

**THE REPUBLIC OF RWANDA**



**[Indicate the official name of the Procuring  
Entity]**

**Standard bidding documents for smaller  
Works**

**Title of Tender:**

**Tender Reference Number:**

**Procurement Method:**

**Date of Issue:**

**February, 2014**

## PREFACE

1. This Standard Bidding Document (SBD) has been prepared by the Rwanda Public Procurement Authority (RPPA) for use by Procuring Entities (PEs) for the procurement of small works. The procedures and practices presented in this SBD have been developed and revised to reflect the requirements of the Law N°12/2007 of 27/03/2007 on Public Procurement as modified and completed by the Law N°05/2013 of 13/02/2013 and the Implementing Regulations No. .... and the best international procurement practices.
2. This SBD for the Procurement of works is suitable for use under both International and National open competitive bidding with or without pre-qualification. It is also suitable for the restricted tendering methods.
3. This SBD is comprised of nine sections, namely; Instructions to Bidders, Bid Data Sheet, Bidding forms, General Conditions of the Contract, Special Conditions of the contract, Specifications, Drawings, Bills of Quantities and forms.
4. Before using this SBD, the user should be familiar with the Public Procurement Law as modified and completed to date, Implementing Regulations and Procedures which have been prepared to provide guidance to public officials in the conduct of the procurement process.
5. The Rwanda Public Procurement Authority welcomes any feedback or comments from the users of this SBD which will assist in improving this document.

**The Director General,**

**The Rwanda Public Procurement Authority (RPPA)**

**P.O BOX: 4276 KIGALI**

**Tél: (+250) 0786582957.....Fax (250).....**

**E-mail: [rppa@rwanda1.rw](mailto:rppa@rwanda1.rw)**

**Site web: [rppa.gov.rw](http://rppa.gov.rw)**

**Kigali-Rwanda.**

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## Introduction

This Standard Bidding Document (SBD) is intended to be used as a model for admeasurement (unit prices or unit rates in a bill of quantities) and lump sum types of Contract, which are the most common in Works contracting. Lump sum contracts are used in particular for buildings and other forms of construction where the Works are well defined and are unlikely to change in quantity or specification, and where encountering difficult or unforeseen site conditions (for example, hidden foundation problems) is unlikely. The main text refers to admeasurement contracts. **Alternative clauses or texts are supplied for use with lump sum contracts.**<sup>1</sup>

Care should be taken to check the relevance of the provisions of the standard documents against the requirements of the specific Works to be procured. The following directions should be observed when using the documents:

- (a) All the documents listed in the Table of Contents are normally required for the procurement of Works. However, they should be adapted as necessary to the circumstances of the particular Project.
- (b) The Procuring Entity (PE) shall prepare the Bid Data Sheet (Section II), Special Conditions of Contract (Section V), and Sections VI, VII, VIII which deal with Specifications, Drawings, and Bill of Quantities respectively, before issuing these Bidding Documents. The PE should read and/or provide the information specified in the italicized notes inside brackets. In the few instances where the Bidder is requested to provide information, the note specifies it. **The footnotes and notes for the PE are not part of the text; they should not be incorporated in the Bidding Documents issued to the bidders.**
- (c) Modifications of the model to meet specific Project or Contract needs should be provided in the **Bid Data Sheet** and the **Special Conditions of Contract** only, as amendments to the Instructions to Bidders and the General Conditions of Contract which should not be modified.
- (d) This standard Bidding Document has been prepared to be used under post qualification of the bidders. However it can also be used under prequalification, with relatively minor modifications. However, the document does not address the bidder prequalification process per se.

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<sup>1</sup> *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, pipe laying, power transmission towers, and series of small structures, such as bus shelters or school ablution units. In lump sum contracts, the concept of priced “activity schedules” has been introduced, to enable payments to be made as “activities” are completed. Payments can also be made on the basis of percentage completion of each activity.*

## **TENDER NOTICE**

*The Tender notice (TN) provides information that enables potential bidders to decide whether to participate in the procurement process. The TN shall specify any important bid evaluation criteria (for example, the application of a margin of preference in bid evaluation) and qualification requirements (for example, a requirement for a minimum level of experience in carrying out works of a similar type(s) and size to those for which the IFB is issued).*

## SAMPLE FORMAT FOR TENDER NOTICE

**Tender Notice N°...../T/20...[insert the year]-N<sup>2</sup> or I<sup>3</sup>/ [insert source of funds]/[insert the name of Procuring Entity]**

*The Republic of Rwanda*

*[Insert name of the Procuring Entity]*

*[Insert name of the project / loan or credit number]*

*[Insert TN title and Number]*

1. The *(Insert the name(s), of the Procuring Entity)* (hereinafter called “Client”) funded by *(Insert the name(s), of the Funding source)* towards the cost of *(Insert the title of the Project)*. The Client intends to apply a portion of the funds to eligible payments under the tender *[insert name/no. of tender]*
2. The *[insert complete name of Procuring Entity]* now invites, by the present invitation to tender, **sealed** bids from eligible and qualified bidders for *[insert brief description of the Works to be procured]*<sup>4</sup>. The execution period is *[insert number of days/months/years or dates]*.
3. Bidding will be conducted through *[Insert the procurement method]* and is open to all eligible bidders as defined in the Bidding Documents<sup>5</sup>.
4. Interested eligible bidders may obtain further information from *[insert complete legal name of Procuring Entity; insert name and e-mail of officer in charge]* and inspect the Bidding Documents at the address given below *[state address at the end of this TN]* from *[insert office hours]*.
5. Qualifications requirements include<sup>6</sup>: *[insert key technical, financial, legal and other requirements]*. A margin of preference for eligible national bidders/joint ventures *[insert “shall” or “shall not” be applied, as appropriate]*.
6. A complete set of bidding Documents in French and English may be obtained by interested bidders at the address below from *[insert date, month and year]*, on presentation of the bank slip as a proof of payment of a non refundable fee<sup>7</sup> *[insert amount in local currency]*

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<sup>2</sup> For the National competitive bidding

<sup>3</sup> For the International Competitive bidding

<sup>4</sup> *A brief description of the type(s) of Works should be provided, including quantities, location of Project, and other information necessary to enable potential bidders to decide whether or not to respond to the Invitation*

<sup>5</sup> *Occasionally, contracts may be financed out of special funds that would further restrict eligibility to a particular group of member countries. When this is the case, it should be mentioned in this paragraph. Also indicate any margin of preference that may be granted as specified in the Loan or Credit Agreement and set forth in the Bidding Documents*

<sup>6</sup> This should include the major criteria for bidder’s qualification

<sup>7</sup> *the fee should defray the printing and mailing/shipping costs); it should not deter competition*

or its equivalent in *[insert the specified convertible currency]* at the exchange rate applicable at the National Bank of Rwanda (BNR) at the day of payment. The sum is to be deposited at *[insert the name of bank]* on the Account N° *[insert the account number]* titled *[insert the title]* open in the name of *[insert the name of the Procuring Entity]*.

7. An *[Insert optional or Compulsory depending on the case]* site visit is scheduled *[insert the date/Month/year]* and will be conducted by *[insert the name of Institution]*. The venue for departure is fixed at ***[insert the prompt local time]am*** (----a.m GMT) at *[insert the place of departure]*
8. Bids must be delivered to the address below at or before *[insert time and date]*. Electronic bidding *shall [indicate whether it shall be allowed or not]*. Late bids will be rejected. Bids will be opened physically in the presence of the bidders or of their representatives who choose to attend in person at the address below at *[insert time and date]*.
9. Where applicable, all bids *must* be accompanied by a Bid Security of *[insert amount in local currency or an equivalent amount in a freely convertible currency]* or by a *declaration of commitment*.
10. The address(es) referred to above is(are): *[insert detailed address(es) including complete legal name of the Procuring Entity, Office designation (room number) , name of Officer, Street address, City (code), Country; insert different addresses if addresses for purchase of bidding documents, bid submission and bid opening are different]*

Name and Surname of the competent authority

Signature and seal

## **Section I. Instructions to Bidders**

*This Section of the Standard Bidding Document should provide the information necessary for bidders to prepare responsive bids, in accordance with the requirements of the Procuring Entity. It should also give information on bid submission, opening and evaluation, and on the award of Contract.*

*Matters governing the performance of the Contractor, payments under the Contract, or matters affecting the risks, rights, and obligations of the parties under the Contract are not normally included in this Section, but rather under Section IV, General Conditions of Contract (GCC), and/or Section V, Special Conditions of Contract (SCC). If duplication of a subject is inevitable in the different sections of the documents, care must be exercised to avoid contradictions between clauses dealing with the same matter.*

*These Instructions to Bidders shall not be part of the Contract and shall cease to have effect once the Contract is signed.*

## Instructions to Bidders (ITB)

### A. General

#### 1. Scope of Bid

- 1.1 The Procuring Entity, as defined in **the Bid Data sheet**<sup>8</sup> invites bids for the construction of small Works, as **described in the BDS** and Section II, “Special Conditions of Contract” (SCC). The name and identification number of the Contract are provided in the BDS and the SCC.
- 1.2 The successful Bidder shall be expected to complete the Works by the Intended Completion **Date specified in the BDS 1.2 and SCC 1.1 (r)**.
- 1.3 Throughout these Bidding Documents:
- (a) the term “in writing” means communicated in written form (e.g. by mail, e-mail, fax, telex,) with proof of receipt;
  - (b) if the context so requires, “singular” means “plural” and vice versa;
  - (c) “day” means calendar day; and
  - (d) “Works” means small works.

#### 2. Source of Funds

The Procuring Entity, **as defined in the BDS**, intends to apply part of the funds from the Funding Agency, **as defined in the BDS**, towards the cost of the Project, **as defined in the BDS**, to cover eligible payments under the Contract for the Works. Payments by the Funding Agency shall be made only at the request of the Procuring Entity and upon approval by The Funding Agency in accordance with the grant/credit or Loan agreement, and shall be subject in all respects to the terms and conditions of that Agreement. Except as the Funding Agency may specifically otherwise agree, no party other than the Procuring Entity shall derive any rights from the Grant/credit or Loan Agreement or have any rights to the loan proceeds.

#### 3. Fraud and Corruption

Following the spirit of the Rwanda Public Procurement Regulations, RPPA requires that any public officials as well as bidders, suppliers, contractors, and consultants, observe the highest standard of ethics during the procurement proceedings and execution of such contracts. In pursuit of this policy, RPPA:

- (a) Referring to the Law on public procurement as modified and completed to date, gives the definition, for the purposes of this provision, of the terms set forth below as follows:

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<sup>8</sup> See Section IV, “General Conditions of Contract, “Clause 1. Definition

- (i) **“corrupt practice”** means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence a civil servant or Government entity;
  - (ii) **“fraudulent practice”** means any act or omission, including a misrepresentation, that knowingly or recklessly misleads or attempts to mislead a civil servant to obtain a financial or other benefit or to avoid an obligation;
  - (iii) **“collusive practice”** means arrangement between two or more parties designed to achieve an improper purpose, including influencing another party or the civil servant;
  - (iv) **“coercive practice”** means any act intending to harm or threaten to harm directly or indirectly persons, their works or their property to influence their participation in the procurement process or affect its performance;
  - (v) **“Obstructive practices”** means destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators deliberately in order to materially impede investigations into allegations of a corrupt, coercive or collusive practice: and/or threatening, harassing or intimidating any party to prevent him/her from disclosing his/her knowledge of matters relevant to the investigation or from pursuing the investigations.
- (b) shall reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive and/or obstructive practices in competing for the contract in question;
- (c) shall sanction a company or individual by debarment, either indefinitely or for a stated period of time, if it at any time determines that they have, directly or through an agent, engaged, in corrupt, fraudulent, collusive, coercive and/or obstructive practices in competing for, or in executing, a contract. Prior to debarment, the company or individual may be suspended for investigation reasons.

#### **4. Eligible Bidders**

- 4.1 A bidder, and all parties constituting the bidder, may have the nationality of any country, unless otherwise provided for by the BDS. A bidder shall be deemed to have the nationality of a country if s/he is a citizen of that country or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors.
- 4.2 A bidder shall not have a conflict of interest. All bidders found to have conflict of interest shall be disqualified. Bidders may be considered to have a conflict of interest with one or more parties in this bidding process, if they are associated, or has been associated in the past, directly or indirectly, with the consultant or any

other entity that has prepared the design, specifications, and other documents for the Project or being proposed as Project Manager for the Contract. A firm that has been engaged by the Procuring Entity to provide consulting services for the preparation or supervision of the works, and any of its affiliates shall not be eligible.

- 4.3 A bidder that is under a declaration of ineligibility by RPPA for suspension or debarment reasons in accordance with the Public Procurement Law N° 12/2007 as modified and completed to date, at the date of contract award, shall be disqualified. The list of such debarred firms is available at the address specified in the BDS<sup>1</sup>. Likewise shall be disqualified bidders who are not eligible in accordance with the same Law and regulations establishing public procurement.
- 4.4 Rwanda Government-owned enterprises may be eligible only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law.

## **5. Qualifications of the Bidder**

- 5.1 All bidders shall provide in Section III, “Form of Bid, Qualification Information, Letter of Acceptance, and Agreement,” a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.
- 5.2 In the event that prequalification of potential bidders has been undertaken, only bids from prequalified bidders shall be considered for competition prior to the award of contract. These prequalified bidders should submit with their bids any information updating their original prequalification applications or, alternatively, confirm in their bids that the originally submitted prequalification information remains essentially correct as of the date of bid submission. The update or confirmation should be provided in Section III.
- 5.3 If the Procuring Entity has not undertaken prequalification of potential bidders, all bidders shall include the following information and documents with their bids as well as those specified in Section III:
- (a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business of the bidder; written power of attorney of the signatory of the bid to commit the bidder;
  - (b) total monetary value of construction works performed for the period described in the BDS;
  - (c) evidence of relevant experience in the execution of works of similar nature, including the nature and value of the relevant contracts for each of the last five years, as well as works in hand and contractually committed. The evidence must answer at least the criteria indicated to under subparagraph 5.5 below.

- (d) major items of construction equipment proposed to carry out the contract. The descriptions must demonstrate the bidder's ability to complete the works and should include inter alia:

The Bidder must indicate whether such equipment is owned by him, hired or used by subcontractor (s).

- (e) qualifications and experience of key site management and technical personnel proposed for the contract with their CVs and academic testimonials
- (f) reports on the financial standing of the bidder, such as profit and loss statements and auditor's reports for the period specified in the Bid Data Sheet;
- (g) evidence of adequacy of working capital for this contract (access to line(s) of credit and availability of other financial resources);
- (h) authority to seek references from the bidder's bankers;
- (i) information regarding any litigation, current or during the last five years, in which the bidder was/is involved, the parties concerned, and the disputed amounts; and awards;
- (j) Proposals for subcontracting components of the works amounting not to more than 20 percent of the contract price shall be indicated in the bid. Bidders shall be required also to indicate in their bids names of any proposed subcontractors, but in anyway a subcontract shall not be awarded to any person of company that is suspended or debarred from participation in public procurement. The ceiling for sub contractor's participation and the name of a proposed subcontractor are **stated in the BDS.**

- (k) as well as other document or information not mentioned above but appearing on Section III.**

5.4 Bids submitted by a JV of two or more companies in partnership shall comply with the following requirements, unless otherwise **stated in the BDS:**

- (a) the Bid shall include all the information listed in ITB Sub-Clause 5.3 above for each joint venture partner;
- (b) the Bid shall be a single document bearing the name of the Joint Venture and signed so as to be legally binding on all partners;
- (c) companies participating in the Joint Venture shall be jointly and severally liable towards the procuring entity for the execution of the contract in accordance with the contract terms;
- (d) one of companies shall lead the Joint Venture and serve as its representative in all activities under the tender process and contract execution. The lead company serving as the authorized representative of others in all the tender activities shall provide as part of their bid a written agreement confirming its representation and the scope of its powers; and

- (e) a copy of the Agreement to enter into a Joint Venture between companies making up the very Joint Venture shall be submitted in the bid as well.

5.5 To qualify for award of a contract, bidders shall meet the following minimum qualifying criteria

- (a) an average annual financial amount of construction work over the period specified in the **BDS** of at least the multiple indicated in the **BDS**
- (b) experience as prime contractor in the construction of at least the number of works of a nature and complexity equivalent to the works over the period **specified in the BDS** (to comply with this requirement, works cited should be at least 70 percent complete);
- (c) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment **listed in the BDS**;
- (d) Present a key personnel with qualification and experience specified in the BDS; and
- (e) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the contract, of no less than the amount **specified in the BDS**.<sup>9</sup>

A relevant history of litigation or arbitration awards against the applicant or any partner of a Joint Venture may result in disqualification.

5.6 The figures for each of the partners of a JV shall be added together to determine the bidder's compliance with the minimum qualifying criteria of ITB Sub-Clauses 5.5 (a) and (e); however, for a Joint Venture to qualify, each of its partners must meet at least 25 percent of minimum criteria of ITB Sub-Clauses 5.5 (a), (b), and (e) for an individual bidder, and the partner in charge at least 40 percent of those minimum criteria. Failure to comply with this requirement shall result in rejection of the Joint Venture's Bid. Subcontractors' experiences and resources shall not be taken into account in determining the bidder's compliance with the qualifying criteria, unless otherwise **stated in the BDS**.

5.7 Domestic bidders and Joint Ventures of domestic bidders applying for eligibility for the percent of margin's preference, **as specified in the BDS**, in bid evaluation shall supply all information to satisfy the criteria for eligibility as described in ITB Clause 31.

## 6. One Bid per Bidder

Each bidder shall submit only one Bid, either individually or as a partner in a Joint Venture. In case of Joint Venture, one company shall not be allowed to participate in

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<sup>9</sup> Usually the equivalent of the estimated payments flow over 4-6 months at the average (straight line distribution) construction rate. The actual period of reference shall depend on the speed with which the Procuring Entity shall pay the Contractor's monthly certificates.

two different Joint Ventures in the same tender nor shall a company be allowed to submit a bid both on its behalf and as part of a Joint Venture for the same tender. A bidder who submits or participates in more than one bid (other than as a subcontractor or in cases of alternatives that have been permitted or requested) shall cause all the proposals with the bidder's participation to be disqualified.

## **7. Cost of Bidding**

The bidder shall bear all costs associated with the preparation, submission of his bid, appeal fee or any other expenses that s/he may incur during procurement proceedings, and the Procuring Entity shall in no case be responsible or liable for those costs. The procuring entity shall not be liable for any consequences related to the rejection of all bids or the cancellation of the procurement proceedings due to the reasons provided for by the law on public procurement as modified and completed to date, unless it is proved that it was a consequence of its irresponsible conduct.

## **8. Site Visit**

The bidder, at the bidder's own responsibility and risk, is encouraged<sup>10</sup> to visit and examine the site of works and its surroundings and obtain 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 the procuring entity decides to re-advertise the tender, it may not require the second site visit to those who had visited before unless there are reasons for the second site visit.

## **B. Bidding Documents**

### **9. Contents of Bidding Documents**

The set of bidding documents comprises the documents listed below and addenda issued in accordance with ITB Clause 11:

Tender Notice /Invitation for Bids

Section I Instructions to Bidders

Section II Bid Data Sheet

Section III Forms of Bid, Qualification Information, Letter of acceptance, Agreement

Section IV General Conditions of Contract

Section V Special Conditions of Contract

Section VI Specifications

Section VII Drawings

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<sup>10</sup> *On the Procuring Entity's judgment, the site visit may be compulsory; in that case the site visit certificate shall be given to those who will participate to the visit*

Section VIII Bill of Quantities<sup>11</sup>

Section IX Forms of Securities

## 10. Clarification to the Bidding Documents

Any bidder may request in writing to the procuring entity, at its address **mentioned in the BDS**, for clarifications on the bidding document. The Procuring Entity shall respond to any request for clarification within seven (7) days from the day of its reception. The Procuring Entity shall communicate and forward, without disclosing the source of the request for clarification, to all bidders the copies of the clarifications that were given in response to the request by the Procuring Entity.

## 11. Modification to the Bidding Documents

- 11.1 Before the deadline for submission of bids, on its own initiative or in response to bidders' concerns, the Procuring Entity may modify the bidding document by issuing addenda.
- 11.2 Any addendum thus issued shall be part of the bidding document and shall be communicated and forwarded in writing to all bidders who had bought the bidding document<sup>12</sup> and shall be made public through the communication channel that the Procuring Entity used to advertise the initial tender notice. Bidders who were given copies of addendum after they had bought the bidding document shall acknowledge receipt of each addendum in writing to the Procuring Entity.
- 11.3 The Procuring Entity may, as necessary and in accordance with ITB Sub-Clause 21.2 below, extend the deadline for submission of bids to give bidders sufficient time to take modifications into account when preparing their tenders.

## C. Preparation of Bids

### 12. Language of Bid

The bidder may prepare his/her bid in a language of his/her choice consistent with the language **Specified in the BDS**.

### 13. Documents Composing the Bid

The Bid submitted by the bidder shall comprise the following documents:

- (a) The bid (in the format indicated in Section III);
- (b) Bid Security or declaration of commitment where applicable, in accordance with ITB/TN Clause 17, if required;

<sup>11</sup> *In lump sum contracts, delete "Bill of Quantities" and replace with "Activity Schedule".*

<sup>12</sup> *It is therefore important that the Procuring Entity maintain a complete and accurate list of recipients of the Bidding Documents and their addresses.*

- (c) Priced Bill of Quantities or clearly quoted unit prices;
- (d) Qualification Information Form and Documents;
- (e) Alternative offers where invited;

and any other materials required to be completed and submitted by bidders, as **specified in the BDS.**

#### **14. Bid Prices**

- 14.1 The contract price shall cover all expenses for the whole works, as described in ITB/TN Sub-Clause 1.1, based on the priced Bill of Quantities<sup>13</sup> submitted by the bidder.
- 14.2 The bidder shall fill in rates and prices for all items of the works described in the Bill of Quantities.<sup>14</sup> Items for which no rate or price is entered by the bidder shall not be paid for by the Procuring Entity when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities. Corrections, if any, shall be made by crossing out, initialing, dating and rewriting and stamped on, if required.
- 14.3 All duties, taxes, and other levies payable by the contractor under the contract, or for any other cause, as of the date 28 days for ICB or 14 for NCB prior to the deadline for submission of bids, shall be included in the rates, prices, and total bid price submitted by the bidder.<sup>15</sup> In principle the contract price shall therefore cover taxes, duties and levies applicable, except when they are expressly excluded or subject to exemption.
- 14.4 The rates and prices<sup>16</sup> quoted by the bidder shall be subject to adjustment during the performance of the contract if **provided for in the BDS** and SCC and the provisions of Clause 47 of the General Conditions of Contract. The bidder shall submit along with the bid all the information required under the Special Conditions of Contract and GCC Clause 47.

#### **15. Currencies of the Bid and Payment**

- 15.1 The unit rates and prices<sup>17</sup> shall be quoted by the bidder entirely in the currency specified in the BDS.
- 15.2 Foreign currency requirements shall be mentioned as percentages of the bid price (excluding provisional sums<sup>18</sup>) and shall be payable at the bidder's option in only one bidder's chosen foreign currency.

<sup>13</sup> In lump sum contracts, delete "priced Bill of Quantities" and replace with "priced Activity Schedule."

<sup>14</sup> In lump sum contracts, delete "described in the Bill of Quantities" and replace with "described in the drawings and specifications and listed in the Activity Schedule."

<sup>15</sup> In lump sum contracts, delete "rates, prices, and."

<sup>16</sup> In lump sum contracts, delete "rates and prices" and replace with "lump sum price."

<sup>17</sup> In lump sum contracts, delete "unit rates and prices" and replace with "lump sum price."

- 15.3 The exchange rate to be used by the bidder in arriving at the local currency equivalent and the percentages mentioned in para. 15.1 above shall be the selling rates for similar transactions established by the Central Bank or any other authority **specified in the BDS** prevailing on the deadline for submission of bids or on any other date specified in the in the bidding document. These exchange rates shall be applied for all transactions so that no exchange risk shall be borne by the bidder. If the bidder uses other rates of exchange, the provisions of ITB Clause 29.1 shall be applied; in any case, payments shall be computed using the rates quoted in the bid. Bidder shall indicate in advance all the details of any expected foreign currency requirements in the bid.
- 15.4 A bidder may be required by the Procuring Entity to clarify the foreign currency requirements and to substantiate that the amounts included in the rates and prices,<sup>19</sup> **if required in the BDS**, are reasonable and responsive to ITB Sub-Clause 15.1.

## 16. Bid Validity

- 16.1 Bids shall remain valid for the period<sup>20</sup> **specified in the BDS**.
- 16.2 In exceptional circumstances, the PE may request that the bidders extend the period of validity for a specified additional period. The request and the bidders' responses shall be made in writing. If a Bid Security is requested in accordance with ITB Clause 17, it shall be extended up to 30 days after the deadline of the extended bid validity period. A Bidder may refuse the request without forfeiting the Bid Security. A Bidder agreeing to the request shall not be required or permitted to modify his/her Bid, except as provided in ITB Clause 17.

## 17. Bid Security

- 17.1 The bidder shall provide as part of its bid, a bid security in original form as specified in the BDS, **if required in the BDS**.
- 17.2 The Bid Security shall be in the **amount specified in BDS** and denominated in the Rwandan Francs or the currency of the Bid or in another freely convertible currency, and shall:
- (a) be in the form of either, a bank guarantee from a banking institution, or surety issued by any approved financial institution;

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<sup>18</sup> *Provisional sums are monetary sums specified by the Procuring Entity in the Bill of Quantities, to be used at his discretion for nominated subcontractors and other specified purposes.*

<sup>19</sup> *For lump sum contracts, delete "rates and prices" and replace with "Lump Sum."*

<sup>20</sup> *The period is a realistic time not exceeding 120 days unless accepted by the bidder, allowing for bid evaluation, clarifications, and the Funding Institution's "no objection" (where awards of Contract are subject to prior review).*

- (b) be issued by a reputable institution selected by the bidder and located in any country. If the financial institution issuing the surety is located outside the Republic of Rwanda, it shall have a correspondent financial institution located in the Republic of Rwanda to make it enforceable.
  - (c) be substantially in accordance with one of the forms of Bid Security included in Section IX “Security Forms.”;
  - (d) be payable promptly upon written demand by the Procuring Entity in case the conditions listed in ITB Clause 17.5 are invoked;
  - (e) be submitted in its original form; copies shall not be accepted;
  - (f) remain valid for a period of 30 days beyond the validity period of the bids, as extended, if applicable, in accordance with ITB Clause 16.2.
- 17.3 If a Bid Security is required in accordance with ITB Sub-Clause 17.1, any bid not accompanied by a substantially responsive bid security in accordance with ITB Sub-Clause 17.1, shall be rejected by the Procuring Entity as non-responsive.
- 17.4 A bid security issued by a local institution to guarantee a bid that was sent by a foreign bidder from hi/her country before the bid submission deadline, may be presented on the opening date and shall be considered as part of that bid
- 17.5 The bid security of unsuccessful bidders shall be returned as promptly as possible upon the successful bidder’s furnishing of the performance security and signing the contract with the procuring entity.
- 17.6 The procuring entity shall also immediately release the bid security if (i) the procurement proceedings are cancelled, or (ii) if the procuring entity realizes that none of the submitted bids is responsive.
- 17.7 The Bid Security shall be forfeited :
- (a) if a bidder withdraws its bid after the deadline for submitting bids but before the expiry the period of bid validity specified by the bidder on the bid submission sheet, except as provided in ITB Sub-Clause 16.2; or
  - (b) if the bidder does not accept the correction of its bid price pursuant to ITB Sub-Clause 28.
  - (c) if the successful bidder, within the specified time:
    - (i) refuses to sign the contract; or
    - (ii) fails to furnish the required performance security.
- 17.8 The Bid Security under JV must be in the name of the JV that submits the bid.

## **18. Alternative Proposals by Bidders**

- 18.1 Alternatives shall not be considered, unless specifically **allowed in the BDS**. If so allowed, ITB Sub-Clauses 18.1 and 18.2 shall govern, and BDS shall specify which of the following options shall be allowed:
- (a) Option One. A bidder may submit alternative bids with the base bid and the Procuring Entity shall only consider the alternative bids offered by the bidder whose bid for the base case was determined to be the lowest-evaluated bid, or
  - (b) Option Two. A bidder may submit an alternative bid with or without a bid for the base case. All bids received, for the base case, as well as alternative bids meeting the technical specifications and performance requirements pursuant to Section VI, shall be evaluated on their own merits.
- 18.2 Alternative bids shall provide all information necessary for a complete evaluation of the alternative by the Procuring Entity, including design calculations, technical specifications, breakdown of prices, proposed construction methods and other relevant details.

## **19. Format and Signing of Bid**

- 19.1 The bidder shall prepare one original of the documents composing the bid as described in ITB Clause 13, bound with the volume containing the Form of Bid, and clearly marked "ORIGINAL." In addition, the bidder shall submit copies of the bid, in the number **specified in the BDS**, and clearly marked as "COPIES." In the event of discrepancy between them, the original shall prevail.
- 19.2 The original and all copies of the bid shall be typed in indelible ink and shall be signed by the bidder him/herself or any other person or persons duly authorized to sign on behalf of the bidder, pursuant to ITB Sub-Clause 5.3 (a). All pages of the bid where entries or amendments have been made shall be initialed by the person or persons signing the bid.
- 19.3 The bid shall contain no alterations or additions, except those to comply with instructions issued by the Procuring Entity, or as necessary to correct errors made by the bidder, in which case such corrections shall be initialed by the person or persons signing the bid.
- 19.4 The bidder shall provide information as described in the Form of Bid on commissions or gratuities, if any, paid or to be paid to agents relating to this bid, and to contract execution if the bidder is awarded the contract.

## **D. Submission of Bids**

### **20. Submission, Sealing and Marking of Bids**

- 20.1 Bidders will only submit their bids to the place indicated in the tender notice or to any other place that has been officially communicated to them after the tender notice was issued. The bidder shall seal the original and all copies of the bid in two separate inner envelopes and one outer envelope, duly marking the inner envelopes as “ORIGINAL” and “COPIES.”
- 20.2 The inner and outer envelopes shall
- (a) be addressed to the Procuring Entity at the address **provided in the BDS**;
  - (b) bear the title and identification number of the tender as **defined in the BDS** and SCC; and
  - (c) provide a warning not to open before the specified time and date for bid opening as **defined in the BDS**.
- 20.3 In addition to the identification required in ITB Sub-Clause 20.2, the outer envelope shall indicate the name and address of the bidder to enable the bid to be returned unopened in case it is declared late, pursuant to ITB Clause 22.
- 20.4 If the outer envelope is not sealed and marked as above, the Procuring Entity shall assume no responsibility for the misplacement or premature opening of the bid. If the outer envelope is accidentally opened by the procuring entity but the inner envelopes not opened, the bidder shall not claim that information in his/her bid have been accessed.

## **21. Deadline for Submission of Bids**

- 21.1 Bids shall be delivered to the Procuring Entity at the address specified above no later than the time and date **specified in the BDS and in the clause 21 of ITB**.
- 21.2 The Procuring Entity may extend the deadline for submission of bids by issuing an addendum in accordance with ITB Clause 11, in which case all rights and obligations of the Procuring Entity and the bidders previously subject to the original deadline shall then be subject to the new deadline.

## **22. Late Bids**

Any bid received by the Procuring Entity after the deadline prescribed in ITB Clause 21 shall be registered as a late bid with a specific time of its arrival and returned unopened to the bidder.

## **23. Withdrawal, Substitution and Modification of Bids**

- 23.1 Before the deadline prescribed in ITB Clause 21, bidders may write to the procuring entity requesting to withdraw, substitute or modify their bids.
- 23.2 Each bidder’s withdrawal, substitution or modification notice shall be prepared, sealed, marked, and delivered in accordance with ITB Clauses 19 and 20, with

the outer and inner envelopes additionally marked or “WITHDRAWAL,” “SUBSTITUTION,” OR “MODIFICATION” as appropriate.

- 23.3 No bid may be substituted or modified after the deadline for submission of bids.
- 23.4 Withdrawal of a bid after the deadline for submission of bids and before the expiration of the period of bid validity specified in the **Bid Data Sheet** or as extended pursuant to ITB Sub-Clause 16.2 may result in the forfeiture of the bid security pursuant to ITB Clause 17.
- 23.5 Bidders may only offer discounts to, or otherwise modify the prices of their bids, by submitting bid modifications in accordance with this clause or included in the initial bid

## **E. Bid Opening and Evaluation**

### **24. Bid Opening**

- 24.1 The Procuring Entity shall open the bids, including modifications made pursuant to Clause 23, in the presence of the bidders’ representatives who choose to attend at the time and in the place **specified in the BDS**. Any specific opening procedures required if electronic bidding is permitted in accordance with ITB Sub-Clause 20.1, shall be as specified in the BDS.
- 24.2 Bids for which an acceptable notice of withdrawal has been submitted pursuant to ITB Clause 23 shall be returned unopened to bidders.
- 24.3 During the opening session, for each bid opened the opening committee shall read out loudly and record in the opening session minutes the bidder’s names, the bid prices, the total amount of each bid and of any alternative bid (if alternatives have been requested or permitted), any discounts, bid withdrawals, substitutions, or modifications, the presence or absence of bid security, if required, and such other details as the Procuring Entity may consider appropriate, or any other information that deemed necessary by bidders to be read out and which does not compromise other bidders’ interests. No bid shall be rejected during the bids’ opening session except for the late bids pursuant to ITB Clause 22. Substitution bids and modifications submitted pursuant to ITB Clause 23 that are not opened and read out at bid opening shall not be considered for further evaluation regardless of the circumstances.
- 24.4 The Procuring Entity (the bids’ opening committee) shall prepare minutes of the bids’ opening session, including the information disclosed, to those present, in accordance with ITB Sub-Clause 24.3.

### **25. Confidentiality**

No information concerning checking, explanation, opinion and comparison of bids and recommendations concerning the contract award, will be disclosed to bidders or any other person not officially involved in the process until the name of the successful

bidder has been announced. Any bidder, who attempts to contact directly or indirectly during the evaluation period any member of the Internal Tender Committee or any other person involved in the evaluation process, shall be automatically disqualified.

## **26. Clarification of Bids**

To assist in the examination, evaluation, and comparison of bids, the Procuring Entity may, at the Procuring Entity's discretion, ask any bidder to provide clarifications on his/her bid or on some specific elements of it, including breakdowns of unit rates.<sup>21</sup> The request for clarification and the response shall be in writing, but no change in the price or substance of the bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the bids in accordance with ITB Clause 28. At his/her own initiative, a bidder may provide clarifications on his/her bid but which shall not change its price or substance.

## **27. Examination of Bids and Determination of Responsiveness**

27.1. Prior to the detailed evaluation of bids, the evaluation committee shall determine whether each bid (a) meets the eligibility criteria defined in ITB Clause 4; (b) has been properly signed; (c) is accompanied by the bid security (or declaration of commitment), if required; and (d) is substantially responsive to the requirements of the bidding document.

27.2 A substantially responsive bid is one which conforms to all the terms, conditions, and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the works; (b) which limits in any substantial way, inconsistent with the bidding documents, the Procuring Entity's rights or the bidder's obligations under the contract; or (c) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.

27.3 If a Bid is not substantially responsive, it shall be rejected by the evaluation committee, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

27.4 The procuring entity may regard a bid as responsive even if it contains minor errors that do not materially alter or depart from the characteristics, terms, conditions, and other requirements set for in the bidding notice or/and document or if it contains errors that were due to the omission that may be corrected without altering the substance of the bid. Where possible such errors shall be taken into account in the evaluation and comparison of bids.

## **28. Correction of Errors**

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<sup>21</sup> *In lump sum contracts, delete "unit rates" and replace with "the prices in the Activity Schedule."*

28.1 Bids determined to be substantially responsive shall be checked by the evaluation committee for any arithmetic errors. Errors shall be corrected by the evaluation committee as follows:<sup>22</sup>

- (a) where there is a discrepancy between the amounts in figures and in words, the amount in words shall govern; and
- (b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted shall govern, unless in the opinion of the Procuring Entity there is an obviously gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted shall govern, and the unit rate shall be corrected.

28.2 The amount stated in the bid shall be adjusted by the evaluation committee in accordance with the above procedure for the correction of errors and, with the concurrence of the bidder, shall be considered as binding upon the bidder. If the bidder does not accept the corrected amount, the bid shall be rejected, and the bid security shall be forfeited executed in accordance with ITB Sub-Clause 17.5 (b).

## 29 Currency for Bid Evaluation

Bids shall be evaluated as quoted in the Rwandan francs currency, in accordance with ITB Sub-Clause 15.1, unless a Bidder has used different exchange rates than those prescribed in ITB Sub-Clause 15.2, in which case the bid shall be first converted into the amounts payable in different currencies using the rates quoted in the bid and then reconverted to the Rwandan francs' currency using the exchange rates prescribed in ITB Sub-Clause 15.3.

## 30 Evaluation and Comparison of Bids

30.1 The evaluation committee shall evaluate and compare only the bids determined to be substantially responsive in accordance with ITB Clause 27.

30.2 In evaluating the bids, the evaluation committee shall determine for each bid the evaluated bid price by adjusting the bid price as follows:

- (a) making any correction for errors pursuant to ITB Clause 28;
- (b) excluding provisional sums and the provision, if any, for contingencies in the Bill of Quantities,<sup>23</sup> but including Daywork,<sup>24</sup> where priced competitively;

<sup>22</sup> In lump sum contracts, delete from "as follows" to the end, and replace with the following: "as follows: where there is a discrepancy between the amounts in figures and in words, the amount in words shall govern."

<sup>23</sup> In lump sum contracts, delete "Bill of Quantities" and replace with "Activity Schedule."

<sup>24</sup> Daywork is work carried out following instructions of the Project Manager and paid for on the basis of time spent by workers, and the use of materials and the Contractor's equipment, at the rates quoted in the Bid. For Daywork to be priced competitively for Bid evaluation purposes, the Procuring Entity must list

- (c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with ITB Clause 18; and
- (d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with ITB Sub-Clause 23.5.

30.3 The Procuring Entity reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors which are in excess of the requirements of the bidding document or otherwise result in unsolicited benefits for the Procuring Entity shall not be taken into account in bid evaluation and shall not be considered against bidders who did not provide them.

30.4 The estimated effect of any price adjustment conditions under GCC Clause 47, during the period of implementation of the contract, shall not be taken into account in bid evaluation.

### **31 Preference for Domestic and Regional Bidders**

31.1 If so **indicated in the BDS**, domestic and regional bidders may receive a margin of preference in bid evaluation in compliance with the relevant provisions of the national Law and regulations on Public Procurement, for which this clause shall apply.<sup>25</sup>

31.2 The following procedure shall be used to apply the margin of preference:

- (a) Responsive bids shall be classified into the following groups:
  - (i) Group A: bids offered by domestic bidders and joint ventures meeting the criteria of nationality as set up by the national Law and regulations on Public Procurement;
  - (ii) Group B: all other bids.
- (b) For the purpose of further evaluation and comparison of bids only, an amount equal to a maximum of a percentage specified in the BDS in accordance with ITB Sub-Clause 30.2 shall be added to all bids classified in Group B.

## **F. Award of Contract**

### **32 Award Criteria**

Subject to ITB Clause 33, the Procuring Entity shall award the contract to the bidder whose bid has been selected as being substantially responsive to the bidding document and who has offered the lowest evaluated bid price, provided that such

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*tentative quantities for individual items to be coated against Daywork (e.g., a specific number of tractor driver staff-days, or a specific tonnage of Portland cement), to be multiplied by the bidders' quoted rates and included in the total Bid price.*

<sup>25</sup> *This Clause may be used only where the domestic preference is expressly permitted.*

bidder has been determined to be (a) eligible in accordance with the provisions of ITB Clause 4, and (b) qualified in accordance with the provisions of ITB Clause 5.

### **33 Procurement Entity's Right to accept any Bid and to reject any or all Bids**

Notwithstanding ITB Clause 32, the Procuring Entity reserves the right to accept or reject any bid, or to cancel the bidding process and reject all bids, at any time prior to the award of contract, in compliance with the relevant provisions of the national Law and regulations on Public Procurement.

### **34 Notification of Award and Signing of Agreement**

34.1 Before the expiry of the bid validity period, the procuring entity shall simultaneously notify the successful and the unsuccessful bidders of the provisional outcome of the bids evaluation. The notification shall specify that the major elements of the procurement process would be made available to the bidders upon request and that they have seven (7) days in which to lodge a protest, if any, before a contract is signed with the successful bidder. Upon signature of a procurement contract, the procuring entity shall finally notify other bidders that their bids were not successful.

The notification letter to the successful bidder (hereinafter and in the GCC called the "Letter of Acceptance") shall state the sum that the Procuring Entity shall pay the contractor in consideration of the execution, completion, and maintenance of the Works by the contractor as prescribed by the contract (hereinafter and in the contract called the "contract price").

34.2 The Letter of Acceptance shall constitute the formation of the contract, subject to the bidder furnishing the performance security in accordance with ITB Clause 35 and signing the written contract.

34.3 The written contract shall base on the bidding document, the successful bid, any clarification received and accepted, and any correction made and negotiations agreement between the Procuring Entity and the successful bidder. Within 15 (fifteen) and 21 (twenty one) days for National Competitive Bidding and International Competitive Bidding respectively, after receipt of the final notification, the successful Bidder shall bring a performance security and sign a contract.

34.3 Only the signed contract will constitute an official commitment on the part of the Procuring Entity, and activities may not begin until the contract has been signed by both parties, the procuring entity and the successful bidder.

### **35 Performance Security**

35.1

- 35.2 Within 15 and 21 days for National Competitive Bidding and International Competitive Bidding respectively, after receipt of the letter of notification, the successful bidder shall provide the performance security in the form provided in the bidding document and whose amount shall depend on the contract value and nature of activities to be carried out. However, the value of the performance security shall neither be less than 5% nor more than 10% of the contract value. Upon provision of the performance security the procuring entity and the successful bidder shall sign the written contract.
- 35.3 If the performance security is provided by the successful bidder in the form of a bank guarantee, it shall be issued at the bidder's option, by a bank located in the Republic of Rwanda, or by an acceptable foreign bank. In case the bidder has opted to provide a security issued by a foreign bank, there must be a correspondent bank located in Rwanda to make it enforceable.
- 35.4 Failure of the successful Bidder to comply with the requirements of ITB Sub-Clauses 35.1 and 34.3 shall constitute sufficient grounds for cancellation of the award and forfeiture of the bid security. Upon the successful bidder's provision of the performance security pursuant to ITB Clause 35.1 and signature of the written contract, the Procuring Entity shall promptly finally notify the name of the winning bidder to all unsuccessful bidders and shall discharge their bid securities pursuant to ITB Clause 17.5.
- 35.5 If the initial contract execution period has been extended or its value has increased, the contractor shall respectively extend the validity period of the performance security and increase its amount accordingly.
- 35.6 Upon amendment of the initial contract agreed between the procuring entity and the contractor, the form of the performance security may be changed but that change shall be made preserving the security continuity and without decreasing its amount.
- 35.7 In case the contract is not fully and/or well executed, the performance security shall be unconditionally seized by the procuring entity as compensation without prejudice to other penalties provided for by the laws on public procurement.
- 35.8 In case the contract is successfully completed, the performance security shall be returned to the contract in ways and conditions provided for by the laws on public procurement.

### **36 Advance Payment and Security**

The Procuring Entity may provide an advance payment on the contract price as may be stipulated in the GCC, subject to a maximum amount, as **stated in the BDS**. The Advance Payment shall be guaranteed by a Security. Section IX "Security Forms" provides a Bank Guarantee for Advance Payment form.

### **37 Adjudicator**

The Procuring Entity 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 Procuring Entity has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the BDS and the SCC at the request of either party.

## Section II. Bid Data Sheet (BDS)<sup>26</sup>

<b>A. General</b>	
<b>ITB 1.1</b>	<p>The Procuring Entity is <i>[insert name of the Procuring Entity]</i></p> <p>The Works are <i>[Insert brief description of the Works]</i></p> <p>The name and identification of the contract are <i>[insert name and identification number of contract]</i></p>
<b>ITB 1.2</b>	The Intended Completion Date is <i>[insert date or execution period in days]</i>
<b>ITB 2.</b>	<p>The Project is <i>[insert name and summary description of the Project].</i></p> <p>The Funding Agency is <i>[insert the name of the Funding Agency]</i></p>
<b>ITB 4.3</b>	The list of firms debarred from participating in this project is available at: <i>[Insert the address where the list of the debarred firms or individuals could be freely consulted].</i>
<b>ITB 5.3<sup>27</sup></b>	The information required from bidders in ITB Sub-Clause 5.3 is modified as follows: <i>[list any additions or deletions to list in ITB Sub-Clause 5.3; otherwise list "none"]</i> .
<b>ITB 5.3 (b)</b>	The value of works accomplished during <i>[insert the number of years]</i>
<b>ITB 5.3 (f)</b>	The profit and loss statements as well as auditor's reports for <i>[insert the number of year]</i>
<b>ITB 5.3 (j)</b>	<p>The ceiling for sub contractor's participation is: <i>[Insert the percentage]</i></p> <p>The name of proposed subcontractor is: <i>[Insert the name]</i></p>
<b>ITB 5.4</b>	The qualification data required from bidders in ITB Sub-Clause 5.4 are modified as follows: <i>[list any additions or deletions to list in ITB Sub-Clause 5.4; otherwise list "none"]</i> .
<b>ITB 5.5</b>	The qualification criteria in ITB Sub-Clause 5.5 are modified as follows: <i>[list any additions or deletions to list in ITB Sub-Clause 5.5; otherwise insert "none"]</i> .
<b>ITB 5.5 (a)</b>	The period is: <i>[insert number of years ]</i>
<b>ITB 5.5 (b)</b>	The number of similar works is <i>[insert the number]</i>

<sup>26</sup> This section should be filled out by the Procuring Entity before issuance of the Bidding Documents.

<sup>27</sup> Delete if prequalification has been conducted.

	The period is <i>[insert the number of years, generally 3 or 5 years]</i>
<b>ITB 5.5 (c)</b>	The essential equipment to be made available for the contract by the successful Bidder shall be: <i>[insert equipment list]</i> .
<b>ITB 5.5. (d)</b>	The key personnel to be presented by the bidder for the execution of this tender are <i>[insert the key personnel, their qualification and the minima experience required, the Team Leader .....]</i>
<b>ITB 5.5 (e)<sup>28</sup></b>	The minimum amount of liquid assets and/or credit facilities net of other contractual commitments of the successful Bidder shall be <i>[insert figure in local currency]</i> .
<b>ITB 5.6</b>	Subcontractors' experience and resources <i>[insert "shall" or "shall not"]</i> be taken into account.
<b>ITB 5.7</b>	The percentage of margin's domestic preference is <i>[insert the percentage, if domestic preference is applied if not insert NONE]</i>
<b>B. Bidding Documents</b>	
<b>ITB 10</b>	The Procuring Entity address's for clarification is: <i>[insert address]</i>
<b>C. Preparation of Bids</b>	
<b>ITB 12</b>	<p>The language of the bid</p> <p>is: <i>[Insert English or French]</i></p> <p>"In addition to the above indicated language these Bidding Documents have been also issued in the following language <i>[_____]</i></p> <p><i>Bidders are permitted, at their choice, to submit their bids in either of the two languages above indicated. Bidders shall not submit bids in more than one language. The Contract to be signed with the winning Bidder shall be written in the language in which the Bid was submitted, which shall be the language that shall govern the contractual relations between the PPA and the winning Bidder. A Bidder shall not sign a translated version of its Contract"</i></p>
<b>ITB 13</b>	Any additional materials required to be completed and submitted by the Bidders are <i>[insert list, if none, state "none"]</i> .
<b>ITB 14.4</b>	The Contract <i>[specify "is" or "is not"]</i> subject to price adjustment in accordance with GCC Clause 47.

<sup>28</sup> Delete if prequalification has been conducted.

	<i>[Price adjustment is mandatory when the expected completion time exceeds nine (9) months]</i>
<b>ITB 15.2</b>	The authority for establishing the rates of exchange shall be <b><i>National Bank of Rwanda (BNR)</i></b> .
<b>ITB 15.3</b>	Bidders <i>[insert “are” or “are not”]</i> required to substantiate the rates and prices.
<b>ITB 16.1</b>	The Bid shall be valid for <i>[insert number of days]</i>
<b>ITB 17.1</b>	<p><i>[Select one of the following options]</i></p> <ul style="list-style-type: none"> <li>• No Bid Security is required. <b>OR</b></li> <li>• Bid shall include a Bid Security issued by a bank or by surety using the form for bid security included in Section IX. Security Forms. The Bid Security shall be <i>[insert amount in local currency should be the same as provided in the Tender Notice/Invitation to Bid]</i> or an equivalent amount in a freely convertible currency.</li> </ul>
<b>ITB 17.2</b>	The Bid Security amount is :
<b>ITB 18.1</b>	<p>Alternative Bids <i>[insert “shall be” or “shall not be”]</i> considered.</p> <p><i>[If alternatives shall be considered insert “the PPA shall only consider (insert “Option One” or “Option Two”)].</i></p>
<b>ITB 19.1</b>	The number of copies of the Bid to be completed and returned shall be <i>[insert number of copies]</i>
<b>D. Submission of Bids</b>	
<b>ITB 20.2 (a)</b>	<p>The Procuring Entity’s address for the purpose of Bid submission is <i>[insert the receiving address provided in the Tender Notice:</i></p> <p><i>Attention: .....;</i></p> <p><i>Address: .....;</i></p> <p><i>Floor-Room number: .....;</i></p> <p><i>Country: ..... ].</i></p>
<b>ITB 20.2 (b)</b>	Name and Identification number of the contract as given in ITB 1.1 above in this sheet.
<b>ITB 20.2 (c)</b>	The warning should read “DO NOT OPEN BEFORE” <i>[insert date and time]”</i>

<b>ITB 21.1</b>	The deadline for submission of bids shall be <i>[insert time and date]</i> ;
<b>E. Bid Opening and Evaluation</b>	
<b>ITB 24.1</b>	<p>The bid opening shall take place at: <i>[insert precise address including room and this address must be the same as indicated in TN ]</i></p> <p>Date: <i>[insert date]</i>; Time:<i>[insert time]</i></p>
<b>ITB 31.1</b>	Domestic contractors <i>[insert “may” or “shall not,” as appropriate]</i> receive a margin of preference of <i>[insert the percentage if the margin of preference will be applied]</i> in Bid evaluation.
<b>ITB 31.2 (b)</b>	The domestic and regional preference is <i>[insert the percentage]</i>
<b>F. Award of Contract</b>	
<b>ITB 35.1</b>	<p>The Standard Form of Performance Security acceptable to the Procuring Entity shall be the one delivered by the bank or an approved financial institution pursuant to the form provided for under Section IX</p> <p><i>That <b>Bank Guarantee</b> shall be unconditional (on first demand) (see Section IX: Security Forms) and its value shall be comprised between 5 and 10 percent of the contract price..</i></p>
<b>ITB 36</b>	<p>The Advance Payment shall be limited to <i>[insert percentage]</i> percent of the Contract Price.</p> <p><i>[Maximum twenty percent of the Contract Price in compliance with the relevant provisions of the Law on Public Procurement. The amount shall be adequate to minimize the needs of the Contractor to borrow for the Contract.]</i></p>
<b>ITB 37</b>	<p>The Adjudicator proposed by the Procuring Entity is <i>[insert name and address]</i>.</p> <p>The hourly fee for this proposed Adjudicator shall be <i>[insert amount and currency]</i>. The biographical data of the proposed Adjudicator is as follows:</p> <p><i>[provide relevant information, such as education, experience, age, nationality, and present position; attach additional pages as necessary].</i></p> <p>The Appointing Authority is <i>[insert complete legal name and address]</i></p>

## Section III. Forms of Bid, Qualification Information, Letter of Acceptance, and Agreement

### 1. Contractor's Bid

*The **Bidder** shall fill in and submit this Bid form with the Bid. If the Bidder objects to the Adjudicator proposed by the Procuring Entity in the Bidding Documents, it should so state in its Bid, and present an alternative candidate, together with the candidate's daily fees and biographical data, in accordance with ITB Clause 37.*

*[date]*

Identification N° and Title of the tender: *[insert identification number and title of the tender]*

To: *[name and address of Procuring Entity]*

Having examined the Bidding Document, including addenda *[insert list]*, we offer to execute the *[name and identification number of the tender]* in accordance with the GCC accompanying this Bid for the Contract Price of *[insert amount in numbers]*, *[insert amount in words]* *[insert name of currency]*.

The Contract shall be paid in the following currencies:

Currency	Percentage payable in currency	Rate of exchange: one foreign equals <i>[insert local]</i>	Inputs for which foreign currency is required
(a)			
(b)			

The advance payment required is:

Amount	Currency
(a)	
(b)	

We accept the appointment of *[insert name proposed in Bid Data Sheet]* as the Adjudicator.

*[or]*

We do not accept the appointment of *[insert name proposed in Bid Data Sheet]* as the Adjudicator, and propose instead that *[insert name]* be appointed as Adjudicator, whose daily fees and biographical data are attached.

It is understood that the PE is not bound to accept the lowest or any Bid you receive.

It is hereby confirmed that this Bid complies with the Bid validity and, if required, Bid Security as required by the Bidding Document and specified in the BDS.

We, including any subcontractors or suppliers for any part of the Contract, have nationalities from eligible countries in accordance with ITB Sub-Clause 4.1;

We have no conflict of interest in accordance with ITB Sub-Clause 4.2;

Our firm, its affiliates or subsidiaries—including any subcontractors or suppliers for any part of the contract—has not been declared ineligible by RPPA, or under the laws or official regulations of the Republic of Rwanda in accordance with ITB Sub-Clauses 4.3.

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

Name and Title of Signatory: \_\_\_\_\_

Name of Bidder: \_\_\_\_\_

Address: \_\_\_\_\_

## 2. Qualification Information

*[The information to be filled in by bidders in the following pages shall be used for the purposes of post qualification or for verification of prequalification as provided for in ITB Clause 5. This information shall not be incorporated in the Contract. Attach additional pages, if needed be.]*

### 2.1. Individual Bidders or Individual Members of Joint Ventures

2.1.1 Constitution or legal status of Bidder: *[attach copy]*

Place of registration: *[insert]*

Principal place of business: *[insert]*

Power of attorney of signatory of Bid: *[attach]*

2.1.2 Annual amounts of construction works performed during the last *[insert number pursuant to ITB sub clause 5.5(a)]* years *[insert amounts in the national currency equivalent]*

2.1.3 Number *[insert number pursuant to ITB sub clause 5.5 (b)]* of works of a nature and amount similar to the Works performed as prime Contractor over the last *[insert number pursuant to ITB 5.5(b)]* years. *[The amounts should be indicated in the same currency used for Item 2.1.2 above. Also list details of work under way or committed, including expected completion date(s).]*

Project name and country	Name of client and contact person	Type of work performed and year of completion	Value of contract (national currency equivalent )
(a)			
(b)			

N.B. All completed projects should be proved by the performance certificates issued by the clients

2.1.4 Major items of Contractor's Equipment proposed for carrying out the Works. *[List all information requested below. Refer also to ITB Sub-Clause 5.5 (c).]*

Item of equipment	Description, make, and age (years)	Condition (new, good, poor) and number available	Owned, leased (from whom?), or to be purchased (from whom?)
(a)			
(b)			

N.B Attach the possession and/or leasing evidences

2.1.5 Qualifications and experience of key personnel proposed for administration and execution of the Contract. *[Attach biographical data, The CVs and academic testimonials. Refer also to ITB Sub-Clause 5.3 (e) and GCC Sub-Clause 9.1.]*

Position	Name	Years of experience (general)	Years of experience in proposed position
(a)			
(b)			

2.1.6 Proposed subcontracts and firms involved. Refer to GCC Clause 7.

Sections of the Works	Value of subcontract	Subcontractor (name and address)	Experience in similar work
(a)			
(b)			

2.1.7 Financial reports for the last *[insert number]* years: balance sheets, profit and loss statements, auditors' reports, etc. *[List below and attach copies.]*

2.1.8 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of supporting documents.

2.1.9 Name, address, and telephone, telex, and facsimile numbers of banks that may provide references if contacted by the PE.

2.1.10 Information on current litigation(s) in which the Bidder is involved.

Other party(ies)	Cause of dispute	Amount involved
(a)		
(b)		

2.1.11 Proposed Program (work method and schedule). Descriptions, drawings, and charts, as necessary, to comply with the requirements of the Bidding Document.

## **2.2 Joint Ventures**

2.2.1 The information listed in 2.1.1 – 2.1.10 above shall be provided for each partner of the joint venture.

2.2.2 The information in 1.11 above shall be provided for the joint venture.

2.2.3 Attach the power of attorney of the signatory (ies) of the Bid authorizing the signature of the Bid on behalf of the joint venture.

2.2.4 Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that:

- i. all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
- ii. one of the partners shall be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
- iii. The execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

## **2.3. Additional Requirements**

Bidders should provide any additional information required in the BDS.

### 3. Letter of Acceptance

*[Letterhead paper of the Procuring Entity]*

*[The Letter of Acceptance shall be the basis for formation of the Contract as described in ITB Clauses 34 and 35. This Standard Form of Letter of Acceptance shall be filled in and sent to the successful Bidder only after evaluation of bids has been completed, subject to any review by the funding entity]*

*[insert date]*

Identification N° and Title of the tender: *[insert identification number and title of the tender]*

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

This is to notify you that your bid dated *[insert date]* for execution of the *[insert name of the tender and identification number, as given in the SCC]* for the price of the equivalent<sup>29</sup> of *[insert amount in numbers and words] [insert name of currency]*, as corrected and modified<sup>30</sup> in accordance with the Instructions to Bidders is hereby accepted by our Institution

*[Insert one of the following (a) or (b) options]*

- (a) We accept that *[insert name proposed by bidder]* be appointed as the Adjudicator.<sup>31</sup>
- (b) We do not accept that *[insert name proposed by bidder]* be appointed as Adjudicator, and by sending a copy of this Letter of Acceptance to *[insert name of the Appointing Authority]*, we are hereby requesting *[insert name]*, the Appointing Authority, to appoint the Adjudicator in accordance with ITB Clause 37.1.<sup>32</sup>

You are hereby instructed to (a) proceed with the execution of the said works in accordance with the contract documents, (b) sign and return the attached contract documents, and (c) forward the performance security pursuant to ITB Sub-Clause 35.1, i.e., Within 15 and 21 days for National Competitive Bidding and International Competitive Bidding, respectively, after receipt of this Letter of Acceptance, and pursuant to GCC Sub-Clause 52

Authorized Signature: \_\_\_\_\_  
 Name and Title of Signatory: \_\_\_\_\_  
 Name of the Procuring Entity: \_\_\_\_\_

Attachment: Agreement and Special Condition of the Contract

<sup>29</sup> Delete “of the equivalent” if the Contract Price is expressed wholly in one currency.  
<sup>30</sup> Delete “corrected and” or “and modified” if not applicable. See Notes on Standard Form of Agreement, next page.  
<sup>31</sup> To be used only if the Contractor disagrees in the Bid with the Adjudicator proposed by the Procuring Entity in the Instructions to Bidders, and has accordingly offered another candidate.  
<sup>32</sup> To be used only if the Contractor disagrees in the Bid with the Adjudicator proposed by the Procuring Entity in the ITB, has accordingly offered another candidate, and the Procuring Entity does not accept the counterproposal.



**REPUBLIC OF RWANDA**

**Contract for small works.....**

**By and between**

**The Government of Rwanda**

**Name of the Procuring Entity:.....**

**and**

**.....**

**Contract number: .....**

**Contract amount and currency: .....**

**Contract duration: .....**

**Project Manager: .....**

**Date of contract: .....**

This CONTRACT hereinafter referred to as the “**Contract**” is entered into by and between the Government of Rwanda represented by Mr/Mrs/Ms....., the ..... of the Ministry of ...../name of the Public Institution (Hereinafter referred to as “**the Procuring Entity**” and ..... Ltd/Co, ..... incorporated in (Country) ..... under the Registry number ..... Represented by Mr/Mrs/Ms ..... ID/PC N°....., issued at....., the ..... of the company Hereinafter referred to as the “**Contractor**”

WHEREAS:

**I.** The Procuring Entity is desirous that the Contractor to procure the works for [*insert name and identification number of Contract*] as specified in the General Conditions of Contract attached to this Contract (hereinafter called “the Works”);

**II.** The Procuring Entity has accepted the bid by the Contractor for the execution and completion of such works through an appropriate tender process.

**III.** The Contractor having represented to the Procuring Entity that they have the required capacity has agreed to execute the works specified in this contract;

**IV.** The Procuring Entity has received funds from the [*Insert the name of the funding Institution*], hereinafter called the (“Funding Institution”) towards the cost of the works and intends to apply a portion of the proceeds of these funds to payments under this Contract;

**Or** (c) the Procuring Entity has decided to allocate a portion of its own budget to finance \_\_\_\_\_

Now therefore this Agreement is entered into as follows:

1. Object of the contract is the construction of .....as specified in this contract
2. Considering the terms and conditions of payments to be made by the Procuring Entity to the Contractor as hereinafter mentioned, the Contractor hereby convenes with the Procuring Entity to execute and complete the works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
3. The Procuring Entity hereby convenes to pay the Contractor in consideration of the execution and completion of the works and the remedying of defects wherein the contract price amounting to [*insert the amount*] 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.

4. The following documents shall constitute the contract between the Procuring Entity and the Contractor, and each shall be read and construed as an integral part of the contract:
  - a. **Contract,**
  - b. **Letter of Acceptance,**
  - c. **Special Conditions of Contract,**
  - d. **General Conditions of Contract,**
  - e. **Specifications,**
  - f. **Drawings,**
  - g. **Bill of Quantities,**<sup>33</sup>
  - h. **Bill of prices, and**
  - i. **Contractor's Bid,**
  - j. **Any other document listed in the SCC as forming part of the Contract.**
5. This contract shall prevail over all other contract documents. In the event of any discrepancy or inconsistency within the contract documents, then the documents shall prevail in the order listed above

Signed, Sealed, and Delivered by the said \_\_\_\_\_  
Binding Signature of Procuring Entity [*signature of an authorized representative of the Procuring Entity*]

Binding Signature of Contractor [*signature of an authorized representative of the Contractor*]

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<sup>33</sup> In lump sum contracts, delete "Bill of Quantities" and replace with "Activity Schedule."

## **Section IV. General Conditions of Contract**

*The General Conditions of Contract (GCC), read in conjunction with the Special Conditions of Contract and other documents listed therein, should be a complete document expressing fairly the rights and obligations of both parties.*

*The form of General Conditions of Contract that follows has been developed on the basis of considerable international experience in the drafting and management of contracts, bearing in mind a trend in the construction industry towards simpler, more straightforward language.*

*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.*

*The use of standard General Conditions of Contract for building and civil works in a country shall promote comprehensiveness of coverage, general acceptability of its provisions, savings in cost and time in bid preparation and review, and the development of a solid background of legal case histories.*

## General Conditions of Contract

### A. General

#### 1. Definitions

- (a) The **Adjudicator** is the person appointed jointly by the Procuring Entity and the Contractor to resolve disputes in the first instance, as provided for in GCC Clauses 24 and 25 hereunder.
- (b) **BDS** means Bid Data Sheet
- (c) **Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Bid.
- (d) **Compensation Events** are those defined in GCC Clause 44 hereunder.
- (e) The **Completion Date** is the date of completion of the works as certified by the Project Manager, in accordance with GCC Sub-Clause 55.
- (f) The **Contract** is the contract between the Procuring Entity and the Contractor to execute, complete, and maintain the works. It consists of the documents listed in GCC Clause 2.3 below.
- (g) The **Contractor** is a person or corporate body whose bid to carry out the works has been accepted by the Procuring Entity and who signs the contract with the latter.
- (h) The **Contractor's bid** is the offer prepared in accordance with the requirements of the bidding document and which was submitted by the Contractor to the Procuring Entity.
- (i) The **Contract price** is the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the contract.
- (j) **Days** are calendar days; months are calendar months, unless provided otherwise.
- (k) **Dayworks** are 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.
- (l) A **Defect** is any part of the works not completed in accordance with the contract.
- (m) The **Defects Liability Certificate** is the certificate issued by Project Manager upon correction of defects by the Contractor.

- (n) The **Defects Liability Period** is the period **named in the SCC** Sub-Clause 35.1 and calculated from the Completion Date.
- (o) **Drawings** include calculations and other information provided or approved by the Project Manager for the execution of the Contract.
- (p) The **Procuring Entity** is the party who employs the Contractor to carry out the works, **as specified in the SCC**.
- (q) **Equipment** is the Contractor's machinery and vehicles brought temporarily to the site to construct the works.
- (r) **Force Majeure** means an event or situation beyond the control of the Contractor that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Contractor. Such events may include, but not be limited to, acts of the Procuring Entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- (s) The **Initial Contract Price** is the contract price listed in the Procuring Entity's Letter of Acceptance.
- (t) The **Intended Completion Date** is the date on which it is intended that the Contractor shall complete the works. The Intended Completion Date is **specified in the SCC**. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.
- (u) **Materials** are all supplies, including consumables, used by the Contractor for incorporation in the works.
- (v) **Plant** is any integral part of the works that shall have a mechanical, electrical, chemical, or biological function.
- (w) The **Project Manager** is the person **named in the SCC** (or any other competent person appointed by the Procuring Entity and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the works and administering the contract.
- (x) **SCC** means Special Conditions of Contract
- (y) The **Site** is the area **defined as such in the SCC**.
- (z) **Site Investigation Reports** are those that were included in the bidding document and are factual and interpretative reports about the surface and subsurface conditions at the Site.
- (aa) **Specification** means the nature of the works included in the contract and any modification or addition made or approved by the Project Manager.

- (bb) The **Start Date** is **given in the SCC**. It is the latest date when the Contractor shall commence execution of the works. It does not necessarily coincide with any of the Site Possession Dates.
- (cc) A **Subcontractor** is a person or corporate body who has a contract with the Contractor to carry out a part of the work in the contract, which includes work on the site.
- (dd) **Temporary Works** are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the works.
- (ee) A **Variation** is an instruction given by the Project Manager which varies the works.
- (ff) The **Works** are what the contract requires the Contractor to construct, install, and turn over to the Procuring Entity, **as defined in the SCC**.
- (gg) **Other documents:** documents that may be listed in SCC as part of the contract

## 2. Interpretation

- 2.1 In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to, and they shall be deemed to form and be read and construed as part of this Agreement. For the interpretation of these GCC, singular also means plural, masculine also means feminine or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of the contract unless specifically defined. The Project Manager shall provide instructions clarifying queries about these GCC.
- 2.2 If sectional completion is **specified in the SCC**, 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).

## 3. Effectiveness of Contract

- 3.1. This Contract shall come into effect on the date the Contract is signed by both parties, or such other later date as may be **stated in the SCC**.

## 4. Commencement of Services

- 4.1 The Consultants shall begin carrying out the Services thirty (30) days after the date the Contract becomes effective, or at such other date as may be **specified in the SCC**.

## **5. Law and Language**

5.1 The Law governing the Contract shall be laws of Rwanda and the Language of the Contract shall be as **stated in the SCC**.

## **6. Project Manager's Decisions**

6.1 Except where otherwise specifically stated, the Project Manager shall decide contractual matters between the Procuring Entity and the Contractor in the role representing the Procuring Entity.

## **7. Delegation**

7.1 The Project Manager 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.

## **8. Notices or communications**

8.1 Any notice or communication given by one party to the other pursuant to the Contract shall be in writing to the address **specified in the SCC**. The term "in writing" means communicated in written form with proof of receipt.

8.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

## **9. Confidentiality**

9.1 The Procuring Entity and the Contractor shall keep confidentiality and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor such documents, data, and other information it receives from the Procuring Entity to the extent required for the Subcontractor to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Contractor.

9.2 The Procuring Entity shall not use such documents, data, and other information received from the Contractor for any purposes unrelated to the contract. Similarly, the Contractor shall not use such documents, data, and other information received from the Procuring Entity for any purpose other than the performance of the Contract.

9.3 The above obligation of a party, however, shall not apply to information that:

- (a) **the Procuring Entity or Contractor need to share with RPPA or other institutions participating in the financing of the Contract;**
- (b) **now or hereafter enters the public domain through no fault of that party;**
- (c) **can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or**
- (d) **otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.**

9.4 The above provisions shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the execution or any part thereof.

9.5 The provisions above shall survive completion or termination, for whatever reason, of the Contract.

## **10. Subcontracting**

10.1 The Contractor may subcontract with the approval of the Project Manager, in compliance with the relevant provisions of the Public Procurement Law N°12/2007 as modified and completed to date and its application texts. Subcontracting shall not alter the Contractor's obligations.

## **11. Other Contractors**

11.1 The Contractor shall cooperate and share the site with other contractors, public authorities, utilities, and the Procuring Entity between the dates given in the Schedule of Other Contractors, as **referred to in the SCC**. The Contractor shall also provide facilities and services for them as described in the Schedule. The Procuring Entity may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.

## **12. Personnel**

12.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as **referred to in the SCC**, to carry out the functions stated in the Schedule or other personnel approved by the Project Manager. The Project Manager 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.

12.2 If the Project Manager requests the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the site within seven days and has no further connection with the work in the contract.

## **13. Procuring Entity's and Contractor's Risks**

13.1 The Procuring Entity carries out the risks which this contract states are Procuring Entity's risks, and the Contractor carries the risks which this contract states are Contractor's risks.

#### **14. Procuring Entity's Risks**

14.1 From the start date until the defects liability certificate has been issued, the following are Procuring Entity's risks:

- (a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to
  - (i) use or occupation of the site by the works or for the purpose of the works, which is the unavoidable result of the works or
  - (ii) negligence, breach of statutory duty, or interference with any legal right by the Procuring Authority or by any person employed by or contracted to him except the Contractor and subcontractors.
- (b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Procuring Entity or in the Procuring Entity's design, or due to war or radioactive contamination directly affecting the country where the works are to be executed.

14.2 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 a Procuring Entity's risk except loss or damage due to

- (a) a Defect which existed on the completion date,
- (b) an event occurring before the completion date, which was not itself a Procuring Entity's risk, or
- (c) the activities of the Contractor on the site after the completion date.

#### **15. Contractor's Risks**

15.1 From the starting 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 Procuring Entity's risks are Contractor's risks.

#### **16. Insurance**

16.1 The Contractor shall provide, in the joint names of the Procuring Entity 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 SCC** for the following events which are due to the Contractor's risks:

- (a) loss of or damage to the Works, Plant, and Materials;

- (b) loss of or damage to Equipment;
- (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the contract; and
- (d) personal injury or death.

16.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager'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.

16.3 If the Contractor does not provide any of the policies and certificates required, the Procuring Entity may affect the insurance which the Contractor should have provided and recover the premiums the Procuring Entity 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.

16.4 Alterations to the terms of insurance shall not be made without the approval of the Project Manager.

16.5 Both parties shall comply with any conditions of the insurance policies.

### **17. Force Majeure**

17.1 The failure of a Party to fulfil any of its obligations hereunder 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 taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

17.2 Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's Subconsultants or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Contract and (B) avoid or overcome in the carrying out of its obligations hereunder.

17.3 Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

17.4 A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to fulfil its obligations hereunder with a minimum of delay.

17.5 A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than five (5) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the

restoration of normal conditions as soon as possible.

17.6 The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

17.7 Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

17.8 Not later than thirty (30) days after the Contractor, as the result of an event of Force Majeure, have become unable to perform a material portion of the works, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

## **18. Contract Amendment**

18.1 No amendment or other variation of the Contract shall be valid unless it is in writing, in form of an addendum, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.

18.2 The amendment shall not affect the substance and the nature of the original contract, and any amendment increasing 20% of the contract shall require a new tender.

## **19. Entire Agreement**

19.1 The Contract constitutes the entire agreement between the Procuring Entity and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of the parties with respect thereto made prior to the date of Contract.

## **20. No waiver**

20.1 No relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

20.2 Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

## **21. Severability**

21.1 If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

## **22. Good Faith**

22.1 The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract

### **23. Site Investigation Reports**

23.1 Contractor, in preparing the bid, shall rely on any Site Investigation Reports **referred to in the SCC**, supplemented by any information available to the Bidder.

### **24. Queries about the Special Conditions of Contract**

24.1 The Project Manager shall clarify queries on the **SCC**.

### **25. Contractor to Construct the Works**

25.1 The Contractor shall construct and install the works in accordance with the specifications and drawings.

### **26. The Works to be completed at the Intended Completion Date**

26.1 The Contractor may commence execution of the works on the start date and shall carry out the works in accordance with the program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the intended completion date.

### **27. Approval by the Project Manager**

27.1 The Contractor shall submit specifications and drawings showing the proposed temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings.

27.2 The Contractor shall be responsible for design of Temporary Works.

27.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.

27.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.

27.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.

27.6 Any other approval as specified in the contract.

### **28. Safety**

28.1 The Contractor shall be responsible for the safety of all activities on the Site.

### **29. Discoveries**

29.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Procuring Entity. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.

### **30. Possession of the Site**

31.1 The Procuring Entity shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date **stated in the SCC**, the Procuring Entity shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.

### **31. Access to the Site**

31.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

### **32. Instructions, Inspections and Audits**

32.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.

32.2 The Contractor shall permit the Procuring Entity to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by the Procuring Entity.

### **33. Disputes settlement**

#### **33.1 Amicable Settlement**

33.1.1 The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or the interpretation thereof.

#### **33.2 Adjudication**

33.2.1 In case parties fail to amicably settle a dispute in relation with technical matters like the calculations, specifications or any other details related to the works shall be referred to the Adjudicator within 14 days from the date parties fail to resolve the dispute amicably.

#### **33.3 Litigation or Arbitration**

33.3.1 Any dispute between the Parties as to matters arising pursuant to this Contract which cannot be settled amicably or through adjudication within thirty (30) days after the receipt by one Party of the other Party's request for such amicable settlement or thirty days (30) after the Adjudicator's decision may be submitted by either Party for settlement in accordance with the provisions **specified in the SCC**.

## **B. Control of the schedule**

### **34. Program**

- 34.1 Within the time **stated in the SCC**, after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works.
- 34.2 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.
- 34.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period **stated in the SCC**. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount **stated in the SCC** 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.
- 34.4 The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.

### **35. Extension of the Intended Completion Date**

- 35.1 The Project Manager 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, which would cause the Contractor to incur additional cost.
- 35.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.
- 35.3 Request for extension of time shall be made not later than within a time period **stated in SCC**. Any request made after that period may be rejected by the Procuring Entity or accepted without prejudice to the application of liquidated damages.

### **36. Acceleration**

- 36.1 When the Procuring Entity wants the Contractor to finish before the Intended Completion Date, the Project Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Procuring Entity accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Procuring Entity and the Contractor.
- 36.2 If the Contractor's priced proposals for acceleration are accepted by the Procuring Entity, they are incorporated in the Contract Price and treated as a Variation.

### **37. Delays Ordered by the Project Manager**

37.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works. Such instruction shall impact on the completion date which shall be extended accordingly.

### **38. Management Meetings**

38.1 Either the Project Manager 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.

38.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Procuring Entity. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

### **39. Early Warning**

39.1 The Contractor shall warn the Project Manager at the earliest opportunity, before the execution of the affected works or related activities, 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 Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.

39.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

## **C. Quality Control**

### **40. Identifying Defects**

40.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.

### **41. Tests**

41.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.

## 42. Correction of Defects

- 42.1 The Project Manager 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 SCC**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.
- 42.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.

## 43. Uncorrected Defects

- 43.1 If the Contractor has not corrected a defect within the time specified in the Project Manager's notice, the Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.

## D. Cost Control

### 44. Bill of Quantities<sup>34</sup>

- 44.1 The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.

### 45 The Bill of Quantities is used to calculate the Contract Price.

- 45.1 The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item.

### 46. Changes in the Quantities<sup>35</sup>

- 46.1 If the reduction of the activities of the tender results in a reduction of its cost by more than twenty per cent (20%) of the initial contract, the procuring entity and the Contractor shall negotiate the compensation to be given to the Contractor depending on the total expense incurred in the execution of the tender. This compensation shall not exceed twenty percent (20%) of the activities that have been reduced.

- 46.2 If the addition of the activities of the tender results in an increase of its costs by more than twenty percent (20%) of the initial contract, the Procuring Entity shall proceed to the

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<sup>34</sup> In lump sum contracts, delete "Bill of Quantities" and replace with "Activity Schedule," and replace GCC Sub-Clauses 37.1 and 37.2, as follows:

37.1 The Contractor shall provide updated Activity Schedules within 14 days of being instructed to by the Project Manager. The activities on the Activity Schedule shall be coordinated with the activities on the Program.

37.2 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.

<sup>35</sup> In lump sum contracts, delete "Bill of Quantities" and replace with "Activity Schedule," and replace entire GCC Clause 38 with new GCC Sub-Clause 38.1, as follows:

38.1 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.

award of a new tender or seek for no objection from Rwanda Public Procurement Authority to award that new tender to the current contractor.

#### **47. Variations**

47.1 All Variations shall be included in updated Programs<sup>36</sup> produced by the Contractor.

#### **48. Payments for Variations**

48.1 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.

48.2 If the work in the variation corresponds with an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in Sub-Clause 38 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.

48.3 If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the contract price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.

48.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.

48.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.

#### **49. Cash Flow Forecasts**

49.1 When the Program<sup>37</sup> is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.

#### **50. Payment Certificates**

50.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.

50.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.

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<sup>36</sup> In lump sum contracts, add "and Activity Schedules" after "Programs."

<sup>37</sup> In lump sum contracts, add "or Activity Schedule" after "Program."

- 50.3 The value of work executed shall be determined by the Project Manager.
- 50.4 The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed.<sup>38</sup>
- 50.5 The value of work executed shall include the valuation of Variations and Compensation Events.
- 50.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

## 51. Payments

- 51.1 Payments shall be adjusted for deductions for advance payments and retention. The Procuring Entity shall pay the Contractor the amounts certified by the Project Manager within 45<sup>39</sup> days of the date of each certificate. The penalties for delayed payments **shall be as stated in SCC.**
- 51.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- 51.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.
- 51.4 Items of the Works for which no rate or price has been entered in shall not be paid for by the Procuring Entity and shall be deemed covered by other rates and prices in the Contract.

## 52. Compensation Events

52.1 The following shall be Compensation Events:

- (a) The Procuring Entity does not give access to a part of the Site by the Site Possession Date pursuant to GCC Sub-Clause 21.1.
- (b) The Procuring Entity modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
- (c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
- (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.

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<sup>38</sup> *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."*

<sup>39</sup> For joint ventures, these days will be reduced to 3 weeks

- (e) The Project Manager unreasonably does not approve a subcontract to be let.
- (f) 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.
- (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Procuring Entity, or additional work required for safety or other reasons.
- (h) Other contractors, public authorities, utilities, or the Procuring Entity does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- (i) The advance payment is delayed.
- (j) The effects on the Contractor of any of the Procuring Entity's Risks.
- (k) The Project Manager unreasonably delays issuing a Certificate of Completion.

52.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

52.3 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 Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager shall assume that the Contractor shall react competently and promptly to the event.

52.4 The Contractor shall not be entitled to compensation to the extent that the Procuring Entity's interests are adversely affected by the Contractor's not having given early warning or not having cooperated with the Project Manager.

### **53. Tax**

53.1 The taxes, duties, levies applicable, shall be included in the contract price except when they are subject to exemption in accordance with the tax legal framework. The Project Manager shall adjust the contract price if taxes, duties, and other levies are changed between the date 28 days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC Clause 47.

### **54. Currencies**

54.1 Companies registered in Rwanda and those owned by Rwandan nationals shall only be paid in Rwanda currency. Where payments are made in currencies other than the currency of the Republic of Rwanda, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's bid.

## 55. Price Adjustment

55.1 Prices shall be adjusted for fluctuations in the cost of inputs only if provided **for in the SCC** and in accordance with the Law N°12/2007 of 27/03/2007 on Public Procurement as modified and completed to date and with regulations on public procurement. If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the following formula:

$$P_1 = P_0 [a + bL_1/L_0 + cM_1/M_0] - P_0$$

$a+b+c = 1$  in which:

$P_1$  = adjustment amount payable to the Supplier.

$P_0$  = Contract Price (base price).

$a$  = fixed element representing profits and overheads included in the Contract Price and generally in the range of five (5) to fifteen (15) percent.

$b$  = estimated percentage of labour component in the Contract Price

$c$  = estimated percentage of material component in the Contract Price.

$L_0, L_1$  = labour indices applicable to the appropriate industry in the country of origin on the base date and date for adjustment, respectively.

$M_0, M_1$  = material indices for the major raw material on the base date and date for adjustment, respectively, in the country of origin.

The coefficients  $a, b,$  and  $c$  as specified by the Procuring entity are as follows:

$a$  = [insert value of coefficient]

$b$  = [insert value of coefficient]

$c$  = [insert value of coefficient]

55.2 The Bidder shall indicate the source of the indices and the base date indices in its bid.

Base date = thirty (30) days prior to the deadline for submission of the bids.

Date of adjustment = [insert number of weeks] weeks prior to date of shipment (representing the midpoint of the period of manufacture).

55.3 The above price adjustment formula shall be invoked by either party subject to the following further conditions:

(a) No price adjustment shall be allowed beyond the original delivery dates unless specifically stated in the extension letter. As a rule, no price adjustment shall be allowed for periods of delay for which the Supplier is entirely responsible.

The Procuring entity will, however, be entitled to any decrease in the prices of the Goods and Services subject to adjustment.

(b) If the currency in which the Contract Price  $P_0$  is expressed is different from the currency of origin of the labour and material indices, a correction factor will be applied to avoid incorrect adjustments of the Contract Price. The correction factor shall correspond to the ratio of exchange rates between the two currencies on the base date and the date for adjustment as defined above.

(c) No price adjustment shall be payable on the portion of the contract price paid to the Supplier as advance payment.

55.4 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.

## 56. Retention

56.1 The Procuring Entity shall retain from each payment due to the Contractor the proportion **stated in the SCC**, until Completion of the whole of the Works and shall be payable to the Procuring Entity for any loss resulting from the Contractor's failure to complete his obligations under this contract.

56.2 On completion of the whole works, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected.

56.3 On completion of the whole Works, the Contractor may substitute retention money with an "on demand" Bank guarantee.

## 57. Liquidated Damages

57.1 The Contractor shall pay liquidated damages to the Procuring Entity at the rate of one thousandth (1‰) of the total amount of the contract per each day of delay to complete any phase of the works as stated in the work schedule as approved by the Project Manager. The total amount of liquidated damages shall not exceed 5% of the total amount of the contract.

57.2 Once the maximum is reached, the purchaser may terminate the contract or extend its duration until full completion. However such extension of the contract shall not exceed the time period **stated in SCC** and penalties shall continue to accrue until full completion of the contract or termination.

57.3 The Procuring Entity may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

## 58. Bonus

58.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day **stated in the SCC** for each day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete.

## 59. Advance Payment

- 59.1 The Procuring Entity shall make advance payment to the Contractor of the amounts **stated in the SCC** by the date **stated in the SCC**, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Procuring Entity in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest shall not be charged on the advance payment.
- 59.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager. If the Contractor uses part of or entire amount of the advance paid to him in activities other than those related to the contract, the advance shall immediately be considered as a debt which shall be paid by seizing the entire security or part of it.
- 59.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

## 60. Securities

- 60.1 The Performance Security shall be provided to the Procuring Entity not later than the date specified in the Letter of Acceptance and shall be issued in an amount **specified in the SCC**, by a bank of the first order acceptable to the Procuring Entity, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until the date specified therein.
- 60.2 If the public contract execution period has been extended or its value has increased, the contractor shall respectively extend the validity period of the performance security and submit a performance security of an increased amount respectively.

## 61. Dayworks

- 61.1 If applicable, the Dayworks rates in the Contractor's bid shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.
- 61.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.
- 61.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

## 62. Cost of Repairs

62.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction 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. Completion of the Contract**

### **63. Completion**

#### **63.1 Provisional acceptance of works**

63.1 The Contractor shall officially inform the Project Manager of the completion of the works and request him to schedule a site visit for the purpose of provisional acceptance of completed works. The provisional acceptance shall take place within twenty (20) days following effective completion of works. The Project Manager together with the Contractor shall inspect the project and make a statement agreeing to or refusing the provisional acceptance of works, indicating mistakes to be corrected if any. In case of mistakes the Project Manager can decide to partially accept the works without mistakes and reschedule the inspection until full provisional acceptance.

#### **63.2 Final acceptance of works**

63.2.1 Within twenty (20) days prior to the expiry of the guarantee period for the provisional acceptance of works a final acceptance shall be scheduled upon the request by the Contractor, subject to correction of all mistakes notified to the Contractor during the guarantee period.

#### **63.3 Certificate of completion**

63.3.1 After final acceptance of works the Contractor shall request the Procuring Entity to be given a certificate of good completion of works indicating the date on which he completed his contractual obligations.

### **64. Taking Over**

64.1 The Procurement Authority shall take over the site and the works within seven (7) days of the Project Manager's issuing a certificate of Completion.

### **65. Final Account**

65.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager 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 Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

### **66. Operating and Maintenance Manuals**

66.1 If “as built” Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates **stated in the SCC**.

66.2 If the Contractor does not supply the Drawings and/or manuals by the dates **stated in the SCC**, or they do not receive the Project Manager’s approval, the Project Manager shall withhold the amount **stated in the SCC** from payments due to the Contractor.

### **67. Termination**

67.1 The Procuring Entity or the Contractor may terminate the Contract if one or another party causes a grave breach of the Contract.

67.2 grave breaches of Contract shall include, but shall not be limited to, the following:

- (a) the Contractor stops work for 60 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;
- (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 60 days;
- (c) The Procuring Entity or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (d) a payment certified by the Project Manager is not paid by the Procuring Entity to the Contractor within 90 days of the date of the Project Manager’s certificate;
- (e) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
- (f) the Contractor does not maintain a Security, which is required; and
- (g) the Contractor has delayed the completion of the works by the number of days for which the maximum amount of liquidated damages can be paid, as **defined in the SCC**.
- (h) if the Contractor, in the judgment of the Procuring Entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

67.3 When either party to the contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under GCC Sub-Clause 59.2 above, the Project Manager shall decide whether the breach is fundamental or not.

67.4 Notwithstanding the above, the Procuring Entity may terminate the Contract for convenience.

67.5 If the Contract is terminated, the Contractor shall stop work immediately, make the site safe and secure, and leave the site as soon as reasonably possible.

## **68. Payment upon Termination**

68.1 If the contract is terminated because of a fundamental breach of contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as **indicated in the SCC**. Additional Liquidated Damages shall not apply. If the total amount due to the Procuring Entity exceeds any payment due to the Contractor, the difference shall be a debt payable to the Procuring Entity.

68.2 If the contract is terminated for the Procuring Entity's convenience or because of a fundamental breach of contract by the Procuring Entity, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the works, and the Contractor's costs of protecting and securing the works, and less advance payments received up to the date of the certificate.

## **69. Property**

69.1 All Materials on the site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Procuring Entity if the Contract is terminated because of the Contractor's default.

## **70. Release from Performance**

70.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Procuring Entity or the Contractor, the Project Manager shall certify that the contract has been frustrated. The Contractor shall make the site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

## Section V: Special Conditions of Contract

*Except where otherwise indicated, all SCC should be filled in by the Procuring Authority prior to issuance of the Bidding Document. Schedules and reports to be provided by the contractor should be annexed.*

<b>A. General</b>	
<b>GCC 1 (m)</b>	The Defects Liability Period is <i>[insert period of time calculated from the Completion Date]</i>
<b>GCC 1(p)</b>	The Procuring Entity is <i>[insert name, address, and name of authorized representative]</i> .
<b>GCC 1 (t)</b>	The Intended Completion Date for the whole of the Works shall be <i>[insert date]</i>  <i>[If different dates are specified for completion of the Works by section (“sectional completion” or milestones), these dates should be listed here]</i>
<b>GCC 1(w)</b>	The Project Manager is <i>[insert name, address, and name of authorized representative]</i> .
<b>GCC 1(y)</b>	The Site is located at <i>[insert address of Site ]</i> and is defined in drawings No. <i>[insert numbers]</i>
<b>GCC 1(bb)</b>	The Start Date shall be <i>[insert date]</i> .
<b>GCC 1(ff)</b>	The Works consist of <i>[insert brief summary, including relationship to other contracts under the Project]</i> .
<b>GCC 1 (gg)</b>	The following documents also form part of the Contract: <i>[list documents]</i>
<b>GCC 2.2</b>	Sectional Completions are: <i>[insert nature and dates, if appropriate]</i>
<b>GCC 3</b>	The effective date of this contract is <i>[insert date]</i>
<b>GCC 4</b>	Commencement date of the works is <i>[insert date]</i>

<b>GCC 5</b>	<p>The language of the contract is <i>[insert name of the language. The language shall be that of the bid]</i>.</p> <p>The law that applies to the Contract is the law of Rwanda.</p> <p><i>The Parties have further agreed that if the provisions of this Agreement are inconsistent with the effective laws of the Republic of Rwanda, the inconsistent provision shall be amended and brought in conformity with the law.</i></p> <p><i>Invalidity of one or more provision or articles of this Agreement shall not invalidate any other provisions or the Agreement as a whole. If a provision is found to be invalid or contravenes national legislation, the parties will agree on amendment of the provision and in the case of disagreement, the matter shall be referred to the Minister of Justice/Attorney General for legal advice. In case the matter is not resolved, it shall be submitted to the competent courts of Rwanda for an equitable solution”.</i></p>
<b>GCC 8</b>	The notice or communication shall be sent at <i>[insert address]</i>
<b>GCC 11</b>	Schedule of other contractors: <i>[insert Schedule of Other Contractors, if appropriate]</i>
<b>GCC 12.1</b>	Key Personnel: <i>[insert Schedule of Key Personnel]</i>
<b>GCC 16.1</b>	<p>The minimum insurance amounts and deductibles shall be:</p> <p>(a) For the Works, Plant and Materials: <i>[insert amounts]</i>.</p> <p>(b) For loss or damage to Equipment: <i>[insert amounts]</i>.</p> <p>(c) for loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract <i>[insert amounts]</i>.</p> <p>(d) for personal injury or death:</p> <p>(i) of the Contractor’s employees: <i>[illuminated]</i>.</p> <p>(ii) of other people: <i>[illuminated]</i>.</p>
<b>GCC 23</b>	Site Investigation Reports are: <i>[list Site Investigation Reports]</i>
<b>GCC 24</b>	Queries on Special Conditions of the Contract [to be provided]

<b>GCC 31</b>	The Site Possession Date(s) shall be: <i>[insert location(s) and date(s)]</i>
<b>GCC 33.2</b>	Fees and types of reimbursable expenses to be paid to the Adjudicator: <i>[insert hourly fees and reimbursable expenses]</i> .
<b>GCC 33</b>	<p>Option for Adjudication:</p> <p>The adjudication shall be conducted and the Adjudicator appointed in accordance with the rules of Kigali International Arbitration Centre.</p> <p>If the Adjudicator resigns or dies, or should the Procuring Entity and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract; within 14 days of the resignation or death of the Adjudicator or of the date the parties agreed to replace him/her, a new Adjudicator shall be appointed in the same way as the Adjudicator being replaced was appointed.</p> <p>The Adjudicator shall give a decision in writing within thirty (30) days of receipt of a notification of a dispute.</p> <p>The Adjudicator shall be on hourly basis at the rate of ....., together with reimbursable expenses of the types specified in the Contract Data, and the cost shall be divided equally between the Procuring Entity and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to ..... (insert either litigation or arbitration) within thirty (30) days of the Adjudicator’s written decision. If neither party refers the dispute to ..... (insert either litigation or arbitration) within the above mentioned days, the Adjudicator’s decision shall be final and binding.</p> <p>Option for litigation:</p> <p>“If the parties cannot settle the dispute amicably or by Adjudication within thirty (30) days after appointment of the Adjudicator, the matter shall be referred to national courts of competent jurisdiction.”</p> <p>Option for arbitration:</p> <p>(i) “Any dispute or difference between the Parties as to the interpretation or implementation of this Agreement or in respect of any matter or thing arising under, out of or in connection with this Agreement that cannot be settled by amicable settlement or mediation (when provided for), shall be settled by</p>

	<p>arbitration in accordance with Kigali International Arbitration Centre (KIAC) rules.</p> <p>(ii) The number of arbitrators to the proceedings shall be .....(Choose the number of arbitrators/can be one or three).</p> <p>(iii) The seat for arbitration shall be ..... (Choose the seat).</p> <p>(iv) The language for arbitration proceedings shall be .....(Choose the language).</p> <p>(v) The award rendered by the arbitrator(s) shall be final and binding and shall be enforced by any Court of competent jurisdiction. The party seeking enforcement shall be entitled to an award of all costs including legal fees to be paid by the party against whom enforcement is ordered.</p> <p>In case the other party wishes to use a different arbitration mechanism namely UNICTRAL, EACJ, or any other the Procuring Entity shall seek for advice from the Ministry of Justice/Attorney General’s Office.</p>
<b>GCC 33</b>	Appointing Authority for the Adjudicator is Kigali International Arbitration Centre.
<b>B. Time Control</b>	
<b>GCC 34.1</b>	The Contractor shall submit for approval a Program for the Works within <i>[number]</i> days from the date of the Letter of Acceptance.
<b>GCC 34.3</b>	<p>The period between Program updates is <i>[insert number]</i> days.</p> <p>The amount to be withheld for late submission of an updated Program is <i>[insert amount]</i>.</p>
<b>C. Quality Control</b>	
<b>GCC 35.3</b>	The request for the extension of time shall be made within <i>[insert the time period]</i>
<b>GCC42</b>	<p>The Defects Liability Period is: <i>[insert number]</i> days.</p> <p><i>[The Defects Liability Period is usually limited to 12 months, but could be</i></p>

	<i>less in very simple cases]</i>
<b>D. Cost Control</b>	
<b>CGC 51.1</b>	The payment shall be made within <i>[insert number of days]</i>  Penalties for a delayed payment shall be <i>[insert how penalties for a delayed payment shall be calculated]</i> .
<b>GCC 54</b>	The currency of the Procuring Entity's country is: Rwanda Francs.
<b>GCC 55</b>	The Contract <i>[insert "is" or "is not"]</i> subject to price adjustment in accordance with GCC Clause 47, and the following information regarding coefficients <i>[specify "does" or "does not"]</i> apply.  <i>[Price adjustment is mandatory for contracts which provide for time of completion exceeding 9 months]</i>  The coefficients for adjustment of prices are: <i>[insert the coefficient a, b and c]</i>
<b>GCC 56.1</b>	The proportion of payments retained is: <i>[insert percentage]</i>
<b>GCC 57</b>	The liquidated damages for the whole of the Works are <i>[insert 1/1000 of the total Contract Price]</i> per day of delay. The maximum amount of liquidated damages for the whole of the Works is <i>[insert 5%]</i> of the total Contract Price.  Once the contract is not terminated while the maximum of liquidated damages of 5% is reached, the contract extension shall not exceed <i>[insert time period ]</i>
<b>GCC 58</b>	The Bonus for the whole of the Works is <i>[insert percentage of final Contract Price]</i> per day. The maximum amount of Bonus for the whole of the Works is <i>[Not Applicable]</i> of the final Contract Price.
<b>GCC 59.1</b>	The Advance Payments shall be: <i>[insert amount(s)]</i> and shall be paid to the Contractor no later than <i>[insert date(s)]</i> .
<b>GCC 60.1</b>	The Performance Security amount is <i>[insert amount(s) (which is between 5 to 10% of the total contract price) denominated in the types and proportions of the currencies in which the Contract Price is payable, or in a freely convertible currency acceptable to the Procuring Entity]</i>

	(a) Bank Guarantee: <i>[insert percentage and amount(s)]</i> .
<b>E. Finishing the Contract</b>	
<b>GCC 66.1</b>	The date by which operating and maintenance manuals are required is <i>[insert date]</i> .  The date by which “as built” drawings are required is <i>[insert date]</i> .
<b>GCC 66.2</b>	The amount to be withheld for failing to produce “as built” drawings and/or operating and maintenance manuals by the date required in GCC 58.1 is <i>[insert amount in local currency]</i> .
<b>GCC 67.2 (g)</b>	The maximum number of days is: <i>[insert number; consistent with clause 49.1 on liquidated damages]</i> .
<b>GCC 68.1</b>	The percentage to apply to the value of the work not completed, representing the Procuring Entity’s additional cost for completing the Works, is <i>[insert percentage]</i> .

## **Section VI. Specifications & Performance Requirements**

*A set of precise and clear Specifications is a prerequisite for bidders to respond realistically and competitively to the requirements of the Procuring Entity without qualifying or conditioning their bids. In the context of international competitive bidding, the Specifications must be drafted to permit the widest possible competition and, at the same time, present a clear statement of the required standards of workmanship, materials, and performance of the goods and services to be procured. Only if this is done shall the objectives of economy, efficiency, and fairness in procurement be realized, responsiveness of bids be ensured, and the subsequent task of Bid evaluation facilitated. The Specifications should require that all goods and materials to be incorporated in the Works be new, unused, of the most recent or current models, and incorporate all recent improvements in design and materials unless provided otherwise in the Contract.*

*Most Specifications are normally written specially by the Procuring Entity or Project Manager to suit the Contract Works in hand. There is no standard set of Specifications for universal application in all sectors in all countries, but there are established principles and practices, which are reflected in these documents.*

*There are considerable advantages in standardizing General Specifications for repetitive Works in recognized public sectors, such as highways, ports, railways, urban housing, irrigation, and water supply, in the same country or region where similar conditions prevail. The General Specifications should cover all classes of workmanship, materials, and equipment commonly involved in construction, although not necessarily to be used in a particular Works Contract. Deletions or addendums should then adapt the General Specifications to apply them to the particular Works.*

*Care must be taken in drafting Specifications to ensure that they are not unfairly restrictive. In the Specifications of standards for goods, materials, and workmanship, recognized international standards should be used as much as possible where there are no official national standards. Where other particular standards are used, whether national standards of the Republic of Rwanda or other standards, the Specifications should state that goods, materials, and workmanship that meet other authoritative standards, and which ensure substantially equal or higher quality than the standards mentioned, shall also be acceptable. To that effect, the following sample clause may be inserted in the Special Conditions or Specifications.*

### ***“Equivalency of Standards and Codes***

*Wherever reference is made in the Contract to specific standards and codes to be met by the goods and materials to be furnished, and work performed or tested, the provisions of the latest current edition or revision of the relevant standards and codes in effect shall apply, unless otherwise expressly stated in the Contract. Where such standards and codes are national, or relate to a particular country or region, other authoritative standards that ensure a substantially equal or higher quality than the standards and codes specified shall be accepted subject to the Project Manager’s prior review and written consent. Differences between the standards specified and the proposed alternative standards shall be fully described in writing by the Contractor and submitted to the Project Manager at least 28 days*

*prior to the date when the Contractor desires the Project Manager's consent. In the event the Project Manager determines that such proposed deviations do not ensure substantially equal or higher quality, the Contractor shall comply with the standards specified in the documents."*

***These Notes for Preparing Specifications are intended only as information for the Procuring Entity or the person drafting the bidding documents. They should not be included in the final Tender document to be advertised.***

## Section VII. Drawings

*Insert here a list of Drawings. The actual Drawings, including site plans, should be attached to this section or annexed in a separate folder.*



## Section VIII. Bill of Quantities<sup>40</sup>

### **Objectives**

*The objectives of the Bill of Quantities are:*

- (a) to provide sufficient information on the quantities of Works to be performed to enable bids to be prepared efficiently and accurately; and*
- (b) when a Contract has been entered into, to provide a priced Bill of Quantities for use in the periodic valuation of Works executed.*

*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. Consistent with these requirements, the layout and contents of the Bill of Quantities should be as simple and brief as possible.*

### **Daywork Schedule**

*A Daywork Schedule should be included only if the probability of unforeseen work, outside the items included in the Bill of Quantities, is high. To facilitate checking by the Procuring Entity of the realism of rates quoted by the bidders, the Daywork Schedule should normally comprise the following:*

- (a) A list of the various classes of labor, materials, and Constructional Plant for which basic daywork rates or prices are to be inserted by the Bidder, together with a statement of the conditions under which the Contractor shall be paid for work executed on a daywork basis.*
- (b) Nominal quantities for each item of daywork, to be priced by each Bidder at daywork rates as Bid. The rate to be entered by the Bidder against each basic daywork item should include the Contractor's profit, overheads, supervision, and other charges.*

### **Provisional Sums**

*A general provision for physical contingencies (quantity overruns) may be made by including a provisional sum in the Summary Bill of Quantities. Similarly, a contingency allowance for possible price increases should be provided as a provisional sum in the Summary priced Bill of Quantities. The inclusion of such provisional sums often facilitates budgetary approval by avoiding the need to request periodic supplementary approvals as the future need arises. Where such provisional sums or contingency allowances are used, the Special Conditions of Contract should state the manner in which they shall be used, and under whose authority (usually the Project Manager's).*

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<sup>40</sup> *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."*

*The estimated cost of specialized work to be carried out, or of special goods to be supplied, by other contractors (refer to GCC Clause 8) should be indicated in the relevant part of the Bill of Quantities as a particular provisional sum with an appropriate brief description. .*

These Notes for Preparing a Bill of Quantities are intended only as information for the PPA or the person drafting the Bidding Documents. **They should not be included in the final Tender document to be advertised.**

## Section IX. Forms Securities

*Samples of acceptable forms of Bid, Performance, and Advance Payment Securities are provided in this Section X. Bidders shall not complete the Performance and Advance Payment Security forms at this stage of the procurement process. **Only the successful Bidder shall be required to provide these two securities.***

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

*[If required, the **Bank** shall fill in this Bank Guarantee form in accordance with the instructions indicated in brackets.]*

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

**Beneficiary:** \_\_\_\_\_ *[Name and Address of Procuring Entity]*

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

**BID GUARANTEE N°.:** \_\_\_\_\_

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

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

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

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Form of Bid; or
- (b) having been notified of the acceptance of its Bid by the Procuring Entity during the period of bid validity, (i) fails or refuses to Sign the Contract or (ii) fails or refuses to furnish the performance security, in accordance with the Instructions to Bidders.
- (c) does not accept the arithmetic corrections made to his bill of quantities and price list of his bill

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 to the Bidder of the name of the successful bidder; or (ii) thirty days after the expiration of the Bidder's Bid.

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

Date:.....

Name of Authorized Representative person .....Address:.....

Position:.....

Signature:..... Seal:.....

### Performance Bank Guarantee

(Unconditional)

*[The **bank** providing the Guarantee shall fill in this form in accordance with the instructions indicated in brackets, if the Procuring Entity requires this type of security.]*

*[insert bank's name, and address of issuing branch or office]*

**Beneficiary:** *[insert name and address of Procuring Entity]*

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

**PERFORMANCE GUARANTEE No.:** *[insert Performance Guarantee number]*

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

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

At the request of the Contractor, we *[insert name of Bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures]* (*[insert amount in words]*),<sup>41</sup> such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the . . . Day/month/year..., and any demand for payment under it must be received by us at this office on or before that date. However, before that expiration date, if the planned contract execution period has been delayed or extended, or its value increased, the contractor shall respectively extend the validity period of this performance security or increase its amount accordingly.

Date:.....

Name:.....Address:.....

Position:.....

Signature:.....

Seal:.....

<sup>41</sup> *The Guarantor (bank) shall insert an amount representing the percentage of the Contract Price specified in the Contract and denominated either in the currency (ies) of the Contract or a freely convertible currency acceptable to the Procuring Entity.*

### Bank Guarantee for Advance Payment

The **bank/** providing the Guarantee shall fill in this form in accordance with the instructions indicated in brackets, if an Advance Payment is to be provided under the Contract

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

**Beneficiary:** *[insert name and address of Procuring Entity]*

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

**ADVANCE PAYMENT GUARANTEE No.:** *[insert number]*

We have been informed that *[insert 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 *[insert name of contract and brief description of Works]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment is to be made against an advance payment guarantee in the sum indicated below.

At the request of the Contractor, we *[insert name of Bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures]* (*[insert amount in words]*<sup>42</sup>) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the Advance Payment for purposes other than the costs of mobilization in respect of the Works.

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 *[insert account number]* at *[insert name and address of Bank]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the 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 date of completion of its total payment. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

Date of issue:.....

Name:.....Address:.....

Position:.....

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<sup>42</sup> The Guarantor shall insert an amount representing the amount of the Advance Payment and denominated either in the currency(ies) of the Advance Payment as specified in the Contract, or in a freely convertible currency acceptable to the Procuring Entity.

Signature: *[insert signature(s) of authorized representative(s) of bank]*

Seal:.....