](#footnote-ref-23)
24. Insert here a list of Drawings. The actual Drawings, including site plans, should be attached to this section or annexed in a separate volume. [↑](#footnote-ref-24)
25. See Guidance Document for further details [↑](#footnote-ref-25)
26. The form can be used directly for smaller admeasurement contracts and, with the modifications noted in the footnotes, it can be adapted for lump sum contracts. [↑](#footnote-ref-26)
27. In lump sum contracts, delete “Bill of Quantities” and replace with “Activity Schedule” and move the term to the appropriate place (alphabetically) in this list of defined terms. [↑](#footnote-ref-27)
28. In lump sum contracts, delete “Bill of Quantities” and replace with “Activity Schedule.” [↑](#footnote-ref-28)
29. In lump sum contracts, delete “Bill of Quantities” and replace with “Activity Schedule,” and replace GCC Sub-Clauses 39.1 and 39.2, with the following:

39.1 The Contractor shall provide updated Activity Schedules within 14 days of being instructed to do so by the Engineer. The activities on the Activity Schedule shall be coordinated with the activities on the Program.

39.2 The Contractor shall show delivery of Materials to the Site separately on the Activity Schedule if payment for Materials on Site shall be made separately. [↑](#footnote-ref-29)
30. In lump sum contracts, delete “Bill of Quantities” and replace with “Activity Schedule,” and replace entire GCC Clause 40 (40.1 through 40.3) with the following:

40.1 The Activity Schedule shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor’s own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule. [↑](#footnote-ref-30)
31. In lump sum contracts, add “and Activity Schedules” after “Programs.” [↑](#footnote-ref-31)
32. In lump sum contracts, delete this GCC Sub-Clause 44.2 entirely and renumber the following sub-clauses accordingly. [↑](#footnote-ref-32)
33. In lump sum contracts, add “or Activity Schedule” after “Program.” [↑](#footnote-ref-33)
34. In lump sum contracts, replace this paragraph with the following: “The value of work executed shall comprise the value of completed activities in the Activity Schedule.” [↑](#footnote-ref-34)
35. This GCC Sub-Clause 47 may need to be modified to address unique tax arrangements in some countries. In situations in which a potential issue exists, the relevant MCC OGC attorney is to be consulted before finalizing a form of contract based on this Standard Bidding Document. [↑](#footnote-ref-35)
36. The sum of the two coefficients Ac and Bc should be 1 (one) in the formula for each currency. Normally, both coefficients shall be the same in the formulae for all currencies, since coefficient A, for the nonadjustable portion of the payments, takes account of fixed cost elements or other nonadjustable components. The sum of the adjustments for each currency are added to the Contract Price. [↑](#footnote-ref-36)
37. If MCC approves a bonus provision, the following should be inserted in GCC Clause 52:

 52.1 The Contractor shall be paid a bonus calculated at the rate per calendar day **stated in the PCC** for each day (less any days for which the Contractor is paid for acceleration) that the Completion Date is earlier than the Intended Completion Date. The Engineer shall certify that the Works are complete, although they may not be due to be complete. [↑](#footnote-ref-37)
38. <https://www.mcc.gov/resources/doc/policy-counter-trafficking-in-persons-policy> [↑](#footnote-ref-38)
39. Available at: https://assets.mcc.gov/guidance/mcc-policy-gender.pdf [↑](#footnote-ref-39)
40. The Defects Liability Period is usually limited to 12 months, but could be less in very simple projects. [↑](#footnote-ref-40)
41. It is recommended that 10 percent of the payments be retained. [↑](#footnote-ref-41)
42. Usually liquidated damages are set at a dollar amount per day, and the total amount is not to exceed between 5 percent and 10 percent of the Contract Price. If Sectional Completion and Damages per Section have been agreed, the latter should be specified here. [↑](#footnote-ref-42)
43. If GCC Clause 52 allows for payment of a bonus, “Reserved” should be deleted and the following should be inserted in its place:

The bonus for the whole of the Works is *[insert percentage of final Contract Price]* per day.

The maximum amount of bonus for the whole of the Works is *[insert percentage]* of the final Contract Price. [↑](#footnote-ref-43)
44. It is advised that the Advance Payment not exceed 10 percent of the Contract Price. [↑](#footnote-ref-44)
45. It is advised that the Performance Security be in the amount of 10 percent of the Contract Price. [↑](#footnote-ref-45)
46. “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-46)
47. “MCC Funding” is defined as funding provided by MCC, through a Compact Program, a Threshold Program, or 609(g) funding [↑](#footnote-ref-47)
48. See Guidance Document for further details [↑](#footnote-ref-48)
49. See Guidance Document for further details [↑](#footnote-ref-49)