
THE REPUBLIC OF RWANDA



Procurement of Large Works

[Indicate the official name of the Procuring Entity]

Title of Tender:

Tender Reference Number:

Procurement Method:

Date of Issue:

February, 2014

In the present Standard Bidding Documents (SBD) for the procurement of large works, two alternatives Sections III are proposed, Evaluation and Qualification Criteria, are included. The first one is the default alternative and assumes that prequalification has taken place before bidding. The other one is applied for those exceptional cases when, subject to prior approval post -qualification takes place.

These SBD for Procurement of large Works have been prepared to be used for the procurement of admeasurements (unit price or rate) type of works.

These SBD assume that prequalification has taken place before bidding.

Pre-qualification shall be followed for all major works. Exceptionally, post-qualification might be appropriate. An alternative Section III, Evaluation and Qualification Criteria, is also provided to address this exceptional possibility.

The document comprises two (2) main components:

- The SBD [Standard Bidding Document]; and
- A User's Guide for Procurement of large Works.

PART 1 – BIDDING PROCEDURES

Section I: Instructions to Bidders (ITB)

This Section provides relevant information to help the Bidders to prepare their bids. Information is also provided on the submission, opening, and evaluation of bids as well as the Contracts award.

Section I contains provisions that are to be used without modification.

Section II. Bid Data Sheet (BDS)

This Section consists of provisions that are specific to each procurement and that supplement the information or requirements included in Section I, Instructions to Bidders.

Section III. Evaluation and Qualification Criteria *(alternative Section III to be use when Prequalification has taken place before bidding).*

This Section consists of criteria to determine the lowest evaluated bid and to ascertain the continued qualification of the Bidder to perform the contract.

Section III. Evaluation and Qualification Criteria *(alternative Section III to be used when the Prequalification phase has not taken place before bidding).*

This Section contains the criteria to determine the lowest evaluated bid and the qualifications of the Bidder to perform the contract.

Section IV: Bidding Forms

This Section contains the forms to be completed by the Bidder and submitted as part of his/her Bid.

PART 2 – WORKS REQUIREMENTS

Section VI. Works Requirements

This Section contains the Specification, the Drawings, and supplementary information that describe the Works to be procured.

PART 3 – CONDITIONS OF CONTRACT AND CONTRACT FORMS

Section VII. General Conditions (GC)

This Section contains the general clauses to be applied in all contracts.

The text of the clauses in this Section shall not be modified.

Section VIII. Particular Conditions (PC)

This Section comprises Part A, Contract Data, which contains data, and Part B, Specific Provisions, which contains clauses specific to each contract. The contents of this Section supplement the General Conditions and shall be prepared by the Procuring Entity (PE).

Section IX: Annex to the Particular Conditions - Contract Forms

This Section contains forms which, once completed, will form part of the Contract.

The forms for **Performance Security** and **Advance Payment Security**, when required, shall only be completed by the successful Bidder after the contract award.

User's Guide for Procurement of Large Works

The Bidding Documents Guideline contains detailed explanations and recommendations on how to prepare a bidding document for a specific procurement of large Works and related services. **The Guide is not a part of the Bidding Documents.**

Table of Contents

PART 1 – Bidding Procedures.....	1
Section I. Instructions to Bidders.....	3
Section II. Bid Data Sheet (BDS).....	29
Section III. Evaluation and Qualification Criteria (Following Prequalification)	33
Section III. Evaluation and Qualification Criteria (Without Prequalification).....	37
Section IV. Bidding Forms	49
Section V. Eligible Countries	97
PART 2 –Works Requirements	99
Section VI. Works Requirements	101
PART 3 – Conditions of Contract and Contract Forms	107
Section VII. General Conditions (GC)	109
Section VIII. Particular Conditions (PC).....	227
Section IX. Annex to the Particular Conditions - Contract Forms	235
User's Guideline	i

PART 1 – BIDDING PROCEDURES

Section I. Instructions to Bidders

Table of Clauses

A. General.....	5
1. Scope of Bid.....	5
2. Source of Funds	5
3. Fraud and Corruption.....	6
4. Eligible Bidders	8
5. Eligible Materials, Equipment, and Services.....	10
B. Contents of Bidding Documents	10
6. Sections of Bidding Documents.....	11
7. Clarification of Bidding Documents, Site Visit, Pre-Bid Meeting	11
8. Amendment of Bidding Documents	12
C. Preparation of Bids	12
9. Cost of Bidding	12
10. Language of Bid.....	12
11. Documents composing the Bid.....	12
12. Letter of Bid and Schedules.....	13
13. Alternative Bids	13
14. Bid Prices and Discounts	14
15. Currencies of Bid and Payment	15
16. Documents Comprising the Technical Proposal.....	15
17. Documents Establishing the Qualifications of the Bidder.....	15
18. Period of Validity of Bids.....	16
19. Bid Security	17
20. Format and Signing of Bid.....	18
D. Submission and Opening of Bids	19
21. Sealing and Marking of Bids	19
22. Deadline for Submission of Bids	20
23. Late Bids	20
24. Withdrawal, Substitution, and Modification of Bids.....	20
25. Bid Opening.....	20
E. Evaluation and Comparison of Bids.....	22
26. Confidentiality	22
27. Clarification of Bids.....	22
28. Deviations, Reservations, and Omissions.....	22
29. Determination of Responsiveness.....	23
30. Nonmaterial Nonconformities	23
31. Correction of Arithmetical Errors.....	24
32. Conversion to Single Currency.....	24
33. Margin of Preference	24
34. Evaluation of Bids	25
35. Comparison of Bids	26

36. Qualification of the Bidder	26
37. Procuring entity’s Right to Accept Any Bid, and to reject any or all Bids	26
F. Award of Contract.....	26
38. Award Criteria	26
39. Notification of Award	27
40. Signing of contract.....	27
41. Performance Security.....	27

Section I. Instructions to Bidders

A. General

1. Scope of the Bids

1.1 In connection with the Invitation for Bids indicated in the Bid Data Sheet (BDS), the Procuring entity, as indicated in the BDS, issues these Bidding Documents for the procurement of Works as specified in Section VI, Works Requirements.

The name, identification, and number of lots of the present Bidding are provided in the BDS.

1.2 The selected bidder will be responsible for executing the works at the completion date specified in the tender documents

1.3 Definitions

Throughout these Bidding Documents:

- (a) the term “in writing” means communicated in written form and delivered against receipt;
- (b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and
- (c) “day” means calendar day including holidays unless provided otherwise.

2. Source of Funds

2.1 In the case the Procuring entity receives a financial assistance)

The procuring Entity (**indicated in the BDS**) has applied for or received financing (hereinafter called “funds”) from the funding entity, (**as indicated in BDS**) toward the cost of the project (**named in the BDS**).

The Procuring entity intends to apply a portion of the funds to eligible payments under the contract(s) for which these Bidding Documents are issued.

2.2 Payments by the funding entity will be made only at the request of the Procuring entity and upon approval by the funding entity in accordance with the terms and conditions of the financing agreement between the Procuring entity and the funding entity (hereinafter called the Loan Agreement), and will be subject in all respects to the terms and conditions of that

Loan Agreement. No party other than the Procuring entity shall derive any rights from the Loan Agreement or have any claim to the funds.

3. Fraud and Corruption

3.1 The Rwanda Public procurement Authority (RPPA) requires that its officials, those from all procuring entities, as well as bidders, suppliers, and contractors and their subcontractors, observe the highest standard of ethics during the procurement and execution of such contracts.

In pursuance of this policy, the Law on public procurement as modified and completed to date:

(a) defines, for the purposes of this provision, the terms set forth below as follows:

(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 practice” is:

(aa) 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.

(bb) acts intended to materially impede the exercise of the Procuring entity inspection and audit rights provided for under sub-clause 3.1(e) below.

(b) will reject a bid for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;

(c) will sanction a firm or individual, including declaring them ineligible, either indefinitely or for a stated period of time, to be awarded a contract if it at any time determines that they

have, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, a public procurement contract; and

(d) will have the right to require that a provision be included in bidding documents and in contracts signed by the Procuring entity, requiring bidders/contractors to permit the Procuring entity to inspect their accounts and records and other documents relating to the Bid submission and contract performance and to have them audited by auditors appointed by the Procurement entity.

4. Eligible Bidders

4.1 Eligible bidders for public procurement are those who deal in commercial activities and registered as businesses or those holding professional licenses or exercising any liberal profession. Other bidders eligible for public procurement are provided for in public procurement regulations.

4.2 To be eligible bidders may be required to prove that they are members of a professional body or that they abide by any other rules or procedures set by Rwanda Public Procurement Authority in collaboration with stakeholders in public procurement.

4.3 A Bidder may be a natural person, private entity, government-owned entity—subject to ITB 4.5—or any combination of such entities in the form of a joint venture or association (JVA) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture or association:

(a) **Unless otherwise specified in the BDS**, all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms, and

(b) The JVA shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the partners of the JVA during the bidding process and, in the event the JVA is awarded the Contract, during contract execution.

4.4 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:

(a) They have at least one controlling partner in common; or

(b) They receive or have received any direct or indirect subsidy from any of them; or

(c) They have the same legal representative for purposes of this bid; or

(d) They have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder, or influence the decisions of the Procuring entity regarding this bidding process; or

(e) A Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which such Bidder is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or

(f) A Bidder participates as a consultant in the preparation of the design or technical specifications of the works that are the subject of the bid;

(g) A Bidder or any of its affiliates has been hired (or is proposed to be hired) by the Procuring entity as Engineer for the Contract implementation.

4.4 A Bidder that has been determined to be ineligible by any other Procuring entity for any reasons related to corruption shall not be eligible to be awarded a contract.

4.5 A Bidder shall provide such evidence of their continued eligibility satisfactory to the Procuring entity, as the Procuring entity shall reasonably request.

4.6 This bidding is open only to pre-qualified Bidders unless an exception has been granted by the Procuring entity, **(as indicated in the BDS)**.

5. Eligible Materials, Equipment, and Services

5.1 The materials, equipment and services to be supplied under the Contract may have their origin in any country subject to the restrictions specified in Section V, Eligible Countries, and all expenditures under the Contract will not contravene such restrictions. At the Procuring entity request, Bidders may be required to provide evidence of the origin of materials, equipment and services.

B. Contents of Bidding Documents

6. Sections of Bidding Documents

6.1 The Bidding Document comprises three parts, which include all the Sections indicated below. Each page of the bidding document shall bear the procuring entity's stamp.

PART 1 Bidding Procedures

- Section I. Instructions to Bidders (ITB)
- Section II. Bid Data Sheet (BDS)
- Section III. Evaluation Criteria and Qualification Criteria
- Section IV. Bidding Forms
- Section V. Eligible Countries

PART 2 Works Requirements

- Section VI. Works Requirements

PART 3 Conditions of Contract and Contract Forms

- Section VII. General Conditions (GC)
- Section VIII. Particular Conditions (PC)
- Section IX. Annex to the Particular Conditions - Contract Forms

6.2 The Invitation for Bids issued by the Procuring entity is not part of the Bidding Documents.

6.3 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents. Failure to furnish all information or documentation required by the Bidding Documents may result in the rejection of the bid.

6.4 Administrative documents required to bidders shall refer to the Laws in force in the bidders' home country.

7. Clarification of Bidding Documents, Site Visit, Pre-Bid Meeting

7.1 Any bidder may request in writing to the procuring entity, at its address **mentioned in the BDS**, for clarifications on the bidding document or raise his/her enquiries during the pre-bid meeting if provided for in accordance with ITB 7.4. 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. The Procuring entity will respond in writing to any request for clarification, provided that such request is received no later than twenty-one (21) days prior to the deadline for submission of bids.

The Procuring entity shall forward copies of its response to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. Result in changes to the key elements of the Bidding Documents, the Procuring entity shall amend the Bidding Documents following the procedure under ITB 8 and ITB 22.2.

7.2 The Bidder is advised to visit and examine the Site of Works and surroundings and obtain on his/her own responsibility all information that may be necessary for preparation of 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.

7.3 The Bidder and any of personnel or agents will be granted permission by the Procuring entity to enter upon premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, personnel, and agents will release and indemnify the Procuring entity and personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.

7.4 The Bidder's designated representative is invited to attend a pre-bid meeting, (*if provided for in the BDS*). The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

7.5 The Bidder is requested, as far as possible, to submit any questions in writing, to reach the Procuring entity not later than one week before the meeting.

7.6 Minutes of the pre-bid meeting, including the text of the questions rose, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Documents.

Any modification to the Bidding Documents that may become necessary as a result of the pre-bid meeting shall be made by the Procuring entity exclusively through the issue of an Addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting.

7.7 Non attendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

8. Amendment of Bidding Documents

8.1 At any time prior to the deadline for the submission of bids, the Procuring entity may amend the Bidding Documents by issuing addenda. Such amendment shall be made on the initiative of the procuring entity or in response to the bidders' concerns.

8.2 Any addendum issued shall be part of the Bidding Documents and the procuring entity shall promptly provide a copy of the addendum to each person to whom it provided the bidding document and make it public through the communication channel used for the initial tender notice.

8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Procuring entity should extend the deadline for the submission of bids, pursuant to ITB 22.2.

C. Preparation of Bids

9. Cost of Bidding

9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Procuring entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

10. Language of Bid

10.1 The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Procuring entity, shall be written in the language (*specified in the BDS*).

Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language (*specified in the BDS*), in which case, for purposes of interpretation of the Bid, such translation shall govern.

11. Documents comprising parts of the Bid

11.1 The Bid shall comprise the following documents:

- (a) Letter of Bid and Appendix to Bid
- (b) Completed schedules as required, including priced Bill of Quantities, in accordance with ITB 12 and 14;
- (c) Bid Security, in accordance with ITB 19;
- (d) Alternative bids, if permissible, in accordance with ITB 13;
- (e) Written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2;
- (f) Documentary evidence in accordance with ITB 17 establishing the Bidder's continued qualified status or, if post-qualification applies, as indicated in accordance with ITB 4.8, the Bidder's qualification to perform the contract if his/her Bid is accepted;
- (g) Technical Proposal in accordance with ITB 16;
- (h) any other document required in the BDS.

11.2 In addition to the requirements under ITB 11.1, bids submitted through a JVA shall include a copy of the Joint Venture Agreement entered into by all partners. Alternatively, a Letter of Intent to execute a Joint Venture Agreement in the event of a successful bid shall be signed by all partners and submitted with the bid, together with a copy of the proposed agreement.

12. Letter of Bid and Schedules

12.1 The Letter of Bid and Schedules, including the Bill of Quantities, shall be prepared using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITB.

12.2. All blank spaces shall be filled in with the information requested.

13. Alternative Bids

13.1 **Unless otherwise indicated in the BDS**, alternative bids shall not be considered.

13.2 When alternative times for completion are explicitly invited, a statement to that effect **will be included in the BDS**, as will the method of evaluating different times for completion.

13.3 Except as provided under ITB 13.4 below, Bidders wishing to offer technical alternatives to the requirements of the Bidding Documents must first price the Procuring entity's design as described in the Bidding Documents.

They shall further provide all information necessary for a complete evaluation of the alternative by the Procuring entity, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Procuring entity.

13.4 (*When specified in the BDS*), Bidders are permitted to submit alternative technical solutions for specified parts of the Works, and such parts (*will be identified in the BDS*), as will the method for their evaluating, and described in Section VI, Work's Requirements.

14. Bid Prices and Discounts

14.1 The prices and discounts quoted by the Bidder in the Letter of Bid and in the Bill of Quantities shall conform to the requirements specified below.

14.2 The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Bidder will not be paid for by the Procuring entity when executed and shall be deemed covered by the rates for other items and prices in the Bill of Quantities.

14.3 The price to be quoted in the Letter of Bid, in accordance with ITB 12.1, shall be the total price of the Bid, excluding any discounts offered.

14.4 The Bidder shall quote any unconditional discounts and the methodology for their application in the Letter of Bid, in accordance with ITB 12.1.

14.5 **Unless otherwise provided in the BDS** and the Contract, the rates and prices quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract. In such a case, the Bidder shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data and the Procuring entity may require the Bidder to justify its proposed indices and weightings.

14.6 If so indicated in ITB 1.1, bids are being invited for individual lots (contracts) or for any combination of lots (packages). Bidders who express their intent to offer any price reduction for the award of more than one Contract shall specify in their bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package.

Price reductions or discounts shall be submitted in accordance with ITB 14.4, provided the bids for all lots (contracts) are submitted and opened at the same time.

14.7 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be Included in the rates and prices and the total Bid Price submitted by the Bidder.

15. Currencies of Bid and Payment

15.1 The currency (ies) of the bid and the currency (ies) of payments shall be (*as specified in the BDS*).

15.2 Bidders may be required by the Procuring entity to justify, according to its satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Schedule of Adjustment Data in the Appendix to Bid are reasonable, in which case a detailed breakdown of the foreign currency requirements shall be provided by Bidders

16. Documents composing the Technical Proposal

The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section IV, insufficient detail to demonstrate the adequacy of the Bidders' proposal to meet the work requirements and the completion time.

17. Documents Establishing the Qualifications of the Bidder

17.1 In accordance with Section III, Evaluation and Qualification Criteria, to establish that the Bidder continues to meet the criteria used at the time of prequalification, the Bidder shall provide in the corresponding information sheets included in Section IV, Bidding Forms, updated information on any assessed aspect that changed from that time, or if post-qualification applies as indicated in accordance with ITB 4.8, the Bidder shall provide the information requested in the corresponding information sheets included in Section IV, Bidding Forms.

17.2 If a margin of preference applies as indicated in accordance with ITB 33.1, domestic Bidders, individually or in joint ventures, applying for eligibility for domestic preference shall supply all information required to satisfy the criteria for eligibility indicated in accordance with ITB 33.1.

18. Period of Validity of Bids

18.1 Bids shall remain valid for the *period (specified in the BDS)* after the bid submission deadline date prescribed by the Procuring entity in accordance with ITB 22.1. A bid valid for a shorter period shall be rejected by the Procuring entity as non responsive bid.

18.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Procuring entity may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITB 19, the Bidder granting the request shall also extend the bid security for thirty (30) days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid, except as provided in ITB 18.3.

18.3 If the award is delayed by a period exceeding sixty (60) days beyond the expiry of the initial bid validity, the Contract price shall be determined as follows:

(a) In the case of fixed price, the Contract price shall be the bid price adjusted by the factor (*specified in the BDS*).

(b) In the case of adjustable price, in order to determine the Contract price, the fixed portion of the bid price shall be adjusted by the factor (*specified in the BDS*).

(c) In any case, bid evaluation shall be based on the bid price without taking into consideration the applicable correction from those indicated above.

19. Bid Security

19.1 (*Unless otherwise specified in the BDS*), the Bidder shall furnish as part of his bid in the form of bid security (*as specified in the BDS*), in original form and the amount and currency

19.2 A bid security shall be a demand guarantee in any of the following forms at the Bidder's option:

(a) an unconditional bank guarantee issued by a bank or surety;

(b) an irrevocable letter of credit;

(c) another security (*indicated in the BDS*), from a reputable source. If an unconditional guarantee is issued by an insurance company or a bonding company located outside the Republic of Rwanda, the issuer shall have a correspondent financial institution located in the Republic of Rwanda to make it enforceable. In the case of a bank guarantee, the bid security shall be submitted either using the Bid Security Form included in Section IV, Bidding Forms, or in another substantially similar format approved by the Procuring entity prior to bid submission. In either case, the form must include the complete name of the Bidder. The bid

security shall be valid for thirty (30) days beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 18.2.

19.4 If a bid security is specified pursuant to ITB 19.1, any bid not accompanied by a substantially responsive bid security shall be rejected by the Procuring entity as non-responsive.

19.5 If a bid security is specified pursuant to ITB 19.1, the bid security of unsuccessful Bidders shall be returned back as promptly as possible upon the successful Bidder's furnishing of the performance security pursuant to ITB 41.

19.6 The bid security of the successful Bidder shall be returned back as promptly as possible once the successful Bidder has signed the Contract and furnished the required performance security.

19.7 The bid security may be forfeited:

- (a) if a Bidder withdraws its bid during the period of bid validity
- (b) if the successful Bidder fails to:
 - (i) sign the Contract in accordance with ITB 40; or
 - (ii) furnish a performance security in accordance with ITB 41.

19.8 The bid security shall be in the name of the JVA that submits the bid. If the JVA has not been legally constituted into a legally enforceable JVA at the time of bidding, the bid security shall be in the names of all future partners as named in the letter of intent referred to in ITB 4.1.

19.9 If a bid security is not required in the BDS, and

- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid Form, except as provided in ITB 18.2, or
- (b) if the successful Bidder fails to sign the Contract in accordance with ITB 40; or furnish a performance security in accordance with ITB 41; the Procuring Entity may, (*if provided for in the BDS*), declare the Bidder disqualified to be awarded a contract by the Procuring entity for a period of time **as stated in the BDS**.

20. Format and Signing of Bid

20.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB 11 and clearly mark it "*ORIGINAL*." Alternative bids, if permitted in accordance with ITB 13, shall be clearly marked "*ALTERNATIVE*." In addition, the Bidder shall submit copies of the bid, in the number (*specified in the BDS*) and clearly mark them "*COPY*." In the event of any discrepancy between the original and the copies, the original shall prevail.

20.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation (*as specified in the BDS*) and shall be attached to the

bid. The name and position held by each person signing the authorization must be typed or printed below the signature.

All pages of the bid where entries or amendments have been made shall be signed or initialled by the person signing the bid.

20.3 A bid submitted by a JVA shall comply with the following requirements:

- (a) Unless not required in accordance with ITB 4.1 (a), be signed so as to be legally binding on all partners and
- (b) Include the Representative's authorization referred to in ITB 14.1 (b), consisting of a power or attorney signed by those legally authorized to sign on behalf of the JVA.

20.4 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initiated by the person signing the bid.

D. Submission and Opening of Bids

21. Sealing and Marking of Bids

21.1 The Bidder shall enclose the original and all copies of the bid, including alternative bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as "*ORIGINAL*", "*ALTERNATIVE*" and "*COPY*."

These envelopes containing the original and the copies shall then be enclosed in one single envelope.

21.2 The inner and outer envelopes shall:

- (a) bear the name and address of the Bidder;
- (b) be addressed to the Procuring entity in accordance with ITB22.1
- (c) bear the specific identification of this bidding process indicated in the BDS 1.1; and
- (d) bear a warning not to open before the time and date for bid opening.

21.3 If all envelopes are not sealed and marked as required, the Procuring entity will assume no responsibility for the misplacement or premature opening of the bid.

22. Deadline for Submission of Bids

22.1 Bids must be received by the Procuring entity at the address and no later than the date and time (**indicated in the BDS**). The electronic submission of bids is not permitted.

22.2 The Procuring entity may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Documents in accordance with ITB 8, in which case all rights and obligations of the Procuring entity and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

23. Late Bids 23.1 The Procuring entity shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB.

22. Any bid received by the Procuring entity after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.

24. Withdrawal, Substitution, and Modification of Bids

24.1 A Bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 20.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:

- (a) prepared and submitted in accordance with ITB 20 and ITB 21 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked "*WITHDRAWAL*," "*SUBSTITUTION*," "*MODIFICATION*;" and
- (b) received by the Procuring entity prior to the deadline prescribed for submission of bids, in accordance with ITB 22.

24.2 Bids requested to be withdrawn in accordance with ITB 24.1 shall be returned back unopened to the Bidders.

24.3 No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Bid or any extension thereof.

25. Bid Opening

25.1 The Procuring entity shall open the bids in public, in the presence of willing Bidders` designated representatives and anyone who choose to attend, and at the address, date and time (**specified in the BDS**).

25.2 First, envelopes marked "*WITHDRAWAL*" shall be opened and read out and the envelopes with the corresponding bid shall not be opened, but returned back to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at the bid opening. Next, envelopes marked "*SUBSTITUTION*" shall be opened and read out and exchanged with the corresponding bid being substituted, and the substituted bid shall not be opened, but returned back to the Bidder.

No bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at the bid opening. Envelopes marked "*MODIFICATION*" shall be opened and read out with the corresponding bid. No bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at bid opening. Only bids that are opened and read out at the bid opening shall be considered further.

25.3 All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the Bid Price(s), including any discounts and alternative offers; the presence or absence of a bid security, if required; and any other details as the Procuring entity may consider appropriate. Only discounts and alternative offers read out at bid opening shall be considered for evaluation.

(If so requested by the Procuring entity in the BDS), the Letter of Bid and the Bill of Quantities are to be initiated by representatives of the Procuring entity attending the bid opening in the manner indicated in the BDS. No bid shall be rejected at bid opening except for late bids, in accordance with ITB 23.1.

25.4 The Procuring entity shall prepare a record of the bid opening that shall include, as a minimum:

- the name of the Bidder and whether there is a withdrawal, substitution, or modification;
- the Bid Price, per lot if applicable, including any discounts and alternative offers; and the presence or absence of a bid security, if one was required. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. Upon request, a copy of the record shall be distributed to all Bidders.

E. Evaluation and Comparison of Bids

26. Confidentiality 26.1 Information relating to the evaluation of bids and recommendation of contract award shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on Contract award is communicated to all Bidders.

26.2 Any attempt by a Bidder to influence the Procuring entity in the evaluation of the bids or Contract award decisions may result in the rejection of his bid.

26.3 Notwithstanding ITB 26.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Procuring entity on any matter related to the bidding process, it may do so in writing.

27. Clarification of Bids

27.1 To assist in the examination, evaluation, and comparison of the bids, and qualification of the Bidders, the Procuring entity may, at its discretion, ask any Bidder for a clarification of bid. Any clarification submitted by a Bidder that is not in response to a request by the Procuring entity shall not be considered. The Procuring entity's request for clarification and response shall be in writing. No change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring entity in the evaluation of the bids, in accordance with ITB 31.

27.2 If a Bidder does not provide clarifications of its bid by the date and time set in the Procuring entity request for clarification, his/her bid may be rejected.

28. Deviations, Reservations, and Omissions

28.1 During the evaluation of bids, the following definitions apply:

- (a) "Deviation" is a departure from the requirements specified in the Bidding Document;

(b) “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and

(c) “Omission” is the failure to submit part or all of the information or documentation required in the Bidding Document.

29. Determination of conformity

29.1 The conformity of the bid to the qualification criteria is determined based on the contents of the bid itself, as defined in ITB11.

29.2 **A substantially responsive bid** is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:

(a) if accepted, would :

(i) affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or

(ii) limit in any substantial way, inconsistent with the Bidding Document, the Procuring entity’s rights or the Bidder’s obligations under the proposed Contract; or

(b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.

29.3 The Procuring entity shall examine the technical aspects of the bid submitted in accordance with ITB 16, Technical bid, in particular, to confirm that all requirements of Section VI, Works Requirements have been met without any material deviation, reservation or omission.

29.4 If a bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Procuring entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

30. Nonmaterial Nonconformities

30.1 Provided that a bid is substantially responsive, the Procuring entity may waive any non conformity in the bid that does not constitute a material deviation, reservation or omission.

30.2 Provided that a bid is substantially responsive, the Procuring entity may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the bid. Failure of the Bidder to comply with the request may result in the rejection of its bid.

30.3 Provided that a bid is substantially responsive, the Procuring entity shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component. The adjustment shall be made using the method indicated in Section III, Evaluation and Qualification Criteria.

31. Correction of Arithmetical Errors

31.1 Provided that the bid is substantially responsive, the Procuring entity shall proceed to the arithmetical corrections of the errors on the following basis:

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

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

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

31.2 If the Bidder that submitted the lowest evaluated bid does not accept the correction of errors, its bid shall be rejected.

32. Conversion to Single Currency

32.1 For evaluation and comparison purposes, the currency (ies) of the bid shall be converted into a single currency (**as specified in the BDS**).

33. Margin of Preference

33.1 **Unless otherwise specified in the BDS in compliance with the provisions of the Public Procurement law as modified and completed to date and regulations**, a margin of preference shall not apply.

34. Evaluation of Bids

34.1 The Procuring entity shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.

34.2 To evaluate a bid, the Procuring entity shall consider the following:

(a) the bid price, excluding Provisional Sums and the provision, if any, for contingencies in the Summary of the Bill of Quantities, but including Day work items, where priced competitively;

(b) price adjustment for correction of arithmetic errors in accordance with ITB 31.1;

(c) price adjustment due to discounts offered in accordance with ITB 14.4;

(d) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 32;

(e) price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 30.3;

(f) the specifications indicated in Section III,

Evaluation and Qualification Criteria/specifications;

34.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.

34.4 If these Bidding Documents allows Bidders to quote separate prices for different lots (contracts), and the award to a single Bidder of multiple lots (contracts), the methodology to determine the lowest evaluated price of the lot (contract) combinations, including any discounts offered in the Letter of Bid Form, is specified in Section III, Evaluation and Qualification Criteria.

34.5 If the bid, which results in the lowest Evaluated Bid Price, is seriously unbalanced or front loaded in the opinion of the Procuring entity, the Procuring entity may require the Bidder to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed.

After evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the Procuring may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Procuring entity against financial loss in the event of default of the successful Bidder under the Contract.

35. Comparison of Bids

35.1 The Procuring entity shall compare all substantially responsive bids in accordance with ITB 34.2 to determine the lowest evaluated bid.

36. Qualification of the Bidder

36.1 The Procuring entity shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid either continues to meet (if prequalification applies) or meets (if post-qualification applies) the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

36.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 17.1.

36.3 An affirmative determination shall be a pre-requisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Procuring entity shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's qualifications to perform satisfactorily.

37. The right of the Procuring entity to accept Any Bid, and to reject any or all Bids

37.1 The Procuring entity reserves the right to accept or reject any bid, and due to reasons provided for in the law on public procurement as modified and completed to date to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders, unless the annulment was a consequence of its irresponsible conduct. In case of annulment, the procuring entity shall inform all the bidders in writing about the decision and all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.

F. Award of Contract

38. Award Criteria

38.1 Subject to ITB 37.1, the Procuring entity shall award the Contract to the Bidder whose bid has been determined to be the lowest evaluated bid and which is substantially responsive to the requirements included in the Bidding Document provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

39. Notification of Award

39.1 Prior to the expiration of the period of bid validity, the Procuring entity shall notify the successful Bidder, in writing, that his bid has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the “Letter of Acceptance”) shall specify the sum that the Procuring entity will pay the Contractor in consideration of the execution and completion of the Works (hereinafter and in the Conditions of Contract and Contract Forms called “the Contract Price”) and the requirement for the Contractor to remedy any defects therein as prescribed by the Contract.

At the same time, the Procuring entity shall also notify all other Bidders of the results of the bidding identifying the bid and lot numbers and the following information:

- (i) name of each Bidder who submitted a Bid;
- (ii) bid prices as read out at Bid Opening;
- (iii) name and evaluated prices of each Bid that was evaluated;
- (iv) name of bidders whose bids were not qualified and the reasons for their disqualification;
- and
- (v) name of the successful Bidder, and the Price he offered, as well as the duration and summary scope of the contract awarded.

39.2 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.

39.3 The notification shall specify that the major elements of the procurement process would be made available to bidders upon request and they have seven (7) days to lodge a complaint if any, before the contract is signed with the successful bidder.

39.4 The Procuring entity shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 39.1, requests in writing the grounds on which its bid was not selected.

40. Signing of Contract

40.1 After the expiration of a seven day period that is given to bidders to lodge a complaint if any, the Procuring entity shall send the successful Bidder the Contract Agreement or invite him to come to the procuring entity’s office for contract signature.

40.2 Within fifteen (15) days, for national tenders, and twenty-one (21) days, for international tenders, from receipt of the Contract Agreement or from the invitation date, the successful Bidder shall sign, date, and return it to the Procuring entity.

41. Performance Security

41.1 Within that period of fifteen (15) days, for national tenders, and twenty-one (21) days, for international tenders, from the receipt of the contract agreement or from the invitation date for contract signature, the successful Bidder shall provide the performance security in accordance with the General Conditions of Contract, subject to ITB 34.5, using for that purpose the Performance Security Form included in Section IX, Annex to the Particular Conditions – Contract Forms, or another form acceptable to the Procuring entity.

If the performance security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Bidder to be acceptable to the Procuring entity. A foreign institution providing a bond shall have a correspondent financial institution located in the Republic of Rwanda.

41.2 Failure of the successful Bidder to submit the abovementioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security. In that case, the Procuring entity may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Procuring entity to be qualified to perform the Contract satisfactorily.

Section II. Bid Data Sheet

A. Introduction

ITB 1.1 The number of the Invitation for Bids is:

ITB 1.1 The Procuring entity is:

ITB 1.1 The name of the ICB/ NCB is:

The identification number of the ICB/NCB is:

The expedited execution period is:

The number and identification of lots (contracts) comprising this ICB is:

ITB 2.1 The funding entity is:

ITB 2.1 The name of the Project is:

ITB 4.1 (a) the individuals or firms in a joint venture or association jointly and severally liable.

B. Bidding Documents

ITB 7.1 For **clarification purposes** only, the Procuring entity address is:

Attention to:

Street Address:

Floor/Room number:

City:

Telephone:

Facsimile number:

Electronic mail address:

ITB 7.4 A Pre-Bid meeting takes place at the following date, time and venue:

Date:

Time:

venue:

C. Preparation of Bids

ITB 10.1 The language of the bid is:

ITB 11.1 (h) The Bidder shall submit with its bid the following additional documents:

ITB 13.1 Alternative bids is _____ permitted.

ITB 13.2 Alternative times for completion _____ permitted.

If alternative times for completion are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria.

ITB 13.4 Alternative technical solutions shall be permitted for the following parts of the Works: _____.

If alternative technical solutions are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria.

ITB 14.5 The quotations by the bidder shall be: _____

ITB 15.1 The currency (ies) of the bid and the payment currency (ies) shall be in accordance with Alternative _____ as described below:

Alternative A (Bidders to quote entirely in local currency):

(a) The unit rates and the prices shall be quoted by the Bidder in the Bill of Quantities, entirely in Rwandan Francs.

A Bidder expecting to incur expenditures in other currencies for inputs to the Works supplied from outside the Republic of Rwanda (referred to as “the foreign currency requirements” shall indicate in the Appendix to Bid - Table C, the percentage(s) of the Bid Price (excluding Provisional Sums), needed by him for the payment of such foreign currency requirements, limited to no more than three foreign currencies of any country.

(b) The rates of exchange to be used by the Bidder in arriving at the local currency equivalent and the percentage(s) mentioned in (a) above shall be specified by the Bidder in the Appendix to Bid - Table C, and shall apply for all payments under the Contract so that no exchange risk will be borne by the successful Bidder.

Alternative B (Bidders allowed quoting in local and foreign currencies):

(a) The unit rates and prices shall be quoted by the Bidder in the Bill of Quantities separately in the following currencies:

(i) for those inputs to the Works that the Bidder expects to supply from within the Republic of Rwanda, in Rwandan Francs, and further referred to as “the local currency”; and

(ii) for those inputs to the Works that the Bidder expects to supply from outside the Republic of Rwanda (referred to as “the foreign currency requirements”), in up to any three currencies of any country.

ITB 18.1 The bid validity period shall be _____ days.

ITB 18.3 (a) The bid price shall be adjusted by the following factor: _____

ITB 18.3 (b) The fixed portion of the bid price shall be adjusted by the following factor:

ITB 19.1 A bid security _____ required.

If a bid security shall be required, the amount and currency of the bid security shall be -----

ITB 19.2 (d) Other types of acceptable securities:

ITB 19.8 If the Bidder incurs any of the actions prescribed in subparagraphs (a) or (b) of this provision, the Procuring entity will declare the Bidder ineligible to be awarded contracts by the Procuring entity for a period of _____ years.

ITB 20.1 In addition to the original of the bid, the number of copies is: _____

ITB 20.2 The written confirmation of authorization to sign on behalf of the Bidder shall consist of:

D. Submission and Opening of Bids

ITB 22.1 For **bid submission purposes** only, the Procuring entity address is:

Attention:

Address:

Floor/Room number:

City:

Country:

The deadline for bid submission is:

Date:

Time:

ITB 25.1 The bid opening shall take place at:

Street Address:

Floor/Room number:

City:

Country:

Date:

Time:

ITB 25.3 The Letter of Bid and Bill of Quantities shall be initialled by representatives of the Procuring entity attending Bid opening.

Evaluation and Comparison of Bids

ITB 32.1

The currency (ies) of the Bid shall be converted into a single currency as follows: _____

The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency: Rwandan Francs.

The source of exchange rate shall be: National Bank of Rwanda (BNR)

The date for the exchange rate shall be:The exchange rate shall be:

ITB 33.1 A margin of preference of % _____ apply.

Section III. Evaluation and Qualification

Criteria (*Following Prequalification*)

This Section contains all the criteria that the Procuring entity shall use to evaluate bids and qualify Bidders. In accordance with ITB 34 and ITB 36, no other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms.

1. Evaluation

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

1.1 Assessment of adequacy of Technical Proposal with Requirements

1.2 Multiple Contracts, if permitted under ITB 34.4, will be evaluated as follows:

.....
.....

1.3 Alternative Completion Times, if permitted under ITB 13.2, will be evaluated as follows:

.....
.....

1.4 Technical alternatives, if allowed under ITB 13.4, will be evaluated as follows:

.....
.....

2. Qualification

2.1 Update of Information

The Bidder shall continue to meet the criteria used at the time of prequalification.

2.2 Financial Resources

Using the relevant Forms No ... and No... in Section IV, Bidding Forms, and the Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet:

(i) the following cash-flow requirement:

.....

And

(ii) the overall cash flow requirements for this contract and its current Works commitment.

2.3 Personnel

The Bidder must propose adequate personnel for the key positions:

No.	Position	Minimum qualification required	Total Work Similar Experience (years)	In Similar Works Experience (years)
1				
2				
3				
4				
5				

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

2.4 Equipment

The Bidder must demonstrate that he/she has the key equipment listed hereafter:

No.	Equipment	Description (type, characteristics etc.)	Minimum Number required
1			
2			
3			
4			
5			

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

Section III. *Evaluation and Qualification Criteria (Without Prequalification)*

This Section contains all the criteria that the Procuring entity shall use to evaluate bids and qualify Bidders. In accordance with ITB 34 and ITB 36, no other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms.

1. Evaluation

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

1.1 Assessment of adequacy of Technical Proposal with Requirements

1.2 Multiple Contracts, if allowed under ITB 34.4, will be evaluated as follows:

.....
.....
.....

1.3 Alternative Completion Times, if allowed under ITB 13.2, will be evaluated as follows:

.....
.....
.....

1.4 Technical alternatives, if permitted under ITB 13.4, will be evaluated as follows:

.....
.....
.....

2. Qualification

<i>Factor</i>	2.1 ELIGIBILITY					
Sub-Factor	Criteria					Documentati on Required
	Requireme nt	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
All partners combined	Each partner	At least one partn er				
2.1.1 National ity	<i>Nationality in accordance with ITB 4.2.</i>	<i>Must meet requireme nt</i>	<i>Existing or intended JVCA must meet requireme nt</i>	<i>Must meet requireme nt</i>	<i>N / A</i>	<i>Form ELI – 1.1 and 1.2, with attachments</i>
2.1.2 Conflict of Interest	<i>No- conflicts of interests as described in ITB 4.3.</i>	<i>Must meet requireme nt</i>	<i>Existing or intended JVCA must meet requireme nt</i>	<i>Must meet requireme nt</i>	<i>N / A</i>	<i>Letter of Bid</i>
2.1.3 Funding entity Ineligibilit y	<i>Not having been declared ineligible by the funding entity as described in ITB 4.4.</i>	<i>Must meet requireme nt</i>	<i>Existing JVCA must meet requireme nt</i>	<i>Must meet requireme nt</i>	<i>N / A</i>	<i>Letter of Bid</i>
2.1.4 Govern ment Owned Entity	<i>Compliance with conditions of ITB 4.5</i>	<i>Must meet requireme nt</i>	<i>Must meet requireme nt</i>	<i>Must meet requireme nt</i>	<i>N / A</i>	<i>Form ELI – 1.1 and 1.2, with attachments</i>

<i>Factor</i>	2.1 ELIGIBILITY					
Sub-Factor	Criteria					Documentati on Required
	Requireme nt	Bidder				
		Single Entity	Joint Venture, <i>Consortium or Association</i>			
All partners combined			Each partner	At least one partn er		
2.1.5 <i>Ineligibili ty based on a <i>United Nations resolution or Borrower's country law</i></i>	<i>Not having been excluded as a result of the laws or official regulations of the Republic of Rwanda, or by an act of compliance with UN Security Council resolution, in accordance with ITB 4.7</i>	<i>Must meet requireme nt</i>	<i>Existing JVCA must meet requireme nt</i>	<i>Must meet requireme nt</i>	<i>N / A</i>	<i>Letter of Bid</i>

Factor	2.2 HISTORY OF NON-PERFORMANCE CONTRACTS					
Sub-Factor	Criteria					Documentati on Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
All partners combine d			Each partner	At least one partne r		
2.2.1 <i>History of non-performing contracts</i>	<i>Non-performance of a contract did not occur within the last _____ () years prior to the deadline for application submission, based on all information on fully settled disputes or litigation. A fully settled dispute or litigation is one that has been resolved in accordance with the Dispute Resolution Mechanism under the respective contract, and where all appeal instances</i>	<i>Must meet requirement by itself or as partner to past or existing JVCA</i>	<i>N/A</i>	<i>Must meet requirement by itself or as partner to past or existing JVCA</i>	<i>N/A</i>	<i>Form CON - 2</i>

Factor	2.2 HISTORY OF NON-PERFORMANCE CONTRACTS					
Sub-Factor	Criteria					Documentati on Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
	<i>available to the bidder have been exhausted.</i>					
2.2.2 Pending Litigation	<i>All pending litigation shall in total not represent more than _____ percent (____%) of the Bidder's net worth and shall be treated as resolved against the Bidder.</i>	<i>Must meet requirement by itself or as partner to past or existing JVCA</i>	<i>N/A</i>	<i>Must meet requirement by itself or as partner to past or existing JVCA</i>	<i>N/A</i>	<i>Form CON – 2</i>

Factor	2.3 FINANCIAL STATEMENT					
Sub-Factor	Criteria					Docu- mentation Required
	Requirement	Bidder				
		Single Entity	Joint Consortium Association		Venture, or	
			All partn ers combi ned	Each partn er	At least one partn er	
2.3.1 History of Financial performance	<i>Submission of audited balance sheets or if not required by the law of the bidder's country, other financial statements acceptable to the Procuring entity, for the last ____ [] years to demonstrate the current soundness of the bidders financial position and its prospective long term profitability.</i> (a)(criterion 1) (b)(criterion 2) (c) _____	<i>Must meet requirement</i>	N/A	<i>Must meet requirement</i>	N/A	<i>Form FIN – 3.1 with attachments</i>
2.3.2. Average Annual Turnover	<i>Minimum average annual turnover _____ of _____, calculated as total certified payments received for contracts in progress or completed, within the last _____() years</i>	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>Must meet _____ percent (____%) of the requirement</i>	<i>Must meet _____ percent (____%) of the requirement</i>	<i>Form FIN –3.2</i>

Factor	2.3 FINANCIAL STATEMENT					
Sub-Factor	Criteria				Docu- mentation Required	
	Requirement	Bidder				
		Single Entity	Joint <i>Consortium Association</i>	Venture, <i>or</i>		
			All partn ers combi ned	Each partn er	At least one partn er	
<p>2.3.3.Fin ancial capacity</p>	<p><i>The Bidder must demonstrate his/her capacity to access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet:</i></p> <p><i>(i) the following cash-flow requirement:</i></p> <p>.....</p> <p>.....</p> <p><i>and</i></p> <p><i>(ii) the overall cash flow requirements for this contract and its current commitments.</i></p>	<p><i>Must meet requirement</i></p>	<p><i>Must meet requirement</i></p>	<p><i>Must meet</i></p> <p>_____</p> <p>_____</p> <p><i>percent</i></p> <p><i>(_____ %)</i></p> <p><i>of the requirement</i></p>	<p><i>Must meet</i></p> <p>_____</p> <p>_____</p> <p><i>percent</i></p> <p><i>(_____ %)</i></p> <p><i>of the requirement</i></p>	<p><i>Form FIN -3.3</i></p>

Factor	2.4 EXPERIENCE					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.4.1 General Experience	Experience under contracts in the role of contractor, subcontractor, or management contractor for at least the last _____ [____] years prior to the applications submission deadline, and with activity in at least nine (9) months in each year.	Must meet requirement	N/A	Must meet requirement	N/A	Form EXP-4.1
2.4.2 Specific Experience	(a) Participation as contractor, management contractor, or subcontractor, in at least _____ (____) contracts within the last _____ () years, each with a value of at least	Must meet requirement	Must meet requirements for all characteristics	N/A	Must meet requirement for one characteristic	Form EXP 2.4.2(a)

Factor	2.4 EXPERIENCE					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
All partners combined			Each partner	At least one partner		
	<p>_____ (____), that have been successfully and substantially completed and that are similar to the proposed Works. The similarity shall be based on the physical size, complexity, methods/technology or other characteristics as described in Section VI, Procuring entity Requirements.</p>					

Factor	2.4 EXPERIENCE					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
All partners combined			Each partner	At least one partner		
2.4.2 Specific Experience	<i>b) For the above or other contracts executed during the period stipulated in 2.4.2(a) above, a minimum experience in the following key activities:</i> 1.	<i>Must meet requirements</i>	<i>Must meet requirements</i>	<i>N/A</i>	<i>Must meet requirements</i>	<i>Form EXP-2.4.2(b)</i>

2.5 Personnel

The Bidder must demonstrate that he has the personnel for the key positions that meet the following requirements:

No.	Position	Total Work Similar Experience (years)	In Similar Works Experience (years)
1			
2			
3			
4			
5			

The Bidder shall provide details of the proposed personnel and their experience records using Forms PER-1 and PER-2 included in Section IV, Bidding Forms.

Equipment

The Bidder must demonstrate that he has the key equipment listed hereafter:

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

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

Section IV. Bidding Forms

Table of Forms

Bid Submission Sheet.....	43
Appendix to Bid.....	45
Table A. Local Currency.....	45
Table B. Foreign Currency (FC).....	46
Table C. Summary of Payment Currencies.....	47
Bill of Quantities	49
Bill No. 1: General Items	49
Bill No. 2: Earthworks	50
Bill No. 3: Culverts and Bridges.....	51
Schedule of Day work Rates: 1. Labour	52
Schedule of Day work Rates: 2. Materials.....	53
Schedule of Day work Rates: 3. Contractor's Equipment	54
Day work Summary	55
Summary of Specified Provisional Sums	56
Grand Summary	57
Technical Proposal.....	58
Site Organization	59
Method Statement	60
Mobilization Schedule	61
Construction Schedule Form EQU: Equipment.....	62
Form EQU: Equipment.....	63
Personnel.....	64
Form PER-1: Proposed Personnel	64
Form PER-2: Resume of Proposed Personnel	65
Bidders Qualification following Prequalification	66
Form ELI - 1: Bidder Information Sheet	67
Form ELI - 2: JV Information Sheet.....	68
Form LIT: Pending Litigation.....	69
Form FIN-1: Financial Situation.....	70
Form FIN-2: Average Annual Construction Turnover	71
Form FIN-3: Financial Resources.....	72
Form FIN-4: Current Contract Commitments / Works in Progress.....	73
Bidders Qualification without prequalification	74

Form ELI - 1: Bidder's Information Sheet	75
Form ELI - 2: JV Information Sheet.....	76
Form LIT - Pending Litigation	77
Form FIN - 1: Financial Situation.....	78
Form FIN - 2: Average Annual Construction Turnover	79
Form FIN - 3: Financial Resources	80
Form FIN- 4: Current Contract Commitments / Works in Progress.....	81
Form EXP - 1: General Construction Experience.....	82
Form EXP - 2(a): Specific Construction Experience	83
Form EXP - 2(b): Specific Construction Experience in Key Activities	84
Form of Bid Security	85
Form of Bid-Securing Declaration	87

Bid Submission Sheet

Date: _____

ICB No.: _____

Invitation for Bid No.: _____

To: _____

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Document, including Addenda issued in accordance with Instructions to Bidders (ITB)8 _____;
- (b) We offer to execute in conformity with the Bidding Document the following Works: _____
_____;
- (c) The total price of our Bid, excluding any discounts offered in item (d) below is: _____
_____;
- (d) The discounts offered and the methodology for their application are: _____

_____;
- (e) Our bid shall be valid for a period of _____ days from the date fixed for the bid submission deadline in accordance with the Bidding Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) If our bid is accepted, we commit to obtain a performance security in accordance with the Bidding Document;
- (g) We, including any subcontractors or suppliers for any part of the contract, have or will have nationalities from eligible countries, in accordance with ITB 4.2;
- (h) We, including any subcontractors or suppliers for any part of the contract, do not have any conflict of interest in accordance with ITB 4.3;
- (i) We are not participating, as a Bidder or as a subcontractor, in more than one bid in this bidding process in accordance with ITB 4.3, other than alternative offers submitted in accordance with ITB 13;

- (j) We, including any of our subcontractors or suppliers for any part of the contract, have not been declared ineligible by the Procuring entity, debarred or suspended by Rwanda Public Procurement Authority (RPPA), under the laws of the Republic of Rwanda.
- (k) We are not a government owned entity/ we are a government owned entity but meet the requirements of ITB-4.5;¹
- (l) We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract:

Name of Recipient	Address	Reason	Amount
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

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

- (m) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed; and
- (n) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.
- (o) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in bribery or in any other prohibited practices.

Name _____ In the capacity of _____

Signed _____

Duly authorized to sign the bid for and on behalf of _____

Dated on _____ day of _____, _____

¹ Bidder to use as appropriate

Appendix to the Bid

Schedule of the Data Adjustment

[In Tables A, B, and C, below, the Bidder shall (a) indicate the amount in local currency payment, (b) indicate the proposed source and base values of indices for the different foreign currency elements of cost, (c) derive the proposed weightings for local and foreign currency payment, and (d) list the exchange rates used in the currency conversion. In the case of very large and/or complex works contracts, it may be necessary to specify several families of price adjustment formulae corresponding to the different works involved.]

Table A. Local Currency

Index code*	Index description*	Source index*	of	Base value and date*	Bidder's related currency amount	Bidder's proposed weighting
	Non adjustable	—		—	—	A: _____* B: _____ C: _____ D: _____ E: _____
Total						1.00

[* To be entered by the Procuring entity,]

Table B. Foreign Currency

State type: [If the Bidder is allowed to quote in local and foreign currencies and he/she wishes to quote in more than one foreign currency, this table should be repeated for each foreign currency.]

Index code	Index description	Source of index	Base value and date	Bidder's related source currency in type/amount	Equivalent in FC1	Bidder's proposed weighting
	Non adjustable	—	—	—		A: _____ * B: _____ C: _____ D: _____ E: _____
Total						1.00

[* To be entered by the Procuring entity]

Table C. Summary of Payment Currencies

Table: Alternative A

For[insert name of Section of the Works]

Name of payment currency	A Amount of currency	B Rate of exchange (local currency per unit of foreign)	C Local currency equivalent C = A x B	D Percentage of Net Bid Price (NBP) $\frac{100 \times C}{NBP}$
Local currency _____		1.00		
Foreign currency #1 _____				
Foreign currency #2 _____				
Foreign currency # _____				
Net Bid Price				100.00
Provisional sums expressed in local currency	[To be entered by the Procuring entity]		[To be entered by the Procuring entity]	
BID PRICE				

Table: Alternative B

*To be used only with Alternative B Prices directly quoted in the currencies of payment.
(Clause ITB 15.1)*

Summary of currencies of the bid for _____ *[insert name of Section of the Works]*

<i>Name of currency</i>	<i>Amounts payable</i>
Local currency: _____	
Foreign currency #1: _____	
Foreign currency #2: _____	
Foreign currency #3: _____	

Bill of Quantities

Bill No. 1: General Items

<i>Item no.</i>	<i>Description</i>	<i>Unit</i>	<i>Quantity</i>	<i>Rate</i>	<i>Amount</i>
101	Performance Bond/Guarantee	sum	item	—	
102	Insurance of the Works	sum	item	—	
103	Insurance of Contractor's Equipment	sum	item	—	
104	Third-Party Insurance	sum	item	—	
105	Allow for maintenance of Works for (<i>n</i>) months after completion	month	n		
106	—etc.—				
112	Provide and equip Engineer's offices	nr			
113	Maintain Engineer's offices for (<i>n</i>) months, including services	month	n		
114	—etc.—				
121	Provide diversion road	sum	item	—	
122	Provide for traffic control and maintenance of diversion road	month	n	—	
123	—etc.—				
132	Provide for cleaning up the Site on completion	sum	item	—	
	—etc.—				
Total for Bill No. 1 (carried forward to Summary, p. ____)					_____

Bill No. 2: Earthworks

<i>Item no.</i>	<i>Description</i>	<i>Unit</i>	<i>Quantity</i>	<i>Rate</i>	<i>Amount</i>
201	Excavate topsoil to maximum depth 25 cm and stockpile for reuse, maximum haul distance 1 km	m ³			
202	Excavate topsoil to maximum depth 25–50 cm, and dispose	m ³			
203	—etc.—				
206	Excavate fill material from cuttings or approved borrow pits, haul up to 1 km, deposit, shape, and compact to fill	m ³			
207	Excavate rock in cuttings and dispose, any depth	m ³			
208	—etc.—				
Total for Bill No. 2 (carried forward to Summary, p. ___)					_____

Bill No. 3: Culverts and Bridges

<i>Item no.</i>	<i>Description</i>	<i>Unit</i>	<i>Quantity</i>	<i>Rate</i>	<i>Amount</i>
301	Excavate in all materials other than rock from ground level to underside of foundations, maximum depth 5 m, and dispose	m ³			
302	Excavate in all materials other than rock, depth 5 m to 7.5 m	m ³			
303	Provisional Item As Item 302, depth 7.5 m to 10 m	m ³			
304	—etc.—				
311	Concrete class B in abutments	m ³			
312	—etc.—				
318	Mild steel reinforcement in abutments and piers up to 20 mm diameter	t			
319	—etc.—				
Total for Bill No. 3 (carried forward to Summary, p. ____)					_____

Day work Summary

	<i>Amount</i> ^a ()	<i>%</i> <i>Foreign</i>
1. Total for Day work: Labour		
2. Total for Day work: Materials		
3. Total for Day work: Contractor's Equipment		
Total for Day work (Provisional Sum) (carried forward to Bid Summary, p. ____)	_____	_____

a. The Procuring entity, should insert local currency unit.

Summary of Specified Provisional Sums

<i>Bill no.</i>	<i>Item no.</i>	<i>Description</i>	<i>Amount</i>
1			
2	2.8	Supply and install equipment in pumping station	1,250,000
3			
4	4.32	Provide for ventilation system in subway tunnel	3,500,000
etc.			
Total for Specified Provisional Sums (carried forward to Grand Summary (B), p. ___)			4,750,000

Grand Summary

Contract Name:

Contract No.:

<i>General Summary</i>	<i>Page</i>	<i>Amount</i>
Bill No. 1: Preliminary Items		
Bill No. 2: Earthworks		
Bill No. 3: Drainage Structures		
—etc.—		
Total for Day work (Provisional Sum)		
Subtotal of Bills	(A)	
Total for Day work (Provisional Sum)	(B)	
Specified Provisional Sums ^a included in subtotal of bills	(C)	4,750,000 ^b
Total of Bills Plus Provisional Sums (A + B + C)	(D)	
Add Provisional Sum ^a for Contingency Allowance	(E)	[sum] ^b
Bid Price (D + E) (Carried forward to Form of Bid)	(F)	

a. All Provisional Sums are to be expended in whole or in part at the direction and discretion of the Engineer in accordance with Sub-Clause 52.4 and Clause 58 of Part I of the Conditions of Contract.

b. To be entered by the Procuring entity.

Technical Proposal

Site Organization.....

Method Statement.....

Mobilization Schedule.....

Construction Schedule.....

Equipment.....

Others.....

Site Organization

Method Statement

Mobilization Schedule

Construction

Schedule

Form EQU -1: Equipments

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

Item of equipment		
Equipment information	Name of manufacturer	Model and power rating
	Capacity	Year of manufacture
Current status	Current location	
	Details of current commitments	
Source	Indicate source of the equipment <input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured	

Omit the following information for equipment owned by the Bidder.

Owner	Name of owner	
	Address of owner	
	Telephone	Contact name and title
	Fax	Telex
Agreements	Details of rental / lease / manufacture agreements specific to the project	

Personnel

Form PER-2: Proposed Personnel

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

1.	Title of position*	
	Name	
2.	Title of position*	
	Name	
3.	Title of position*	
	Name	
4.	Title of position*	
	Name	

*As listed in Section III.

Bid's attachment: CVs and copies of certified academic testimonials or Degrees

Form PER-3: Summary of Proposed Personnel

Name of the Bidder:

Position:

Personnel information	Name:	Date of birth:
	Professional qualifications:	

Present employment	Name of Procuring entity:	
	Address of Procuring entity:	
	Telephone:	Contact: Manager / personnel officer)
	Fax:	E-mail:
	Job title:	Years with present employee:

Summarize your professional experience over the last 20 years, in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

From	To	Company / Project / Position / Relevant technical and management experience

Bidders' Qualification following the Prequalification

The Bidder shall update the information given during the corresponding prequalification phase to demonstrate that he/she continues to meet the criteria used at the time of Prequalification regarding:

- (a) Eligibility**
- (b) Pending Litigation**
- (c) Financial Situation**

For this purpose, the Bidder shall use the relevant forms included in this Section.

Form ELI - 1: Bidder's Información Sheet

Bidder's Information	
Bidder's legal name	
In case of JV, legal name of each partner	
Bidder's country of constitution	
Bidder's year of constitution	
Bidder's legal address in country of constitution	
Bidder's authorized representative (name, address, telephone numbers, fax numbers, e-mail address)	
<p>Attached are copies of the following original documents.</p> <p><input type="checkbox"/> 1. In case of single entity, articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2.</p> <p><input type="checkbox"/> 2. Authorization to represent the firm or JV named in above, in accordance with ITB 20.2.</p> <p><input type="checkbox"/> 3. In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1.</p> <p><input type="checkbox"/> 4. In case of a government-owned entity, any additional documents not covered under 1 above required to comply with ITB 4.5.</p>	

Form ELI - 2: JV Information Sheet

Each member of a JV must fill in this form

JV / Specialist Subcontractor Information	
Bidder's legal name	
JV Partner's or Subcontractor's legal name	
JV Partner's or Subcontractor's country of constitution	
JV Partner's or Subcontractor's year of constitution	
JV Partner's or Subcontractor's legal address in country of constitution	
JV Partner's or Subcontractor's authorized representative information (name, address, telephone numbers, fax numbers, e-mail address)	
<p>Attached are copies of the following original documents.</p> <ol style="list-style-type: none"> 1. Articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2. 2. Authorization to represent the firm named above, in accordance with ITB 20.2. 3. In the case of government-owned entity, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB Sub-Clause 4.5. 	

Form LIT: Pending Litigation

Each Bidder or member of a JV must fill in this form

Pending Litigation			
No pending litigation			
Pending litigation			
Year	Matter in Dispute	Value of Pending Claim in Rwandan Francs	Value of Pending Claim as a Percentage of Net Worth

Form FIN-1: Financial Statement

Each Bidder or member of a JV must fill in this form

Financial Data for Previous 3 Years [Rwandan Francs]		
Year 1:	Year 2:	Year 3:

Information from Balance Sheet

Total Assets			
Total Liabilities			
Net Worth			
Current Assets			
Current Liabilities			

Information from Income Statement

Total Revenues			
Profits Before Taxes			
Profits After Taxes			

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

Form FIN-2: Average Annual Construction Turnover

Each Bidder or member of a JV must fill in this form

Annual Turnover Data for the Last 3 Years (Construction only)			
Year	Amount Currency	Exchange Rate	Rwandan Francs

Average Annual Construction Turnover

The information provided shall be the Annual Turnover of the Bidder or each member of a JV in terms of the amounts billed to the clients for each year for work in progress or completed, converted into Rwandan Francs at the exchange rate fixed at the end of the period reported.

Form FIN-3: Financial Resources

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

No.	Source of funding	Amount (in Rwandan Francs)
1		
2		
3		

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

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

Number of order	Name of contract	Procuring entity, contact address/tel/fax	Value of outstanding work (Rwandan Francs)	Estimated completion date	Average monthly invoicing over last six months (in Rwandan Francs/month)
1.					
2.					
3.					
4.					
5.					
etc.					

Bidders' Qualification without prequalification

To establish his/her qualifications to perform the contract in accordance with Section III (Evaluation and Qualification Criteria) the Bidder shall provide the information requested in the corresponding Information Sheets included hereunder.

Form ELI - 1: Bidder's Information Sheet

Bidder's Information	
Bidder's legal name	
In case of JV, legal name of each partner	
Bidder's country of constitution	
Bidder's year of constitution	
Bidder's legal address in country of constitution	
Bidder's authorized representative (name, address, telephone numbers, fax numbers, e-mail address)	
<p>Attached are copies of the following original documents.</p> <ol style="list-style-type: none"> 1. In case of single entity, articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2. 2. Authorization to represent the firm or JV named in above, in accordance with ITB 20.2. 3. In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1. 4. In case of a government-owned entity, any additional documents not covered under 1 above required to comply with ITB 4.5. 	

 Form ELI - 2: JV Information Sheet

Each member of a JV must fill in this form

JV / Specialist Subcontractor Information	
Bidder's legal name	
JV Partner's or Subcontractor's legal name	
JV Partner's or Subcontractor's country of constitution	
JV Partner's or Subcontractor's year of constitution	
JV Partner's or Subcontractor's legal address in country of constitution	
JV Partner's or Subcontractor's authorized representative information (name, address, telephone numbers, fax numbers, e-mail address)	
Attached are copies of the following original documents. <ol style="list-style-type: none"> 1. Articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2. 2. Authorization to represent the firm named above, in accordance with ITB 20.2. 3. In the case of government-owned entity, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB 4.5. 	

Form LIT - Pending Litigation

Each Bidder or member of a JV must fill in this form

Pending Litigation			
<input type="checkbox"/> <input type="checkbox"/> No pending litigation in accordance with Criteria 2.2.1 of Section III (Evaluation and Qualification Criteria)			
Pending litigation in accordance with Criteria 2.2.1 of Section III (Evaluation and Qualification Criteria)			
Year	Matter in Dispute	Value of Pending Claim in Rwandan Francs	Value of Pending Claim as a Percentage of Net Worth

Form FIN - 1: Financial Statement

Each Bidder or member of a JV must fill in this form

Financial Data for Previous 3 Years [US\$ Equivalent]		
Year 1:	Year 2:	Year 3:

Information from Balance Sheet

Total Assets			
Total Liabilities			
Net Worth			
Current Assets			
Current Liabilities			

Information from Income Statement

Total Revenues			
Profits Before Taxes			
Profits After Taxes			

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

Form FIN - 2: Average Annual Construction Turnover

Each Bidder or member of a JV must fill in this form

Annual Turnover Data for the Last 3 Years (Construction only)			
Year	Amount Currency	Exchange Rate	US\$ Equivalent
Average Annual Construction Turnover			

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

Form FIN – 3: Financial Resources

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

Financial Resources		
No.	Source of funding	Amount (US\$ equivalent)
1		
2		
3		

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

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

Current Contract Commitments					
No.	Name of Contract	Procuring entity's Contact Address, Tel, Fax	Value of Outstanding Work [Rwandan Francs]	Estimated Completion Date	Average Monthly Invoicing Over Last Six Months [_____Rwandan Francs/month)]
1					
2					
3					
4					
5					

Form EXP – 1: General Construction Experience

Each Bidder or member of a JV must fill in this form

General Construction Experience				
Starting Month Year	Ending Month Year	Years	Contract Identification and Name Name and Address of Procuring entity Brief Description of the Works Executed by the Bidder	Role of Bidder

Bid's attachments: Certificates of good completion

Form EXP – 2(a): Specific Construction Experience

Fill in one (1) form per contract.

Contract of Similar Size and Nature	
Contract No of	Contract Identification
Date of Award	Date of Completion
Role in Contract	Contractor Management Contractor Subcontractor
Total Contract Amount	Rwandan Francs
If partner in a JV or subcontractor, specify participation of total contract amount	Percent of Total Amount
Name of the Procuring entity Address Telephone/Fax Number E-mail	
Description of the similarity in accordance with Criteria 2.4.2(a) of Section III	

Bid's attachment: certificates of good completion

Form EXP - 2(b): Specific Construction Experience in Key Activities

Fill in one (1) form per contract

Contract with Similar Key Activities			
Contract No of	Contract Identification		
Date of Award	Date of Completion		
Role in Contract	<input type="checkbox"/> Contractor <input type="checkbox"/> Management Contractor <input type="checkbox"/> Subcontractor		
Total Contract Amount	Rwandan Francs		
If partner in a JV or subcontractor, specify participation of total contract amount	<table border="1" style="width: 100%;"> <tr> <td style="width: 50%;">Percent of Total</td> <td style="width: 50%;">Amount</td> </tr> </table>	Percent of Total	Amount
Percent of Total	Amount		
Name of the Procuring entity Address Telephone Number Fax Number E-mail			
Description of the key activities in accordance with Criteria 2.4.2(b) of Section III			

Bid's attachment: certificates of good completion

Form of Bid Security

(Guarantee)

Beneficiary: _____

Date: _____

BID GUARANTEE No.: _____

We have been informed that _____ (hereinafter called "the Bidder") has submitted to you its bid dated _____ (hereinafter called "the Bid") for the execution of _____ under Invitation for Bids No. _____ ("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 _____ hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ (_____) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder:

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the 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 execute the Contract Agreement or (ii) fails or refuses to furnish the performance security, in accordance with the ITB

This guarantee will expire: (a) if the Bidder is the successful Bidder, upon our receipt of copies of the contract signed by the Bidder and the performance security issued to you upon the instruction of the Bidder; and (b) if the Bidder is not the successful Bidder, upon the earlier of (i) our receipt of a copy your notification to the Bidder of the name of the successful Bidder; or (ii) thirty (30) days after the expiration of the Bidder's bid.

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

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

(ICC: The International Chamber of Commerce)

Date:.....

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

Position:.....

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

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

Section V. Eligible Countries

Eligibility for the Provision of Goods, Works and Services in

The Republic of Rwanda

1. As an exception to the Public Procurement Code, firms of any Country or goods manufactured in any Country may be excluded from competitive bidding in the Republic of Rwanda, if:

Para 1.8 (a) (i): as a matter of law or official regulation, the Republic of Rwanda prohibits commercial relations with that Country,

Para 1.8 (a) (ii): by an Act of Compliance with a Decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Republic of Rwanda prohibits any import of goods from that Country or any payments to persons or entities in that Country.

2. For the information of bidders, at the present time firms, goods and services from the following countries are excluded from this bidding:

(a) With reference to paragraph 1.8 (a) (i) of the Guidelines:

(b) With reference to paragraph 1.8 (a) (ii) of the Guidelines:

PART 2 –WORKS REQUIREMENTS

Section VI. Works Requirements

Contents

Scope of Works.....	92
Specifications.....	93
Drawings.....	94
Supplementary Information	95

Scope of Works

Specifications

Drawings

Supplementary Information

PART 3 – CONDITIONS OF CONTRACT AND CONTRACT FORMS



REPUBLIC OF RWANDA

Contract for Large 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 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”) and has tendered the works through an open international tender;

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 under the terms and conditions of payments to be made by the Procuring Entity to the Contractor as hereinafter mentioned, to execute and complete the works and remedy any defects therein in conformity in all respects with the provisions of the 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 _____

V. 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.

NOW THEREFORE THIS AGREEMENT IS ENTERED INTO AS FOLLOWS:

1. The object of the contract is the construction of as specified in this contract.

-
2. The following documents shall constitute the contract between the Procuring Entity and the Contractor, and each shall be read and construed as an integral part of the contract:
- a. **Contract Agreement,**
 - b. **Letter of Acceptance,**
 - c. **The Particular Conditions – Part A,**
 - d. **The Particular Conditions – Part B**
 - e. **General Conditions of Contract,**
 - f. **Minutes of negotiation**
 - g. **The Tender,**
 - h. **Specifications,**
 - i. **Drawings,**
 - j. **Bill of Quantities,²**
 - k. **Bill of prices, and**
 - l. **The Schedules,**
 - m. **The time programme and its amendments as agreed by the engineer and the contractor and approved by the Procuring entity,**
 - n. **Contractor’s Bid,**
 - o. **Any other document listed in the SCC as forming part of the Contract.**
3. This contract shall prevail over all other contract documents. **The documents forming the Contract are to be taken as mutually explanatory of one another.** In the event of any discrepancy or inconsistency within the contract documents, then the documents shall prevail in the order listed above
4. If an ambiguity or discrepancy is stated in the documents, the Engineer shall issue any necessary clarification or instruction.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of the Republic of RWANDA on the day, month and year indicated above.

Signed, Sealed, and Delivered on this (DATE)

² *In lump sum contracts, delete “Bill of Quantities” and replace with “Activity Schedule.”*

For and on behalf of the Procuring Entity

For and on behalf of the Contractor

Signature _____

Signature _____

Names : _____

Names : _____

Title: _____

Title: _____

Section VII. General Conditions (GC)

1.	General Provisions	109
1.1	Object of the contract.....	109
1.2	Definitions.....	113
1.3	Communications	114
1.4	Law and Language.....	115
1.5	Contract Agreement	115
1.6	Assignment	115
1.7	Care and Supply of Documents	115
1.8	Delayed Drawings or Instructions	115
1.9	Procuring entity Use of Contractor’s Documents.....	116
1.10	Contractor’s Use of Procuring entity Documents.....	117
1.11	Confidential Details	117
1.12	Compliance with Laws	117
1.13	Joint and Several Liability	118
1.14	Inspections and Audit by the funding entity.....	118
1.15	Contract Amendment.....	118
1.16	Entire Agreement.....	119
1.17	No Waiver.....	119
1.18	Severability.....	119
1.19	Good Faith.....	119
2	The Procuring entity.....	119
2.1	Right of Access to the Site.....	119
2.2	Permits, Licences or Approvals	120
2.3	Procuring entity Personnel.....	120
2.4	Procuring entity Financial Arrangements	121
2.5	Procuring entity Claims	121
3	The Engineer	121
3.1	Engineer’s Duties and Authority	121
3.2	Delegation by the Engineer.....	123
3.3	Instructions of the Engineer	123
3.4	Replacement of the Engineer	124
3.5	Determinations.....	124
4	The Contractor.....	125
4.1	Contractor’s General Obligations	125
4.2	Performance Security.....	126
4.3	Contractor’s Representative.....	127
4.4	Subcontractors.....	127
4.5	Assignment of Benefit of Subcontract.....	128

4.6	Co-operation	128
4.7	Setting Out	129
4.8	Safety Procedures.....	129
4.9	Quality Assurance.....	130
4.10	Site Data.....	130
4.11	Sufficiency of the Accepted Contract Amount.....	131
4.12	Unforeseeable Physical Conditions	131
4.13	Rights of Way and Facilities.....	132
4.14	Avoidance of Interference.....	132
4.15	Access Route.....	132
4.16	Transport of Goods	133
4.17	Contractors Equipment.....	133
4.18	Protection of the Environment.....	133
4.19	Electricity, Water and Gas	134
4.20	Procuring Entity Equipment and Free-Issue Materials.....	134
4.21	Progress Reports.....	136
4.22	Security of the Site.....	137
4.23	Contractor's Operations on Site.....	137
4.24	Fossils	137
5	Nominated Subcontractors	138
5.1	Definition of "nominated Subcontractor"	138
5.2	Objection to Nomination.....	138
5.3	Payments to nominated Subcontractors	138
5.4	Evidence of Payments.....	139
6.	Staff and Labour	139
6.1	Engagement of Staff and Labour	139
6.2	Rates of Wages and Conditions of Labour	139
6.3	Persons in the Service of Procuring entity	140
6.4	Labour Laws	140
6.5	Working Hours.....	140
6.6	Facilities for Staff and Labour	140
6.7	Health and Safety	140
6.8	Contractor's Superintendence.....	141
6.9	Contractor's Personnel.....	141
6.10	Records of Contractor's Personnel and Equipment.....	142
6.11	Disorderly Conduct.....	142
6.12	Foreign Personnel	142
6.13	Supply of Foodstuffs.....	142
6.14	Supply of Water	142
6.15	Measures against Insect and Pest Nuisance	Error! Bookmark not defined.
6.16	Alcoholic Liquor or Drugs.....	142
6.17	Arms and Ammunition	142
6.18	Festivals and Religious Customs	143
6.19	Funeral Arrangements.....	143
6.20	Prohibition of Forced or Compulsory Labour	143

6.21	Prohibition of Harmful Child Labour	143
6.22	Employment Records of Workers.....	143
7.	Plant, Materials and Workmanship.....	143
7.1	Manner of Execution.....	143
7.2	Samples	143
7.3	Inspection.....	144
7.4	Testing.....	144
7.5	Rejection	145
7.6	Remedial Work.....	145
7.7	Ownership of Plant and Materials.....	146
7.8	Royalties	146
8.	Commencement, Delays and Suspension.....	146
8.1	Commencement of Works	146
8.2	Time for Completion.....	147
8.3	Programme.....	147
8.4	Extension of Time for Completion	148
8.5	Delays Caused by Authorities.....	148
8.6	Rate of Progress	149
8.7	Delay Damages	149
8.8	Suspension of Work.....	150
8.9	Consequences of Suspension	150
8.10	Payment for Plant and Materials in Event of Suspension.....	150
8.11	Prolonged Suspension.....	151
8.12	Resumption of Work.....	151
9.	Tests on Completion	151
9.1	Contractor's Obligations.....	151
9.2	Delayed Tests.....	151
9.3	Retesting	152
9.4	Failure to Pass Tests on Completion.....	152
10.	Procuring entity's Taking Over.....	152
10.1	Taking Over of the Works and Sections	152
10.2	Taking Over of Parts of the Works	153
10.3	Interference with Tests on Completion.....	154
11.	Defects Liability	154
11.1	Completion of Outstanding Work and Remedying Defects	154
11.2	Cost of Remedying Defects	155
11.3	Extension of Defects Notification Period	155
11.4	Failure to Remedy Defects.....	155
11.5	Removal of Defective Work	156
11.6	Further Tests	156
11.7	Right of Access	156
11.8	Contractor to Search	156
11.9	Performance Certificate	157
11.10	Unfulfilled Obligations	157

11.11	Clearance of Site	157
12.	Measurement and Evaluation	157
12.1	Works to be Measured	157
12.2	Method of Measurement	158
12.3	Evaluation	158
12.4	Omissions.....	159
13.	Variations and Adjustments	159
13.1	Right to Vary.....	159
13.2	Value Engineering	160
13.3	Variation Procedure	161
13.4	Payment in Applicable Currencies.....	161
13.5	Provisional Sums	161
13.6	Day work.....	162
13.7	Adjustments for Changes in Legislation.....	162
13.8	Adjustments for Changes in Cost	163
14.	Contract Price and Payment.....	164
14.1	The Contract Price	164
14.2	Advance Payment	165
14.3	Application for Interim Payment Certificates	166
14.4	Schedule of Payments	167
14.5	Plant and Materials intended for the Works	167
14.6	Issue of Interim Payment Certificates	168
14.7	Payment.....	169
14.8	Delayed Payment	170
14.9	Payment of Retention Money	170
14.10	Statement at Completion.....	171
14.11	Application for Final Payment Certificate	171
14.12	Discharge	172
14.13	Issue of Final Payment Certificate	172
14.14	Cessation of Procuring entity's Liability	172
14.15	Currencies of Payment.....	173
15.	Termination by Procuring entity.....	173
15.1	Notice to Correct.....	173
15.2	Termination by Procuring entity.....	173
15.3	Valuation at Date of Termination	175
15.4	Payment after Termination	175
15.5	Procuring entity Entitlement to Termination for Convenience.....	175
15.6	Corrupt or Fraudulent Practices	176
16.	Suspension and Termination by Contractor	177
16.1	Contractor's Entitlement to Suspend Work	177
16.2	Termination by Contractor.....	177
16.3	Cessation of Work and Removal of Contractor's Equipment	178
16.4	Payment on Termination.....	178

17.	Risk and Responsibility	179
17.1	Indemnities.....	179
17.2	Contractor's Care of the Works	179
17.3	Procuring entity Risks.....	180
17.4	Consequences of Procuring entity Risks.....	180
17.5	Intellectual and Industrial Property Rights	181
17.6	Limitation of Liability.....	182
17.7	Use of Procuring entity Accomodation/Facilities.....	182
18.	Insurance	182
18.1	General Requirements for Insurances	182
18.2	Insurance for Works and Contractor's Equipment	184
18.3	Insurance against Injury to Persons and Damage to Property	185
18.4	Insurance for Contractor's Personnel.....	186
19.	Force Majeure	186
19.1	Definition of Force Majeure	186
19.3	Duty to Minimise Delay.....	187
19.4	Consequences of Force Majeure	187
19.5	Force Majeure Affecting Subcontractor	188
19.6	Optional Termination, Payment and Release.....	188
19.7	Release from Performance	189
20.	Claims, Disputes and Arbitration.....	189
20.1	Contractor's Claims	189
20.2	Amicable Settlement.....	190
20.3	Adjudication.....	191
20.4	Litigation or Arbitration.....	191
20.5	Failure to Comply With The Adjudicators Decision.....	191

Section VII. General Conditions (GC)

General Conditions

1. General Provisions

1.1 Object of the contract

The object of this contract is the construction of
.....as specified in this contract

1.2 Definitions

In the Conditions of Contract (“these Conditions”), which include Particular Conditions, Parts A and B, and these General Conditions, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

1.2.1 The Contract

1.2.1.1 “Contract” means the Contract Agreement, the Letter of Acceptance, the Letter of Tender, these Conditions, the Specification, the Drawings, the Schedules, and the further documents (if any) which are listed in the Contract Agreement or in the Letter of Acceptance.

1.2.1.2 “Contract Agreement” means the contract agreement referred to in Sub-Clause 1.6 [Contract Agreement].

1.2.1.3 “Letter of Acceptance” means the letter of formal acceptance, signed by the Procuring entity, of the Letter of Tender, including any annexed memoranda comprising agreements between and signed by both Parties. If there is no such letter of acceptance, the expression “Letter of Acceptance” means the Contract Agreement and the date of issuing or receiving the Letter of Acceptance means the date of signing the Contract Agreement.

1.2.1.4 “Letter of Tender” means the document entitled letter of tender or letter of bid, which was completed by the Contractor and includes the signed offer to the Procuring entity for the Works.

1.2.1.5 “Specification” means the document entitled specification, as included in the Contract, and any additions and modifications to the specification in accordance with the Contract. Such document specifies the Works.

1.2.1.6 “Drawings” means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Procuring entity in accordance with the Contract.

1.2.1.7 “Schedules” means the document(s) entitled schedules, completed by the Contractor and submitted with the Letter of Tender, as included in the Contract. Such document may include the Bill of Quantities, data, lists, and schedules of rates and/or prices.

1.2.1.8 “Tender” means the Letter of Tender and all other documents which the Contractor submitted with the Letter of Tender, as included in the Contract.

1.2.1.9 “Bill of Quantities”, “Day work Schedule” and “Schedule of Payment Currencies” mean the documents so named (if any) which are comprised in the Schedules.

1.2.1.10 **“Contract Data” means the pages completed by the Procuring entity entitled contract data which constitute Part A of the Particular Conditions.**

1.2.2 Parties and Persons

1.2.2.1 “Party” means the Procuring entity or the Contractor, as the context requires.

1.2.2.2 “Procuring entity” means the person named as procuring entity in the Contract Data and the legal successors in title to this person.

1.2.2.3 “Contractor” means the person(s) named as contractor in the Letter of Tender accepted by the Procuring entity and the legal successors in title to this person(s).

1.2.2.4 “Engineer” means the person appointed by the Procuring entity to act as the Engineer for the purposes of the Contract and named in the Contract Data, or other person appointed from time to time by the Procuring entity and notified to the Contractor under Sub-Clause 3.4 [Replacement of the Engineer].

1.2.2.5 “Contractor’s Representative” means the person named by the Contractor in the Contract or appointed from time to time by the Contractor under Sub-Clause 4.3 [Contractor’s Representative], who acts on behalf of the Contractor.

1.2.2.6 “Procuring entity Personnel” means the Engineer, the assistants referred to in Sub-Clause 3.2 [Delegation by the Engineer] and all other staff, labour and other employees of the Engineer and of the Procuring entity; and any other personnel notified to the Contractor, by the Procuring entity or the Engineer, as Procuring entity Personnel.

1.2.2.7 “Contractor’s Personnel” means the Contractor’s Representative and all personnel whom the Contractor utilises on Site, who may include the staff, labour and other employees of the Contractor and of each Subcontractor; and any other personnel assisting the Contractor in the execution of the Works.

1.2.2.8 “Subcontractor” means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Works; and the legal successors in title to each of these persons.

1.2.2.9 “DB” means the person or three persons appointed under Sub-Clause 20.2 [Appointment of the Dispute Board] or Sub-Clause 20.3 [Failure to Agree on the Composition of the Dispute Board]

1.2.3 Dates, Tests, Periods and Completion

- 1.2.3.1 “Base Date” means the date 28 days prior to the latest date for submission of the Tender.
- 1.2.3.2 “Commencement Date” means the date notified under Sub-Clause 8.1 [Commencement of Works].
- 1.2.3.3 “Time for Completion” means the time for completing the Works or a Section (as the case may be) under Sub-Clause 8.2 [Time for Completion], as stated in the Contract Data (with any extension under Sub-Clause 8.4 [Extension of Time for Completion]), calculated from the Commencement Date.
- 1.2.3.4 “Tests on Completion” means the tests which are specified in the Contract or agreed by both Parties or instructed as a variation, and which are carried out under Clause 9 [Tests on Completion] before the Works or a Section (as the case may be) are taken over by the Procuring entity.
- 1.2.3.5 “Taking-Over Certificate” means a certificate issued under Clause 10 [Procuring entity’s Taking Over].
- 1.2.3.6 “Tests after Completion” means the tests (if any) which are specified in the Contract and which are carried out in accordance with the specifications after the Works or a Section (as the case may be) are taken over by the Procuring entity.
- 1.2.3.7 “Defects Notification Period” means the period for notifying defects in the Works or a Section (as the case may be) under Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects], which extends over twelve months except if otherwise stated in the Contract Data (with any extension under Sub-Clause 11.3 [Extension of Defects Notification Period]), calculated from the date on which the Works or Section is completed as certified under Sub-Clause 10.1 [Taking Over of the Works and Sections].
- 1.2.3.8 **“Performance Certificate” means the certificate issued under Sub-Clause 11.9 [Performance Certificate].**
- 1.2.3.9 “Day” means a calendar day, “month” means calendar month of 30 days and “year” means 365 days.

1.2.4 Money and Payments

- 1.2.4.1 “Accepted Contract Amount” means the total amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.
- 1.2.4.2 “Contract Price” means the price defined in Sub-Clause 14.1 [The Contract Price], and includes adjustments in accordance with the Contract.
- 1.2.4.3 “Cost” means all expenditure reasonably incurred (or to be incurred) by the Contractor, whether on or off the Site, including overhead and similar charges, but does not include profit.

- 1.2.4.4 “Final Payment Certificate” means the payment certificate issued under Sub-Clause 14.13 [Issue of Final Payment Certificate].
- 1.2.4.5 “Final Statement” means the statement defined in Sub-Clause 14.11 [Application for Final Payment Certificate].
- 1.2.4.6 “Foreign Currency” means a currency in which part (or all) of the Contract Price is payable, but not the Local Currency.
- 1.2.4.7 “Interim Payment Certificate” means a payment certificate issued under Clause 14 [Contract Price and Payment], other than the Final Payment Certificate.
- 1.2.4.8 “Local Currency” means the currency of the Country.
- 1.2.4.9 “Payment Certificate” means a payment certificate issued under Clause 14 [Contract Price and Payment].
- 1.2.4.10 “Provisional Sum” means a sum (if any) which is specified in the Contract as a provisional sum, for the execution of any part of the Works or for the supply of Plant, Materials or services under Sub-Clause 13.5 [Provisional Sums].
- 1.2.4.11 “Retention Money” means the accumulated retention moneys which the Procuring entity retains under Sub-Clause 14.3 [Application for Interim Payment Certificates] and pays under Sub-Clause 14.9 [Payment of Retention Money].

“Statement” means a statement submitted by the Contractor as part of an application, under Clause 14 [Contract Price and Payment], for a payment certificate.

1.2.5 Works and Goods

- 1.2.5.1 “Contractor’s Equipment” means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any defects. However, Contractor’s Equipment excludes Temporary Works, Procuring entity’s Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Permanent Works.
- 1.2.5.2 “Goods” means Contractor’s Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.
- 1.2.5.3 “Materials” means things of all kinds (other than Plant) intended to form or forming part of the Permanent Works, including the supply-only materials (if any) to be supplied by the Contractor under the Contract.
- 1.2.5.4 “Permanent Works” means the permanent works to be executed by the Contractor under the Contract.
- 1.2.5.5 “Plant” means the apparatus, machinery and other equipment intended to form or forming part of the Permanent Works, including vehicles purchased for the Procuring entity and relating to the construction or operation of the Works.

- 1.2.5.6 “Section” means a part of the Works specified in the Contract Data as a Section (if any).
- 1.2.5.7 “Temporary Works” means all temporary works of every kind (other than Contractor’s Equipment) required on Site for the execution and completion of the Permanent Works and the remedying of any defects.
- 1.2.5.8 **“Works” mean the Permanent Works and the Temporary Works, or either of them as appropriate.**

1.2.6 Other Definitions

- 1.2.6.1 “Contractor’s Documents” means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract.
- 1.2.6.2 “Country” means the country in which the Site (or most of it) is located, where the Permanent Works are to be executed.
- 1.2.6.3 “Procuring entity’s Equipment” means the apparatus, machinery and vehicles (if any) made available by the Procuring entity for the use of the Contractor in the execution of the Works, as stated in the Specification; but does not include Plant which has not been taken over by the Procuring entity.
- 1.2.6.4 “Force Majeure” is defined in Clause 19 [Force Majeure].
- 1.2.6.5 “Laws” means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.
- 1.2.6.6 “Public Procurement Law” means the Law N°12/2007 of 27/03/2007 on public procurement as modified and completed to date.
- 1.2.6.6 “Performance Security” means the security (or securities, if any) under Sub-Clause 4.2 [Performance Security].
- 1.2.6.7 “Site” means the places where the Permanent Works are to be executed including storage and working areas and to which Plant and Materials are to be delivered, and any other places as may be specified in the Contract as forming part of the Site.
- 1.2.6.8 “Unforeseeable” means not reasonably foreseeable by an experienced contractor by the Base Date.
- 1.2.6.9 **“Variation” means any change to the Works, which is instructed or approved as a variation under Clause 13 [Variations and Adjustments].**

1.3 Interpretation

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.

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).

In the Contract, except where the context requires otherwise:

- words indicating one gender include all genders;
- words indicating the singular also include the plural and words indicating the plural also include the singular;
- provisions including the word “agree,” “agreed” or “agreement” require the agreement to be
- record in writing;
- “written” or “in writing” means hand-written, type-written, printed or electronically made,
- and resulting in a permanent record; and
- the word “tender” is synonymous with “bid”, and “tenderer” with “bidder” and the words
- “tender documents” with “bidding documents”.

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

In these Conditions, provisions including the expression "Cost plus profit" require this profit to be one-twentieth (1/20) of this Cost unless otherwise indicated in the Contract Data.

1.4 Communications

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:

- in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted
- using any of the agreed systems of electronic transmission as stated in the Contract Data and;
- delivered, sent or transmitted to the address for the recipient’s communications as stated in the Contract Data. However:
 - i. if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
 - ii. if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Engineer, a copy shall be sent to the Engineer or the other Party, as the case may be.

1.5 Law and Language

The Contract shall be governed by the law in force in the Republic of Rwanda.

The ruling language of the Contract shall be that stated in the Contract Data.

The language for communications shall be that stated in the Contract Data. If no language is stated in, the language of communications shall be the ruling language of the Contract.

1.6 Contract Agreement

For national tenders, the Parties shall enter into a Contract Agreement within fifteen (15) days after the Contractor receives the Letter of Acceptance, while for international tenders they shall enter into agreement within twenty one (21) days after the contractor receives the letter of acceptance. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Procuring entity.

1.7 Assignment

Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party:

may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party, and

may, as security in favour of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.

1.8 Care and Supply of Documents

The Specification and Drawings shall be in the custody and care of the Procuring entity. Unless otherwise stated in the Contract, two copies of the Contract and of each subsequent Drawing shall be supplied to the Contractor, who may make or request further copies at the cost of the Contractor.

Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until taken over by the Procuring entity. Unless otherwise stated in the Contract, the Contractor shall supply to the Engineer six copies of each of the Contractor's Documents.

The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Specification, the Contractor's Documents (if any), the Drawings and Variations and other communications given under the Contract. The Procuring entity's Personnel shall have the right of access to all these documents at all reasonable times.

If a Party becomes aware of an error or defect in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.

1.9 Delayed Drawings or Instructions

The Contractor shall give notice to the Engineer whenever the Works are likely to be delayed or disrupted if any necessary drawing or instruction is not issued to the Contractor within a particular time, which shall be reasonable. The notice shall include details of the necessary drawing or instruction, details of why and by when it should be issued, and the nature and amount of the delay or disruption likely to be suffered if it is late.

If the Contractor suffers delay and/or incurs Cost as a result of a failure of the Engineer to issue the notified drawing or instruction within a time which is reasonable and is specified in the notice with supporting details, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and

payment of any such Cost, which shall be included in the Contract Price.

After receiving this further notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

However, if and to the extent that the Engineer's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time, Cost.

1.10 Procuring entity's Use of Contractor's Documents

As between the Parties, the Contractor shall retain the copyright and other intellectual property rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor.

The Contractor shall be deemed (by signing the Contract) to give to the Procuring entity a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This licence shall:

apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,

entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and

in the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor.

The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Procuring entity for purposes other than those permitted under this Sub-Clause.

1.11 Contractor's Use of Procuring entity's Documents

As between the Parties, the Procuring entity shall retain the copyright and other intellectual property rights in the Specification, the Drawings and other documents made by (or on behalf of) the Procuring entity. The Contractor may, at his cost, copy, use, and obtain communication of these documents for the purposes of the Contract. They shall not, without the Procuring entity's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.

1.12 Confidential Details

1.12.1 The Contractor's and the Procuring entity's Personnel shall disclose between them all such confidential and other information as may be reasonably required in order to verify the Contractor's compliance with the Contract and allow its proper implementation.

1.12.2 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.

1.12.3 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.

1.12.4 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.**

1.12.5 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.

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

1.13 Compliance with Laws

The Contractor shall, in performing the Contract, comply with applicable Laws. Unless otherwise stated in the Particular Conditions:

- (a) the Procuring entity shall have obtained (or shall obtain) the planning, zoning, building permit or similar permission for the Permanent Works, and any other permissions described in the Specification as having been (or to be) obtained by the Procuring entity; and the Procuring entity shall indemnify and hold the Contractor harmless against and from the consequences of any failure to do so; and
- (b) the Contractor shall give all notices, pay all taxes, duties and fees, and obtain all permits, licences and approvals, as required by the Laws in relation to the execution and completion of the Works and the remedying of any defects; and the Contractor shall indemnify and hold the Procuring entity harmless against and from the consequences of any failure to do so, unless the Contractor is impeded to accomplish these actions and shows evidence of its diligence.

1.14 Joint and Several Liability

If the Contractor constitutes (under applicable Laws) a joint venture or other unincorporated grouping of two or more persons:

- (a) these persons shall be deemed to be jointly and severally liable to the Procuring entity for the performance of the Contract;
- (b) these persons shall notify the Procuring entity of their leader who shall have authority to bind the Contractor and each of these persons; and
- (c) the Contractor shall not alter its composition or legal status without the prior consent of the Procuring entity.

1.15 Inspection and Audit by the funding entity

The Contractor shall permit the funding entity and/or persons appointed by the funding entity to inspect the Site and/or the accounts and records of the Contractor and its subcontractors relating to the performance of the Contract, and to have such accounts and records audited by auditors appointed by the funding entity if required by the funding entity. The Contractor's attention is drawn to Sub-Clause 15.6 [Corrupt or Fraudulent Practices] which provides, inter alia, that acts intended to materially impede the exercise of the funding entity inspection and audit rights provided for under Sub-Clause 1.15 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility).

1.16 Contract Amendment

1.16.1 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.

1.16.2 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.

1.17 Entire Agreement

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.

1.18 No waiver

1.18.1 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.

1.18.2 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.

1.19 Severability

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

1.20 Good Faith

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

The Procuring entity

2.1 Right of Access to the Site

The Procuring entity shall give the Contractor right of access to, and possession of, all parts of the Site within the time (or times) stated in the Contract Data. The right and possession may not be exclusive to the Contractor. If, under the Contract, the Procuring entity is required to give (to the Contractor) possession of any foundation, structure, plant or means of access, the Procuring entity shall do so in the time and manner stated in the Specification. However, the Procuring entity may withhold any such right or possession until the Performance Security has been received.

If no such time is stated in the Contract Data, the Procuring entity shall give the Contractor right of access to, and possession of, the Site within such times as required to enable the Contractor to proceed without disruption in accordance with the programme submitted under Sub-Clause 8.3 [Programme].

If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Procuring entity to give any such right or possession within such time, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

However, if and to the extent that the Procuring entity's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time, Cost.

2.2. Permits, Licences or Approvals

The Procuring entity shall provide, at the request of the Contractor, such reasonable assistance as to allow the Contractor to obtain properly:

- (a) copies of the Laws which are relevant to the Contract but are not readily available, and
- (b) any permits, licences or approvals required by the Laws of the Republic of Rwanda:
 - (i) which the Contractor is required to obtain under Sub-Clause 1.13 [Compliance with Laws],
 - (ii) for the delivery of Goods, including clearance through customs, and
 - (iii) for the export of Contractor's Equipment when it is removed from the Site.

However, the Contractor is not relieved from his obligation to comply with any laws which are relevant to the contract or to obtain any permits, licences or approvals required by the laws of the Republic of Rwanda, unless he proves that failure or delays in obtaining those laws, licences, permits or approvals is a result of the Procuring Entity negligence.

2.3 Procuring entity's Personnel

2.3.1 Without prejudice to Clause 1.3 [Communications], the Procuring Entity appoints a project Manager in the person indicated in the Contract data. The Project Manager shall work closely with the Engineer and the Contractor in order to carry out in a proper manner the obligations of this contract. He/she shall be responsible for:

- obtaining or cause to obtain any documents, approvals or drawings under the responsibility of the Procurement;

- taking or cause to be taken any decision under the responsibility of the Procuring Entity.

2.3.2 The Procuring entity shall be responsible for ensuring that the Procuring entity Personnel and the Procuring entity other contractors on the Site:

- (a) co-operate with the Contractor's efforts under Sub-Clause 4.6 [Co-operation], and
- (b) take actions similar to those which the Contractor is required to take under subparagraphs (a), (b) and (c) of Sub-Clause 4.8 [Safety Procedures] and under Sub-Clause 4.18 [Protection of the Environment].

2.4 Procuring entity's Financial Arrangements

The Procuring entity shall submit, before the Commencement Date and thereafter within 28 days after receiving any request from the Contractor, reasonable evidence that financial arrangements have been made and are being maintained which will enable the Procuring entity to pay the Contract Price punctually (as estimated at that time) in accordance with Clause 14 [Contract Price and Payment]. Before the Procuring entity makes any material change to his financial arrangements, the Procuring entity shall give notice to the Contractor with detailed particulars.

2.5 Procuring entity's Claims

If the Procuring entity considers itself to be entitled to any payment under any Clause of these Conditions or otherwise in connection with the Contract, and/or to any extension of the Defects Notification Period, the Procuring entity or the Engineer shall give notice and particulars to the Contractor.

The notice shall be given as soon as practicable and no later than 28 days after the Procuring entity became aware, or should have become aware, of the event or circumstances giving rise to the claim. A notice relating to any extension of the Defects Notification Period shall be given before the expiry of such period.

The particulars shall specify the Clause or other basis of the claim, and shall include substantiation of the amount and/or extension to which the Procuring entity considers itself to be entitled in connection with the Contract. The Engineer shall then proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the amount (if any) which the Procuring entity is entitled to be paid by the Contractor, and/or (ii) the extension (if any) of the Defects Notification Period in accordance with Sub-Clause 11.3 [Extension of Defects Notification Period].

This amount may be included as a deduction in the Contract Price and Payment Certificates. The Procuring entity shall only be entitled to set off against or make any deduction from an amount certified in a Payment Certificate, or to otherwise claim against the Contractor, in accordance with this Sub-Clause.

3. The Engineer

3.1 Engineer's Duties and Authority

The Procuring entity shall appoint the Engineer who shall carry out the duties assigned to him in the Contract. The Engineer's staff shall include suitably qualified engineers and other professionals who are competent to carry out these duties.

The Engineer shall have no authority to amend the Contract.

The Engineer may exercise the authority attributable to the Engineer as specified in or necessarily to be implied from the Contract. If the Engineer is required to obtain the approval of the Procuring entity before exercising a specified authority, the requirements shall be as stated in the Particular Conditions. The Procuring entity shall promptly inform the Contractor of any change to the authority attributed to the Engineer.

However, whenever the Engineer exercises a specified authority for which the Procuring entity's approval is required, then (for the purposes of the Contract) the Procuring entity shall be deemed to have given approval.

Except as otherwise stated in these Conditions:

- (a) whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Engineer shall be deemed to act for the Procuring entity;
- (b) the Engineer has no authority to relieve either Party of any duties, obligations or responsibilities under the Contract; and
- (c) any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Engineer (including absence of disapproval) shall not relieve the Contractor from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances.
- (d) Any act by the Engineer in response to a Contractor's request except otherwise expressly specified shall be notified in writing to the Contractor within 28 days of receipt.

The following provisions shall apply:

The Engineer shall obtain the specific approval of the Procuring entity before taking action under the following Sub-Clauses of these Conditions:

- (a) Sub-Clause 4.12 [Unforeseeable Physical Conditions]: Agreeing or determining an extension of time and/or additional cost.
- (b) Sub-Clause 13.1 [Right to Vary]: Instructing a Variation, except;
 - (i) in an emergency situation as determined by the Engineer, or
 - (ii) if such a Variation would increase the Accepted Contract Amount by less than the percentage specified in the Contract Data.

- (c) Sub-Clause 13.3 [Variation Procedure]: Approving a proposal for Variation submitted by the Contractor in accordance with Sub Clause 13.1 [Right to Vary] or 13.2 [Value Engineering].
- (d) Sub-Clause 13.4 payment in Applicable Currencies]: Specifying the amount payable in each of the applicable currencies

Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties and responsibility under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of the Procuring entity, with any such instruction of the Engineer. The Engineer shall determine an addition to the Contract Price, in respect of such instruction, in accordance with Clause 13 [Variations and Adjustments] and shall notify the Contractor accordingly, with a copy to the Procuring entity.

3.2 Delegation by the Engineer

The Engineer may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. These assistants may include a resident engineer, and/or independent inspectors appointed to inspect and/or test items of Plant and/or Materials. The assignment, delegation or revocation shall be in writing and shall not take effect until copies have been received by both Parties.

However, unless otherwise agreed by both Parties, the Engineer shall not delegate the authority to determine any matter in accordance with Sub-Clause 3.5 [Determinations].

Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority, and who are fluent in the language for communications defined in Sub-Clause 1.4 [Law and Language].

Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the Contractor to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by an assistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the Engineer. However:

- (a) any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Engineer to reject the work, Plant or Materials;
- (b) if the Contractor questions any determination or instruction of an assistant, the Contractor may refer the matter to the Engineer, who shall promptly confirm, reverse or vary the determination or instruction.

3.3 Instructions of the Engineer

The Engineer may issue to the Contractor (at any time) instructions and additional or modified Drawings which may be necessary for the execution of the Works and the remedying of any defects, all in accordance with the Contract. The Contractor shall only take instructions from the Engineer, or from an assistant to whom the appropriate authority has been delegated under this Clause. If an instruction constitutes a Variation, Clause 13 [Variations and Adjustments] shall apply.

The Contractor shall comply with the instructions given by the Engineer or delegated assistant, on any matter related to the Contract. Whenever practicable, their instructions shall be given in writing. If the Engineer or a delegated assistant:

- (a) gives an oral instruction,
- (b) receives a written confirmation of the instruction, from (or on behalf of) the Contractor, within two working days after giving the instruction, and
- (c) does not reply by issuing a written rejection and/or instruction within two working days after receiving the confirmation,

then the confirmation shall constitute the written instruction of the Engineer or delegated assistant (as the case may be).

If the contractor believes that the instructions he received are contrary to the provisions of the contract, he shall be required to present his grievance in writing to the procuring entity within fifteen (15) days after receiving such instructions.

3.4 Replacement of the Engineer

If the Procuring entity intends to replace the Engineer, the Procuring entity shall, not less than 21 days before the intended date of replacement, give notice to the Contractor of the name, address and relevant experience of the intended replacement Engineer. If the Contractor considers the intended replacement Engineer to be unsuitable, he has the right to raise objection against him by notice to the Procuring entity, with supporting particulars, and the Procuring entity shall give full and fair consideration to this objection.

3.5 Determinations

Whenever these Conditions provide that the Engineer shall proceed in accordance with this Sub-Clause 3.5 to agree or determine any matter, the Engineer shall consult with each Party in an endeavour to reach agreement. If agreement is not achieved, the Engineer shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.

The Engineer shall give notice to both Parties of each agreement or determination, with supporting particulars within 28 days from the receipt of the corresponding claim or request except when otherwise specified. Each Party shall give effect to each agreement or determination unless and until revised under Clause 20 [Claims, Disputes and Arbitration].

4. The Contractor

4.1 Contractor's General Obligations

The Contractor shall design (to the extent specified in the Contract), execute and complete the Works in accordance with the Contract and with the Engineer's instructions, and shall remedy any defects in the Works.

The Contractor shall provide the Plant and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects.

The Contractor shall be responsible for the adequacy, stability and safety of all Site operations and of all methods of construction. Except to the extent specified in the Contract, the Contractor (i) shall be responsible for all Contractors' Documents, Temporary Works, and such design of each item of Plant and Materials as is required for the item to be in accordance with the Contract, and (ii) shall not otherwise be responsible for the design or specification of the Permanent Works.

The Contractor shall, whenever required by the Engineer, submit details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Engineer.

If the Contract specifies that the Contractor shall design any part of the Permanent Works, then unless otherwise stated in the Particular Conditions:

- (a) the Contractor shall submit to the Engineer the Contractor's Documents for this part in accordance with the procedures specified in the Contract;
- (b) these Contractor's Documents shall be in accordance with the Specification and Drawings, shall be written in the language for communications defined in Sub-Clause 1.4 [Law and Language], and shall include additional information required by the Engineer to add to the Drawings for co-ordination of each Party's designs;
- (c) the Contractor shall be responsible for this part and it shall, when the Works are completed, be fit for such purposes for which the part is intended as are specified in the Contract; and
- (d) prior to the commencement of the Tests on Completion, the Contractor shall submit to the Engineer the "as-built" documents and, if applicable, operation and maintenance manuals in accordance with the Specification and in sufficient detail for the Procuring entity to operate, maintain, dismantle, reassemble, adjust and repair this part of the Works. Such part shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections] until these documents and manuals have been submitted to the Engineer.

4.2 Performance Security

The Contractor shall obtain (at his cost) a Performance Security for proper performance, in the amount and currencies stated in the Contract Data. If an amount is not stated in the Contract Data, then the performance security shall be deemed to be 10% of the total contract price.

In case of a national contract, the Contractor shall deliver the Performance Security to the Procuring entity within fifteen (15) days, within twenty one (21) days in case of international contract, after receiving the Letter of Acceptance, and shall send a copy to the Engineer. The Performance Security shall be issued in a form of a bank guarantee issued by a recognised bank of the first order acceptable to the Procuring Entity from within the country (or other jurisdiction) approved by the Procuring entity, and shall be in the form annexed to the Particular Conditions or in another form approved by the Procuring entity.

The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has fully executed and completed the Works and remedied any defects. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Performance Certificate by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Works have been fully completed and any defects have been remedied.

The Procuring entity shall not make a claim under the Performance Security, except for amounts to which the Procuring entity is entitled under the Contract.

The Procuring entity shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent to which the Procuring entity was not entitled to make the claim.

The proceeds of the Performance Security shall be payable to the Client as compensation for any loss resulting from the Supplier's failure to complete its obligations under the contract;

The Procuring entity shall return the Performance Security to the Contractor in two phases: the first half shall be returned within thirty (30) days following the provisional acceptance of works, and the second half shall be returned within thirty (30) days following the final acceptance of works.

If the stated manner is not respected, the performance security shall bear interests equivalent to one thousandth (1‰) of the total amount of the security for everyday of delay.

Without limitation to the provisions of the rest of this Sub-Clause, whenever the Engineer determines an addition or a reduction to the Contract Price as a result of a change in cost and/or legislation or as a result of a Variation amounting to more than 25 percent of the portion of the Contract Price payable in a specific currency, the Contractor shall at the Engineer's request promptly increase, or may decrease, as the case may be, the value of the Performance Security in that currency by an equal percentage.

In any case, no payment shall be made to the Contractor if he fails to extend the Performance Security in case of extension of time of the contract or increase in the contract price. The Procuring Entity shall be entitled to retain from the Contractor's invoices not yet paid an amount equivalent to the value of the Performance which has expired until its effective extension to the new contract duration or an amount equivalent the value of increase of the contract price which is not covered under the existing Performance Security until the effective increase of the Performance Security.

4.3 Contractor's Representative

The Contractor shall appoint the Contractor's Representative and shall give him all authority necessary to act on the Contractor's behalf under the Contract.

Unless the Contractor's Representative is named in the Contract, the Contractor shall, prior to the Commencement Date, submit to the Engineer for consent the name and particulars of the person the Contractor proposes to appoint as Contractor's Representative. If consent is withheld or subsequently revoked in terms of Sub-Clause 6.9 [Contractor's Personnel], or if the appointed person fails to act as Contractor's Representative, the Contractor shall similarly submit the name and particulars of another suitable person for such appointment.

The Contractor shall not, without the prior consent of the Engineer, revoke the appointment of the Contractor's Representative or appoint a replacement.

The whole time of the Contractor's Representative shall be given to directing the Contractor's performance of the Contract. If the Contractor's Representative is to be temporarily absent from the Site during the execution of the Works, a suitable replacement person shall be appointed, subject to the Engineer's prior consent, and the Engineer shall be notified accordingly.

The Contractor's Representative shall, on behalf of the Contractor, receive instructions under Sub-Clause 3.3 [Instructions of the Engineer].

The Contractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Engineer has received prior notice signed by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

The Contractor's Representative shall be fluent in the language for communications defined in Sub-Clause 1.4 [Law and Language]. If the Contractor's Representative's delegates are not fluent in the said language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Engineer.

4.4 Subcontractors

The Contractor shall not subcontract the whole of the Works.

The subcontract shall neither exceed 20% of the value of the main contract nor be awarded, in any way, to a person or company/firm that has been suspended or debarred from participation in public procurement in accordance with the Law on public procurement as modified and completed to date.

The Contractor shall be responsible for the acts or defaults of any Subcontractor, his/her agents or employees, as if they were the acts or defaults of the Contractor. Unless otherwise stated in the Particular Conditions:

- (a) the Contractor shall not be required to obtain consent to suppliers solely of Materials, or to a subcontract for which the Subcontractor is named in the Contract;
- (b) the prior consent of the Engineer shall be obtained to other proposed Subcontractors;
- (c) the Contractor shall give the Engineer not less than 28 days' notice of the intended date of the commencement of each Subcontractor's work, and of the commencement of such work on the Site; and
- (d) each subcontract shall include provisions which would entitle the Procuring entity to require the subcontract to be assigned to the Procuring entity under Sub-Clause 4.5 [Assignment of Benefit of Subcontract] (if or when applicable) or in the event of termination under Sub-Clause 15.2 [Termination by Procuring entity].

The Contractor shall ensure that the requirements imposed on the Contractor by Sub-Clause 1.12 [Confidential Details] apply equally to each Subcontractor.

Where practicable, the Contractor shall give fair and reasonable opportunity for contractors from the Republic of Rwanda to be appointed as Subcontractors.

4.5 Assignment of Benefit of Subcontract

If a Subcontractor's obligations extend beyond the expiry date of the relevant Defects Notification Period and the Engineer, prior to this date, instructs the Contractor to assign the benefit of such obligations to the Procuring entity, then the Contractor shall do so. The contractor shall be the only one liable even if the obligations of the subcontractor has been agreed by the procuring entity.

4.6 Co-operation

The Contractor shall, as specified in the Contract or as instructed by the Engineer, allow appropriate opportunities for carrying out work to:

- (a) the Procuring entity's Personnel,
- (b) any other contractors employed by the Procuring entity, and
- (c) the personnel of any legally constituted public authorities,

who may be employed in the execution on or near the Site of any work not included in the Contract.

Any such instruction shall constitute a Variation if and to the extent that it causes the Contractor to suffer delays and/or to incur Unforeseeable Cost. Services for these personnel and other contractors may include the use of Contractor's Equipment, Temporary Works or access arrangements which are the responsibility of the Contractor.

If, under the Contract, the Procuring entity is required to give to the Contractor possession of any foundation, structure, plant or means of access in accordance with Contractor's Documents, the Contractor shall submit such documents to the Engineer in the time and manner stated in the Specification.

4.7 Setting Out

The Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Contract or notified by the Engineer. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.

The Procuring entity shall be responsible for any errors in these specified or notified items of reference, but the Contractor shall use reasonable efforts to verify their accuracy before they are used.

If the Contractor suffers delay and/or incurs Cost from executing work which was necessitated by an error in these items of reference, and an experienced contractor could not reasonably have discovered such error and avoided this delay and/or Cost, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost plus profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) whether and (if so) to what extent the error could not reasonably have been discovered, and (ii) the matters described in sub-paragraphs (a) and (b) above related to this extent.

4.8 Safety Procedures

The Contractor shall:

- (a) comply with all applicable safety regulations,
- (b) take care for the safety of all persons entitled to be on the Site,
- (c) use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons,
- (d) provide fencing, lighting, guarding and watching of the Works until completion and taking over under Clause 10 [Procuring entity's Taking Over], and

- (e) provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.
- (f) ensure the security of the site at all times during the execution of the contract. However, if any people is involved in an accident or property is damaged due to factors resulting from project design or due to instructions imposed on the contractor by the procuring entity, the liability resulting from the accident or damage shall be borne by the procuring entity as long as such a problem was reported by the contractor in accordance with the provisions of the Law on public procurement as modified and completed to date.

4.9 Quality Assurance

The Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract. The Engineer shall be entitled to audit any aspect of the system.

Materials to be used by the contractor shall not be used without prior approval by the Engineer or any other appointed supervising official. The procuring entity may be used any means deemed to be useful to determine the quality and quantity of the materials.

Details of all procedures and compliance documents shall be submitted to the Engineer for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Engineer, evidence of the prior approval by the Contractor himself shall be apparent on the document itself.

Compliance with the quality assurance system shall not relieve the Contractor of any of his duties, obligations or responsibilities under the Contract.

4.10 Site Data

The Procuring entity shall have made available to the Contractor for his information, prior to the Base Date, all relevant data in the Procuring entity's possession on sub-surface and hydrological conditions at the Site, including environmental aspects. The Procuring entity shall similarly make available to the Contractor all such data which come into the Procuring entity's possession after the Base Date. The Contractor shall be responsible for interpreting all such data.

To the extent which was practicable (taking account of cost and time), the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Tender or Works. To the same extent, the Contractor shall be deemed to have inspected and examined the Site, its surroundings, the above data and other available information, and to have been satisfied before submitting the Tender as to all relevant matters, including (without limitation):

- (a) the form and nature of the Site, including sub-surface conditions,

- (b) the hydrological and climatic conditions,
- (c) the extent and nature of the work and Goods necessary for the execution and completion of the Works and the remedying of any defects,
- (d) the Laws, procedures and labour practices of the Republic of Rwanda, and
- (e) the Contractor's requirements for access, accommodation, facilities, personnel, power, transport, water and other services.

4.11 Sufficiency of the Accepted Contract Amount

The Contractor shall be deemed to:

- (a) have satisfied himself as to the correctness and sufficiency of the Accepted Contract Amount, and
- (b) have based the Accepted Contract Amount on the data, interpretations, necessary information, inspections, examinations and satisfaction as to all relevant matters referred to in Sub-Clause 4.10 [Site Data].

Unless otherwise stated in the Contract, the Accepted Contract Amount covers all the Contractor's obligations under the Contract (including those under Provisional Sums, if any) and all things necessary for the proper execution and completion of the Works and the remedying of any defects.

4.12 Unforeseeable Physical Conditions

In this Sub-Clause, "physical conditions" means natural physical conditions and man-made and other physical obstructions and pollutants, which the Contractor encounters at the Site when executing the Works, including sub-surface and hydrological conditions but excluding climatic conditions.

If the Contractor encounters adverse physical conditions which he considers to have been Unforeseeable, the Contractor shall give notice to the Engineer as soon as practicable.

This notice shall describe the physical conditions, so that they can be inspected by the Engineer, and shall set out the reasons why the Contractor considers them to be Unforeseeable. The Contractor shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions which the Engineer may give. If an instruction constitutes a Variation, Clause 13 [Variations and Adjustments] shall apply.

If and to the extent that the Contractor encounters physical conditions which are Unforeseeable, gives such a notice, and suffers delay and/or incurs Cost due to these conditions, the Contractor shall be entitled subject to notice under Sub-Clause 20.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost, which shall be included in the Contract Price.

Upon receiving such notice and inspecting and/or investigating these physical conditions, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) whether and (if so) to what extent these physical conditions were Unforeseeable, and (ii) the matters described in sub-paragraphs (a) and (b) above related to this extent.

However, before additional Cost is finally agreed or determined under sub-paragraph (ii), the Engineer may also review whether other physical conditions in similar parts of the Works (if any) were more favourable than could reasonably have been foreseen when the Contractor submitted the Tender. If and to the extent that these more favourable conditions were encountered, the Engineer may proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the reductions in Cost which were due to these conditions, which may be included (as deductions) in the Contract Price and Payment Certificates. However, the net effect of all adjustments under sub-paragraph (b) and all these reductions, for all the physical conditions encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price.

The Engineer shall take account of any evidence of the physical conditions foreseen by the Contractor when submitting the Tender, which shall be made available by the Contractor, but shall not be bound by the Contractor's interpretation of any such evidence.

4.13 Rights of Way and Facilities

Unless otherwise specified in the Contract the Procuring entity shall provide free of charge unrestricted access to and possession of the Site including special and/or temporary rights-of-way which are necessary for the Works. The Contractor shall obtain, at his risk and cost, any additional rights of way or facilities outside the Site which he may require for the purposes of the Works.

4.14 Avoidance of Interference

The Contractor shall not interfere unnecessarily or improperly with:

- (a) the convenience of the public, or
- (b) the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Procuring entity or of others.

The Contractor shall indemnify and hold the Procuring entity harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference.

4.15 Access Route

The Contractor shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site at Base Date. The Contractor shall use reasonable efforts to prevent

any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel. These efforts shall include the proper use of appropriate vehicles and routes.

Except as otherwise stated in these Conditions:

- (a) the Contractor shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes;
- (b) the Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant authorities for his use of routes, signs and directions;
- (c) the Procuring entity shall not be responsible for any claims which may arise from the use or otherwise of any access route;
- (d) the Procuring entity does not guarantee the suitability or availability of particular access routes; and
- (e) Costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor.

4.16 Transport of Goods

Unless otherwise stated in the Particular Conditions:

- (a) the Contractor shall give the Engineer not less than 21 days' notice of the date on which any Plant or a major item of other Goods will be delivered to the Site;
- (b) the Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works; and
- (c) the Contractor shall indemnify and hold the Procuring entity harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of Goods, and shall negotiate and pay all claims arising from their transport.

4.17 Contractor's Equipment

The Contractor shall be responsible for all Contractors' Equipment. When brought on to the Site, Contractor's Equipment shall be deemed to be exclusively intended for the execution of the Works. The Contractor shall not remove from the Site any major items of Contractor's Equipment without the consent of the Engineer. However, consent shall not be required for vehicles transporting Goods or Contractor's Personnel off Site.

4.18 Protection of the Environment

The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.

The Contractor shall ensure that emissions, surface discharges and effluent from the Contractor's activities shall not exceed the values stated in the Specification or prescribed by applicable Laws.

4.19 Electricity, Water and Gas

The Contractor shall, except as stated below, be responsible for the provision of all power, water and other services he may require for his construction activities and to the extent defined in the Specifications, for the tests.

The Contractor shall be entitled to use for the purposes of the Works such supplies of electricity, water, gas and other services as may be available on the Site and of which details and prices are given in the Specification. The Contractor shall, at his risk and cost, provide any apparatus necessary for his use of these services and for measuring the quantities consumed.

The quantities consumed and the amounts due (at these prices) for such services shall be agreed or determined by the Engineer in accordance with Sub-Clause 2.5 [Procuring entity's Claims] and Sub-Clause 3.5 [Determinations]. The Contractor shall pay these amounts to the Procuring entity.

4.20 Procuring entity Equipment and Free-Issue Materials

The Procuring entity shall make the Procuring entity's Equipment (if any) available for the use of the Contractor in the execution of the Works in accordance with the details, arrangements and prices stated in the Specification. Unless otherwise stated in the Specification:

- (a) the Procuring entity shall be responsible for the Procuring entity's Equipment, except that ???
- (b) the Contractor shall be responsible for each item of Procuring entity's Equipment whilst any of the Contractor's Personnel is operating it, driving it, directing it or in possession or control of it.

The appropriate quantities and the amounts due (at such stated prices) for the use of Procuring entity's Equipment shall be agreed or determined by the Engineer in accordance with Sub-Clause 2.5 [Procuring entity's Claims] and Sub-Clause 3.5 [Determinations]. The Contractor shall pay these amounts to the Procuring entity.

The Procuring entity shall supply, free of charge, the "free-issue materials" (if any) in accordance with the details stated in the Specification. The Procuring entity shall, at his risk and cost, provide these materials at the time and place specified in the Contract. The Contractor shall then visually inspect them, and shall promptly give notice to the Engineer of any shortage, defect or default in these materials. Unless otherwise agreed by both Parties, the Procuring entity shall immediately rectify the notified shortage, defect or default.

After this visual inspection, the free-issue materials shall come under the care, custody and control of the Contractor. The Contractor's obligations of inspection, care, custody and

control shall not relieve the Procuring entity of liability for any shortage, defect or default not apparent from a visual inspection.

4.21 Progress Reports

Unless otherwise stated in the Particular Conditions, monthly progress reports shall be prepared by the Contractor and submitted to the Engineer in six copies. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates.

Reporting shall continue until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

Each report shall include:

- (a) charts and detailed descriptions of progress, including each stage of design (if any), Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection and testing; and including these stages for work by each nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]),
- (b) photographs showing the status of manufacture and of progress on the Site;
- (c) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
 - (i) commencement of manufacture,
 - (ii) Contractor's inspections,
 - (iii) tests, and
 - (iv) shipment and arrival at the Site;
- (d) the details described in Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment];
- (e) copies of quality assurance documents, test results and certificates of Materials;
- (f) list of notices given under Sub-Clause 2.5 [Procuring entity's Claims] and notices given under Sub-Clause 20.1 [Contractor's Claims];
- (g) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and
- (h) comparisons of actual and planned progress, with details of any events or circumstances which may jeopardise the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.

4.22 Security of the Site

Unless otherwise stated in the Particular Conditions:

- (a) the Contractor shall be responsible for keeping unauthorised persons off the Site, and
- (b) authorised persons shall be limited to the Contractor's Personnel and the Procuring entity's Personnel; and to any other personnel notified to the Contractor, by the Procuring entity or the Engineer, as authorised personnel of the Procuring entity's other contractors on the Site.

4.23 Contractor's Operations on Site

The Contractor shall confine his operations to the Site, and to any additional areas which may be obtained by the Contractor and agreed by the Engineer as additional working areas. The Contractor shall take all necessary precautions to keep Contractor's Equipment and Contractor's Personnel within the Site and these additional areas, and to keep them off adjacent land.

During the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction, and shall store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall clear away and remove from the Site any wreckage, rubbish and Temporary Works which are no longer required.

Upon the issue of a Taking-Over Certificate, the Contractor shall clear away and remove, from that part of the Site and Works to which the Taking-Over Certificate refers, all Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works. The Contractor shall leave that part of the Site and the Works in a clean and safe condition. However, the Contractor may retain on Site, during the Defects Notification Period, such Goods as are required for the Contractor to fulfil obligations under the Contract.

4.24 Fossils

All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Procuring entity. The Contractor shall take reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.

The Contractor shall, upon discovery of any such finding, promptly give notice to the Engineer and the procuring entity, who shall issue instructions for dealing with it. If the Contractor suffers delay and/or incurs Cost from complying with the instructions, the Contractor shall give a further notice to the Engineer and the procuring entity, and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this further notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

5. Nominated Subcontractors

5.1 Definition of “nominated Subcontractor”

In the Contract, “nominated Subcontractor” means a Subcontractor:

- (a) who is stated in the Contract as being a nominated Subcontractor, or
- (b) whom the Engineer, under Clause 13 [Variations and Adjustments], instructs the Contractor to employ as a Subcontractor subject to Sub-Clause 5.2 [Objection to Notification].

5.2 Objection to Nomination

The Contractor shall not be under any obligation to employ a nominated Subcontractor against whom the Contractor raises reasonable objection by notice to the Engineer as soon as practicable, with supporting particulars. An objection shall be deemed reasonable if it arises from (among other things) any of the following matters, unless the Procuring entity agrees in writing to indemnify the Contractor against and from the consequences of the matter:

- (a) there are reasons to believe that the Subcontractor does not have sufficient competence, resources or financial strength;
- (b) the nominated Subcontractor does not accept to indemnify the Contractor against and from any negligence or misuse of Goods by the nominated Subcontractor, his agents and employees; or
- (c) the nominated Subcontractor does not accept to enter into a subcontract which specifies that, for the subcontracted work (including design, if any), the nominated Subcontractor shall:
 - (i) undertake to the Contractor such obligations and liabilities as will enable the Contractor to discharge his obligations and liabilities under the Contract;
 - (ii) indemnify the Contractor against and from all obligations and liabilities arising under or in connection with the Contract and from the consequences of any failure by the Subcontractor to perform these obligations or to fulfil these liabilities; and
 - (iii) be paid only if and when the Contractor has received from the Procuring entity payments for sums due under the Subcontract referred to under Sub-Clause 5.3 [Payment to nominated Subcontractors].

5.3 Payments to nominated Subcontractors

The Contractor shall pay to the nominated Subcontractor the amounts shown on the nominated Subcontractor’s invoices approved by the Contractor which the Engineer certifies to be due in accordance with the subcontract. These amounts plus other charges shall be included in the Contract Price in accordance with sub-paragraph (b) of Sub-Clause 13.5 [Provisional Sums], except as stated in Sub-Clause 5.4 [Evidence of Payments].

5.4 Evidence of Payments

Before issuing a Payment Certificate which includes an amount payable to a nominated Subcontractor, the Engineer may request the Contractor to supply reasonable evidence that the nominated Subcontractor has received all amounts due in accordance with previous Payment Certificates, less applicable deductions for retention or otherwise. Unless the Contractor:

- (a) submits this reasonable evidence to the Engineer, or
- (b)
 - (i) satisfies the Engineer in writing that the Contractor is reasonably entitled to withhold or refuse to pay these amounts, and
 - (ii) submits to the Engineer reasonable evidence that the nominated Subcontractor has been notified of the Contractor's entitlement,

then the Procuring entity may (at his sole discretion) pay, direct to the nominated Subcontractor, part or all of such amounts previously certified (less applicable deductions) as are due to the nominated Subcontractor and for which the Contractor has failed to submit the evidence described in sub-paragraphs (a) or (b) above. The Contractor shall then repay, to the Procuring entity, the amount which the nominated Subcontractor was directly paid by the Procuring entity.

6. Staff and Labour

6.1 Engagement of Staff and Labour

Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, feeding, transport, and, when appropriate, housing.

The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labour with appropriate qualifications and experience from sources within the Republic of Rwanda.

6.2 Rates of Wages and Conditions of Labour

The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by Procuring entity whose trade or industry is similar to that of the Contractor.

The Contractor shall inform the Contractor's Personnel about their liability to pay personal income taxes in the Republic of Rwanda in respect of such of their salaries, wages, allowances and any benefits as are subject to tax under the Laws of the Republic of Rwanda

for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.

6.3 Persons in service on behalf of the Procuring entity

The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Procuring entity's Personnel.

6.3 Labour Laws

The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

The Contractor shall require his employees to obey all applicable Laws, including those concerning safety at work.

6.4 Working Hours

No work shall be carried out on the Site on locally recognised days of rest, or outside the normal working hours stated in the Contract Data, unless:

- (a) otherwise stated in the Contract,
- (b) the Engineer gives consent, or
- (c) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer.

6.5 Facilities for Staff and Labour

Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Procuring entity's Personnel as stated in the Specification.

The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

6.6 Health and Safety

The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Procuring entity's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

The Contractor shall send, to the Engineer, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Engineer may reasonably require.

The Contractor shall at all times take the necessary precautions to protect the Contractor's Personnel employed on the Site from insect and pest nuisance, and to reduce their danger to health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide

6.7 Contractor's Superintendence

Throughout the execution of the Works, and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the work.

Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications (defined in Sub-Clause 1.4 [Law and Language]) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.

6.8 Contractor's Personnel

The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Engineer may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor's Representative if applicable, who:

- (a) persists in any misconduct or lack of care,
- (b) carries out duties incompetently or negligently,
- (c) fails to conform with any provisions of the Contract, or
- (d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment.

If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person.

6.9 Records of Contractor's Personnel and Equipment

The Contractor shall submit, to the Engineer, details showing the number of each class of Contractor's Personnel and of each type of Contractor's Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Engineer, until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

6.10 Disorderly Conduct

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor's Personnel, and to preserve peace and protection of persons and property on and near the Site.

6.11 Foreign Personnel

The Contractor may bring in to the Republic of Rwanda any foreign personnel who are necessary for the execution of the Works to the extent allowed by the applicable Laws of the Republic of Rwanda. The Contractor shall ensure that these personnel are provided with the required residence visas and work permits. The Procuring entity will, if requested by the Contractor, use his best endeavours in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national, or government permission required for bringing in the Contractor's personnel.

The Contractor shall be responsible for the return of these personnel to the place where they were recruited or to their domicile. In the event of the death in the Republic of Rwanda of any of these personnel or members of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for their return or burial.

6.12 Supply of Foodstuffs

The Contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Specification at reasonable prices for the Contractor's Personnel for the purposes of or in connection with the Contract.

6.13 Supply of Water

The Contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor's Personnel.

6.14 Alcoholic Liquor or Drugs

The Contractor shall not, otherwise than in accordance with the Laws of the Republic of Rwanda, import, sell, give barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift barter or disposal thereto by Contractor's Personnel.

6.15 Arms and Ammunition

The Contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so.

6.16 Festivals and Religious Customs

The Contractor shall respect the recognized festivals, days of rest and religious or other customs of the Republic of Rwanda.

6.17 Funeral Arrangements

The Contractor shall be responsible, to the extent required by local regulations, for making any funeral arrangements for any of his local employees who may die while engaged upon the Works.

6.18 Prohibition of Forced or Compulsory Labour

The contractor shall not employ "forced or compulsory labour" in any form. "Forced or compulsory labour" consists of all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.

6.19 Prohibition of Harmful Child Labour

The Contractor shall not employ any child to perform any work that is economically exploitative, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.

6.20 Employment Records of Workers

The Contractor shall keep complete and accurate records of the employment of labour at the Site. The records shall include the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarized on a monthly basis and submitted to the Engineer, and these records shall be available for inspection by Auditors during normal working hours. These records shall be included in the details to be submitted by the Contractor under Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment].

7. Plant, Materials and Workmanship

7.1 Manner of Execution

The Contractor shall carry out the manufacture of Plant, the production and manufacture of Materials, and all other execution of the Works:

- (a) in the manner (if any) specified in the Contract,
- (b) in a proper workmanlike and careful manner, in accordance with recognised good practice, and
- (c) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.

7.2 Samples

The Contractor shall submit the following samples of Materials, and relevant information, to the Engineer for consent prior to using the Materials in or for the Works:

- (a) manufacturer's standard samples of Materials and samples specified in the Contract, all at the Contractor's cost, and
- (b) additional samples instructed by the Engineer as a Variation.

Each sample shall be labelled as to origin and intended use in the Works.

7.3 Inspection

The Procuring entity's Personnel shall at all reasonable times:

- (a) have full access to all parts of the Site and to all places from which natural Materials are being obtained, and
- (b) during production, manufacture and construction (at the Site and elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials.

The Contractor shall give the Procuring entity's Personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any obligation or responsibility.

The Contractor shall give notice to the Engineer whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Engineer shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that the Engineer does not require to do so. If the Contractor fails to give the notice, he shall, if and when required by the Engineer, uncover the work and thereafter reinstate and make good, all at the Contractor's cost.

7.4 Testing

This Sub-Clause shall apply to all tests specified in the Contract, other than the Tests after Completion (if any).

Except as otherwise specified in the Contract, the Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with the Engineer, the time and place for the specified testing of any Plant, Materials and other parts of the Works.

The Engineer may, under Clause 13 [Variations and Adjustments], vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Variation shall be borne by the Contractor, notwithstanding other provisions of the Contract.

The Engineer shall give the Contractor not less than 24 hours' notice of the Engineer's intention to attend the tests. If the Engineer does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Engineer, and the tests shall then be deemed to have been made in the Engineer's presence.

If the Contractor suffers delay and/or incurs Cost from complying with these instructions or as a result of a delay for which the Procuring entity is responsible, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost plus profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

The Contractor shall promptly forward to the Engineer duly certified reports of the tests. When the specified tests have been passed, the Engineer shall endorse the Contractor's test certificate, or issue a certificate to him, to that effect. If the Engineer has not attended the tests, he shall be deemed to have accepted the readings as accurate.

7.5 Rejection

If, as a result of an examination, inspection, measurement or testing, any Plant, Materials or workmanship is found to be defective or otherwise not in accordance with the Contract, the Engineer may reject the Plant, Materials or workmanship by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the defect and ensure that the rejected item complies with the Contract.

If the Engineer requires this Plant, Materials or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Procuring entity to incur additional costs, the Contractor shall subject to Sub-Clause 2.5 [Procuring entity's Claims] pay these costs to the Procuring entity.

7.6 Remedial Work

Notwithstanding any previous test or certification, the Engineer may instruct the Contractor to:

- (a) remove from the Site and replace any Plant or Materials which is not in accordance with the Contract;
- (b) remove and re-execute any other work which is not in accordance with the Contract, and;
- (c) execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

The Contractor shall comply with the instruction within a reasonable time, which shall be the time (if any) specified in the instruction, or immediately if urgency is specified under subparagraph (c).

If the Contractor fails to comply with the instruction, the Procuring entity shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall subject to Sub-Clause 2.5 [Procuring entity's Claims] pay to the Procuring entity all costs arising from this failure.

7.7 Ownership of Plant and Materials

Except otherwise specified in the Contract, each item of Plant and Materials shall, to the extent consistent with the Laws of the Republic of Rwanda, become the property of the Procuring entity at whichever is the earlier of the following times, free from liens and other encumbrances:

- (a) when it is incorporated in the Works;
- (b) when the Contractor is paid the corresponding value of the Plant and Materials under Sub-Clause 8.10 [Payment for Plant and Materials in Event of Suspension].

7.8 Royalties

Unless otherwise stated in the Specification, the Contractor shall pay all royalties, rents and other payments for:

- (a) natural Materials obtained from outside the Site, and
- (b) the disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal areas within the Site are specified in the Contract.

8. Commencement, Delays and Suspension

8.1 Commencement of Works

Except otherwise specified in the Particular Conditions, the Commencement Date shall be the date at which the following precedent conditions have all been fulfilled and the Engineer's instruction recording the agreement of both Parties on such fulfillment and instructing to commence the Works is received by the Contractor:

signature of the Contract Agreement by both Parties, and if required, approval of the Contract by relevant authorities in the Republic of Rwanda;

delivery to the Contractor of reasonable evidence of the Procuring entity's Financial arrangements (under Sub-Clause 2.4 [Procuring entity's Financial Arrangements])

except if otherwise specified in the Contract Data, possession of the Site given to the Contractor together with such permission(s) under (a) of Sub-Clause 1.13 [Compliance with Laws] as required for the commencement of the Works; and

receipt by the Contractor of the Advance Payment under Sub-Clause 14.2 [Advance Payment] provided that the corresponding bank guarantee has been delivered by the Contractor.

If the said Engineer's instruction is not received by the Contractor within 60 days from his receipt of the Letter of Acceptance, the Contractor shall be entitled to terminate the Contract under Sub-Clause 16.2 [Termination by Contractor].

The Contractor shall commence the execution of the Works as soon as is reasonably practicable after the Commencement Date, and shall then proceed with the Works with due expedition and without delay.

8.2 Time for Completion

The Contractor shall complete the whole of the Works, and each Section (if any), within the Time specified in the Contract Data for Completion for the Works or Section (as the case may be), including:

- (a) achieving the passing of the Tests on Completion, and
- (b) completing all work which is stated in the Contract as being required for the Works or Section to be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections].

8.3 Programme

The Contractor shall submit a detailed time programme to the Engineer within 28 days after receiving the notice under Sub-Clause 8.1 [Commencement of Works]. The Contractor shall also submit a revised programme whenever a variation has been approved by the Procuring Entity. The Contractor shall submit a time programme which is as accurate as possible, taking into account all the conditions on the site, the nature of the works and all other conditions and shall include:

- the order in which the Contractor intends to carry out the Works, including the anticipated timing of each stage of design (if any), Contractor's Documents, procurement, manufacture of Plant, delivery to Site, construction, erection and testing,
- each of these stages for work by each nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]),
- the sequence and timing of inspections and tests specified in the Contract, and
- a supporting report which includes:
 - (i) a general description of the methods which the Contractor intends to adopt, and of the major stages, in the execution of the Works, and
 - (ii) details showing the Contractor's reasonable estimate of the number of each class of Contractor's Personnel and of each type of Contractor's Equipment, required on the Site for each major stage.

Unless the Engineer, within 21 days after receiving a programme, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the programme, subject to his other obligations under the Contract. The Procuring entity's Personnel shall be entitled to rely upon the programme when planning their activities.

The Contractor shall promptly give notice to the Engineer of specific probable future events or circumstances which may adversely affect the work, increase the Contract Price, or delay the execution of the Works. The Engineer may require the Contractor to submit an estimate of the anticipated effect of the future event or circumstances, and/or a proposal under Sub-Clause 13.3 [Variation Procedure].

If, at any time, the Engineer gives notice to the Contractor that a programme fails (to the extent stated) and in accordance with the preceding paragraph to comply with the Contract or to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall submit a revised programme to the Engineer in accordance with this Sub-Clause.

If the Contractor fails to comply with the time programme submitted and approved by the Procuring Entity for a reason other than those specified in the preceding paragraph the Contractor shall not be entitled to any revision of the programme and penalties for delays shall apply.

8.4 Extension of Time for Completion

The Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 [Taking-Over of the Works and Sections] is or will be delayed by any of the following causes:

- (a) a Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [Variation Procedure]) or other substantial change in the quantity of an item of work included in the Contract,
- (b) a cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions,
- (c) exceptionally adverse climatic conditions,
- (d) Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions, or
- (e) any delay, impediment or prevention caused by or attributable to the Procuring entity, the Procuring entity's Personnel, or the Procuring entity's other contractors.

If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Engineer in accordance with Sub-Clause 20.1 [Contractor's Claims]. When determining each extension of time under Sub-Clause 20.1, the Engineer shall review previous determinations and may increase, but shall not decrease, the total extension of time.

In case the contract execution period is extended, the performance security shall be extended accordingly in order to secure the performance of the contractor throughout the additional time.

8.5 Delays Caused by Authorities

If the following conditions apply, namely:

- (a) the Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in the Republic of Rwanda,
- (b) these authorities delay or disrupt the Contractor's work, and
- (c) the delay or disruption was Unforeseeable,

then this delay or disruption will be considered as a cause of delay under sub-paragraph (b) of Sub-Clause 8.4 [Extension of Time for Completion].

8.6 Rate of Progress

If, at any time:

- (a) actual progress is too slow to complete within the Time for Completion, and/or
- (b) progress has fallen (or will fall) behind the current programme under Sub-Clause 8.3 [Programme],

other than as a result of a cause listed in Sub-Clause 8.4 [Extension of Time for Completion], then the Engineer may instruct the Contractor to submit, under Sub-Clause 8.3 [Programme], a revised programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time for Completion.

Unless the Engineer notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Contractor's Personnel and/or Goods, at the risk and cost of the Contractor. If these revised methods cause the Procuring entity to incur additional costs, the Contractor shall subject to notice under Sub-Clause 2.5 [Procuring entity's Claims] pay these costs to the Procuring entity, in addition to delay damages (if any) under Sub-Clause 8.7 [Delay Damages] below.

Additional costs of revised methods, including acceleration measures, instructed by the Engineer to reduce delays resulting from causes listed under Sub-Clause 8.4 [Extension of Time for Completion] shall be paid by the Procuring entity, without generating, however, any other additional payment benefit to the Contractor.

8.7 Delay Damages

If the Contractor fails to comply with Sub-Clause 8.2 [Time for Completion] and sub-clause 8.3[Programme], the Contractor shall be subject to notice under Sub-Clause 2.5 [Procuring entity's Claims] and without prejudice to other remedies available for the Procuring Entity pay delay damages to the Procuring entity for this default at the rate of one thousandth (1‰) of the total amount of the contract per each day of delay to complete any works as stated in the Time Programme as approved by the Project Manager. The total amount of liquidated damages shall not exceed 5% of the total amount of the contract.

Once the maximum is reached, the Procuring Entity 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 the Contract Data** and penalties shall continue to accrue until full completion of the contract or termination.

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

The Procurement Authority shall also be entitled to payment by the Contractor in case of delays, to damages equivalent to the sums paid by the Procuring Entity to the Engineer for the extension of his contract duration due to the Contractor's delays.

These damages shall not relieve the Contractor from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the Contract.

8.8 Suspension of Work

The Engineer may at any time instruct the Contractor to suspend progress of part or all of the Works. During such suspension, the Contractor shall protect, store and secure such part or the Works against any deterioration, loss or damage.

The Engineer may also notify the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of the Contractor, the following Sub-Clauses 8.9 [Consequences of Suspension], 8.10 [Payment for Plant and Materials in Event of Suspension] and 8.11 [Prolonged Suspension] shall not apply.

8.9 Consequences of Suspension

If the Contractor suffers delay and/or incurs Cost from complying with the Engineer's instructions under Sub-Clause 8.8 [Suspension of Work] and/or from resuming the work, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

The Contractor shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's failure to protect, store or secure in accordance with Sub-Clause 8.8 [Suspension of Work].

8.10 Payment for Plant and Materials in Event of Suspension

The Contractor shall be entitled to payment of the value (as at the date of suspension) of Plant and/or Materials which have not been delivered to Site, if:

- (a) the work on Plant or delivery of Plant and/or Materials has been suspended for more than 28 days, and
- (b) the Contractor has marked the Plant and/or Materials as the Procuring entity's property in accordance with the Engineer's instructions.

8.11 Prolonged Suspension

If the suspension under Sub-Clause 8.8 [Suspension of Work] has continued for more than 30 days, the Contractor may request the Engineer's permission to proceed. If the Engineer does not give permission within 28 days after being requested to do so, the Contractor may, by giving notice to the Engineer, treat the suspension as an omission under Clause 13 [Variations and Adjustments] of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give notice of termination under Sub-Clause 16.2 [Termination by Contractor].

8.12 Resumption of Work

After the permission or instruction to proceed is given, the Contractor and the Engineer shall jointly examine the Works and the Plant and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension after receiving from the Engineer an instruction to this effect under Clause 13 [Variations and Adjustments].

9. Tests on Completion

9.1 Contractor's Obligations

The Contractor shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 7.4 [Testing], after providing the documents in accordance with sub-paragraph (d) of Sub-Clause 4.1 [Contractor's General Obligations].

The Contractor shall give to the Engineer not less than 21 days' notice of the date after which the Contractor will be ready to carry out each of the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out within 14 days after this date, on such day or days as the Engineer shall instruct.

In considering the results of the Tests on Completion, the Engineer shall make allowances for the effect of any use of the Works by the Procuring entity on the performance or other characteristics of the Works. As soon as the Works, or a Section, have passed any Tests on Completion, the Contractor shall submit a certified report of the results of these Tests to the Engineer.

9.2 Delayed Tests

If the Tests on Completion are being unduly delayed by the Procuring entity, Sub-Clause 7.4 [Testing] (fifth paragraph) and/or Sub-Clause 10.3 [Interference with Tests on Completion] shall be applicable.

If the Tests on Completion are being unduly delayed by the Contractor, the Engineer may by notice require the Contractor to carry out the Tests within 21 days after receiving the notice. The Contractor shall carry out the Tests on such day or days within that period as the Contractor may fix and of which he shall give notice to the Engineer.

If the Contractor fails to carry out the Tests on Completion within the period of 21 days, the Procuring entity's Personnel may proceed with the Tests at the risk and cost of the Contractor. The Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate.

9.3 Retesting

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [Rejection] shall apply, and the Engineer or the Contractor may require the failed Tests, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

9.4 Failure to Pass Tests on Completion

If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [Retesting], the Engineer shall be entitled to:

- (a) order further repetition of Tests on Completion under Sub-Clause 9.3;
- (b) if the failure deprives the Procuring entity of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Procuring entity shall have the same remedies as are provided in sub-paragraph (c) of Sub-Clause 11.4 [Failure to Remedy Defects]; or
- (c) issue a Taking-Over Certificate, if the Procuring entity so requests.

In the event of sub-paragraph (c), the Contractor shall proceed in accordance with all other obligations under the Contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Procuring entity as a result of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract, the Procuring entity may require the reduction to be (i) agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking-Over Certificate is issued, or (ii) determined and paid under Sub-Clause 2.5 [Procuring entity's Claims] and Sub-Clause 3.5 [Determinations].

10. Procuring entity's taking over

10.1 Taking Over of the Works and Sections

Except as stated in Sub-Clause 9.4 [Failure to Pass Tests on Completion], the Works shall be taken over by the Procuring entity when (i) the Works have been completed in accordance with the Contract, including the matters described in Sub-Clause 8.2 [Time for Completion] and except as allowed in sub-paragraph (a) below, and (ii) a Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.

The Contractor may apply by notice to the Engineer for a Taking-Over Certificate not earlier than 14 days before the Works will, in the Contractor's opinion, be complete and ready for taking over. If the Works are divided into Sections, the Contractor may similarly apply for a Taking-Over Certificate for each Section.

The Engineer shall, within 28 days after receiving the Contractor's application:

- (a) issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use of the Works or Section for their intended purpose (either until or whilst this work is completed and these defects are remedied); or
- (b) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this Sub-Clause.

If the Engineer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days, and if the Works or Section (as the case may be) are substantially in accordance with the Contract, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.

10.2 Partial Taking Over of the Works

The Engineer may, at the sole discretion of the Procuring entity, issue a Taking-Over Certificate for any part of the Permanent Works.

The Procuring entity shall not use any part of the Works (other than as a temporary measure which is either specified in the Contract or agreed by both Parties) unless and until the Engineer has issued a Taking-Over Certificate for this part. However, if the Procuring entity does use any part of the Works before the Taking-Over Certificate is issued:

- (a) the part which is used shall be deemed to have been taken over as from the date on which it is used,
- (b) the Contractor shall cease to be liable for the care of such part as from this date, when responsibility shall pass to the Procuring entity except that the warranty liability shall remain valid until its expiration, and
- (c) if requested by the Contractor, the Engineer shall issue a Taking-Over Certificate for this part.

After the Engineer has issued a Taking-Over Certificate for a part of the Works, the Contractor shall be given the earliest opportunity to take such steps as may be necessary to carry out any outstanding Tests on Completion. The Contractor shall carry out these Tests on Completion as soon as practicable before the expiry date of the relevant Defects Notification Period.

If the Contractor incurs Cost as a result of the Procuring entity taking over and/or using a part of the Works, other than such use as is specified in the Contract or agreed by the Contractor,

the Contractor shall (i) give notice to the Engineer and (ii) be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to payment of any such Cost, which shall be included in the Contract Price. After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this Cost and profit.

10.3 Interference with Tests on Completion

If the Contractor is prevented, for more than 14 days, from carrying out the Tests on Completion by a cause for which the Procuring entity is responsible, the Procuring entity shall be deemed to have taken over the Works or Section (as the case may be) on the date when the Tests on Completion would otherwise have been completed.

The Engineer shall then issue a Taking-Over Certificate accordingly, and the Contractor shall carry out the Tests on Completion as soon as practicable, before the expiry date of the Defects Notification Period. The Engineer shall require the Tests on Completion to be carried out by giving 14 days' notice and in accordance with the relevant provisions of the Contract.

If the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

10.4 Surfaces Requiring Reinstatement

Except as otherwise stated in a Taking-Over Certificate, a certificate for a Section or part of the Works shall not be deemed to certify completion of any ground or other surfaces requiring reinstatement.

11. Defects Liability

11.1 Completion of Outstanding Work and Remedying Defects

In order that the Works and Contractor's Documents, and each Section, shall be in the condition required by the Contract (fair wear and tear excepted) by the expiry date of the relevant Defects Notification Period or as soon as practicable thereafter, the Contractor shall:

- (a) complete any work which is outstanding on the date stated in a Taking-Over Certificate, within such reasonable time as is instructed by the Engineer, and
- (b) execute all work required to remedy defects or damage, as may be notified by (or on behalf of) the Procuring entity on or before the expiry date of the Defects Notification Period for the Works or Section (as the case may be).

If a defect appears or damage occurs, the Contractor shall be notified accordingly, by (or on behalf of) the Procuring entity.

11.2 Cost of Remedying Defects

All work referred to in sub-paragraph (b) of Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects] shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:

- (a) any design for which the Contractor is responsible,
- (b) Plant, Materials or workmanship not being in accordance with the Contract, or
- (c) failure by the Contractor to comply with any other obligation.

If and to the extent that such work is attributable to any other cause, the Contractor shall be notified promptly by (or on behalf of) the Procuring entity and Sub-Clause 13.3 [Variation Procedure] shall apply.

11.3 Extension of Defects Notification Period

The Procuring entity shall be entitled subject to Sub-Clause 2.5 [Procuring entity's Claims] to an extension of the Defects Notification Period for the Works or a Section if and to the extent that the Works, Section or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or by reason of a damage attributable to the Contractor. However, a Defects Notification Period shall not be extended by more than two years.

If delivery and/or erection of Plant and/or Materials was suspended under Sub-Clause 8.8 [Suspension of Work] or Sub-Clause 16.1 [Contractor's Entitlement to Suspend Work], the Contractor's obligations under this Clause shall not apply to any defects or damage occurring more than two years after the Defects Notification Period for the Plant and/or Materials would otherwise have expired.

11.4 Failure to Remedy Defects

If the Contractor fails to remedy any defect or damage within a reasonable time but not exceeding ten (10) days, a date may be fixed by (or on behalf of) the Procuring entity, on or by which the defect or damage is to be remedied. The Contractor shall be given reasonable notice of this date.

If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Contractor under Sub-Clause 11.2 [Cost of Remedying Defects], the Procuring entity shall deduct from the Contractor's invoices a delay damage equal to one thousandth (1‰) of the value of the item that has been reported to be defective or does not conform to the requirement of the Contract each day of delay for the first seven days of delay. The Contractor shall incur an additional delay damage equal to one thousandth (1‰) of the item for each day of delay until full remedy of the defect.

The Contractor may also (at his option):

- (a) carry out the work himself or by others, in a reasonable manner and at the Contractor's cost, but the Contractor shall have no responsibility for this work; and the Contractor shall subject to Sub-Clause 2.5 [Procuring entity's Claims] pay to the Procuring entity the costs reasonably incurred by the Procuring entity in remedying the defect or damage;
- (b) require the Engineer to agree or determine a reasonable reduction in the Contract Price in accordance with Sub-Clause 3.5 [Determinations]; or
- (c) if the defect or damage deprives the Procuring entity of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, the Procuring entity shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

11.5 Removal of Defective Work

If the defect or damage cannot be remedied expeditiously on the Site and the Procuring entity gives consent, the Contractor may remove from the Site for the purposes of repair such items of Plant as are defective or damaged. This consent may require the Contractor to increase the amount of the Performance Security by the full replacement cost of these items, or to provide other appropriate security.

11.6 Further Tests

If the work of remedying of any defect or damage may affect the performance of the Works, the Engineer may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within 28 days after the defect or damage is remedied.

These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under Sub-Clause 11.2 [Cost of Remedying Defects], for the cost of the remedial work.

11.7 Right of Access

Until the Performance Certificate has been issued, the Contractor shall have such right of access to the Works as is reasonably required in order to comply with this Clause, except as may be inconsistent with the Procuring entity's reasonable security restrictions.

11.8 Contractor to Search

The Contractor shall, if required by the Engineer, search for the cause of any defect, under the direction of the Engineer. Unless the defect is to be remedied at the cost of the Contractor under Sub-Clause 11.2 [Cost of Remedying Defects], the Cost of the search plus profit shall be agreed or determined by the Engineer in accordance with Sub-Clause 3.5 [Determinations] and shall be included in the Contract Price.

11.9 Performance Certificate

Performance of the Contractor's obligations shall not be considered to have been completed until the Engineer has issued the Performance Certificate to the Contractor, stating the date on which the Contractor completed his obligations under the Contract.

The Engineer shall issue the Performance Certificate within 28 days after the latest of the expiry dates of the Defects Notification Periods, or as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all the Works, including remedying any defects. A copy of the Performance Certificate shall be issued to the Procuring entity.

Only the Performance Certificate shall be deemed to constitute acceptance of the Works.

11.10 Unfulfilled Obligations

After the Performance Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force.

11.11 Clearance of Site

Upon receiving the Performance Certificate, the Contractor shall remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.

If all these items have not been removed within 28 days after receipt by the Contractor of the Performance Certificate, the Procuring entity may sell or otherwise dispose of any remaining items. The Procuring entity shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.

Any balance of the moneys from the sale shall be paid to the Contractor. If these moneys are less than the Procuring entity's costs, the Contractor shall pay the outstanding balance to the Procuring entity.

12. Measurement and Evaluation

12.1 Works to be measured

The Works shall be measured, and valued for payment, in accordance with this Clause. The Contractor shall show in each application under Sub-Clauses 14.3 [Application for Interim Payment Certificates], 14.10 [Statement at Completion], and 14.11 [Application for Final Payment Certificate] the quantities and other particulars detailing the amounts which he considers to be entitled under the Contract.

Whenever the Engineer requires any part of the Works to be measured, reasonable notice shall be given to the Contractor's Representative, who shall:

- (a) promptly either attend or send another qualified representative to assist the Engineer in making the measurement, and

(b) supply any particulars requested by the Engineer.

If the Contractor fails to attend or send a representative, the measurement made by (or on behalf of) the Engineer shall be accepted as accurate.

Except as otherwise stated in the Contract, wherever any Permanent Works are to be measured from records, these shall be prepared by the Engineer. The Contractor shall, as and when requested, attend to examine and agree the records with the Engineer, and shall sign the same when agreed. If the Contractor does not attend, the records shall be accepted as accurate.

If the Contractor examines and disagrees the records, and/or does not sign them as agreed, then the Contractor shall give notice to the Engineer of the respects in which the records are asserted to be inaccurate. After receiving this notice, the Engineer shall review the records and either confirm or vary them and certify the payment of the undisputed part. If the Contractor does not so give notice to the Engineer within 14 days after being requested to examine the records, they shall be accepted as accurate.

12.2 Method of Measurement

Except as otherwise stated in the Contract and notwithstanding local practice:

- (a) measurement shall be made of the net actual quantity of each item of the Permanent Works, and
- (b) the method of measurement shall be in accordance with the Bill of Quantities or other applicable Schedules.

12.3 Evaluation

Except as otherwise stated in the Contract, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the Contract Price by evaluating each item of work, applying the measurement agreed or determined in accordance with the above Sub-Clauses 12.1 [Works to be Measured] and 12.2 [Method of Measurement] and the appropriate rate or price for the item.

For each item of work, the appropriate rate or price for the item shall be the rate or price specified for such item in the Contract or, if there is no such item, specified for similar work.

Any item of work included in the Bill of Quantities for which no rate or price was specified shall be considered as included in other rates and prices in the Bill of Quantities and will not be paid for separately.

However, a new rate or price shall be appropriate for an item of work if:

- (a) (i) the measured quantity of the item is changed by more than 25% from the quantity of this item in the Bill of Quantities or other Schedule,
- (ii) this change in quantity multiplied by such specified rate for this item exceeds 0.25% of the Accepted Contract Amount,

(iii) this change in quantity directly changes the Cost per unit quantity of this item by more than 1%, and

(iv) this item is not specified in the Contract as a “fixed rate item”;

or

(b) (i) the work is instructed under Clause 13 [Variations and Adjustments],

(ii) no rate or price is specified in the Contract for this item, and

(iii) no specified rate or price is appropriate because the item of work is not of similar character, or is not executed under similar conditions, as any item in the Contract.

Each new rate or price shall be derived from any relevant rates or prices in the Contract, with reasonable adjustments to take account of the matters described in sub-paragraph (a) and/or (b), as applicable. If no rates or prices are relevant for the derivation of a new rate or price, it shall be derived from the reasonable Cost of executing the work, together with profit, taking account of any other relevant matters.

Until such time as an appropriate rate or price is agreed or determined, the Engineer shall determine a provisional rate or price for the purposes of Interim Payment Certificates as soon as the concerned Works commences.

12.4 Omissions

Whenever the omission of any work forms part (or all) of a Variation, the value of which has not been agreed, if:

(a) the Contractor will incur (or has incurred) cost which, if the work had not been omitted, would have been deemed to be covered by a sum forming part of the Accepted Contract Amount;

(b) the omission of the work will result (or has resulted) in this sum not forming part of the Contract Price; and

(c) this cost is not deemed to be included in the evaluation of any substituted work;

Then the Contractor shall give notice to the Engineer accordingly, with supporting particulars. Upon receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this cost, which shall be included in the Contract Price.

13. Variations and Adjustments

13.1 Right to Vary

Variations may be initiated by the Engineer at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal.

The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Engineer stating (with supporting particulars) that (i) the Contractor cannot readily obtain the Goods required for the Variation, or (ii) such Variation triggers a substantial change in the sequence or progress of the Works. Upon receiving this notice, the Engineer shall cancel, confirm or vary the instruction.

Each Variation may include:

- (a) changes to the quantities of any item of work included in the Contract (however, such changes do not necessarily constitute a Variation),
- (a) changes to the quality and other characteristics of any item of work,
- (b) changes to the levels, positions and/or dimensions of any part of the Works,
- (d) omission of any work unless it is to be carried out by others,
- (e) any additional work, Plant, Materials or services necessary for the Permanent Works, including any associated Tests on Completion, boreholes and other testing and exploratory work, or
- (f) changes to the sequence or timing of the execution of the Works.

The Contractor shall not make any alteration and/or modification of the Permanent Works, unless and until the Engineer instructs or approves a Variation.

13.2 Value Engineering

The Contractor may, at any time, submit to the Engineer a written proposal which (in the Contractor's opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Procuring entity of executing, maintaining or operating the Works, (iii) improve the efficiency or value to the Procuring entity of the completed Works, or (iv) otherwise be of benefit to the Procuring entity.

The proposal shall be prepared at the cost of the Contractor and shall include the items listed in Sub-Clause 13.3 [Variation Procedure].

If a proposal, which is approved by the Engineer, includes a change in the design of part of the Permanent Works, then unless otherwise agreed by both Parties:

- (a) the Contractor shall design this part,
- (b) sub-paragraphs (a) to (d) of Sub-Clause 4.1 [Contractor's General Obligations] shall apply, and
- (c) if this change results in a reduction in the contract value of this part, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine a fee, which shall be included in the Contract Price. This fee shall be half (50%) of the difference between the following amounts:

- (i) such reduction in contract value, resulting from the change, excluding adjustments under Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost], and
- (ii) the reduction (if any) in the value to the Procuring entity of the varied works, taking account of any reductions in quality, anticipated life or operational efficiencies.

However, if amount (i) is less than amount (ii), there shall not be a fee.

13.3 Variation Procedure

If the Engineer requests a proposal, prior to instructing a Variation, the Contractor shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting:

- (a) a description of the proposed work to be performed and a programme for its execution,
- (b) the Contractor's proposal for any necessary modifications to the programme according to Sub-Clause 8.3 [Programme] and to the Time for Completion, and
- (c) the Contractor's proposal for evaluation of the Variation.

The Engineer shall, as soon as practicable after receiving such proposal (under Sub-Clause 13.2 [Value Engineering] or otherwise), respond with approval, disapproval or comments. The Contractor shall not delay any work whilst awaiting a response.

Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Engineer to the Contractor, who shall acknowledge receipt.

Each Variation shall be evaluated in accordance with Clause 12 [Measurement and Evaluation], unless the Engineer instructs or approves otherwise in accordance with this Clause.

13.4 Payment in Applicable Currencies

If the Contract provides for payment of the Contract Price in more than one currency, then whenever an adjustment is agreed, approved or determined as stated above, the amount payable in each of the applicable currencies shall be specified. For this purpose, reference shall be made to the actual or expected currency proportions of the Cost of the varied work, and to the proportions of various currencies specified for payment of the Contract Price.

13.5 Provisional Sums

Each Provisional Sum shall only be used, in whole or in part, in accordance with the Engineer's instructions, and the Contract Price shall be adjusted accordingly. The total sum paid to the Contractor shall include only such amounts, for the work, supplies or services to which the Provisional Sum relates, as the Engineer shall have instructed. For each Provisional Sum, the Engineer may instruct:

- (a) work to be executed (including Plant, Materials or services to be supplied) by the Contractor and valued under Sub-Clause 13.3 [Variation Procedure]; and/or
- (b) Plant, Materials or services to be purchased by the Contractor, from a nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]) or otherwise; and for which there shall be included in the Contract Price:
 - (i) the actual amounts paid (or due to be paid) by the Contractor, and
 - (ii) a sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate (if any) stated in the appropriate Schedule. If there is no such rate, the percentage rate stated in the Contract Data shall be applied.

The Contractor shall, when required by the Engineer, produce quotations, invoices, vouchers and accounts or receipts in substantiation.

13.6 Day work

For work of a minor or incidental nature, the Engineer may instruct that a Variation shall be executed on a Day work basis. The work shall then be valued in accordance with the Day work Schedule included in the Contract, and the following procedure shall apply. If a Day work Schedule is not included in the Contract, this Sub-Clause shall not apply.

Before ordering Goods for the work, the Contractor shall submit quotations to the Engineer. When applying for payment, the Contractor shall submit invoices, vouchers and accounts or receipts for any Goods.

Except for any items for which the Day work Schedule specifies that payment is not due, the Contractor shall deliver each day to the Engineer accurate statements in duplicate which shall include the following details of the resources used in executing the previous day's work:

- (a) the names, occupations and time of Contractor's Personnel,
- (b) the identification, type and time of Contractor's Equipment and Temporary Works, and
- (c) the quantities and types of Plant and Materials used.

One copy of each statement will, if correct, or when agreed, be signed by the Engineer and returned to the Contractor. The Contractor shall then submit priced statements of these resources to the Engineer, prior to their inclusion in the next Statement under Sub-Clause 14.3 [Application for Interim Payment Certificates].

13.6 Adjustments for Changes in Legislation

The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in the Laws of the Republic of Rwanda (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the Base Date, which affect the Contractor in the performance of obligations under the Contract.

If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these changes in the Laws or in such interpretations, made after the Base Date, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

Notwithstanding the foregoing, the Contractor shall not be entitled to such an extension of time if the relevant delay has already been taken into account in determining an extension and such Cost shall not be separately paid if the same shall already have been taken into account in the indexing of any inputs to the table of adjustment data in accordance with the provisions of Sub-Clause 13.8 [Adjustments for Changes in Cost] .

13.7 Adjustments for Changes in Cost

In this Sub-Clause, “table of adjustment data” means the completed table of adjustment data for local and foreign currencies included in the Schedules. If there is no such table of adjustment data, this Sub-Clause shall not apply.

If this Sub-Clause applies, the amounts payable to the Contractor shall be adjusted for rises or falls in the cost of labour, Goods and other inputs to the Works, by the addition or deduction of the amounts determined by the formulae prescribed in this Sub-Clause. To the extent that full compensation for any rise or fall in Costs is not covered by the provisions of this or other Clauses, the Accepted Contract Amount shall be deemed to have included amounts to cover the contingency of other rises and falls in costs.

The adjustment to be applied to the amount otherwise payable to the Contractor, as valued in accordance with the appropriate Schedule and certified in Payment Certificates, shall be determined from formulae for each of the currencies in which the Contract Price is payable. No adjustment is to be applied to work valued on the basis of Cost or current prices. The formulae shall be of the following general type:

$P_n = a + b L_n / L_o + c E_n / E_o + d M_n / M_o + \dots$ where:

“ P_n ” is the adjustment multiplier to be applied to the estimated contract value in the relevant currency of the work carried out in period “ n ”, this period being a month unless otherwise stated in the Contract Data ;

“ a ” is a fixed coefficient, stated in the relevant table of adjustment data, representing the non-adjustable portion in contractual payments;

“ b ”, “ c ”, “ d ”, ... are coefficients representing the estimated proportion of each cost element related to the execution of the Works, as stated in the relevant table of adjustment data; such

tabulated cost elements may be indicative of resources such as labour, equipment and materials;

“Ln”, “En”, “Mn”, ... are the current cost indices or reference prices for period “n”, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the date 49 days prior to the last day of the period (to which the particular Payment Certificate relates); and

“Lo”, “Eo”, “Mo”, ... are the base cost indices or reference prices, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the Base Date.

The cost indices or reference prices stated in the table of adjustment data shall be used. If their source is in doubt, it shall be determined by the Engineer. For this purpose, reference shall be made to the values of the indices at stated dates (quoted in the fourth and fifth columns respectively of the table) for the purposes of clarification of the source; although these dates (and thus these values) may not correspond to the base cost indices.

In cases where the “currency of index” (stated in the table) is not the relevant currency of payment, each index shall be converted into the relevant currency of payment at the selling rate, established by the central bank of the Republic of Rwanda, of this relevant currency on the above date for which the index is required to be applicable.

Until such time as each current cost index is available, the Engineer shall determine a provisional index for the issue of Interim Payment Certificates. When a current cost index is available, the adjustment shall be recalculated accordingly.

If the Contractor fails to complete the Works within the Time for Completion, adjustment of prices thereafter shall be made using either (i) each index or price applicable on the date 49 days prior to the expiry of the Time for Completion of the Works, or (ii) the current index or price: whichever is more favourable to the Procuring entity.

The weightings (coefficients) for each of the factors of cost stated in the table(s) of adjustment data shall only be adjusted if they have been rendered unreasonable, unbalanced or inapplicable, as a result of Variations.

14. Contract Price and Payment

14.1 The Contract Price

Unless otherwise stated in the Particular Conditions:

- (a) the Contract Price shall be agreed or determined under Sub-Clause 12.3 [Evaluation] and be subject to adjustments in accordance with the Contract;
- (b) the Contractor shall pay all taxes, duties and fees required to be paid by him under the Contract, and the Contract Price shall not be adjusted for any of these costs except as stated in Sub-Clause 13.7 [Adjustments for Changes in Legislation];

- (c) any quantities which may be set out in the Bill of Quantities or other Schedule are estimated quantities and are not to be taken as the actual and correct quantities:
 - (i) of the Works which the Contractor is required to execute, or
 - (ii) for the purposes of Clause 12 [Measurement and Evaluation]; and
- (d) the Contractor shall submit to the Engineer, within 28 days after the Commencement Date, a proposed breakdown of each lump sum price in the Schedules. The Engineer may take account of the breakdown when preparing Payment Certificates, but shall not be bound by it.
- (e) If a specific law provides for tax exemptions, reductions, allowances or privileges the Procuring Entity shall use its best efforts to enable the Supplier to benefit from any such tax exemptions, reductions, allowances or privileges.

14.2 Advance Payment

In case the bidding document had provided for the advance payment and after the contract is signed, the Procuring entity makes an advance payment, as an interest-free loan for mobilisation and cash flow support, when the Contractor submits a guarantee in accordance with this Sub-Clause. The total advance payment, the number and timing of instalments (if more than one), and the applicable currencies and proportions, shall be as stated in the Contract Data.

Unless and until the Procuring entity receives this guarantee, or if the total advance payment is not stated in the Contract Data, this Sub-Clause shall not apply.

The Engineer shall deliver to the Procuring entity and to the Contractor an Interim Payment Certificate for the advance payment or its first instalment after receiving a Statement (under Sub-Clause 14.3 [Application for Interim Payment Certificates]) and after the Procuring entity receives (i) the Performance Security in accordance with Sub-Clause 4.2 [Performance Security] and (ii) a guarantee in amounts and currencies equal to the advance payment. This guarantee shall be issued by an entity and from within a country (or other jurisdiction) approved by the Procuring entity, and shall be in the form annexed to the Particular Conditions or in another form approved by the Procuring entity.

The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid, but its amount shall be progressively reduced by the amount repaid by the Contractor as indicated in the Payment Certificates. If the terms of the guarantee specify its expiry date, and the advance payment has not been repaid by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid. The Procuring Entity shall be entitled to retain from the Contractor's invoices not yet paid an amount equivalent to the value of the advance payment guarantee which has expired until its effective extension to the full repayment of the advance payment.

Unless stated otherwise in the Contract Data, the advance payment shall be repaid through percentage deductions from the interim payments determined by the Engineer in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates], as follows:

- (a) deductions shall commence in the next interim Payment Certificate following that in which the total of all certified interim payments (excluding the advance payment and deductions and repayments of retention) exceeds 30 percent (30%) of the Accepted Contract Amount less Provisional Sums; and
- (b) deductions shall be made at the amortisation rate stated in the Contract Data of the amount of each Interim Payment Certificate (excluding the advance payment and deductions for its repayments as well as deductions for retention money) in the currencies and proportions of the advance payment until such time as the advance payment has been repaid; provided that the advance payment shall be completely repaid prior to the time when 90 per cent (90%) of the Accepted Contract Amount less Provisional Sums has been certified for payment.

If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the Works or prior to termination under Clause 15 [Termination by Procuring entity], Clause 16 [Suspension and Termination by Contractor] or Clause 19 [Force Majeure] (as the case may be), the whole of the balance then outstanding shall immediately become due and in case of termination under Clause 15 [Termination by Procuring entity] and Sub-Clause 19.5 [Optional Termination, Payment and Release], payable by the Contractor to the Procuring entity

14.3 Application for Interim Payment Certificates

The Contractor shall submit a Statement in six copies to the Engineer after the end of each month, in a form approved by the Engineer, showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the report on the progress during this month in accordance with Sub-Clause 4.21 [Progress Reports].

The Statement shall include the following items, as applicable, which shall be expressed in the various currencies in which the Contract Price is payable, in the sequence listed:

- (a) the estimated contract value of the Works executed and the Contractor's Documents produced up to the end of the month (including Variations but excluding items described in sub-paragraphs (b) to (g) below);
- (b) any amounts to be added and deducted for changes in legislation and changes in cost, in accordance with Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost];
- (c) any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Contract Data to the total of the above amounts, until the amount so retained by the Procuring entity reaches the limit of Retention Money (if any) stated in the Contract Data;

- (d) any amounts to be added for the advance payment and (if more than one instalment) and to be deducted for its repayments in accordance with Sub-Clause 14.2 [Advance Payment];
- (e) any amounts to be added and deducted for Plant and Materials in accordance with Sub-Clause 14.5 [Plant and Materials intended for the Works];
- (f) any other additions or deductions which may have become due under the Contract or otherwise, including those under Clause 20 [Claims, Disputes and Arbitration]; and
- (g) the deduction of amounts certified in all previous Payment Certificates.

14.4 Schedule of Payments

If the Contract includes a schedule of payments specifying the instalments in which the Contract Price will be paid, then unless otherwise stated in this schedule:

- (a) the instalments quoted in this schedule of payments shall be the estimated contract values for the purposes of sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates];
- (b) Sub-Clause 14.5 [Plant and Materials intended for the Works] shall not apply; and
- (c) if these instalments are not defined by reference to the actual progress achieved in executing the Works, and if actual progress is found to be less or more than that on which this schedule of payments was based, then the Engineer may proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine revised instalments, which shall take account of the extent to which progress is less or more than that on which the instalments were previously based.

If the Contract does not include a schedule of payments, the Contractor shall submit non-binding estimates of the payments which he expects to become due during each quarterly period. The first estimate shall be submitted within 42 days after the Commencement Date. Revised estimates shall be submitted at quarterly intervals, until the Taking-Over Certificate has been issued for the Works.

14.5 Plant and Materials intended for the Works

If this Sub-Clause applies, Interim Payment Certificates shall include, under sub-paragraph (e) of Sub-Clause 14.3, (i) an amount for Plant and Materials which have been sent to the Site for incorporation in the Permanent Works, and (ii) a reduction when the contract value of such Plant and Materials is included as part of the Permanent Works under sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates].

If the lists referred to in sub-paragraphs (b)(i) or (c)(i) below are not included in the Schedules, this Sub-Clause shall not apply.

The Engineer shall determine and certify each addition if the following conditions are satisfied:

- (a) the Contractor has:

- (i) kept satisfactory records (including the orders, receipts, Costs and use of Plant and Materials) which are available for inspection, and
- (ii) submitted a statement of the Cost of acquiring and delivering the Plant and Materials to the Site, supported by satisfactory evidence;

and either:

(b) the relevant Plant and Materials:

- (i) are those listed in the Schedules for payment when shipped,
- (ii) have been shipped to the Republic of Rwanda, en route to the Site, in accordance with the Contract; and
- (iii) are described in a clean shipped bill of lading or other evidence of shipment, which has been submitted to the Engineer together with evidence of payment of freight and insurance, any other documents reasonably required, and a bank guarantee in a form and issued by an entity approved by the Procuring entity in amounts and currencies equal to the amount due under this Sub-Clause: this guarantee may be in a similar form to the form referred to in Sub-Clause 14.2 [Advance Payment] and shall be valid until the Plant and Materials are properly stored on Site and protected against loss, damage or deterioration;

or

(c) the relevant Plant and Materials:

- (i) are those listed in the Schedules for payment when delivered to the Site, and
- (ii) have been delivered to and are properly stored on the Site, are protected against loss, damage or deterioration, and appear to be in accordance with the Contract.

The additional amount to be certified shall be the equivalent of eighty percent of the Engineer's determination of the cost of the Plant and Materials (including delivery to Site), taking account of the documents mentioned in this Sub-Clause and of the contract value of the Plant and Materials.

The currencies for this additional amount shall be the same as those in which payment will become due when the contract value is included under sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates]. At that time, the Payment Certificate shall include the applicable reduction which shall be equivalent to, and in the same currencies and proportions as, this additional amount for the relevant Plant and Materials.

14.6 Issue of Interim Payment Certificates

No amount will be certified or paid until the Procuring entity has received and approved the Performance Security. Thereafter, the Engineer shall, within 28 days after receiving a Statement and supporting documents, deliver to the Procuring entity and to the Contractor an Interim Payment Certificate which shall state the amount which the Engineer fairly

determines to be due, with all supporting particulars for any reduction or withholding made by the Engineer on the Statement if any.

However, prior to issuing the Taking-Over Certificate for the Works, the Engineer shall not be bound to issue an Interim Payment Certificate in an amount which would (after retention and other deductions) be less than the minimum amount of Interim Payment Certificates (if any) stated in the Contract Data. In this event, the Engineer shall give notice to the Contractor accordingly.

An Interim Payment Certificate shall not be withheld for any other reason, although:

- (a) if anything supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or
- (b) if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Engineer, the value of this work or obligation may be withheld until the work or obligation has been performed.

The Engineer may in any Payment Certificate make any correction or modification that should properly be made to any previous Payment Certificate. A Payment Certificate shall not be deemed to indicate the Engineer's acceptance, approval, consent or satisfaction.

14.7 Payment

The Procuring entity shall pay to the Contractor:

- (a) the first instalment of the advance payment within 42 days after issuing the Letter of Acceptance or within 21 days after receiving the documents in accordance with Sub-Clause 4.2 [Performance Security] and Sub-Clause 14.2 [Advance Payment], whichever is later;
- (b) the amount certified in each Interim Payment Certificate within 56 days after the Engineer receives the Statement and supporting documents or, at a time when the funding entity loan or credit (from which part of the payments to the Contractor is being made) is suspended, the amount shown on any statement submitted by the Contractor, within 14 days after such statement is submitted, any discrepancy being rectified in the next payment to the Contractor; and
- (c) the amount certified in the Final Payment Certificate within 56 days after the Procuring entity receives this Payment Certificate or, at a time when the funding entity loan or credit (from which part of the payments to the Contractor is being made) is suspended, the undisputed amount shown in the Final Statement, within 56 days after the date of notification of the suspension in accordance with Sub-Clause 16.2.

Payment of the amount due in each currency shall be made into the funding entity account, nominated by the Contractor, in the payment country (for this currency) specified in the Contract.

14.8 Delayed Payment

If the Contractor does not receive payment in accordance with Sub-Clause 14.7 [Payment], the Contractor shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period of delay. This period shall be deemed to commence on the date for payment specified in Sub-Clause 14.7 [Payment], irrespective (in the case of its subparagraph (b)) of the date on which any Interim Payment Certificate is issued.

Unless otherwise stated in the Particular Conditions, these financing charges shall be calculated at the annual rate of three percentage points above the discount rate of the central funding entity the Republic of Rwanda, or if not available, the inter-funding entity offered rate, and shall be paid in such currency.

14.9 Payment of Retention Money

When the Taking-Over Certificate has been issued for the Works, the first half of the Retention Money shall be certified by the Engineer for payment to the Contractor. If a Taking-Over Certificate is issued for a Section or part of the Works, a proportion of the Retention Money shall be certified and paid. This proportion shall be half (50%) of the proportion calculated by dividing the estimated contract value of the Section or part, by the estimated final Contract Price.

Promptly after the latest of the expiry dates of the Defects Notification Periods, the outstanding balance of the Retention Money shall be certified by the Engineer for payment to the Contractor. If a Taking-Over Certificate was issued for a Section, a proportion of the second half of the Retention Money shall be certified and paid promptly after the expiry date of the Defects Notification Period for the Section. This proportion shall be half (50%) of the proportion calculated by dividing the estimated contract value of the Section by the estimated final Contract Price.

However, if any work remains to be executed under Clause 11 [Defects Liability], the Engineer shall be entitled to withhold certification of the estimated cost of this work until it has been executed.

When calculating these proportions, no account shall be taken of any adjustments under Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost].

Unless otherwise stated in the Particular Conditions, when the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment by the Engineer, the Contractor shall be entitled to substitute a guarantee, in the form annexed to the Particular Conditions or in another form approved by the Procuring entity and provided by an entity approved by the Procuring entity, for the second half of the Retention Money. The Contractor shall ensure that the guarantee is in the amounts and currencies of the second half of the Retention Money and is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects, as specified for the Performance Security in Sub-Clause 4.2. On receipt by the Procuring entity of the required guarantee, the Engineer shall certify and the Procuring entity shall pay the second

half of the Retention Money. The release of the second half of the Retention Money against a guarantee shall then be in lieu of the release under the second paragraph of this Sub-Clause. The Procuring entity shall return the guarantee to the Contractor within 21 days after receiving a copy of the Performance Certificate.

Notwithstanding the above, The proceeds of the retention money shall be payable to the Procuring Entity as compensation for any money due to the Procuring Authority by the Contractor or due to Contractor's failure to complete its obligations under this Contract

If the Performance Security required under Sub-Clause 4.2 is in the form of a demand guarantee, and the amount guaranteed under it when the Taking-Over Certificate is issued is a double of the Retention Money, then the Retention Money guarantee will not be required. Statement at Completion

Within 84 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Engineer six copies of a Statement at completion with supporting documents, in accordance with Sub-Clause 14.3 [Application for Interim Payment Certificates], showing:

- (a) the value of all work done in accordance with the Contract up to the date stated in the Taking-Over Certificate for the Works,
- (b) any further sums which the Contractor considers to be due, and
- (c) an estimate of any other amounts which the Contractor considers will become due to him under the Contract. Estimated amounts shall be shown separately in this Statement at completion.

The Engineer shall then certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates].

14.10 Application for Final Payment Certificate

Within 56 days after receiving the Performance Certificate, the Contractor shall submit, to the Engineer, six copies of a draft final statement with supporting documents showing in detail in a form approved by the Engineer:

- (a) the value of all work done in accordance with the Contract, and
- (b) any further sums which the Contractor considers to be due to him under the Contract or otherwise.

If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonably require within 28 days from receipt of the said draft and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Engineer the final statement as agreed. This agreed statement is referred to in these Conditions as the "Final Statement".

However if, following discussions between the Engineer and the Contractor and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Engineer shall deliver to the Procuring entity (with a copy to the Contractor) an Interim Payment Certificate for the agreed parts of the draft final statement. Thereafter, if the dispute is finally resolved under Sub-Clause 20.4 [Obtaining Dispute Board's Decision] or Sub-Clause 20.5 [Amicable Settlement], the Contractor shall then prepare and submit to the Procuring entity (with a copy to the Engineer) a Final Statement.

14.11 Discharge

When submitting the Final Statement, the Contractor shall submit a discharge which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract. This discharge may state that it becomes effective when the Contractor has received the Performance Security and the outstanding balance of this total, in which event the discharge shall be effective on such date.

14.12 Issue of Final Payment Certificate

Within 28 days after receiving the Final Statement and discharge in accordance with Sub-Clause 14.11 [Application for Final Payment Certificate] and Sub-Clause 14.12 [Discharge], the Engineer shall deliver to the Procuring entity and to the Contractor, the Final Payment Certificate which shall state:

- (a) the amount which he fairly determines is finally due, and
- (b) after giving credit to the Procuring entity for all amounts previously paid by the Procuring entity and for all sums to which the Procuring entity is entitled, the balance (if any) due from the Procuring entity to the Contractor or from the Contractor to the Procuring entity, as the case may be.

If the Contractor has not applied for a Final Payment Certificate in accordance with Sub-Clause 14.11 [Application for Final Payment Certificate] and Sub-Clause 14.12 [Discharge], the Engineer shall request the Contractor to do so. If the Contractor fails to submit an application within a period of 28 days, the Engineer shall issue the Final Payment Certificate for such amount as he fairly determines to be due.

14.13 Cessation of Procuring entity's Liability

The Procuring entity shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the Works, except to the extent that the Contractor shall have included an amount expressly for it:

- (a) in the Final Statement and also
- (b) (except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in the Statement at completion described in Sub-Clause 14.10 [Statement at Completion].

However, this Sub-Clause shall not limit the Procuring entity liability under his indemnification obligations or the Procuring entity's liability in any case of fraud, deliberate default or reckless misconduct by the Procuring entity.

14.14 Currencies of Payment

The Contract Price shall be paid in the currency or currencies named in the Schedule of Payment Currencies. If more than one currency is so named, payments shall be made as follows:

- (a) if the Accepted Contract Amount was expressed in Local Currency only:
 - (i) the proportions or amounts of the Local and Foreign Currencies, and the fixed rates of exchange to be used for calculating the payments, shall be as stated in the Schedule of Payment Currencies, except as otherwise agreed by both Parties;
 - (ii) payments and deductions under Sub-Clause 13.5 [Provisional Sums] and Sub-Clause 13.7 [Adjustments for Changes in Legislation] shall be made in the applicable currencies and proportions; and
 - (iii) other payments and deductions under sub-paragraphs (a) to (d) of Sub-Clause 14.3 [Application for Interim Payment Certificates] shall be made in the currencies and proportions specified in sub-paragraph (a)(i) above;
- (b) payment of the damages specified in the Contract Data, shall be made in the currencies and proportions specified in the Schedule of Payment Currencies;
- (c) other payments to the Procuring entity by the Contractor shall be made in the currency in which the sum was expended by the Procuring entity, or in such currency as may be agreed by both Parties;
- (d) if any amount payable by the Contractor to the Procuring entity in a particular currency exceeds the sum payable by the Procuring entity to the Contractor in that currency, the Procuring entity may recover the balance of this amount from the sums otherwise payable to the Contractor in other currencies; and
- (e) if no rates of exchange are stated in the Schedule of Payment Currencies, they shall be those prevailing on the Base Date and determined by the central funding entity of the Republic of Rwanda.

15. Termination by the Procuring entity

15.1 Notice to Correct

If the Contractor fails to carry out any obligation under the Contract, the Engineer may by notice require the Contractor to make good the failure and to remedy it within a specified reasonable time.

15.2 Termination by Procuring entity

The Procuring entity shall be entitled to terminate the Contract if the Contractor:

- (a) fails to comply with Sub-Clause 4.2 [Performance Security] or with a notice under Sub-Clause 15.1 [Notice to Correct];
- (b) abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract;
- (c) without reasonable excuse fails:
 - (i) to proceed with the Works in accordance with Clause 8 [Commencement, Delays and Suspension], or
 - (ii) to comply with a notice issued under Sub-Clause 7.5 [Rejection] or Sub-Clause 7.6 [Remedial Work], within 28 days after receiving it,
- (d) subcontracts the whole of the Works or assigns the Contract without the required agreement;
- (e) becomes funding entityrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events, or;
- (f) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
 - (i) for doing or forbearing to do any action in relation to the Contract, or
 - (ii) for showing or forbearing to show favour or disfavour to any person in relation to the Contract, or if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (f). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination.

In any of these events or circumstances, the Procuring entity may, upon giving 14 days' notice to the Contractor, terminate the Contract and expel the Contractor from the Site. However, in the case of sub-paragraph (e) or (f), the Procuring entity may by notice terminate the Contract immediately.

The Procuring entity's election to terminate the Contract shall not prejudice any other rights of the Procuring entity, under the Contract or otherwise.

The Contractor shall then leave the Site and deliver any required Goods, all Contractor's Documents, and other design documents made by or for him, to the Engineer. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any subcontract, and (ii) for the protection of life or property or for the safety of the Works.

After termination, the Procuring entity may complete the Works and/or arrange for any other entities to do so. The Procuring entity and these entities may then use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor.

The Procuring entity shall then give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Procuring entity, these items may be sold by the Procuring entity in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

15.3 Valuation at Date of Termination

As soon as practicable after a notice of termination under Sub-Clause 15.2 [Termination by Procuring entity] has taken effect, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the value of the Works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract.

15.4 Payment after Termination

After a notice of termination under Sub-Clause 15.2 [Termination by Procuring entity] has taken effect, the Procuring entity may:

- (a) proceed in accordance with Sub-Clause 2.5 [Procuring entity's Claims],
- (b) withhold further payments to the Contractor until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Procuring entity, have been established, and/or
- (c) recover from the Contractor any losses and damages incurred by the Procuring entity and any extra costs of completing the Works, after allowing for any sum due to the Contractor under Sub-Clause 15.3 [Valuation at Date of Termination]. After recovering any such losses, damages and extra costs, the Procuring entity shall pay any balance to the Contractor.

15.5 Procuring entity Entitlement to Termination for Convenience

The Procuring entity shall be entitled to terminate the Contract, at any time for the Procuring entity's convenience, by giving notice of such termination to the Contractor. The termination shall take effect 28 days after the later of the dates on which the Contractor receives this notice or the Procuring entity returns the Performance Security. The Procuring entity shall not terminate the Contract under this Sub-Clause in order to execute the Works himself or to arrange for the Works to be executed by another contractor or to avoid a termination of the Contract by the Contractor under Sub-Clause 16.4 [Payment on Termination].

After this termination, the Contractor shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment] and shall be paid in accordance with Sub-Clause 19.5 [Optional Termination, Payment and Release].

15.6 Corrupt or Fraudulent Practices

If the Procuring entity determines that the Contractor has engaged in corrupt, fraudulent, collusive coercive, or obstructive practices, in competing for or in executing the Contract, then the Procuring entity may, after giving 14 days notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site, and the provisions of Clause 15 shall apply as if such expulsion had been made under Sub-Clause 15.2 [Termination by Procuring entity].

Should any employee of the Contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the Works, then that employee shall be removed in accordance with Sub-Clause 6.9 [Contractor's Personnel].

For the purposes of this Sub-Clause:

- (h) "corrupt practice"¹ 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"² 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"³ means arrangement between two or more parties designed to achieve an improper purpose, including influencing another party or the civil servant;
 - (iv) "coercive practice"⁴ 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 practice" is
 - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Funding entity investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or

¹ "another party" refers to a public official acting in relation to the procurement process or contract execution].

² a "party" refers to a public official; the terms "benefit" and "obligation" relate to the procurement process or contract execution; and the "act or omission" is intended to influence the procurement process or contract execution.

³ "parties" refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

⁴ a "party" refers to a participant in the procurement process or contract execution.

- (bb) acts intended to materially impede the exercise of the funding entity inspection and audit rights provided for under Sub-Clause 1.15 .

16. Suspension and Termination by Contractor

16.1 Contractor's Entitlement to Suspend Work

If the Engineer fails to certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates] or the Procuring entity fails to comply with Sub-Clause 2.4 [Procuring entity's Financial Arrangements] or Sub-Clause 14.7 [Payment], the Contractor may, after giving not less than 21 days' notice to the Procuring entity, suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, reasonable evidence or payment, as the case may be and as described in the notice.

The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 14.8 [Delayed Payment] and to termination under Sub-Clause 16.2 [Termination by Contractor].

If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.

If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

16.2 Termination by Contractor

The Contractor shall be entitled to terminate the Contract if:

- (a) the Contractor does not receive the reasonable evidence within 42 days after giving notice under Sub-Clause 16.1 [Contractor's Entitlement to Suspend Work] in respect of a failure to comply with Sub-Clause 2.4 [Procuring entity's Financial Arrangements],
- (b) the Engineer fails, within 56 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate,
- (c) the Contractor does not receive the amount due under an Interim Payment Certificate within 42 days after the expiry of the time stated in Sub-Clause 14.7 [Payment] within which payment is to be made (except for deductions in accordance with Sub-Clause 2.5 [Procuring entity's Claims]),

- (d) the Procuring entity substantially fails to perform his obligations under the Contract in such manner as to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract,
- (e) the Procuring entity fails to comply with Sub-Clause 1.6 [Contract Agreement] or Sub-Clause 1.7 [Assignment],
- (f) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [Prolonged Suspension], or
- (g) In the event the funding entity suspends the loan or credit from which part of the payments to the Contractor are being made, if the Contractor has not received the sums due to him upon expiration of the 14 days referred to in Sub-Clause 14.7 [Payment] for payments under Interim Payment certificates, the Contractor may, without prejudice to the Contractor's entitlement to financing charges under Sub-Clause 14.8 [Delayed Payment], take one or both of the following actions, namely (i) suspend work or reduce the rate of work, and (ii) terminate his employment under the Contract by giving notice to the Procuring entity, with a copy to the Engineer, such termination to take effect 14 days after the giving of the notice.
- (h) the Contractor does not receive the Engineer's instruction recording the agreement of both Parties on the fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1 [Commencement of Works].

In any of these events or circumstances, the Contractor may, upon giving 14 days' notice to the Procuring entity, terminate the Contract. However, in the case of sub-paragraph (f) ~~or (g)~~, the Contractor may by notice terminate the Contract immediately.

The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.

16.3 Cessation of Work and Removal of Contractor's Equipment

After a notice of termination under Sub-Clause 15.5 [Procuring entity's Entitlement to Termination for Convenience], Sub-Clause 16.2 [Termination by Contractor] or Sub-Clause 19.5 [Optional Termination, Payment and Release] has taken effect, the Contractor shall promptly:

- (a) cease all further work, except for such work as may have been instructed by the Engineer for the protection of life or property or for the safety of the Works,
- (b) hand over Contractor's Documents, Plant, Materials and other work, for which the Contractor has received payment, and
- (c) remove all other Goods from the Site, except as necessary for safety, and leave the Site.

16.4 Payment on Termination

After a notice of termination under Sub-Clause 16.2 [Termination by Contractor] has taken effect, the Procuring entity shall promptly:

- (a) return the Performance Security to the Contractor,
- (b) pay the Contractor in accordance with Sub-Clause 19.6 [Optional Termination, Payment and Release], and
- (c) pay to the Contractor the amount of any loss or damage sustained by the Contractor as a result of this termination.

17. Risk and Responsibility

17.1 Indemnities

The Contractor shall indemnify and hold harmless the Procuring entity, the Procuring entity's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

- (a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, wilful act or breach of the Contract by the Procuring entity, the Procuring entity's Personnel, or any of their respective agents, and
- (b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss arises out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless and to the extent that any such damage or loss is attributable to any negligence, wilful act or breach of the Contract by the Procuring entity, the Procuring entity's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

The Procuring entity shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, wilful act or breach of the Contract by the Procuring entity, the Procuring entity's Personnel, or any of their respective agents, and (2) the matters for which liability may be excluded from insurance cover, as described in subparagraphs (d)(i), (ii) and (iii) of Sub-Clause 18.3 [Insurance Against Injury to Persons and Damage to Property].

17.2 Contractor's Care of the Works

The Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be issued under Sub-Clause 10.1 [Taking Over of the Works and Sections]) for the Works, when responsibility for the care of the Works shall pass to the Procuring entity. If a Taking-Over

Certificate is issued (or is so deemed to be issued) for any Section or part of the Works, responsibility for the care of the Section or part shall then pass to the Procuring entity.

After responsibility has accordingly passed to the Procuring entity, the Contractor shall take responsibility for the care of any work which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed.

If any loss or damage happens to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause not listed in Sub-Clause 17.3 [Procuring entity's Risks], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform with the Contract.

The Contractor shall be liable for any loss or damage caused by any actions performed by the Contractor after a Taking-Over Certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after a Taking-Over Certificate has been issued and which arose from a previous event for which the Contractor was liable.

17.3 Procuring entity Risks

The risks referred to in Sub-Clause 17.4 [Consequences of Procuring entity's Risks] below, insofar as they directly affect the execution of the Works in the Republic of Rwanda, are:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (b) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war, within the Republic of Rwanda,
- (c) riot, commotion or disorder within the Republic of Rwanda by persons other than the Contractor's Personnel,
- (d) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, within the Republic of Rwanda, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity,
- (e) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
- (f) use or occupation by the Procuring entity of any part of the Permanent Works, except as may be specified in the Contract,
- (g) design of any part of the Works by the Procuring entity Personnel or by others for whom the Procuring entity is responsible, and
- (h) any operation of the forces of nature which is Unforeseeable or against which an experienced contractor could not reasonably have been expected to have taken adequate preventative precautions.

17.4 Consequences of Procuring entity Risks

If and to the extent that any of the risks listed in Sub-Clause 17.3 above results in loss or damage to the Works, Goods or Contractor's Documents, the Contractor shall promptly give notice to the Engineer and shall rectify this loss or damage to the extent required by the Engineer.

If the Contractor suffers delay and/or incurs Cost from rectifying this loss or damage, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost, which shall be included in the Contract Price. In the case of sub-paragraphs (f) and (g) of Sub-Clause 17.3 [Procuring entity's Risks], Cost plus profit shall be payable.

After receiving this further notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

17.4 Intellectual and Industrial Property Rights

In this Sub-Clause, "infringement" means an infringement (or alleged infringement) of any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and "claim" means a claim (or proceedings pursuing a claim) alleging an infringement.

Whenever a Party does not give notice to the other Party of any claim within 28 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.

The Procuring entity shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:

- (a) an unavoidable result of the Contractor's compliance with the Contract, or
- (b) a result of any Works being used by the Procuring entity:
 - (i) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or
 - (ii) in conjunction with anything not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.

The Contractor shall indemnify and hold the Procuring entity harmless against and from any other claim which arises out of or in relation to (i) the manufacture, use, sale or import of any Goods, or (ii) any design for which the Contractor is responsible.

If a Party is entitled to be indemnified under this Sub-Clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which

may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party.

17.6 Limitation of Liability

Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than as specifically provided in Sub-Clause 8.7 [Delay Damages]; Sub-Clause 11.2 [Cost of Remedying Defects]; Sub-Clause 15.4 [Payment after Termination]; Sub-Clause 16.4 [Payment on Termination]; Sub-Clause 17.1 [Indemnities]; Sub-Clause 17.4 (b) [Consequences of Procuring entity's Risks] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights].

The total liability of the Contractor to the Procuring entity, under or in connection with the Contract other than under Sub-Clause 4.19 [Electricity, Water and Gas], Sub-Clause 4.20 [Procuring entity's Equipment and Free-Issue Material], Sub-Clause 17.1 [Indemnities] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights], shall not exceed the sum resulting from the application of a multiplier (less or greater than one) to the Accepted Contract Amount, as stated in the Contract Data, or (if such multiplier or other sum is not so stated), the Accepted Contract Amount.

This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

17.7 Use of Procuring entity Accommodation/Facilities

The Contractor shall take full responsibility for the care of the Procuring entity provided accommodation and facilities, if any, as detailed in the Specification, from the respective dates of hand-over to the Contractor until cessation of occupation (where hand-over or cessation of occupation may take place after the date stated in the Taking-Over Certificate for the Works).

If any loss or damage happens to any of the above items while the Contractor is responsible for their care arising from any cause whatsoever other than those for which the Procuring entity is liable, the Contractor shall, at his own cost, rectify the loss or damage to the satisfaction of the Engineer.

18. Insurance

18.1 General Requirements for Insurances

In this Clause, "insuring Party" means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant Sub-Clause.

Wherever the Contractor is the insuring Party, each insurance shall be concluded with insurers and in terms acceptable to the Contractor. These terms shall be consistent with any

terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.

Wherever the Procuring entity is the insuring Party, each insurance shall be concluded with insurers and in terms acceptable to the Contractor. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.

If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Clause, (i) the Contractor shall act under the policy on behalf of these additional joint insured except that the Procuring entity shall act for Procuring entity Personnel, (ii) additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer, and (iii) the insuring Party shall require all additional joint insured to comply with the conditions stipulated in the policy.

Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.

The relevant insuring Party shall, within the respective periods stated in the Contract Data (calculated from the Commencement Date), submit to the other Party:

- (a) evidence that the insurances described in this Clause have been effected, and
- (b) copies of the policies for the insurances described in Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment] and Sub-Clause 18.3 [Insurance against Injury to Persons and Damage to Property].

When each premium is paid, the insuring Party shall submit evidence of payment to the other Party. Whenever evidence or policies are submitted, the insuring Party shall also give notice to the Engineer.

Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.

Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give notice to the other Party.

If the insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintain under the Contract, or fails to provide satisfactory evidence and copies of policies in accordance with this Sub-Clause, the other Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these premiums to the other Party, and the Contract Price shall be adjusted accordingly.

Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the Procuring entity, under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or the Procuring entity in accordance with these obligations, liabilities or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Contract, and the other Party neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party.

Payments by one Party to the other Party shall be subject to Sub-Clause 2.5 [Procuring entity's Claims] or Sub-Clause 20.1 [Contractor's Claims], as applicable.

18.2 Insurance for Works and Contractor's Equipment

The insuring Party shall insure the Works, Plant, Materials and Contractor's Documents for not less than the full reinstatement cost including the costs of demolition, removal of debris and professional fees and profit. This insurance shall be effective from the date by which the evidence is to be submitted under sub-paragraph (a) of Sub-Clause 18.1 [General Requirements for Insurances], until the date of issue of the Taking-Over Certificate for the Works.

The insuring Party shall maintain this insurance to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Contractor is liable arising from a cause occurring prior to the issue of the Taking-Over Certificate, and for loss or damage caused by the Contractor in the course of any other operations (including those under Clause 11 [Defects Liability]).

The insuring Party shall insure the Contractor's Equipment for not less than the full replacement value, including delivery to Site. For each item of Contractor's Equipment, the insurance shall be effective while it is being transported to the Site and until it is no longer required as Contractor's Equipment.

Unless otherwise stated in the Particular Conditions, insurances under this Sub-Clause:

- (a) shall be effected and maintained by the Contractor as insuring Party,
- (b) shall be in the joint names of the Parties, who shall be jointly entitled to receive payments from the insurers, payments being held or allocated to the Party actually bearing the costs of rectifying the loss or damage,
- (c) shall cover all loss and damage from any cause not listed in Sub-Clause 17.3 [Procuring entity's Risks],
- (d) shall also cover, to the extent specifically required in the bidding documents of the Contract, loss or damage to a part of the Works which is attributable to the use or occupation by the Procuring entity of another part of the Works, and loss or damage from the risks listed in sub-paragraphs (c), (g) and (h) of Sub-Clause 17.3 [Procuring

entity's Risks], excluding (in each case) risks which are not insurable at commercially reasonable terms, with deductibles per occurrence of not more than the amount stated in the Contract Data (if an amount is not so stated, this sub-paragraph (d) shall not apply), and

- (e) may however exclude loss of, damage to, and reinstatement of:
 - (i) a part of the Works which is in a defective condition due to a defect in its design, materials or workmanship (but cover shall include any other parts which are lost or damaged as a direct result of this defective condition and not as described in sub-paragraph (ii) below),
 - (ii) a part of the Works which is lost or damaged in order to reinstate any other part of the Works if this other part is in a defective condition due to a defect in its design, materials or workmanship,
 - (iii) a part of the Works which has been taken over by the Procuring entity, except to the extent that the Contractor is liable for the loss or damage, and
 - (iv) Goods while they are not in the Country, subject to Sub-Clause 14.5 [Plant and Materials intended for the Works].

If, more than one year after the Base Date, the cover described in sub-paragraph (d) above ceases to be available at commercially reasonable terms, the Contractor shall (as insuring Party) give notice to the Procuring entity, with supporting particulars. The Procuring entity shall then (i) be entitled subject to Sub-Clause 2.5 [Procuring entity's Claims] to payment of an amount equivalent to such commercially reasonable terms as the Contractor should have expected to have paid for such cover, and (ii) be deemed, unless he obtains the cover at commercially reasonable terms, to have approved the omission under Sub-Clause 18.1 [General Requirements for Insurances].

18.3 Insurance against Injury to Persons and Damage to Property

The insuring Party shall insure against each Party's liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment]) or to any person (except persons insured under Sub-Clause 18.4 [Insurance for Contractor's Personnel]), which may arise out of the Contractor's performance of the Contract and occurring before the issue of the Performance Certificate.

This insurance shall be for a limit per occurrence of not less than the amount stated in the Contract Data, with no limit on the number of occurrences. If an amount is not stated in the Contract Data, this Sub-Clause shall not apply.

Unless otherwise stated in the Particular Conditions, the insurances specified in this Sub-Clause:

- (a) shall be effected and maintained by the Contractor as insuring Party,

- (b) shall be in the joint names of the Parties,
- (c) shall be extended to cover liability for all loss and damage to the Procuring entity's property (except things insured under Sub-Clause 18.2) arising out of the Contractor's performance of the Contract, and
- (d) may however exclude liability to the extent that it arises from:
 - (i) the Procuring entity right to have the Permanent Works executed on, over, under, in or through any land, and to occupy this land for the Permanent Works,
 - (ii) damage which is an unavoidable result of the Contractor's obligations to execute the Works and remedy any defects, and
 - (iii) a cause listed in Sub-Clause 17.3 [Procuring entity's Risks], except to the extent that cover is available at commercially reasonable terms.

18.4 Insurance for Contractor's Personnel

The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel.

The insurance shall cover the Procuring entity and the Engineer against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel, except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect of the Procuring entity or of the Procuring entity Personnel.

The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Works. For a Subcontractor's employees, the insurance may be affected by the Subcontractor, but the Contractor shall be responsible for compliance with this Clause.

19. Force Majeure

19.1 Definition of Force Majeure

In this Clause, "Force Majeure" means an exceptional event or circumstance:

- (a) which is beyond a Party's control,
- (b) which such Party could not reasonably have provided against before entering into the Contract,
- (c) which, having arisen, such Party could not reasonably have avoided or overcome, and
- (d) which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (ii) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war,
- (iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel,
- (iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
- (v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

19.2 Notice of Force Majeure

If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within five (5) days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

19.3 Duty to Minimize Delay

Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure.

A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

19.4 Consequences of Force Majeure

If the Contractor is prevented from performing its substantial obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and

- (b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 19.1 [Definition of Force Majeure] and, in the case of sub-paragraphs (ii) to (iv), occurs in the Country, payment of any such Cost, including the costs of rectifying or replacing the Works and/or Goods damaged or destroyed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment].

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

19.4 Force Majeure Affecting Subcontractor

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

19.5 Optional Termination, Payment and Release

If the execution of substantially all the Works in progress is prevented for a continuous period of sixty (60) days by reason of Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment].

Upon such termination, the Engineer shall determine the value of the work done and issue a Payment Certificate which shall include:

- (a) the amounts payable for any work carried out for which a price is stated in the Contract;
- (b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Procuring entity when paid for by the Procuring entity, and the Contractor shall place the same at the Procuring entity disposal;
- (c) other Costs or liabilities which in the circumstances were reasonably and necessarily incurred by the Contractor in the expectation of completing the Works;
- (d) the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and
- (e) the Cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of termination.

19.6 Release from Performance

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

- (a) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and
- (b) the sum payable by the Procuring entity to the Contractor shall be the same as would have been payable under Sub-Clause 19.5 [Optional Termination, Payment and Release] if the Contract had been terminated under Sub-Clause 19.5.

20. Claims, Disputes and Arbitration

20.1 Contractor's Claims

If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Procuring entity shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting the Procuring entity liability, the Engineer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Engineer to inspect all these records, and shall (if instructed) submit copies to the Engineer.

Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Engineer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- (a) this fully detailed claim shall be considered as interim;
- (b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Engineer may reasonably require; and
- (c) the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.

Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Engineer and approved by the Contractor, the Engineer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within the above defined time period.

Within the above defined period of 42 days, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

Each Payment Certificate shall include such additional payment for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

If the Engineer does not respond within the timeframe defined in this Clause, either Party may consider that the claim is rejected by the Engineer and any of the Parties may refer it to the Dispute Board in accordance with Sub-Clause 20.4 [Obtaining Dispute Board's Decision].

The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

20.2 Amicable Settlement

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.

20.3 Adjudication

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 in accordance with the terms specified in the Contract Data.

20.4 Litigation or Arbitration

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 Contract Data.**

20.5 Failure to Comply with Adjudicator's Decision

In the event that a Party fails to comply with a final and binding adjudicator's decision, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to litigation or arbitration under Sub-Clause 20.4 [Arbitration].

Section VIII. Particular Conditions (PC)

The following Particular Conditions shall supplement the GC. Whenever there is a conflict, the provisions herein shall prevail over those in the GC.

Part A - Contract Data

Conditions	Sub-Clause	Data
Procuring entity name and address	1.2.2.2 & 1.4	
Engineer's name and address	1.2.2.4 & 1.4	
Time for Completion	1.2.3.3	_____days <i>If Sections are to be used, refer to Table: Summary of Sections below</i>
Defects Notification Period	1.2.3.7	365 days.
Sections	1.2.5.6	<i>If Sections are to be used, refer to Table: Summary of Sections below</i>
Electronic transmission systems	1.4	
Governing Law	1.5	
Ruling language	1.5	
Language for communications	1.5	
Time for the Parties entering into a Contract Agreement	1.7]	
Time for access to the Site	2.1	No later than the Commencement Day, except for the following parts (if applicable, with detailed description of parts concerned: _____days after Commencement Date
Engineer's Duties and Authority	3.1(b)(ii)	Variations resulting in an increase of the Accepted Contract Amount in excess of_____% shall require

Conditions	Sub-Clause	Data
		approval of the Procuring entity.
Performance Security	4.2	The performance security will be in the form of a bank guarantee, unless otherwise stated in this contract data ____ <i>[insert another chosen form of the guarantee and delete bank guarantee]</i> in the amount(s) of 10% of the total contract amount, unless otherwise stated in this contract data <i>[insert another chosen percentage between 5% and 10% and delete the 10%]</i> in the same currency(ies) of the Accepted Contract Amount.
Normal working hours	6.5	
Delay damages for the Works	8.7 & 14.14(b)	<u>1%</u> ‰ of the Contract Price per day. <i>If Sections are to be used, refer to Table: Summary of Sections below</i> 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>
Maximum amount of delay damages	8.7	5% of the final Contract Price, unless the contract duration is extended along with the application of penalties
Provisional Sums	13.5.(b)(ii)	<i>[If there are Provisional Sums, insert a percentage for adjustment of Provisional Sums]</i> _____%
Adjustments for Changes in Cost	13.7	Period “n” applicable to the adjustment multiplier “Pn”: _____ <i>[Insert the period if different from one (1) month; if period “n” is one (1) month, insert “not applicable”]</i>
Total advance payment	14.2	_____% Percentage of the Accepted Contract Amount payable in the currencies and proportions in which the Accepted Contract Amount is payable <i>[Insert number and timing of installments if applicable]</i>
Repayment amortization rate of advance payment	14.2(b)	_____%

Conditions	Sub-Clause	Data
Percentage of Retention	14.3	_____%
Limit of Retention Money	14.3	_____ % of the Accepted Contract Amount
Plant and Materials	14.5(b)(i)	If Sub-Clause 14.5 applies: Plant and Materials for payment Free on Board _____ [list].
	14.5(c)(i)	Plant and Materials for payment when delivered to the Site _____ [list].
Minimum Amount of Interim Payment Certificates	14.6	_____ % of the Accepted Contract Amount.
Publishing source of commercial interest rates for financial charges in case of delayed payment	14.8	
Maximum total liability of the Contractor to the Procuring entity	17.6	[Select one of the two options below as appropriate] The product of _____ [insert a multiplier less or greater than one] times the Accepted Contract Amount, or _____ [insert amount of the maximum total liability]
Periods for submission of insurance: a. evidence of insurance. b. relevant policies	18.1	[Insert period for submission of evidence of insurance and policy. Period may be from 14 days to 28 days.] ____ days ____ days
Maximum amount of deductibles for insurance of the Procuring entity's risks	18.2(d)	[Insert maximum amount of deductibles]

Conditions	Sub- Clause	Data
Minimum amount of third party Insurance	18.3	<i>[Insert amount of third party insurance]</i>
Adjudication process	20.3	<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>

Conditions	Sub- Clause	Data
Litigation or Arbitration	20.4	<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 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>

Conditions	Sub- Clause	Data
		<p>The Judges or arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, and any decision of the Adjudicator, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Engineer from being called as a witness and giving evidence before the Judges or arbitrators on any matter whatsoever relevant to the dispute.</p> <p>Neither Party shall be limited in the proceedings before the Judges or arbitrators to the evidence or arguments previously put before the Adjudicator to obtain its decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the Adjudicator shall be admissible in evidence in the arbitration but shall not bind the Judges or the Arbitrators.</p> <p>Litigation or Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Engineer and the Adjudicator shall not be altered by reason of any litigation or arbitration being conducted during the progress of the Works.</p>

Table: Summary of Sections

Section Name/Description (Sub-Clause 1.1.5.6)	Time for Completion (Sub-Clause 1.1.3.3)	Damages for Delay (Sub-Clause 8.7)

Part B - Specific Provisions**Sub-Clause 14.1 The Contract Price** (*Alternative paragraph*)

- (e) Notwithstanding the provisions of subparagraph (b), Contractor's Equipment, including essential spare parts therefore, imported by the Contractor for the sole purpose of

executing the Contract shall be temporarily exempt from the payment of import duties and taxes upon initial importation, provided the Contractor shall post with the customs authorities at the port of entry an approved export bond or bank guarantee, valid until the Time for Completion plus six months, in an amount equal to the full import duties and taxes which would be payable on the assessed imported value of such Contractor's Equipment and spare parts, and callable in the event the Contractor's Equipment is not exported from the Country on completion of the Contract. A copy of the bond or bank guarantee endorsed by the customs authorities shall be provided by the Contractor to the Procuring entity upon the importation of individual items of Contractor's Equipment and spare parts. Upon export of individual items of Contractor's Equipment or spare parts, or upon the completion of the Contract, the Contractor shall prepare, for approval by the customs authorities, an assessment of the residual value of the Contractor's Equipment and spare part to be exported, based on the depreciation scale(s) and other criteria used by the customs authorities for such purposes under the provisions of the applicable Laws. Import duties and taxes shall be due and payable to the customs authorities by the Contractor on (a) the difference between the initial imported value and the residual value of the Contractor's Equipment and spare parts to be exported; and (b) on the initial imported value that Contractor's Equipment and spare parts remaining in the Republic of Rwanda after completion of the Contract. Upon payment of such dues within 28 days of being invoiced, the bond or bank guarantee shall be reduced or released accordingly; otherwise the security shall be called in the full amount remaining.

Sub-Clause 6.23 Workers' Organizations *(additional sub-clause to be added after Sub-Clause 6.22)*

In countries where national law recognizes workers' rights to form and to join workers' organizations of their choosing without interference and to bargain collectively, the Contractor shall comply with national law. Where national law substantially restricts workers' organizations, the Contractor shall enable alternative means for Contractor's Personnel to express their grievances and protect their rights regarding working conditions and terms of employment. In either case described above, and where national law is silent, the Contractor shall not discourage workers from forming or joining workers' organizations of their choosing or from bargaining collectively, and will not discriminate or retaliate against Contractor's Personnel who participate, or seek to participate, in such organizations and bargain collectively. The Contractor shall engage with such workers representatives. Worker organizations are expected to fairly represent the workers in the workforce.

Sub-Clause 6.24 Non-Discrimination and Equal Opportunity
(additional sub-clause to be added after Sub-Clause 6.23 above)

The Contractor shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment relationship on the principle of equal opportunity and fair treatment, and will not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or

retirement, and discipline. In countries where national law provides for non-discrimination in employment, the Contractor shall comply with national law. When national laws are silent on non-discrimination in employment, the Contractor shall meet this Sub-Clause's requirements. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on inherent requirements of the job will not be deemed discrimination.

Section IX. Annex to the Particular Conditions - Contract Forms

Table of Forms

Notification of Award	200
Contract Agreement	Error! Bookmark not defined.
Performance Security	204
Advance Payment Security	208
Retention Money Security	210

Notification of Award

LETTER OF ACCEPTANCE

[Letterhead *paper of the Procuring entity*]

[*date*]

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

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

You are requested to furnish the Performance Security within [*insert 15 or 21 days depending on whether the contract is national or international*] days in accordance with the Conditions of Contract, using for that purpose one of the Performance Security Forms included in Section IX, Annex to the Particular Conditions - Contract Forms, of the Bidding Document

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Agency: _____

Contract Agreement

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 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”) and has tendered the works through an open international tender;

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 under the terms and conditions of payments to be made by the Procuring Entity to the Contractor as hereinafter mentioned, to execute and complete the works and remedy any defects therein in conformity in all respects with the provisions of the 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 _____

V. 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.

NOW THEREFORE THIS AGREEMENT IS ENTERED INTO AS FOLLOWS:

5. The object of the contract is the construction of as specified in this contract.
6. 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:
 - p. **Contract Agreement,**
 - q. **Letter of Acceptance,**
 - r. **The Particular Conditions – Part A,**
 - s. **The Particular Conditions – Part B**
 - t. **General Conditions of Contract,**
 - u. **Minutes of negotiation**
 - v. **The Tender,**
 - w. **Specifications,**
 - x. **Drawings,**
 - y. **Bill of Quantities,⁵**
 - z. **Bill of prices, and**
 - aa. **The Schedules,**
 - bb. **The time programme and its amendments as agreed by the engineer and the contractor and approved by the Procuring entity,**
 - cc. **Contractor’s Bid,**
 - dd. **Any other document listed in the SCC as forming part of the Contract.**
7. This contract shall prevail over all other contract documents. **The documents forming the Contract are to be taken as mutually explanatory of one another.** In the event of any discrepancy or inconsistency within the contract documents, then the documents shall prevail in the order listed above
8. If an ambiguity or discrepancy is stated in the documents, the Engineer shall issue any necessary clarification or instruction.

⁵ *In lump sum contracts, delete “Bill of Quantities” and replace with “Activity Schedule.”*

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of the Republic of RWANDA on the day, month and year indicated above.

Signed, Sealed, and Delivered on this (DATE)

For and on behalf of the Procuring Entity

For and on behalf of the Contractor

Signature _____

Signature _____

Names : _____

Names : _____

Title: _____

Title: _____

Performance Security

Option 1: (Demand Guarantee)

_____ [Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: _____ [Name and Address of Procuring entity]

Date: _____

PERFORMANCE GUARANTEE No.: _____

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

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

At the request of the Contractor, we _____ [name of Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ [amount in figures] (_____) [amount in words],¹ such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without 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.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

¹ The Guarantor shall insert an amount representing the percentage of the Contract Price specified in the Contract and denominated either in the currency(cies) of the Contract or a freely convertible currency acceptable to the Procuring entity.

Date of issue:.....

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

Position:.....

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

Seal:.....

on behalf of [*name of Contractor*] in the capacity of [insert title(s)]

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

Option 2: Performance Bond

By this Bond _____ as Principal (hereinafter called “the Contractor”) and _____] as Surety (hereinafter called “the Surety”), are held and firmly bound unto _____] as Obligee (hereinafter called “the Procuring entity”) in the amount of _____, for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Contractor has entered into a written Agreement with the Procuring entity dated the ___ day of _____, 20 ___, for _____ in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

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

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

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

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

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

In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this _____ day of _____ 20 ____.

Signed on _____ on behalf of _____

By _____ in the capacity of _____

In the presence of _____

Signed on _____ on behalf of _____

By _____ in the capacity of _____

In the presence of _____

Advance Payment Security

Demand Guarantee

_____ [Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: _____ [Name and Address of Procuring entity]

Date: _____

ADVANCE PAYMENT GUARANTEE No.: _____

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

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

At the request of the Contractor, we _____ [name of Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ [amount in figures] (_____) [amount in words]¹ upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor 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 _____ at _____ [name and address of Bank].

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that eighty (80) percent of the Contract Price has been certified for payment, or on the ___ day of _____,

¹ 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.

2____,² whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date..

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

Date of issue:.....

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

Position:.....

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

Seal:.....

on behalf of *[name of Contractor]* in the capacity of *[insert title(s)]*

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

² *Insert the expected expiration date of the Time for Completion. The Procuring entity should note that in the event of an extension of the time for completion of the Contract, the Procuring entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Procuring entity might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Procuring entity’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”*

Retention Money Security

Demand Guarantee

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

Beneficiary: _____ *[Name and Address of Procuring entity]*

Date: _____

RETENTION MONEY GUARANTEE No.: _____

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

Furthermore, we understand that, according to the conditions of the Contract, when the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment, payment of *[insert the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security]* is to be made against a Retention Money guarantee.

At the request of the Contractor, we _____ *[name of Bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ *[amount in figures]* (_____) *[amount in words]*¹ upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor 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 payment of the second half of the Retention Money referred to above must have been received by the

¹ *The Guarantor shall insert an amount representing the amount of the second half of the Retention Money or or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security and denominated either in the currency(ies) of the second half of the Retention Money as specified in the Contract, or in a freely convertible currency acceptable to the Procuring entity.*

Contractor on its account number _____ at _____ [*name and address of Bank*].

This guarantee shall expire, at the latest, 21 days after the date when the Procuring entity has received a copy of the Performance Certificate issued by the Engineer. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

Date of issue:.....

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

Position:.....

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

Seal:.....

on behalf of [*name of Contractor*] in the capacity of [*insert title(s)*]

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

STANDARD BIDDING DOCUMENTS

USER'S GUIDE

FOR

PROCUREMENT OF WORKS

Contents

Introduction	v
Acronyms	Error! Bookmark not defined.
The Bidding Process	1
Preparing and Issuing a Bidding Document	1
Bid Preparation and Submission	2
Bid Opening	2
Bid Evaluation and Contract Award	3
Invitation for Bids	5
Invitation for Bids - Following Prequalification.....	5
Invitation for Bids - Without Prequalification	7
Section I. Instructions to Bidders	9
Section II. Bid Data Sheet	10
BDS Form	11
Section III. Evaluation and Post Qualification Criteria - Following	
Prequalification	18
1. Evaluation	19
2. Qualification	20
Section III. Evaluation and Qualification Criteria - Without Prequalification	25
1. Evaluation	26
2. Qualification	28
Section IV. Bidding Forms	35
Bid Submission Sheet	36
Appendix to Bid.....	38
Bill of Quantities.....	42
Technical Proposal.....	60
Personnel.....	63
Bidders Qualification Following Prequalification	65
Bidders Qualification without prequalification	73
Form of Bid Security	84
Form of Bid-Securing Declaration.....	86
Section V. Eligible Countries	86
Part 2 – Works Requirements	87
Section VI. Works Requirements - Specification	87
Specifications	87
Drawings	90
Supplementary Information	91

Part 3 – Conditions of Contract and Contract Forms	93
Section VII. General Conditions	94
Section VIII. Particular Conditions	95
Part A - Contract Data.....	95
Part B - Specific Provisions	101
Section IX. Contract Forms	102
Notification of Award	103
Contract Agreement	104
Performance Security	107
Advance Payment Security	109

Introduction

16. There are two optional procedures both covered by this User's Guide.

Bidding following Prequalification: This procedure is to be used when bidding is preceded by a prequalification exercise. Prequalification of bidders is required for large or complex contracts or turnkey contracts in advance of bidding, that invitations to bid are confined to capable firms. Prequalification is followed by a competitive bidding procedure in which only those firms meeting specified prequalification criteria are invited to submit a bid. Prequalification should not be used for limiting competition to a predetermined number of potential bidders. All applicants meeting the specified criteria shall be allowed to bid.

Bidding without Prequalification: For the procurement of simple works contracts the Procuring entity may apply post qualification by requiring bidders to submit the information pertaining to their qualification together with their bids. In this event, it will be necessary to ensure that a bidder's risk of having its bid rejected on grounds of qualification is remote if due diligence is exercised by the bidder during bid preparation. For that purpose, clear-cut, fail-pass qualification criteria need to be specified by the Procuring entity in the Bidding Document in order to enable bidders to make an informed decision whether to pursue a specific contract and, if so, either as a single entity or in joint venture. Post qualification criteria and procedures are covered in Section III (Evaluation and Qualification Criteria) and Section IV (Bidding Forms).

This Guide includes two initial sections on the Bidding Process, and the Invitation for Bids (IFB). The Procuring entity should note that **the IFB is neither a part of the Bidding Documents nor a Contract Document.**

Abbreviations

BDS	Bid Data Sheet
BD	Bidding Document
EQC	Evaluation and Qualification Criteria
GCC	General Conditions of Contract
ICB	International Competitive Bidding
IFB	Invitation for Bids
ITB	Instructions to Bidders
JV	Joint Venture
PCC	Particular Conditions of Contract
SBD	Standard Bidding Document
TS	Technical Specifications

The Bidding Process

The International Competitive Bidding (ICB) process includes six main stages: *Publicity [Advertising or Notice]*, Preparation and Issuing of Bidding Documents, Bid Preparation and Submission, Bid Opening, Bid Evaluation, and Contract Award.

Publicity [Advertising or Notice]

The Procuring entity must announce an upcoming bidding process in the international (dg Market and UN Development Business on-line) and national media—re Guidelines, Para 2.8,⁸ --and give enough time for potential bidders to respond with well prepared offers

Preparing and Issuing a Bidding Document

The Procuring entity and Bidder should keep in mind that:

- (a) The Procuring entity is responsible for the preparation and issuing of the Bidding Document.
- (b) The Procuring entity shall use the present SBD.
- (c) The Procuring entity shall prepare the Bidding Document using the published version of the SBD without suppressing or adding text to the sections of the document to be used without modifications, which are **Section I Instructions to Bidders (ITB)** and **Section VII General Conditions of Contract (GCC)**. All information and data particular to each individual bidding process must be provided by the Procuring entity in the following sections of the Bidding Document:
 - (i) Section II, Bid Data Sheet
 - (ii) Section III, Evaluation and Qualification Criteria
 - (iii) Section IV, Bidding Forms
 - (iv) Section V, Eligible Countries
 - (v) Section VI, Works Requirements
 - (vi) Section VIII, Particular Conditions of Contract

⁸ Full text of Para 8 of the Guidelines: “Invitations to prequalify or to bid, as the case may be, shall be advertised as Specific Procurement Notices in at least one newspaper of national circulation in the Borrower’s country (or in the official gazette, or in an electronic portal with free access). Such invitations shall also be published in *UNDB online* and in *dgMarket*. Notification shall be given in sufficient time to enable prospective bidders to obtain prequalification or bidding documents and prepare and submit their responses”

- (vii) Section IX, Contract Forms
- (d) The Procuring entity shall allow Bidders sufficient time for studying the Bidding Document, preparing complete and responsive bids and submitting the bids.

Bid Preparation and Submission

The Bidder is responsible for the preparation and submission of its Bid. During this stage, the Procuring entity shall:

- Promptly respond to requests for clarifications from Bidders and amend, as needed, the Bidding Documents.
- Amend the Bidding Documents only with the funding entity “no objection” in contracts subject to funding entity prior review.

Bid Opening

The Procuring entity is responsible for the Bid Opening, which is a critical event in the bidding process. The Procuring entity shall appoint experienced staff to conduct the Bid Opening, as inappropriate procedures at Bid Opening are usually irreversible and may require cancellation of the Bidding Process with the consequent delays and waste of time and resources.

17. Best Bid-Opening Practices to Observe

18. The Procuring entity, in observance of best practices, shall:

Conduct the Bid Opening strictly following the procedures as specified in the ITB Clause 25 for all bids received not later than the date and time of the bid submission deadline. The term “Bid Opening” can be misleading because a bid for which a Bid Withdrawal or Bid Substitution notice was received on time shall not be opened, but returned unopened to the Bidder. The sequence in which bids are handled and opened is crucial.

Ensure that all bids that were received on time **are accounted for, before starting** the Bid Opening, as bids that are not opened and read out at Bid Opening shall not be further considered.

Not reject any bid at Bid Opening, except for late bids received after the date and time of bid submission deadline.

The Procuring entity shall, however, verify at Bid Opening the validity of the documentation (Power of Attorney or other acceptable equivalent document as specified in ITB Sub-Clause 11.1), confirming the validity of a bid modification, bid withdrawal, or bid substitution as the case may be, because a withdrawn or substituted bid shall not be

opened and in consequence not read out and, therefore, they shall not be further considered by the Procuring entity. Similarly, a bid modification shall be opened and read out to modify a bid that was received on time.

Bid Evaluation and Contract Award

19. The Procuring entity is responsible for bid evaluation and Contract award. The Procuring entity shall appoint experienced staff to conduct the evaluation of the bids. Mistakes committed at bid evaluation may later prompt complaint from Bidders, requiring reevaluation of the bids, with the consequent delays and waste of time and resources.

20. The Procuring entity, in observance of best practices, shall:

- Maintain the bid evaluation process strictly confidential;
- Reject any attempts or pressures to distort the outcome of the evaluation, including fraud and corruption;
- Always comply with the prior-review requirements of the funding entity; and
- Strictly apply only and all of the evaluation and qualification criteria specified in the Bidding Documents.

Invitation for Bids

Invitation for Bids - Following Prequalification

The Invitation for Bids for contracts, subject to prequalification, is sent only to firms determined by the Procuring entity to be qualified in accordance with the Procuring entity prequalification procedure. This prequalification procedure must be reviewed and commented on by the Procuring entity if the potential contract is to be eligible for the Procuring entity financing.

Ideally, the **Invitation for Bids** is sent to the qualified bidders at the time that the prequalification results are announced.

For major works, prequalification shall normally be used. If, exceptionally, prequalification is not used, the appropriate Invitation for Bids form (see below) shall be used.

Standard Format for Invitation for Bids

Date: *[date of issuance of IFB]*

Loan N^o:

IFB N^o:

1. The *[name of Procuring entity]* has received⁹ a loan¹⁰ from *[Insert the name of the funding entity]* _____ in various currencies towards the cost of *[insert name of Project]*. It is intended that part of the proceeds of this loan will be applied to eligible payments under the contract for *[insert title of contract]*.
2. The *[name of the Procuring entity]* now invites sealed bids from pre-qualified eligible bidders for the construction and completion of *[insert brief description of the works]* ("the Works").
3. Pre-qualified eligible bidders may obtain further information from and inspect the bidding documents at the office of *[insert mailing address of appropriate office for inquiry and issuance of bidding documents and cable, telex, and/or facsimile numbers]*.
4. A complete set of bidding Documents in French and English may be obtained by interested Pre-qualified bidders at the above address from *[insert date, month and year]*, on presentation of the bank statement as a proof of payment of a non refundable fee¹¹ *[insert amount in local currency]* 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^o *[insert the account number]* titled *[insert the title]* open in the name of *[insert the name of the Procuring Entity]*.

⁹ Substitute "has applied for," if appropriate.

¹⁰ Substitute "grant" or "credit" for "loan," where appropriate.

¹¹ *the fee should defray the printing and mailing/shipping costs; it should not deter competition*

5. An optional 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]
6. Bids must be delivered to the above office¹² on or before [insert time] on [insert date] and must be accompanied by a security of [insert fixed sum or percentage of bid amount]
7. Bids will be opened in the presence of bidders' representatives who choose to attend at [insert time and date] at the offices of [insert address of appropriate office].
8. Qualified domestic and regional bidders may be eligible to receive a margin of preference of _____ % percent in Bid evaluation in compliance with the Public procurement Law as modified and completed to date.

¹² Substitute the Procuring entity's address for bid submission if different from its address for inquiry and issuance of bidding documents.

Invitation for Bids - Without Prequalification

If bids are invited openly from contractors without using a prequalification procedure, the Invitation for Bids should be issued directly to the public as a Specific Procurement Notice as:

- (a) an advertisement in at least one newspaper of general circulation in the Republic of Rwanda and , if possible, in an electronic portal with free access; and
- (b) an advertisement in UN Development Business on line and in dgMarket.

The Invitation for Bids provides information that enables potential bidders to decide whether to participate. Apart from a summary description of the works, the Invitation for Bids should also indicate any important bid evaluation criteria (for example, the application of a margin of preference in bid evaluation) or qualification requirement (for example, a requirement for a minimum level of experience in similar works for which the Invitation for Bids is issued).

The Invitation for Bids form should be incorporated in the bidding documents and should be consistent with the information contained in Section II - Bid Data Sheet.

Standard Format for Invitation for Bids

Date: *[date of issuance of IFB]*

Loan N^o:

IFB N^o:

1. The *[name of Procuring entity]* has received¹³ a loan¹⁴ from _____ *[Insert the name of the funding entity]* in various currencies towards the cost of *[insert name of Project]*. It is intended that part of the proceeds of this loan will be applied to eligible payments under the contract for *[title of contract]*.
2. The *[insert name of the Procuring entity]* now invites sealed bids from eligible bidders for the construction and completion of *[insert brief description of the works]* ("the Works").
3. Interested eligible bidders may obtain further information from and inspect the bidding documents at the office of *[insert mailing address of appropriate office for inquiry and issuance of bidding documents and cable, telex, and/or facsimile numbers]*.

¹³ Substitute "has applied for," if appropriate.

¹⁴ Substitute "grant" or "credit" for "loan," where appropriate.

4. A complete set of bidding Documents in French and English may be obtained by interested bidders at the above address from *[insert date, month and year]*, on presentation of the bank statement as a proof of payment of a non refundable fee¹⁵ *[insert amount in local currency]* 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]*
5. An optional 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]*
6. Bids must be delivered to the above office¹⁶ on or before *[insert time]* on *[insert date]* and must be accompanied by a security of *[insert fixed sum or percentage of bid amount]*
7. Bids will be opened in the presence of bidders' representatives who choose to attend at *[insert time and date]* at the offices of *[insert address of appropriate office]*.
8. Qualified domestic and regional bidders may be eligible to receive a margin of preference of _____%percent in Bid evaluation in compliance with the Public procurement Law as modified and completed to date.

¹⁵ *the fee should defray the printing and mailing/shipping costs); it should not deter competition*

¹⁶ Substitute the Procuring entity address for bid submission if different from its address for inquiry and issuance of bidding documents.

Section I. Instructions to Bidders

Section I, Instructions to Bidders, provides the information necessary for bidders to prepare responsive bids in accordance with the requirements of the Procuring entity. It also gives information on bid submission, opening, and evaluation, and on the award of the Contract.

Section I includes provisions that are to be used unchanged. Section II, Bid Data Sheet, consists of provisions that supplement, amend, or specify information or changes to Section I that are specific to each procurement.

Matter governing the performance of the Contractor under the Contract, payments under the Contract, or matters affecting the risks, rights, or obligations of the parties under the Contract, are not included in this section, but rather in Section VII, General Conditions, Section VIII, Particular Conditions, and/or the Contract Forms (Annex to the Particular Conditions). If duplication of a subject is inevitable in the different sections of the documents, the Procuring entity should exercise care to avoid contradiction or conflict between clauses dealing with the same topic.

The Instructions to Bidders will not be part of the Contract.

Section II. Bid Data Sheet

21. Section II, Bid Data Sheet, shall be filled in by the Procuring entity before issuance of the bidding documents. This Guide provides information to the Procuring entity **[in bold]** on how to enter all required information, and includes a BDS format that summarizes all information to be provided.

22. The Bid Data Sheet (BDS) contains information and provisions that are specific to a particular bidding process. The Procuring entity must specify in the BDS only the information that the ITB request be specified in the BDS. All information shall be provided; **no clause shall be left blank.**

23. To facilitate the preparation of the BDS, its clauses are numbered with the same numbers as the corresponding ITB clause.

BDS Form

24. Information Form to be completed by Procuring entity

ITB Clause Reference	Bid Data
A. Introduction	
ITB 1.1	The number of the Invitation for Bids is : [Insert number of the Invitation for Bids]
ITB 1.1	The Procuring entity is: [Insert name of the Procuring entity]
ITB 1.1	<p>The name of the ICB (International competitive bidding) is: [Insert name of the ICB]</p> <p>The identification number of the ICB is: [Insert number of the ICB]</p> <p>[The following text is to be included and the corresponding information inserted only if the contract is to be bid simultaneously with other contracts on a “slice and package” basis. Otherwise omit.]</p> <p>The number and identification of lots (contracts) comprising this ICB is: [Insert number and identification of lots (contracts)]</p>
ITB 2.1	The funding entity: [Insert name of the funding entity and statement of relationship with the Procuring entity. This insertion should correspond to the information provided in the Invitation for Bids]
ITB 2.1	The name of the Project is: [Insert name of the project]
<i>ITB 4.1 (a)</i>	<p>[The following provision should be included and the corresponding information inserted only if partners of a JV (Joint Venture) will not be required to be jointly and severally liable. Otherwise omit.]</p> <p>The individuals or firms in a joint venture [insert “shall not be”] jointly and severally liable.</p>
B. Bidding Documents	
ITB 7.1	<p>For <u>clarification purposes</u> only, the Procuring entity address is: [Insert the corresponding information as required below. This address may be the same as or different from that specified under provision ITB 22.1 for bid submission]</p> <p>Attention: [insert full name of person, if applicable]</p> <p>Street Address: [insert street address and number]</p> <p>Floor/ Room number: [insert floor and room number, if applicable]</p> <p>City: [insert name of city or town]</p> <p>ZIP Code: [insert postal (ZIP) code, if applicable]</p>

	<p>Country: The Republic of Rwanda</p> <p>Telephone: [insert telephone number, including country and city codes]</p> <p>25. Facsimile number: [insert telephone number, including country and city codes]</p> <p>Electronic mail address: [insert email address, if applicable]</p>
ITB 7.4	<p>A Pre-Bid meeting [inserts “will” and inserts the date, time and place information in the spaces provided below if a pre-bid meeting will take place, taking into consideration that the meeting should take place no later than four weeks before the deadline for bid submission. Otherwise, insert “will not” and insert “Not Applicable” in the spaces provided below for the date, time and place] take place at the following date, time and place:</p> <p>Date: _____</p> <p>Time: _____</p> <p>Place: _____</p> <p>A site visit conducted by the Procuring entity [insert “will be” or “will not be”, as appropriate] organized.</p>
C. Preparation of Bids	
ITB 10.1	The language of the bid is: [insert language] .
ITB 11.1 (h)	The Bidder shall submit with its bid the following additional documents: [list any additional document not already listed in ITB Sub-Clause 11.1 that must be submitted with the Bid] .
ITB 13.1	<p>[The following provision should be included and the required corresponding information inserted <u>only</u> if alternative bids will be considered. Otherwise omit.]</p> <p>Alternative bids [insert “shall be”] permitted.</p>
ITB 13.2	<p>Alternative times for completion [insert “will be” or “will not be”, as appropriate] permitted. [Alternative times for completion should be permitted when the Procuring entity sees potential net benefits in different times for completion; they also have merit for contracts bid on a “slice and package” basis.]</p> <p>If alternative times for completion are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria.</p>
ITB 13.4	<p>Alternative technical solutions shall be permitted for the following parts of the Works: [List the parts of the works].</p> <p>If alternative technical solutions are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria.</p>
ITB 14.5	[Price adjustment is allowed for contracts expected to last more than 9 months. The following provision should be included and the required corresponding information inserted <u>only</u> if the prices quoted

	<p>by the Bidder are not subject to price adjustment. Otherwise omit.] The prices quoted by the Bidder shall be: [Insert “fixed; consequently, the Bidder is not required to furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data”.]</p>
<p>15.Currencies of Bid and Payment</p>	<p>15.1 The currency(ies) of the bid shall be in accordance with Alternative _____ [select either “A” or “B”], as described below.</p> <p>The Procuring entity shall select the alternative which is the most suitable. Alternative B reflects more closely the actual various currency requirements of the Contractor (in terms of time of payment of the various currencies to the Contractor).</p> <p>The Procuring entity must keep <u>only one</u> of the following alternative texts:</p> <p>Alternative A: Bidders quote entirely in local currency</p> <p>The unit rates and the prices shall be quoted by the bidder in the Bill of Quantities entirely in Rwandan Francs and further referred to as “the local currency”. A bidder expecting to incur expenditures in other currencies for inputs to the Works supplied from outside the Republic of Rwanda (referred to as “the foreign currency requirements”) shall indicate in the Appendix to Bid – Table C the percentage(s) of the Bid Price (excluding Provisional Sums) needed by him for the payment of such foreign currency requirements, limited to no more than three foreign currencies of any country.</p> <p>The rates of exchange to be used by the bidder in arriving at the local currency equivalent shall be specified by the bidder in the Appendix to Bid –Table C, and shall apply for all payments under the Contract so that no exchange risk will be borne by the successful bidder.</p> <p>OR</p> <p>Alternative B: Bidders quote in local and foreign currencies</p> <p>The unit rates and prices shall be quoted by the bidder in the Bill of Quantities separately in the following currencies:</p> <p>(a) for those inputs to the Works that the bidder expects to supply from within the Republic of Rwanda, in Rwandan Francs and further referred to as “the local currency”; and</p> <p>(b) for those inputs to the Works that the bidder expects to supply from outside the Republic of Rwanda (referred to as “the foreign currency requirements”) in up to any three currencies of any country</p>
	<p>The bid validity period shall be ----- days.</p> <p>[This period should be realistic, allowing sufficient time to evaluate the bids, bearing in mind the complexity of the Works and the time required for obtaining references, clarifications, clearances, and approvals (including if the case may be the funding entity “No Objection”) and for notification of the award. Normally the validity period should not exceed 120 days.]</p>

ITB 18.3 (a)	The bid price shall be adjusted by the following factor(s):_____ <i>[The local currency portion of the Contract price shall be adjusted by a factor reflecting local inflation during the period of extension, and the foreign currency portion of the Contract price shall be adjusted by a factor reflecting the international inflation (in the country of the foreign currency) during the period of extension.]</i>
ITB 18.3 (b)	The fixed portion of the bid price shall be adjusted by the following factor(s): _____ <i>[The local currency portion of the fixed portion of the Contract price shall be adjusted by a factor reflecting local inflation during the period of extension, and the foreign currency portion of the fixed portion of the Contract price shall be adjusted by a factor reflecting the international inflation (in the country of the foreign currency) during the period of extension.]</i>
ITB 19.1	<p>[The following provision should be included and the required corresponding information inserted <u>only</u> if a bid security will not be required. Otherwise omit.]</p> <p>A bid security [insert “shall not be”] required.</p> <p>If a bid security shall be required, the amount and currency of the bid security shall be: [If a bid security is required, insert amount and currency of the bid security. Otherwise insert “Not Applicable”.]</p>
ITB 19.2 (d)	Other types of acceptable securities: [Insert names of other acceptable securities. Insert “None” if no bid security is required under provision ITB 19.1 or if bid security is required but no other forms of bid securities besides those listed in ITB 19.2 (a) through (c) are acceptable.]
ITB 19.8	<p>[The following provision should be included and the required corresponding information inserted <u>only</u> if a bid security is not required under provision ITB 19.1 and the Procuring entity wishes to declare the Bidder ineligible for a period of time should the Bidder incur in the actions mentioned in provision ITB 19.8. Otherwise omit.]</p> <p>The ineligibility period will be [insert period of time].</p>
ITB 20.1	In addition to the original of the bid, the number of copies is: [Insert number of copies]
ITB 20.2	The written confirmation of authorization to sign on behalf of the Bidder shall consist of: [insert the name and description of the documentation required to demonstrate the authority of the signatory to sign the bid] .
D. Submission and Opening of Bids	
ITB 22.1	For <u>bid submission purposes</u> only, the Procuring entity address is: [This address may be the same as or different from that specified under

	<p>provision ITB 7.1 for clarifications] Attention: [insert full name of person, if applicable] Street Address: [insert street address and number] Floor/ Room number: [insert floor and room number, if applicable] City: [insert name of city or town] ZIP Code: [insert postal (ZIP) code, if applicable] Country: The Republic of Rwanda.</p> <p>The deadline for bid submission is: Date: [insert day, month, and year] Time: [insert time, and identify if a.m. or p.m., i.e. 10:30 a.m.] [The date and time should be the same as those provided in the Invitation for Bids, unless subsequently amended pursuant to Clause 22.2.]</p> <p>Bidders [insert “shall” or “shall not”] have the option of submitting their bids electronically.</p> <p>[The following provision should be included and the required corresponding information inserted <u>only</u> if Bidders have the option of submitting their bids electronically. Otherwise omit.]</p> <p>If bidders have the option of submitting their bids electronically, the electronic bidding submission procedures shall be: [insert a description of the electronic bidding submission procedures]</p>
ITB 25.1	<p>The bid opening shall take place at: Street Address: [insert street address and number] Floor/ Room number: [insert floor and room number, if applicable] City: [insert name of city or town] Country: [The Republic of Rwanda] Date: [insert day, month, and year] Time: [insert time, and identify if a.m. or p.m. i.e. 10:30 a.m.] [Date and time should be the same as those given for the deadline for submission of bids (Clause 22).] [The following provision should be included and the required corresponding information inserted only if Bidders have the option of submitting their bids electronically. Otherwise omit.]</p> <p>If bidders have the option of submitting their bids electronically, the electronic bidding opening procedures shall be: [insert a description of the electronic bidding opening procedures]</p>
ITB 25.3	<p>The Letter of Bid and Bill of Quantities <i>shall</i> be initialed by three representatives of the Procuring entity attending Bid opening.</p>

E. Evaluation and Comparison of Bids	
ITB 32.1	<p>The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is: [Rwandan Francs]</p> <p>The source of exchange rate shall be: [Insert name of the source of exchange rates (e.g., the Central Bank of Rwanda).]</p> <p>The date for the exchange rate shall be: [insert day, month and year, not earlier than 28 days prior to the deadline for submission of the Bids, nor later than the original date for the expiry of bid validity].</p> <p>The currency(ies) of the Bid shall be converted into a single currency in accordance with the procedure under Alternative _____ [insert either “A” or “B”] that follows:</p> <p>The Procuring entity shall select the alternative which is the most suitable, depending on the alternative selected in the BDS under ITB 15.1. The Procuring entity must keep only one of the following alternative texts:</p> <p>Alternative A: Bidders quote entirely in local currency</p> <p>For comparison of bids, the Bid Price, corrected pursuant to Clause 31, shall first be broken down into the respective amounts payable in various currencies by using the exchange rates specified by the bidder in accordance with Sub-Clause 15.3.</p> <p>In the second step, the Procuring entity will convert the amounts in various currencies in which the Bid Price is payable (excluding Provisional Sums but including Day work where priced competitively) to the single currency identified above at the selling rates established for similar transactions by the authority specified and on the date stipulated above.</p> <p>OR</p> <p>Alternative B: Bidders quote in local and foreign currencies</p> <p>The Procuring entity will convert the amounts in various currencies in which the Bid Price, corrected pursuant to Clause 31, is payable (excluding Provisional Sums but including Day work where priced competitively) to the single currency identified above at the selling rates established for similar transactions by the authority specified and on the date stipulated above.</p>
ITB 33.1	<p>[The following provision should be included and the required corresponding information inserted only if the Financing Agreement authorizes the application of domestic contractor price preference and the Procuring entity intends to apply it to the subject contract. Otherwise omit]</p> <p>A margin of domestic preference [insert “shall”] apply.</p>

	If a margin of preference applies the application methodology shall be defined in Section III – Evaluation and Qualification Criteria.
--	--

Section III. Evaluation and Post Qualification Criteria - Following Prequalification

This Section contains all the criteria that the Procuring entity shall use to evaluate bids and qualify Bidders. In accordance with ITB 34 and ITB 36, no other methods, criteria and factors shall be used. The Bidder shall provide all the information requested in the forms included in Section IV (Bidding Forms).

Table of Criteria

1. Evaluation.....	19
1.1 Adequacy of Technical Proposal	19
1.2 Multiple Contracts	19
1.3 Completion Time	19
1.4 Technical Alternatives	19
1.5 Domestic Preference	19
2. Qualification	20
2.1 Update of Information.....	20
2.2 Financial Resources	21
2.3 Personnel.....	21
2.4 Equipment	22

1. Evaluation

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

Use the evaluation criteria listed below as appropriate and required for the project.

1.1 Adequacy of Technical Proposal

Evaluation of the Bidder's Technical Proposal will include an assessment of the Bidder's technical capacity to mobilize key equipment and personnel for the contract consistent with its proposal regarding work methods, scheduling, and material sourcing in sufficient detail and fully in accordance with the requirements stipulated in Section VI (Procuring entity Requirements).

1.2 Multiple Contracts

Works are grouped in multiple contracts and pursuant to Sub-Clause 34.4 of the Instructions to Bidders, the Procuring entity will evaluate and compare Bids on the basis of a contract, or a combination of contracts, or as a total of contracts in order to arrive at the least cost combination for the Procuring entity by taking into account discounts offered by Bidders in case of award of multiple contracts. If a bidder submits several successful (lowest evaluated substantially responsive) bids, the evaluation will also include an assessment of the Bidder's capacity to meet the aggregated requirements regarding:

- Experience
- Financial situation
- Current contract commitments,
- Cash flow capacity,
- Equipment to be allocated, and
- Personnel to be fielded.

1.3 Completion Time

If permitted under ITB 13.2 varying times for completion may be used in bid comparison as follows: [the **method for evaluating the differences offered by bidders should be specified as a specific amount for each week of delay from a specified "standard" or minimum completion date related to the loss of benefits to the Procuring entity. The amount should be no more than the sum stated in the Contract Data for delay damages.**]

1.4 Technical Alternatives

Technical alternatives, if permitted under ITB 13.4, will be evaluated as follows:

[**insert method for evaluation of such alternatives, if appropriate**]

1.5 Domestic Preference

If a margin of preference is provided for under ITB 33.1, the following procedure shall apply:

The following methodology is suggested:

“The following procedure will be used to apply the margin of preference:

- (a) *After bids have been converted to a single currency in accordance with the provisions of ITB 34.2 (d), responsive bids will be classified into the following groups:*
 - (i) *Group A: bids offered by domestic and regional bidders and joint ventures meeting the criteria set out below; and*
 - (ii) *Group B: all other bids.*
- (b) *For the purpose of further evaluation and comparison of bids only, an amount equal to _____ percent of the evaluated Bid Price determined in accordance with the provisions of ITB 34.2 (a), (b), (d), and, where applicable, (c), will be added to all bids classified in Group B.*

A domestic bidder is one that meets the following criteria:

- (a) *for an individual firm:*
 - (i) *is registered in the Republic of Rwanda;*
 - (ii) *has more than 50 percent ownership by nationals of the Republic of Rwanda;*
 - (iii) *does not subcontract more than 10 percent of the Contract Price, excluding Provisional Sums, to foreign contractors.*
- (b) *for a joint venture (JV) of domestic firms:*
 - (i) *individual member firms shall satisfy the criteria under (a) (i) and (a) (ii) above;*
 - (ii) *the JV shall be registered in the Republic of Rwanda;*
 - (iii) *the JV shall not subcontract more than 10 percent of the Contract Price, excluding Provisional Sums, to foreign firms*

2. Qualification

2.1 Update of Information

The Bidder shall continue to meet the criteria used at the time of prequalification. Updating and reassessment of the following information which was previously considered during prequalification will be required:

- (a) Eligibility
- (b) Pending Litigation
- (c) Financial Situation

2.2 Financial Resources

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

- (1) the following cash-flow requirement: and
- (2) the overall cash flow requirements for this contract and his current works commitment.

-- Note --

Indicate under (1) above the construction cash flow requirement for a number of months, determined as the total time needed by the Procuring entity to pay a contractor's invoice, allowing for (a) the actual time consumed for construction, from the beginning of the month invoiced, (b) the time needed by the Engineer to issue the monthly payment certificate, and (c) the time needed by the Procuring entity to pay the amount certified.

The total period should not exceed four months. The assessment of the monthly amount should be based on a straight-line projection of the estimated cash flow requirement over the particular contract period, neglecting the effect of any advance payment and retention monies, but including contingency allowances in the estimated contract cost.

2.3 Personnel

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

No.	Position	Total Work Experience [years]	Experience In Similar Work [years]
1			
2			
3			
4			
5			

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

-- Note --

The managerial and technical competence of a contractor is largely related to the key personnel on site. The extent to which the Bidder should demonstrate having staff with extensive experience should be limited to those requiring critical operational or technical skills. The prequalification criteria should therefore refer to a limited number of such key

personnel, for instance, the project or contract manager and those superintendents working under the project manager who will be responsible for major components (e.g., superintendents specialized in dredging, piling, or earthworks, as required for each particular project). Criteria of acceptability should be based on:

- (a) **a minimum number of years of experience in a similar position; and**
- (b) **a minimum number of years of experience and/or number of comparable projects carried out in a specified number of preceding years.**

The requirement of specified education and academic qualifications is normally unnecessary for such positions, as contractors often employ competent staff who have learned their profession “on the job” rather than through academic training. It is appropriate to specify that certain positions are filled by individuals who have held posts of comparable authority for, say, three years with the Bidder, so that key staff in executive site positions have sufficient knowledge of the Bidder's management, policy, procedures, and practices to act with confidence and authority within that framework.

2.4 Equipment

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

No.	Equipment Characteristics	Type	and	No. Min. Number Required
1				
2				
3				
4				
5				

The Bidder shall provide further details of proposed items of equipment using the relevant Form in Section IV (Bidding Forms)

-- Note --

In most cases Bidders can readily purchase, lease, or hire equipment; thus, it is usually unnecessary for the assessment of a contractor's qualification to depend on the contractor's owning readily available items of equipment. The pass-fail criteria adopted should therefore be limited only to those bulky or specialized items that are critical for the type of project to be implemented, and that may be difficult for the contractor to obtain quickly. Examples may include items such as heavy lift cranes and piling barges, dredgers, asphalt mixing plants, etc. Even in such cases, contractors may not own the specialized items of equipment, and may rely on specialist subcontractors or equipment-hire firms. The availability of such subcontractors and of the specified equipment should be subject to verification prior to contract award.

The Bidder shall provide updated details for the above by using the relevant forms included in Section IV (Bidding Forms).

Section III. Evaluation and Qualification Criteria - Without Prequalification

This Section contains all the criteria that the Procuring entity shall use to evaluate bids and qualify Bidders. In accordance with ITB 34 and ITB 36, no other methods, criteria and factors shall be used. The Bidder shall provide all the information requested in the forms included in Section IV (Bidding Forms).

The Procuring entity shall require bidders to be qualified by meeting predefined, precise minimum requirements. The method entails setting pass-fail criteria, which, if not met by the bidder, results in disqualification. It will therefore be necessary to ensure that a bidder’s risk of having its bid rejected on grounds of qualification is remote if due diligence is exercised by the bidder during bid preparation. For that purpose, clear-cut, fail-pass qualification criteria need to be specified in order to enable bidders to make an informed decision whether to pursue a specific contract and, if so, either as a single entity or in joint venture. The criteria adopted must relate to characteristics that are essential to ensure satisfactory execution of the contract, and must be stated in unambiguous terms.

Table of Criteria

1. Evaluation	26
1.1 Adequacy of Technical Proposal	26
1.2 Multiple Contracts	26
1.3 Completion Time	26
1.4 Technical Alternatives	26
1.5 Domestic Preference	27
2. Qualification.....	28
2.1. Eligibility	28
2.1.1 Nationality.....	28
2.1.2 Conflict of Interest.....	28
2.1.3 Funding entity Eligibility.....	28
2.1.4 Government-owned Entity.....	28
2.1.5 Exclusions.....	28
2.2 Pending Litigation.....	29
2.2.1 Historical Contract Non Performance	29
2.2.2 Pending Litigation.....	29
2.3. Financial Situation	29
2.3.1 Historical Financial Performance	29
2.3.2 Average Annual Construction Turnover	30
2.3.3 Financial Resources.....	30
2.4 Experience	31
2.4.1 General Construction Experience	31
2.4.2 Specific Construction Experience	31
2.5 Personnel.....	32
2.6 Equipment.....	33

1. Evaluation

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

-- **Note** --

Use the evaluation criteria listed below as appropriate and required for the project.

1.1 Adequacy of Technical Proposal

Evaluation of the Bidder's Technical Proposal will include an assessment of the Bidder's technical capacity to mobilize key equipment and personnel for the contract consistent with its proposal regarding work methods, scheduling, and material sourcing in sufficient detail and fully in accordance with the requirements stipulated in Section VI (Procuring entity's Requirements).

1.2 Multiple Contracts

Works are grouped in multiple contracts and pursuant to Sub-Clause 34.4 of the Instructions to Bidders, the Procuring entity will evaluate and compare Bids on the basis of a contract, or a combination of contracts, or as a total of contracts in order to arrive at the least cost combination for the Procuring entity by taking into account discounts offered by Bidders in case of award of multiple contracts. If a bidder submits several successful (lowest evaluated substantially responsive) bids, the evaluation will also include an assessment of the Bidder's capacity to meet the aggregated requirements regarding:

- Experience
- Financial situation
- Current contract commitments,
- Cash flow capacity,
- Equipment to be allocated, and
- Personnel to be fielded.

1.3 Completion Time

If permitted under ITB 13.2 varying times for completion may be used in bid comparison as follows: **[the method for evaluating the differences offered by bidders should be specified as a specific amount for each week of delay from a specified "standard" or minimum completion date related to the loss of benefits to the Procuring entity. The amount should be no more than the sum stated in the Contract Data for delay damages.]**

1.4 Technical Alternatives

Technical alternatives, if permitted under ITB 13.4, will be evaluated as follows:

[insert method for evaluation of such alternatives, if appropriate]

1.5 Domestic Preference

If a margin of preference is provided for under ITB 33.1, the following procedure shall apply:

The following methodology is suggested:

“The following procedure will be used to apply the margin of preference:

- (a) After bids have been converted to a single currency in accordance with the provisions of ITB 34.2 (d), responsive bids will be classified into the following groups:*
 - (i) Group A: bids offered by domestic and regional bidders and joint ventures meeting the criteria set out below; and*
 - (ii) Group B: all other bids.*
- (b) For the purpose of further evaluation and comparison of bids only, an amount equal to _____ percent of the evaluated Bid Price determined in accordance with the provisions of ITB 34.2 (a), (b), (d), and, where applicable, (c), will be added to all bids classified in Group B.*

A domestic bidder is one that meets the following criteria:

- (a) for an individual firm:*
 - (i) is registered in the Republic of Rwanda;*
 - (ii) has more than 50 percent ownership by nationals of the Republic of Rwanda;*
 - (iii) does not subcontract more than 10 percent of the Contract Price, excluding Provisional Sums, to foreign contractors.*
- (b) for a joint venture (JV) of domestic firms:*
 - (i) individual member firms shall satisfy the criteria under (a) (i) and (a) (ii) above;*
 - (ii) the JV shall be registered in the Republic of Rwanda;*
 - (iii) the JV shall not subcontract more than 10 percent of the Contract Price, excluding Provisional Sums, to foreign firms.*

2. Qualification

2.1. Eligibility

Criteria	Compliance Requirements				Documents
	Requirement	Single Entity	Joint Venture		
All Partners Combined			Each Partner	One Partner	

2.1.1 Nationality

Nationality in accordance with ITB Sub-Clause 4.2.	must meet requirement	existing or intended JV must meet requirement	must meet requirement	not applicable	Forms ELI -1; ELI -2 with attachments
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2.1.2 Conflict of Interest

No conflicts of interest in accordance with ITB Sub-Clause 4.3.	must meet requirement	existing or intended JV must meet requirement	must meet requirement	not applicable	Application Submission Sheet
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2.1.3 Funding entity Eligibility

Not having been declared ineligible by the funding entity, as described in ITB Sub-Clause 4.4 (or by the Procuring entity).	must meet requirement	existing or intended JV must meet requirement	must meet requirement	not applicable	Application Submission Sheet
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2.1.4 Government-owned Entity

Bidder required to meet conditions of ITB Sub-Clause 4.5.	must meet requirement	must meet requirement	must meet requirement	not applicable	Forms ELI -1, ELI -2 with attachments
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2.1.5 Exclusions

Bidder required meeting conditions of ITB Sub-Clause 4.7.	must meet requirement	must meet requirement	must meet requirement	not applicable	Application Submission Sheet
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2.2 Pending Litigation

2.2.1 Historical Contract Non Performance

2.2.2 Pending Litigation

Criteria	Compliance Requirements			Documents	
Requirement	Single Entity	Joint Venture		Submission Requirements	
		All Partners Combined	Each Partner		One Partner
All pending litigation shall be treated as resolved against the Bidder and so shall in total not represent more than percent of the Bidder's net worth.	must meet requirement by itself or as partner to past or existing JV	not applicable	must meet requirement by itself or as partner to past or existing JV	not applicable	Form LIT

[The above percentage should normally be within the range of 50% to 100% of a Bidder's net worth]

2.3. Financial Situation

2.3.1 Historical Financial Performance

Criteria	Compliance Requirements			Documents	
Requirement	Single Entity	Joint Venture		Submission Requirements	
		All Partners Combined	Each Partner		One Partner
Submission of audited balance sheets and income statements or, if not required by the law of the bidder's country, other financial statements acceptable to the Procuring entity, for the last [Insert no. of years in words and figures. The time period should not be less than 3 years.] years to demonstrate the current soundness of the bidders financial position and its prospective long-term profitability. As a minimum, a Bidder's net worth calculated as the difference between total assets and total liabilities should be positive.	must meet requirement	not applicable	must meet requirement	not applicable	Form FIN - 1 with attachments

[The financial information provided by a Bidder should be reviewed in its entirety to allow a truly informed judgment, and the pass-fail decision on the financial position of the Bidder should be given on this basis. Any abnormal features which may lead to financial problems should alert the Procuring entity to seek expert professional advice for further review and interpretation]

2.3.2 Average Annual Construction Turnover

Criteria Requirement	Compliance Requirements				Documents Submission Requirements
	Single Entity	Joint Venture			
		All Partners Combined	Each Partner	One Partner	
Minimum average annual construction turnover of Rwandan Francs calculated as total certified payments received for contracts in progress or completed, within the last [Insert number of years in words and figures; the time period is normally 3 years or more] years.	must meet requirement	must meet requirement	must meet of the requirement	must meet of the requirement	Form FIN - 2

[The amount stated should normally not be less than 2 x V/T, the estimated annual turnover or cash flow in the subject contract based on a straight-line projection of the Procuring entity's estimated cost (V), including contingencies, over the contract duration (T). The multiplier of two may be reduced for very large contracts but should not be less than 1.5]₂

2.3.3 Financial Resources

Using Forms FIN – 3 and FIN - 4 in Section IV (Bidding Forms) the Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet: (1) the following cash-flow requirement: , and (2) the overall cash flow requirements for this contract and its current works commitment.	must meet requirement	must meet requirement	must meet of the requirement	must meet of the requirement	Form FIN - 3
--	-----------------------	-----------------------	--	--	--------------

- Note -

[Indicate under (1) above the construction cash flow requirement for a number of months determined as the total time needed by the Procuring entity to pay a contractor's invoice, allowing for (a) the actual time consumed for construction, from the beginning of the month invoiced, (b) the time needed by the Engineer to issue the monthly payment certificate, and (c) the time needed by the Procuring entity to pay the amount certified. The total period should not exceed six months. The assessment of the monthly amount should be based on a straight-line projection of the estimated cash flow requirement over the particular contract period, neglecting the effect of any advance payment and retention monies, but including contingency allowances in the estimated contract cost]

2.4 Experience

2.4.1 General Construction Experience

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Experience under construction contracts in the role of contractor, subcontractor, or management contractor for at least the last years prior to the applications submission deadline.	must meet requirement	not applicable	must meet requirement	not applicable	Form EXP-1

[Insert number of years in words and figures. The time period is normally 5 years or more, but may be reduced to not less than 5 years]

2.4.2 Specific Construction Experience

(a) Contracts of Similar Size and Nature

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Participation as contractor, management contractor, or subcontractor, in at least [1] contracts within the last [2] years, each with a value of at least _____ Rwandan Francs [3] that have been successfully or are substantially completed and that are similar to the proposed works. The similarity shall be based on the physical size, complexity, methods, technology or other characteristics as described in Section VI, Procuring entity Requirements.	must meet requirement	must meet requirement	not applicable	not applicable	Form EXP 2(a)

[1] Insert number of contracts, the range should be one to three, depending on the size and complexity of the subject contract, the exposure of the Procuring entity to risk of contractor default, and country conditions. For contracts in a developed environment with a high potential supply of construction services, three similar contracts may not limit applications, but would reduce the risk of contractor default.

(2) Insert number of years in words and figures. The range is normally five to ten years, and should be related to the number of similar contracts stated above and to the duration of the subject contract, e.g., ten years for two contracts of about five years' duration, or six years for two contracts of about three years' duration

(3) Insert US\$ amount, usually 80% of the estimated value of the subject contract]

(b) Construction Experience in Key Activities

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
For the above or other contracts executed during the period stipulated in 2.4.2(a) above, a minimum construction experience in the following key activities:	must meet all requirements	must meet all requirements	not applicable	not applicable	Form EXP-2(b)
*					
*					
*					
*					

-- Note --

[* List the production rate(s) for the key activity or activities in the subject contract. The rates should be about

80% of the estimated production rates of the key activity or activities in the subject contract as needed to meet the expected construction schedule with due allowance for adverse climatic conditions.

X cubic meters of rock placed in rock fill dams in one year

Y tons of asphalt concrete per month placed in road paving

Z cubic meters of concrete placed per ... etc.]

2.5 Personnel

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

No.	Position	Total Work Experience [years]	Experience In Similar Work [years]
1			
2			
3			
4			
5			

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

-- Note --

The managerial and technical competence of a contractor is largely related to the key personnel on site. The extent to which the Bidder should demonstrate having staff with extensive experience should be limited to those requiring critical operational or technical skills. The prequalification criteria should therefore refer to a limited number of such key personnel, for instance, the project or contract manager and those superintendents working under the project manager who will be responsible for major components (e.g., superintendents specialized in dredging, piling, or earthworks, as required for each particular project). Criteria of acceptability should be based on:

- (a) a minimum number of years of experience in a similar position; and**
- (b) a minimum number of years of experience and/or number of comparable projects carried out in a specified number of preceding years.**

The requirement of specified education and academic qualifications is normally unnecessary for such positions, as contractors often employ competent staff who have learned their profession “on the job” rather than through academic training. It is appropriate to specify that certain positions are filled by individuals who have held posts of comparable authority for, say, three years with the Bidder, so that key staff in executive site positions have sufficient knowledge of the Bidder's management, policy, procedures, and practices to act with confidence and authority within that framework.

2.6 Equipment

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

No.	Equipment Characteristics	Type	and	No. Min. Number Required
1				
2				
3				
4				
5				

The Bidder shall provide further details of proposed items of equipment using the relevant Form in Section IV (Bidding Forms)

-- Note --

In most cases Bidders can readily purchase, lease, or hire equipment; thus, it is usually unnecessary for the assessment of a contractor's qualification to depend on the contractor's owning readily available items of equipment. The pass-fail criteria adopted should therefore be limited only to those bulky or specialized items that are

critical for the type of project to be implemented, and that may be difficult for the contractor to obtain quickly. Examples may include items such as heavy lift cranes and piling barges, dredgers, asphalt mixing plants, etc. Even in such cases, contractors may not own the specialized items of equipment, and may rely on specialist subcontractors or equipment-hire firms. The availability of such subcontractors and of the specified equipment should be subject to verification prior to contract award.

Section IV. Bidding Forms

26. The Procuring entity shall include in the BD all bidding forms that the Bidder shall fill out and include in its bid. As specified in Section IV of the BD, these forms are the Bid Submission Sheet and relevant Schedules, the Bid Security, the Bill of Quantities, the Technical Proposal Form, and the Bidder's Qualification Information Form for which two options are attached (Option "Following Prequalification" and Option "Without Prequalification"). This Guide helps the Procuring entity fill in all the required information in each Bidding Form.

Bid Submission Sheet

Input of Information to be completed by Bidder (bold) or Procuring entity (*italic*)

Bid Submission Sheet

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

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

Invitation for Bid No.: [*insert No of IFB*]

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

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

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda No.: **[insert the number and issuing date of each Addenda]**, issued in accordance with Instructions to Bidders (ITB) 8;
- (b) We offer to execute in conformity with the Bidding Documents the following Works [*insert a brief description of the Works*];
- (c) The total price of our Bid, excluding any discounts offered in item (d) below, is: **[insert the total bid price in words and figures, indicating the various amounts and the respective currencies]**;
- (d) The discounts offered and the methodology for their application are:

Discounts: If our bid is accepted, the following discounts shall apply. [Specify in detail each discount offered.]

Methodology of Application of the Discounts: The discounts shall be applied using the following method: [Specify in detail the method that shall be used to apply the discounts];

- (e) Our bid shall be valid for a period of [*specify the number of calendar days*] days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) If our bid is accepted, we commit to obtain a performance security in accordance with the Bidding Documents;
- (g) We, including any subcontractors or suppliers for any part of the Contract, has nationals from eligible countries in accordance with ITB 4.2;

- (h) We, including any subcontractors or suppliers for any part of the contract, do not have any conflict of interest in accordance with ITB-4.3;
- (i) We are not participating, as Bidders or as a subcontractor, in more than one bid in this bidding process in accordance with ITB 4.3, other than alternative bids in accordance with ITB 13;
- (j) We, including any of our subcontractors or suppliers for any part of the contract, have not been declared ineligible by the funding entity or the Procuring entity, under the laws or official regulations of the Republic of Rwanda or by an act of compliance with a decision of the United Nations Security Council;
- (k) We are not a government owned entity/ We are a government owned entity but meet the requirements of ITB 4.5;¹⁷
- (l) The following commissions, gratuities, or fees have been paid or are to be paid with respect to the bidding process or execution of the Contract: **[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity]**

Name of Recipient	Address	Reason	Amount
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

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

- (m) We understand that this Bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed.
- (n) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.
- (o) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in bribery.

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

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

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

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

Dated on _____ day of _____, _____ **[insert date of signing]**

¹⁷ Bidder to use as appropriate

Appendix to Bid

Schedule of Adjustment Data

[In Tables A, B, and C, below, the Bidder shall (a) indicate its amount of local currency payment, (b) indicate its proposed source and base values of indices for the different foreign currency elements of cost, (c) derive its proposed weightings for local and foreign currency payment, and (d) list the exchange rates used in the currency conversion. In the case of very large and/or complex works contracts, it may be necessary to specify several families of price adjustment formulae corresponding to the different works involved.]

Table A. Local Currency

Index code*	Index description*	Source of index*	Base value and date*	Bidder's related currency amount	Bidder's proposed weighting
	Nonadjustable	—	—	—	A: _____* B: _____ C: _____ D: _____ E: _____
Total					1.00

[* To be entered by the Procuring entity]

Table B. Foreign Currency

State type: [insert name of currency; if the Bidder wishes to quote in more than one foreign currency, this table should be repeated for each foreign currency.]

Index code	Index description	Source of index	Base value and date	Bidder's related source currency in type/amount	Equivalent in FC1	Bidder's proposed weighting
	Nonadjustable	—	—	—		A: _____* B: _____ C: _____ D: _____ E: _____
Total						1.00

[* To be entered by the Procuring entity]

Table C. Summary of Payment Currencies

The Procuring entity must retain the Table which matches the Currency alternative retained in BDS ITB 15.1

Table: Alternative A

To be used only with Alternative A Prices entirely in the currency of the Republic of Rwanda with percentage(s) payable in foreign currency(ies). (Clause ITB 15.1)

Summary of payment currencies of the Bid

For [insert name of Section of the Works]

[Separate tables may be required if the various sections of the Works (or of the Bill of Quantities) will have substantially different foreign and local currency requirements. The Procuring entity should insert the names of each Section of the Works.]

Name of payment currency	A Amount of currency	B Rate of exchange (local currency per unit of foreign)	C Local currency equivalent C = A x B	D Percentage of Net Bid Price $\frac{100 \times C}{NBP}$
<u>Local currency</u> <u>RWANDAN</u> <u>FRANCS</u>		1.00		
Foreign currency #1 _____				
Foreign currency #2 _____				
Foreign currency #3 _____				
Net Bid Price				100.00

Provisional sums expressed in local currency	<i>[To be entered by the Procuring entity]</i>		<i>[To be entered by the Procuring entity]</i>	
BID PRICE				

Table: Alternative B

To be used only with Alternative B Prices directly quoted in the currencies of payment. (Clause ITB 15.1)

Summary of currencies of the bid for _____ *[insert name of Section of the Works]*

[Separate tables may be required if the various sections of the Works (or of the Bill of Quantities) will have substantially different foreign and local currency requirements. The Procuring entity should insert the names of each Section of the Works.]

<i>Name of currency</i>	<i>Amounts payable</i>
Local currency: _____	
Foreign currency #1: _____	
Foreign currency #2: _____	
Foreign currency #3: _____	

Bill of Quantities

Notes for Preparing a Bill of Quantities

Objectives

The objectives of the Bill of Quantities are

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

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 content of the Bill of Quantities should be as simple and brief as possible.

Content

The Bill of Quantities should be divided generally into the following sections:

- (a) Preamble;
- (b) Work Items (grouped into parts);
- (c) Day work Schedule; and
- (d) Summary.

Preamble

The Preamble should indicate the inclusiveness of the unit prices, and should state the methods of measurement that have been adopted in the preparation of the Bill of Quantities and that are to be used for the measurement of any part of the Works.

Rock

Where excavation, boring, or driving is included in the Works, a comprehensive definition of rock (always a contentious topic in contract administration), if not given in the Technical Specification, should be given in the Preamble, and this definition should be used for the purposes of measurement and payment.

Work Items

The items in the Bill of Quantities should be grouped into sections to distinguish between those parts of the Works that by nature, location, access, timing, or any other special characteristics may give rise to different methods of construction, phasing of the Works, or

considerations of cost. General items common to all parts of the Works may be grouped as a separate section in the Bill of Quantities. When a family of Price Adjustment Formulae are used, they should relate to appropriate sections in the Bill of Quantities.

Quantities

Quantities should be computed net from the Drawings, unless directed otherwise in the Contract, and no allowance should be made for bulking, shrinkage, or waste. Quantities should be rounded up or down where appropriate and spurious accuracy should be avoided.

Units of Measurement

The following units of measurement and abbreviations are recommended for use (unless other national units are mandatory in the Republic of Rwanda).

Unit	Abbreviation	Unit	Abbreviation
cubic meter	m ³ or cu m	millimeter	mm
hectare	ha	month	mon
hour	h	number	nr
kilogram	kg	square meter	m ² or sq m
lump sum	sum	square millimeter	mm ² or sq mm
meter	m	week	wk
metric ton (1,000 kg)	t		

Ground and Excavation Levels

The commencing surface should be identified in the description of each item for work involving excavation, boring, or driving, for which the commencing surface is not also the original surface. The excavated surface should be identified in the description of each item for work involving excavation for which the excavated surface is not also the final surface. The depths of work should be measured from the commencing surface to the excavated surface, as defined.

Day work Schedule

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

- (a) a list of the various classes of labour, materials, and Contractor's Equipment for which basic Day work rates or prices are to be inserted by the bidder, together with a statement of the conditions under which the Contractor will be paid for work executed on a Day work basis; and

- (b) a percentage to be entered by the bidder against each basic Day work Subtotal amount for labour, materials, and Plant representing the Contractor's profit, overheads, supervision, and other charges.

Provisional Quantities and Sums

Provision for quantity contingencies in any particular item or class of work with a high expectation of quantity overrun should be made by entering specific "Provisional Quantities" or "Provisional Items" in the Bill of Quantities, and *not* by increasing the quantities for that item or class of work beyond those of the work normally expected to be required. To the extent not covered above, a general provision for physical contingencies (quantity overruns) should be made by including a "Provisional Sum" in the Summary of the Bill of Quantities. Similarly, a contingency allowance for possible price increases should be provided as a "Provisional Sum" in the Summary of the Bill of Quantities. The inclusion of such Provisional Sums often facilitates budgetary approval by avoiding the need to request periodic supplementary approvals as the future need arises.

The estimated cost of specialized work to be carried out, or of special goods to be supplied, by a Nominated Subcontractor (reference Clause 59 or Part I) should be indicated in the relevant part of the Bill of Quantities as a particular Provisional Sum with an appropriate brief description. A separate bidding procedure is normally carried out by the Procuring entity to select the specialists, who are then nominated as subcontractors to the main or prime contractor. To provide an element of competition among the main bidders (or prime contractors) in respect of any facilities, amenities, attendance, etc., to be provided by the successful bidder as prime contractor for the use and convenience of the specialist or nominated subcontractor, each related Provisional Sum should be followed by an item in the Bill of Quantities inviting a percentage (to be quoted by the main bidder) payable on the actual expenditure from the Provisional Sum.

Line Items to Address Social Clauses

The Procuring entity shall decide, on a case-by-case basis, whether the cost to comply with the requirements of the so called "social clauses" (Sub-Clauses 6.1 through 6.22 of the General Conditions), to the level and extent specified in the Specification, is to be considered by the bidder as part of its overhead or reflected as a cost associated with one or more line items in the Bill of Quantities addressing such requirements. As a general rule, such cost should be part of the bidder's overhead unless the cost to comply with the requirements of some or all of the "social clauses" represents a large component of the Works, as indicated by the Specification. If line items are included, then the prices shall not be lump sums in order to have the facilities measured and paid through monthly installments to make the supervisor able to control the implementation of the facilities and services to be provided to the workers –and their families, when necessary- on the site.

Summary

The Summary should contain a tabulation of the separate parts of the Bill of Quantities carried forward, with provisional sums for Day work, for physical (quantity) contingencies, and for price contingencies (upward price adjustment) where applicable.

These Notes for Preparing a Bill of Quantities are intended only as information for the Procuring entity or the person drafting the bidding documents. They should not be included in the final documents.

Sample Bill of Quantities

A. Preamble

1. The Bill of Quantities shall be read in conjunction with the Instructions to Bidders, General and Special Conditions of Contract, Technical Specifications, and Drawings.
2. The quantities given in the Bill of Quantities are estimated and provisional, and are given to provide a common basis for bidding. The basis of payment will be the actual quantities of work ordered and carried out, as measured by the Contractor and verified by the Engineer and valued at the rates and prices bid in the priced Bill of Quantities, where applicable, and otherwise at such rates and prices as the Engineer may fix within the terms of the Contract.
3. The rates and prices bid in the priced Bill of Quantities shall, except insofar as it is otherwise provided under the Contract, include all Constructional Plant, labour, supervision, materials, erection, maintenance, insurance, profit, taxes, and duties, together with all general risks, liabilities, and obligations set out or implied in the Contract.
4. A rate or price shall be entered against each item in the priced Bill of Quantities, whether quantities are stated or not. The cost of Items against which the Contractor has failed to enter a rate or price shall be deemed to be covered by other rates and prices entered in the Bill of Quantities.
5. The whole cost of complying with the provisions of the Contract shall be included in the Items provided in the priced Bill of Quantities, and where no Items are provided, the cost shall be deemed to be distributed among the rates and prices entered for the related Items of Work.
6. General directions and descriptions of work and materials are not necessarily repeated nor summarized in the Bill of Quantities. References to the relevant sections of the Contract documentation shall be made before entering prices against each item in the priced Bill of Quantities.
7. Provisional Sums included and so designated in the Bill of Quantities shall be expended in whole or in part at the direction and discretion of the Engineer in accordance with Sub-Clause 13.5 and Clause 13.6 of the General Conditions.
8. The method of measurement of completed work for payment shall be in accordance with *[insert the name of a standard reference guide, or full details of the methods to be used]*.¹⁸

¹⁸ The method of measurement should be spelled out precisely in the Preamble to the Bill of Quantities, describing for example the allowances (if any) for timbering in excavation, etc. Many national standard reference guides have been prepared on the subject, and one such guide is the *Standard Method of Measurement* of the U.K. Institution of Civil Engineers.

9. Any arithmetic errors in computation or summation will be corrected by the Procuring entity as follows:

- (a) where there is a discrepancy between amounts in figures and in words, the amount in words will govern; and
- (b) where there is a discrepancy between the unit rate and the total amount derived from the multiplication of the unit price and the quantity, the unit rate as quoted will govern, unless in the opinion of the Procuring entity, there is an obviously gross misplacement of the decimal point in the unit price, in which event the total amount as quoted will govern and the unit rate will be corrected.

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

B. Work Items

1. The Bill of Quantities usually contains the following part Bills, which have been grouped according to the nature or timing of the work:

- Bill No. 1—General Items;
- Bill No. 2—Earthworks;
- Bill No. 3—Culverts and Bridges;
- Bill No. 4—etc., as required;
- Day work Schedule; and
- Summary Bill of Quantities.

2. Bidders shall price the Bill of Quantities in local currency only and shall indicate in the Appendix to Bid the percentage expected for payment in foreign currency or currencies.¹⁹

The tables in BOQ must be prepared in accordance with the currency alternative retained in BDS – ITB 15.1.

¹⁹ The example given illustrates one of the two alternative methods of setting up a Bill of Quantities, in which rates and prices are entered in local currency only, with bidders stating separately their proportionate requirements in different types and amounts of foreign currencies. The second method is where rates and prices are broken down for each item into local and foreign currency components. The first method is administratively more convenient and hence is more commonly used in Works contracts.

Bill No. 1: General Items

<i>Item no.</i>	<i>Description</i>	<i>Unit</i>	<i>Quantity</i>	<i>Rate</i>	<i>Amount</i>
101	Performance Bond/Guarantee	sum	item	—	
102	Insurance of the Works	sum	item	—	
103	Insurance of Contractor's Equipment	sum	item	—	
104	Third-Party Insurance	sum	item	—	
105	Allow for maintenance of Works for 12 months after completion	month	12		
106	—etc.—				
112	Provide and equip Engineer's offices	nr	2		
113	Maintain Engineer's offices for 24 months, including services	month	24		
114	—etc.—				
121	Provide diversion road	sum	item	—	
122	Provide for traffic control and maintenance of diversion road	month	24	—	
123	—etc.—				
132	Provide for cleaning up the Site on completion	sum	item	—	
	—etc.—				
Total for Bill No. 1 (carried forward to Summary, p. ____)					_____

Bill No. 2: Earthworks

<i>Item no.</i>	<i>Description</i>	<i>Unit</i>	<i>Quantity</i>	<i>Rate</i>	<i>Amount</i>
201	Excavate topsoil to maximum depth 25 cm and stockpile for reuse, maximum haul distance 1 km	m ³	95,000		
202	Excavate topsoil to maximum depth 25–50 cm, and dispose	m ³	15,000		
203	—etc.—				
206	Excavate fill material from cuttings or approved borrow pits, haul up to 1 km, deposit, shape, and compact to fill	m ³	258,000		
207	Excavate rock in cuttings and dispose, any depth	m ³	25,000		
208	—etc.—				
Total for Bill No. 2 (carried forward to Summary, p. ____)					_____

Bill No. 3: Culverts and Bridges

<i>Item no.</i>	<i>Description</i>	<i>Unit</i>	<i>Quantity</i>	<i>Rate</i>	<i>Amount</i>
301	Excavate in all materials other than rock from ground level to underside of foundations, maximum depth 5 m, and dispose	m ³	18,500		
302	Excavate in all materials other than rock, depth 5 m to 7.5 m	m ³	2,500		
303	Provisional Item As Item 302, depth 7.5 m to 10 m	m ³	500		
304	—etc.—				
311	Concrete class B in abutments	m ³	18,500		
312	—etc.—				
318	Mild steel reinforcement in abutments and piers up to 20 mm diameter	t	370		
319	—etc.—				
Total for Bill No. 3 (carried forward to Summary, p. ____)					_____

C. Day work Schedule²⁰

General

1. Reference should be made to Sub-Clause 13.6 of the General Conditions. Work shall not be executed on a Day work basis except by written order of the Engineer. Bidders shall enter basic rates for Day work items in the Schedules, which rates shall apply to any quantity of Day work ordered by the Engineer. Nominal quantities have been indicated against each item of Day work, and the extended total for Day work shall be carried forward as a Provisional Sum to the Summary Total Bid Amount. Unless otherwise adjusted, payments for Day work shall be subject to price adjustment in accordance with the provisions in the Conditions of Contract.

Day work Labour

2. In calculating payments due to the Contractor for the execution of Day work, the hours for labour will be reckoned from the time of arrival of the labour at the job site to execute the particular item of Day work to the time of return to the original place of departure, but excluding meal breaks and rest periods. Only the time of classes of labour directly doing work ordered by the Engineer and for which they are competent to perform will be measured. The time of gangers (charge hands) actually doing work with the gangs will also be measured but not the time of foremen or other supervisory personnel.

3. The Contractor shall be entitled to payment in respect of the total time that labour is employed on Day work, calculated at the basic rates entered by him in the **Schedule of Day work Rates: 1. Labour**, together with an additional percentage payment on basic rates representing the Contractor's profit, overheads, etc.,²¹ as described below:

- (a) The basic rates for labour shall cover all direct costs to the Contractor, including (but not limited to) the amount of wages paid to such labour, transportation time, overtime, subsistence allowances, and any sums paid to or on behalf of such

²⁰ (i) A "Day work Schedule" is commonly found in contracts where the likely incidence of unforeseen work cannot be covered by definitive descriptions and approximate quantities in the Bill of Quantities. The preferred alternative is to value the additional work in accordance with Sub-Clauses 52.1 and 52.2 of Part I of the Conditions of Contract. A Day work Schedule normally has the disadvantage of not being competitive among bidders, who may therefore load the rates assigned to some or all the items. If a Day work Schedule is to be included *at all* in the bidding documents, it is preferable to include nominal quantities against the items most likely to be used, and to carry the sum of the extended amounts forward into the Bid Summary in order to make the basic Schedule of Day work Rates competitive.

(ii) The total amount assigned to such competitive Day work is normally 3–5 percent of the estimated base Contract Price and is regarded as a Provisional Sum for contingencies to be expended under the direction and at the discretion of the Engineer. A limitation on quantity should *not* apply, and the unit rate quoted should be invariable whatever quantities of work are ordered.

²¹ This method of indicating profit and overheads separately facilitates the addition of further items of Day work, if needed, the basic costs of which can then be checked more easily. An alternative is to make Day work rates all-inclusive of the Contractor's overhead and profit, etc., in which case this paragraph and the relevant Day work Schedule should be modified accordingly.

labour for social benefits in accordance with relevant laws of the Republic of Rwanda. The basic rates will be payable in local currency only.

- (b) The additional percentage payment to be quoted by the bidder and applied to costs incurred under (a) above shall be deemed to cover the Contractor's profit, overheads, superintendence, liabilities, and insurances and allowances to labour, timekeeping, and clerical and office work, the use of consumable stores, water, lighting, and power; the use and repair of stagings, scaffolding, workshops, and stores, portable power tools, manual plant, and tools; supervision by the Contractor's staff, foremen, and other supervisory personnel; and charges incidental to the foregoing. Payments under this item shall be made in the following currency proportions:
 - (i) foreign: ___ percent (to be stated by bidder).²²
 - (ii) local: _____ percent (to be stated by bidder).

Day work Materials

4. The Contractor shall be entitled to payment in respect of materials used for Day work (except for materials for which the cost is included in the percentage addition to labour costs as detailed heretofore), at the basic rates entered by him in the **Schedule of Day work Rates: 2. Materials**, together with an additional percentage payment on the basic rates to cover overhead charges and profit, as follows:

- (a) the basic rates for materials shall be calculated on the basis of the invoiced price, freight, insurance, handling expenses, damage, losses, etc., and shall provide for delivery to store for stockpiling at the Site. The basic rates shall be stated in local currency, but payment will be made in the currency or currencies expended upon presentation of supporting documentation.
- (b) the additional percentage payment shall be quoted by the bidder and applied to the equivalent local currency payments made under (a) above. Payments under this item will be made in the following currency proportions:
 - (i) foreign: ___ percent (to be stated by the bidder);²³
 - (ii) local: _____ percent (to be stated by the bidder);
- (c) the cost of hauling materials for use on work ordered to be carried out as Day work from the store or stockpile on the Site to the place where it is to be used will be paid in accordance with the terms for Labour and Construction in this schedule.

²² The bidder shall state the percentage in a common foreign currency equivalent required for payment and the exchange rates and official sources used.

²³ The bidder shall state the percentage in a single foreign currency equivalent and the exchange rates and official sources used.

Day work Contractor's Equipment

5. The Contractor shall be entitled to payments in respect of Contractor's Equipment already on Site and employed on Day work at the basic rental rates entered by him in the **Schedule of Day work Rates: 3. Contractor's Equipment**. Said rates shall be deemed to include due and complete allowance for depreciation, interest, indemnity, and insurance, repairs, maintenance, supplies, fuel, lubricants, and other consumables, and all overhead, profit, and administrative costs related to the use of such equipment.²⁴ The cost of drivers, operators, and assistants will be paid for separately as described under the section on Day work Labour.²⁵

6. In calculating the payment due to the Contractor for Contractor's Equipment employed on Day work, only the actual number of working hours will be eligible for payment, except that where applicable and agreed with the Engineer, the travelling time from the part of the Site where the Contractor's Equipment was located when ordered by the Engineer to be employed on Day work and the time for return journey thereto shall be included for payment.

7. The basic rental rates for Contractor's Equipment employed on Day work shall be stated in local currency, but payments to the Contractor will be made in currency proportions, as follows:

- (a) foreign: _____ percent (to be stated by the bidder).²⁶
- (b) local: _____ percent (to be stated by the bidder).

²⁴ This is an example of wording to include overhead and profit, etc., in the Day work rates. A separate percentage addition could be used as for labour and materials.

²⁵ An alternative, sometimes adopted for administrative convenience, is to include the cost of drivers, operators, and assistants in the basic rates for Contractor's Equipment. The last sentence of paragraph 5 should then be modified accordingly.

²⁶ The bidder shall state the percentage in a single foreign currency equivalent and the exchange rates and official sources used.

Schedule of Day work Rates: 3. Contractor's Equipment

<i>Item no.</i>	<i>Description</i>	<i>Nominal quantity (hours)</i>	<i>Basic hourly rental rate</i>	<i>Extended amount</i>
D301	Excavator, face shovel, or dragline:			
.1	Up to and including 1 m ³	500		
.2	Over 1 m ³ to 2 m ³	400		
.3	Over 2 m ³	100		
D302	Tractor, including bull or angle dozer:			
.1	Up to and including 150 kW	500		
.2	Over 150 kW to 200 kW	400		
.3	Over 200 kW to 250 kW	200		
D303	Tractor with ripper:			
.1	Up to and including 200 kW	400		
.2	Over 200 kW to 250 kW	200		
D304	—etc.—			
Total for Day work: Contractor's Equipment (carried forward to Day work Summary, p. ___)				_____

Day work Summary

	<i>Amount^a</i> ()	<i>%</i> <i>Foreign</i>
1. Total for Day work: Labour		
2. Total for Day work: Materials		
3. Total for Day work: Contractor's Equipment		
Total for Day work (Provisional Sum) (carried forward to Bid Summary, p. ____)	_____	_____

a. The Procuring entity should insert local currency unit.

Summary of Specified Provisional Sums

<i>Bill no.</i>	<i>Item no.</i>	<i>Description</i>	<i>Amount</i>
1			
2	2.8	Supply and install equipment in pumping station	1,250,000
3			
4	4.32	Provide for ventilation system in subway tunnel	3,500,000
etc.			
Total for Specified Provisional Sums (carried forward to Grand Summary (B), p. ____)			4,750,000

Grand Summary

Contract Name:

Contract No.:

<i>General Summary</i>	<i>Page</i>	<i>Amount</i>
Bill No. 1: Preliminary Items		
Bill No. 2: Earthworks		
Bill No. 3: Drainage Structures		
—etc.—		
Total for Day work (Provisional Sum)		
Subtotal of Bills	(A)	
Total for Day work (Provisional Sum)	(B)	
Specified Provisional Sums ^a included in subtotal of bills	(C)	4,750,000 ^b
Total of Bills Plus Provisional Sums (A + B + C)	(D)	
Add Provisional Sum ^a for Contingency Allowance	(E)	[sum] ^b
Bid Price (D + E) (Carried forward to Form of Bid)	(F)	

a. All Provisional Sums are to be expended in whole or in part at the direction and discretion of the Engineer in accordance with Sub-Clause 52.4 and Clause 58 of Part I of the Conditions of Contract.

b. To be entered by the Procuring entity.

Technical Proposal

Site Organization

Method Statement

Mobilization Schedule

Construction Schedule

Equipment

Others

Technical Proposal - Site Organization

[insert Site Organization information]

Technical Proposal - Method Statement

[insert Method Statement]

Technical Proposal - Mobilization Schedule

[insert Mobilization Schedule]

Technical Proposal - Construction Schedule

[insert Construction Schedule]

Form EQU - Equipment

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

Item of Equipment		
Equipment Information	Name of manufacturer	Model and power rating
	Capacity	Year of manufacture
Current Status	Current location	
	Details of current commitments	
Source	Indicate source of the equipment <input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured	

Omit the following information for equipment owned by the Bidder.

Owner	Name of owner	
	Address of owner	
	Telephone	Contact name and title
	Fax	Telex
Agreements	Details of rental / lease / manufacture agreements specific to the project	

Personnel

Form PER – 1: Proposed Personnel

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

1.	Title of position*
	Name
2.	Title of position*
	Name
3.	Title of position*
	Name
4.	Title of position*
	Name

*As listed in Section III (Evaluation and Qualification Criteria).

Bidders Qualification Following Prequalification

The Bidder shall update the information given during the corresponding prequalification exercise to demonstrate that he continues to meet the criteria used at the time of prequalification regarding

- (a) Eligibility**
- (b) Pending Litigation**
- (c) Financial Situation**

For this purpose, the Bidder shall use the relevant forms included in this Section.

Form ELI - 1: Bidder Information Sheet

Bidder Information	
Bidder's legal name	
In case of JV, legal name of each partner	
Bidder's country of constitution	
Bidder's year of constitution	
Bidder's legal address in country of constitution	
Bidder's authorized representative (name, address, telephone numbers, fax numbers, e-mail address)	
<p>Attached are copies of the following original documents.</p> <p><input type="checkbox"/> 1. In case of single entity, articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2.</p> <p><input type="checkbox"/> 2. Authorization to represent the firm or JV named in above, in accordance with ITB 20.2.</p> <p><input type="checkbox"/> 3. In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1.</p> <p><input type="checkbox"/> 4. In case of a government-owned entity, any additional documents not covered under 1 above required to comply with ITB 4.5.</p>	

Form ELI - 2: JV Information Sheet

Each member of a JV must fill in this form

JV / Specialist Subcontractor Information	
Bidder's legal name	
JV Partner's or Subcontractor's legal name	
JV Partner's or Subcontractor's country of constitution	
JV Partner's or Subcontractor's year of constitution	
JV Partner's or Subcontractor's legal address in country of constitution	
JV Partner's or Subcontractor's authorized representative information (name, address, telephone numbers, fax numbers, e-mail address)	
<p>Attached are copies of the following original documents.</p> <ol style="list-style-type: none"> Articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2. Authorization to represent the firm named above, in accordance with ITB 20.2. In the case of government-owned entity, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB Sub-Clause 4.5. 	

Form LIT: Pending Litigation

Each Bidder or member of a JV must fill in this form

Pending Litigation			
<input type="checkbox"/> <input type="checkbox"/> No pending litigation			
Pending litigation			
Year	Matter in Dispute	Value of Pending Claim in US\$ Equivalent	Value of Pending Claim as a Percentage of Net Worth

Form FIN - 1: Financial Situation

Each Bidder or member of a JV must fill in this form

Financial Data for Previous 3 Years [US\$ Equivalent]		
Year 1:	Year 2:	Year 3:

Information from Balance Sheet

Total Assets			
Total Liabilities			
Net Worth			
Current Assets			
Current Liabilities			

Information from Income Statement

Total Revenues			
Profits Before Taxes			
Profits After Taxes			

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

Form FIN - 2: Average Annual Construction Turnover

Each Bidder or member of a JV must fill in this form

Annual Turnover Data for the Last 3 Years (Construction only)			
Year	Amount Currency	Exchange Rate	RWANDAN FRANCS Equivalent
Average Annual Construction Turnover			

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

Form FIN-3: Financial Resources

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

No.	Source of financing	Amount (RWANDAN FRANCS equivalent)
1		
2		
3		

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

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

No.	Name of Contract	Procuring entity's Contact Address, Tel, Fax	Value of Outstanding Work [Current US\$ Equivalent]	Estimated Completion Date	Average Monthly Invoicing Over Last Six Months [----Rwandan Francs/month]
1					
2					
3					
4					
5					

Bidders Qualification without prequalification

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

Form ELI - 1: Bidder's Information Sheet

Bidder's Information	
Bidder's legal name	
In case of JV, legal name of each partner	
Bidder's country of constitution	
Bidder's year of constitution	
Bidder's legal address in country of constitution	
Bidder's authorized representative (name, address, telephone numbers, fax numbers, e-mail address)	
Attached are copies of the following original documents. <ul style="list-style-type: none"> <input type="checkbox"/> 1. In case of single entity, articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2. <input type="checkbox"/> 2. Authorization to represent the firm or JV named in above, in accordance with ITB 20.2. <input type="checkbox"/> 3. In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1. <input type="checkbox"/> 4. In case of a government-owned entity, any additional documents not covered under 1 above required to comply with ITB 4.5. 	

Form ELI - 2: JV Information Sheet

Each member of a JV must fill in this form

JV / Specialist Subcontractor Information	
Bidder's legal name	
JV Partner's or Subcontractor's legal name	
JV Partner's or Subcontractor's country of constitution	
JV Partner's or Subcontractor's year of constitution	
JV Partner's or Subcontractor's legal address in country of constitution	
JV Partner's or Subcontractor's authorized representative information (name, address, telephone numbers, fax numbers, e-mail address)	
<p>Attached are copies of the following original documents.</p> <ol style="list-style-type: none"> 1. Articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2. 2. Authorization to represent the firm named above, in accordance with ITB 20.2. 3. In the case of government-owned entity, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB 4.5. 	

Form LIT - Pending Litigation

Each Bidder or member of a JV must fill in this form

Pending Litigation			
<input type="checkbox"/> <input type="checkbox"/> No pending litigation in accordance with Criteria 2.2.1 of Section III (Evaluation and Qualification Criteria)			
Pending litigation in accordance with Criteria 2.2.1 of Section III (Evaluation and Qualification Criteria)			
Year	Matter in Dispute	Value of Pending Claim in Rwandan Francs Equivalent	Value of Pending Claim as a Percentage of Net Worth

Form FIN - 1: Financial Situation

Each Bidder or member of a JV must fill in this form

Financial Data for Previous 3 Years [US\$ Equivalent]		
Year 1:	Year 2:	Year 3:

Information from Balance Sheet

Total Assets			
Total Liabilities			
Net Worth			
Current Assets			
Current Liabilities			

Information from Income Statement

Total Revenues			
Profits Before Taxes			
Profits After Taxes			

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

Form FIN - 2: Average Annual Construction Turnover

Each Bidder or member of a JV must fill in this form

Annual Turnover Data for the Last 3 Years (Construction only)			
Year	Amount Currency	Exchange Rate	US\$ Equivalent
Average Annual Construction Turnover			

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

Form FIN – 3: Financial Resources

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

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

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

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

Current Contract Commitments					
No	Name of Contract	Procuring entity's Contact Address, Tel, Fax	Value of Outstanding Work [Current Rwandan Francs Equivalent]	Estimated Completion Date	Average Monthly Invoicing Over Last Six Months [-----Rwandan Francs/month)]
1					
2					
3					
4					
5					

Form EXP – 1: General Construction Experience

Each Bidder or member of a JV must fill in this form

General Construction Experience				
Starting Month Year	Ending Month Year	Years	Contract Identification and Name Name and Address of Procuring entity Brief Description of the Works Executed by the Bidder	Role of Bidder

Form EXP – 2(a): Specific Construction Experience

Fill up one (1) form per contract.

Contract of Similar Size and Nature		
Contract No of	Contract Identification	
Award Date	Completion Date	
Role in Contract	Contractor	Management Contractor Subcontractor
Total Contract Amount	RWANDAN FRANCS	
If partner in a JV or subcontractor, specify participation of total contract amount	Percent of Total	Amount
Procuring entity's Name Address Telephone/Fax Number E-mail		
Description of the similarity in accordance with Criteria 2.4.2(a) of Section III		

Form EXP - 2(b): Specific Construction Experience in Key Activities

Fill up one (1) form per contract

Contract with Similar Key Activities		
Contract No of	Contract Identification	
Award Date	Completion Date	
Role in Contract	<input type="checkbox"/> Contractor <input type="checkbox"/> Management Contractor <input type="checkbox"/> Subcontractor	
Total Contract Amount	RWANDAN FRANCS	
If partner in a JV or subcontractor, specify participation of total contract amount	Percent of Total	Amount
Procuring entity Name Address Telephone Number Fax Number E-mail		
Description of the key activities in accordance with Criteria 2.4.2(b) of Section III		

Bid Security Form

(Bank Guarantee)

_____ /bank's name, and address of Issuing Branch or Office/

Beneficiary: _____ [Name and Address of Procuring entity]

Date: _____

BID GUARANTEE No.: _____

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 contract] under Invitation for Bids No. _____ ("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 accompanied by a written statement stating that the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder:

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the 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 execute the Contract Agreement or (ii) fails or refuses to furnish the performance security, in accordance with the ITB.

This guarantee will expire: (a) if the Bidder is the successful Bidder, upon our receipt of copies of the contract signed by the Bidder and the performance security issued to you upon the instruction of the Bidder; and (b) if the Bidder is not the successful Bidder, upon the earlier of (i) our receipt of a copy your notification to the Bidder of the name of the successful Bidder; or (ii) thirty (30) days after the expiration of the Bidder's bid validity.

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

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

[signature(s)]

Section V. Eligible Countries

Input of Information Form to be completed by Procuring entity

Part 2 – Works Requirements

Section VI. Works Requirements - Specification

Specifications

Notes for Preparing Technical Specifications

These **Notes for Preparing Technical 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 documents.

Precise and clear Specifications are 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 materials, Plant, other supplies, and workmanship to be provided. Only if this is done will the objectives of economy, efficiency, and equality in procurement be realized, responsiveness of bids be ensured, and the subsequent task of bid evaluation facilitated. The Specifications should require that all materials, Plant, and other supplies to be incorporated in the Works are new, unused, of the most recent or current models, and incorporate all recent improvements in design and materials unless provided otherwise in the Contract. A clause setting out the scope of the Works is often included at the beginning of the Specifications, and it is customary to give a list of the Drawings. Where the Contractor is responsible for the design of any part of the Permanent Works, the extent of his obligations must be stated. (See GCC Sub-Clause 4.1 Contractor's General Obligations.)

Samples of Specifications from previous similar projects in the same country are useful in this respect. The metric units should be used. Most Specifications are normally written specially by the Procuring entity or Engineer to suit the contracts for Works in hand. There are no standard Specifications for universal application in all sectors in all countries, but there are established principles and practices that are reflected in these documents.

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

Care must be taken in drafting Specifications to ensure that they are not restrictive. In the specification of standards for materials, Plant, other supplies, and workmanship, recognized international standards should be used as much as possible. Where other particular standards are used, whether national standards or other standards, the Specifications should state that materials, Plant, other supplies, and workmanship meeting other authoritative standards, and

which ensure substantially equal performance, as the standards mentioned, will also be acceptable.

Specific minimum requirements for “social clauses” (common collective name for provisions under Sub-Clauses 6.1 through 6.22 of the General Conditions), are to be detailed as part of the Specifications at a level equivalent to the local norms, if they exist and at a level according to the country's regulations, or to minimum requirements when no local regulations exist (see “**Line Items to Address Social Clauses**” under the Notes for Preparing a Bill of Quantities, Section IV of this User's Guide).

The following clause may be inserted in the Particular Conditions or the Specification:

Sample Clause: Equivalency of Standards and Codes

Wherever reference is made in the Contract to specific standards and codes to be met by the materials, Plant, and other supplies to be furnished, and work performed or tested, the provisions of the latest current edition or revision of the relevant standards and codes in effect shall apply, unless otherwise expressly stated in the Contract. Where such standards and codes are national, or relate to a particular country or region, other authoritative standards that ensure substantial equivalence to the standards and codes specified will be accepted subject to the Engineer's prior review and written approval. Differences between the standards specified and the proposed alternative standards must be fully described in writing by the Contractor and submitted to the Engineer at least 28 days prior to the date when the Contractor desires the Engineer's approval. In the event the Engineer determines that such proposed deviations do not ensure substantially equal performance, the Contractor shall comply with the standards specified in the documents.

Alternative Technical Proposals

Procuring entity should decide whether technical solutions to specified parts of the Works are to be permitted. Alternatives are appropriate in cases where obvious (and potentially less costly) alternatives are possible to the technical solutions indicated in the bidding documents for certain elements of the Works, taking into consideration the comparative specialized advantage of potential bidders. For example:

- pile foundations (proprietary methods and different material)
- bridge foundations (open well, caissons, piles, etc.)
- columns, beams, decking (reinforced concrete, prestressed concrete, steel, etc.)
- proprietary methods for post-tensioning concrete
- lining of canals
- pipeline materials, coating, jointing
- road surfacing (asphalt, concrete, etc.)
- transmission tower design and erection
- street lighting
- offshore foundations
- offshore trestle spans

The Procuring entity should provide a description of the selected parts of the Works with appropriate references to Drawings, Specifications, Bill of Quantities, and Design or Performance criteria, stating that the alternative solutions shall be at least structurally and functionally equivalent to the basic design parameters and specifications.

Such alternative solutions shall be accompanied by all information necessary for a complete evaluation by the Procuring entity, including drawings, design calculations, technical specifications, breakdown of prices, proposed construction methodology, and other relevant details. Technical alternatives permitted in this manner shall be considered by the Procuring entity each on its own merits and independently of whether the bidder has priced the item as described in the Procuring entity's design included with the bidding documents.

In more complex cases, a "turnkey" or "design-and-construct" approach may be more appropriate, in which cases a two-stage bidding process is recommended.

These **Notes for Preparing Technical 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 documents.

Drawings

-- Note --

It is customary to bind the drawings in a separate volume, which is often larger than other volumes of the Contract documents. The size will be dictated by the scale of the drawings, which must not be reduced to the extent that details are rendered illegible.

A simplified map showing the location of the Site in relation to the local geography, including major roads, posts, airports, and railroads, is helpful.

The construction drawings, even if not fully developed, must show sufficient details to enable bidders to understand the type and complexity of the work involved and to price the Bill of Quantities.

Supplementary Information

Part 3 – Conditions of Contract and Contract Forms

The Conditions of Contract comprise two parts:

- (a) **General Conditions** – GC (Section VII of this document), and
- (b) **Particular Conditions** – PC (Section VIII of this document).

Any amendments and additions to the General Conditions, specific to the contract in hand, should be introduced in the Particular Conditions. A number of such Particular Conditions, applicable to the above Conditions of Contract, are included in Section VIII.

The use of standard conditions of contract for all civil Works will ensure comprehensiveness of coverage, better balance of rights or obligations between Procuring entity and Contractor, general acceptability of its provisions, and savings in time and cost for bid preparation and review, leading to more economical prices.

The Particular Conditions take precedence over the General Conditions—see Sub-Clause 1.5, Priority of Documents, in the General Conditions.

The Particular Conditions (PC) complement the General Conditions (GC) to specify data and contractual requirements linked to the special circumstances of the country, the Procuring entity, the Engineer, the sector, the overall project, and the Works. It is good practice to have a list of tax and custom regulations applicable in the country, to be provided as non-binding general information, attached to the Bidding Documents.

Part A, the Contract Data of the PC, includes data to complement GC in a manner similar to the way in which the Bid Data Sheet complements the Instructions to Bidders.

Part B, the Specific Provisions of the PC, consists of a set of sample provisions for use by the Procuring entity in preparing the PC. **They are not a complete standard set of PC provisions**; country- or Project-specific provisions for PC must also be prepared in each case. However, standard, country-specific PC should be developed.

Whoever drafts the PC should be thoroughly familiar with the provisions of the GC and with any specific requirements of the Contract. Legal advice is recommended when amending provisions or drafting new ones. Note that the **PC provisions take precedence over those in the GC**.

Clause numbers in the PC correspond to those in the GC.

Section VII. General Conditions

Clause 6 Staff and Labour

Sub-Clauses 6.1 through 6.22 are commonly referred to **collectively** as “social clauses”. These clauses are of a general nature; specific **minimum** requirements are to be specified in the Specification (see Notes for Preparing Technical Specifications in this User's Guide). Where the nature of the project makes any of the “social clauses” inapplicable, the Particular Conditions could indicate exceptions or modification to the application of any of them.

Sub-Clause 6.21 Prohibition of Harmful Child Labour

The Convention on the Rights of the Child adopted by the UN General Assembly on November 1989 and ratified by 192 countries, defined in article 1, quote "a child means every human being below the age of eighteen years unless the law applicable to the child, majority is attained earlier" unquote.

Economically exploitative is any wages less than the market rate or that paid for similar "output" by adult worker.

Sub-Clause 14.1 The Contract Price

If the Procuring entity has arranged for exemption of the Contractor from import duties with customs and excise authorities, Paragraph (e) in the PC Sub-Clause 14.1 should be inserted. However, the alternative Paragraph (e) should be used where import duties and taxes are to be levied on the value of depreciation of the Contractor's Equipment during construction. Its use is recommended in situations where domestic contractors who have paid full duties for the Contractor's Equipment they use are to compete with foreign contractors.

Section VIII. Particular Conditions

The PC complement the GC to specify data and contractual requirements linked to the special circumstances of the country, the Procuring entity, the Engineer, the sector, the overall project, and the Works. Whenever there is a conflict, the provisions herein shall prevail over those in the GC.

Part A, Contract Data of the PC, includes data to complement the GC in a manner similar to the way in which the Bid Data Sheet complements the Instructions to Bidders.

Part B, Specific Provisions of the PC are sample provisions for use by the Procuring entity in preparing the PC. They are not a complete standard set of PC provisions; country- or project-specific provisions may need to be prepared in each case.

Note that the PC provisions take precedence over those in the GC.

Clause numbers in the PC correspond to those in the GC.

Part A - Contract Data

[The Procuring entity should insert relevant data prior to the issue of the bidding document. Where a number of days is to be inserted it is desirable for the number to be a multiple of seven for consistency with the Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the GC.]

Input of Information to be completed by Bidder (bold) or Procuring entity (italic)

Conditions	Ref. GC	Data
Procuring entity's name and address	1.2.2.2 & 1.4	[... <i>insert Procuring entity name and address ...</i>]
Engineer's name and address	1.2.2.4 & 1.4	[... <i>insert Engineer name and address ...</i>]
Procuring entity name	1.1.2.12	[... <i>insert Borrower's name ...</i>]
Time for Completion	1.2.3.3	..._days [... <i>insert the time for completion of the whole of the Works and also the time for completion of sections, if applicable. If times (or dates) are to be specified for various sections of the Works, they should be listed here ...</i>]
Defects Notification Period	1.2.3.7	365 days.

Sections	1.2.5.6	[If sections are used, refer to table Summary of Sections of the Works given below]
Electronic transmission systems	1.4	[... insert Electronic transmission systems...]
Governing Law	1.4	[... insert: "The law of the Republic of Rwanda"
Ruling language	1.5	
Language for communications	1.5	
Time for access to the Site	2.1	_____days after Commencement Date
Engineer's Duties and Authority	3.1(b)(ii)	Variations resulting in an increase of the Accepted Contract Amount in excess of____% shall require approval of the Procuring entity.
Performance Security	4.2	The performance security will be in the form of an unconditional bank guarantee in the amount(s) of [insert related figure(s)] percent of the Contract Price.]
Normal working hours	6.5	[... insert the normal working hours]
Delay damages for the Works	8.7 & 14.15(b)	[insert percentage per day such that the maximum amount of delay damages is attained as a result of a delay of about one third of the Time for Completion] % of the final Contract Price per day, in the currencies and proportions in which the Contract Price is payable.
Maximum amount of delay damages	8.7	<u> </u> % of the Contract Price per day. <i>If Sections are to be used, refer to Table: Summary of Sections below</i> Once the contract is not terminated while the maximum of liquidated damages of 5% is reached, the contract extension shall not exceed [insert time period]
Provisional Sums	13.5.(b)(ii)	_____ % [If there are Provisional Sums, insert a percentage for adjustment of Provisional Sums]
Adjustments for Changes in Cost; Table(s) of Adjustment Data	13.8	Period "n" applicable to the adjustment multiplier "Pn": _____ <i>[Insert the period if different from one (1) month; if period "n" is one (1) month, leave blank]</i>
Total advance payment	14.2	_____ % Percentage of the Accepted Contract Amount payable in the currencies and proportions in which the Accepted Contract Amount is payable <i>[Insert percentage, which should not be more than 20%, number and timing of installments if applicable]</i>

Repayment amortization of advance payment	14.2(b)	_____% <i>[Insert percentage of amortization rate, stating that repayment will begin when amount of work certified by the Engineer attains 30% of the Contract Price]</i>
Percentage of Retention	14.3	_____% <i>[Insert percentage of retention, not exceeding 10]</i>
Limit of Retention Money	14.3	_____% of the Accepted Contract Amount <i>[Insert percentage of limit of retention, usually 5 and not exceeding 10]</i>
Plant and Materials	14.5(b)(i)	If Sub-Clause 14.5 applies: Plant and Materials for payment when shipped en route to the Site _____ <i>[list]</i> .
	14.5(c)(i)	Plant and Materials for payment when delivered to the Site _____ <i>[list]</i> .
Minimum Amount of Interim Payment Certificates	14.6	_____% of the Accepted Contract Amount. <i>[Insert percentage, which may depend on the contract amount and time for completion; a minimum of about one fifth the average expected value of Interim Payment Certificate would be reasonable]</i>
Maximum total liability of the Contractor to the Procuring entity	17.6	<i>[Select one of the two options below as appropriate]</i> <u>The product of _____ [insert a multiplier less or greater than one] times the Accepted Contract Amount,</u> <u>or</u> <u>the Accepted Contract Amount</u>
Periods for submission of insurance: a. evidence of insurance. b. relevant policies	18.1	<i>[Insert period for submission of evidence of insurance and policy. Period may be from 14 days to 28 days]</i> ____ days ____ days
Maximum amount of deductibles for insurance of the Procuring entity risks	18.2(d)	<i>[insert maximum amount of deductibles; about 5000 US\$\$s equivalent would be reasonable]</i>
Minimum amount of third party insurance	18.3	<i>[insert minimum amount of third party insurance; this minimum amount per occurrence should be commensurate with the risk of damage specific to the Contract]</i>

<p>Adjudication process</p>	<p>20.3</p>	<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>
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Litigation or Arbitration	20.4	<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 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>

Summary of Sections of the Works

Section Name/Description (Sub-Clause 1.1.5.6)	Time for Completion (Sub-Clause 1.1.3.3)	Damages for Delay (Sub-Clause 8.7)

Part B - Specific Provisions

[Specific Provisions of the PC are intended to address country, project, and contract specific requirements not covered by the GC. Whoever drafts the Specific Provisions should be thoroughly familiar with the provisions of the GC and with any specific requirements of the contract. Legal advice is recommended when amending provisions or drafting new ones.

Sub-Clause 14.1 The Contract Price

If the Procuring entity has arranged for exemption of the Contractor from import duties with customs and excise authorities, Paragraph (e) of GC Sub-Clause 14.1 should be retained. However, the alternative Paragraph (e) below should be used where import duties and taxes are to be levied on the value of depreciation of the Contractor's Equipment during construction.

Alternative paragraph (e): *“Paragraph (e) is amended as follows: Notwithstanding the provisions of subparagraph (b), Contractor's Equipment, including essential spare parts therefore, imported by the Contractor for the sole purpose of executing the Contract shall be temporarily exempt from the payment of import duties and taxes upon initial importation, provided the Contractor shall post with the customs authorities at the port of entry an approved export bond or bank guarantee, valid until the Time for Completion plus six months, in an amount equal to the full import duties and taxes which would be payable on the assessed imported value of such Contractor's Equipment and spare parts, and callable in the event the Contractor's Equipment is not exported from the Country on completion of the Contract. A copy of the bond or bank guarantee endorsed by the customs authorities shall be provided by the Contractor to the Procuring entity upon the importation of individual items of Contractor's Equipment and spare parts. Upon export of individual items of Contractor's Equipment or spare parts, or upon the completion of the Contract, the Contractor shall prepare, for approval by the customs authorities, an assessment of the residual value of the Contractor's Equipment and spare part to be exported, based on the depreciation scale(s) and other criteria used by the customs authorities for such purposes under the provisions of the applicable Laws. Import duties and taxes shall be due and payable to the customs authorities by the Contractor on (a) the difference between the initial imported value and the residual value of the Contractor's Equipment and spare parts to exported; and (b) on the initial imported value that Contractor's Equipment and spare parts remaining in the Country after completion of the Contract. Upon payment of such dues within 28 days of being invoiced, the bond or bank guarantee shall be reduced or released accordingly; otherwise the security shall be called in the full amount remaining.*

Section IX. Contract Forms

The Notification of Award will be the basis for formation of the Contract as described in ITB-39. This Standard Form should be filled in and sent to the successful Bidder only after evaluation of bids has been completed, subject to any review by as the case may be of the funding entity.

Section IX of the BD also contains forms for the Contract Agreement, the Performance Security, and the Advance Payment Security. Bidders shall not submit these forms with their bids. After notification of award, the Procuring entity shall prepare the Contract Agreement using the Contract Agreement Form and send it to the successful Bidder.

The successful Bidder shall sign the Contract Agreement and return it to the Procuring entity together with the Performance Security and, if applicable, the Advance Payment Security, using the respective forms provided in Section IX.

Notification of Award Form

[On letterhead paper of the Procuring entity]

..... *Date*

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

Subject: *Notification of Award Contract No.*

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

You are requested to furnish the Performance Security within *[insert 15 or 21 days
depending on whether the contract is national or international]* days in accordance
with the Conditions of Contract, using for that purpose the *of* the Performance
Security Form included in Section IX (Contract Forms) of the Bidding Document.

Authorized Signature:

Name and Title of Signatory:

Name of Agency:

Attachment: Contract Agreement

Contract Agreement Form

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 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”) and has tendered the works through an open international tender;

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 under the terms and conditions of payments to be made by the Procuring Entity to the Contractor as hereinafter mentioned, to execute and complete the works and remedy any defects therein in conformity in all respects with the provisions of the 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 _____

V. 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.

NOW THEREFORE THIS AGREEMENT IS ENTERED INTO AS FOLLOWS:

9. The object of the contract is the construction of as specified in this contract.
10. 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:

- ee. Contract Agreement,**
- ff. Letter of Acceptance,**
- gg. The Particular Conditions – Part A,**
- hh. The Particular Conditions – Part B**
- ii. General Conditions of Contract,**
- jj. Minutes of negotiation**
- kk. The Tender,**
- ll. Specifications,**
- mm. Drawings,**
- nn. Bill of Quantities,¹**
- oo. Bill of prices, and**
- pp. The Schedules,**
- qq. The time programme and its amendments as agreed by the engineer and the contractor and approved by the Procuring entity,**
- rr. Contractor's Bid,**
- ss. Any other document listed in the SCC as forming part of the Contract.**

11. This contract shall prevail over all other contract documents. **The documents forming the Contract are to be taken as mutually explanatory of one another.** In the event of any discrepancy or inconsistency within the contract documents, then the documents shall prevail in the order listed above
12. If an ambiguity or discrepancy is stated in the documents, the Engineer shall issue any necessary clarification or instruction.

¹ *In lump sum contracts, delete "Bill of Quantities" and replace with "Activity Schedule."*

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of the Republic of RWANDA on the day, month and year indicated above.

Signed, Sealed, and Delivered on this (DATE)

For and on behalf of the Procuring Entity

For and on behalf of the Contractor

Signature _____

Signature _____

Names : _____

Names : _____

Title: _____

Title: _____

Performance Security Form

.....*Bank's Name, and Address of Issuing Branch or Office*.....

Beneficiary:*Name and Address of Procuring entity*

Date:

Performance Guarantee No.:

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

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

At the request of the Contractor, we *name of the Bank*. hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *name of the currency and amount in figures**. (. *amount in words*.) 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.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

Date of issue:.....

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

Position:.....

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

Seal:.....

on behalf of [*name of Contractor*] in the capacity of [*insert title(s)*]

Note: All italicized text is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.

** The Guarantor 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.*

Advance Payment Security Form

.....*Bank's Name, and Address of Issuing Branch or Office*.....

Beneficiary:*Name and Address of Procuring entity*

Date:

Advance Payment Guarantee No.:

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

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

At the request of the Contractor, we *name of the Bank*. hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *name of the currency and amount in figures**. (. *amount in words*.) 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 *Contractor's account number*. at *name and address of the Bank*.

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

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

Date of issue:.....

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

Position:.....

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

Seal:.....

on behalf of *[name of Contractor]* in the capacity of *[insert title(s)]*

Note: All italicized text is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.

**** The Guarantor shall insert an amount representing the amount of the advance payment denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Procuring entity.***

***** Insert the expected expiration date of the Time for Completion. The Procuring entity should note that in the event of an extension of the time for completion of the Contract, the Procuring entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Procuring entity might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Procuring entity's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."***

Retention Money Security Form

Demand Guarantee

_____ [Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: _____ [Name and Address of Procuring entity]

Date: _____

RETENTION MONEY GUARANTEE No.: _____

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

Furthermore, we understand that, according to the conditions of the Contract, when the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment, payment of [insert the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security] is to be made against a Retention Money guarantee.

At the request of the Contractor, we [name of Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [amount in figures] (_____) [amount in words]¹ upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor 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 payment of the second half of the Retention Money referred to above must have been received by the Contractor on its account number _____ at [name and address of Bank].

This guarantee shall expire, at the latest, 21 days after the date when the Procuring entity has received a copy of the Performance Certificate issued by the Engineer. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

¹ The Guarantor shall insert an amount representing the amount of the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security and denominated either in the currency(ies) of the second half of the Retention Money as specified in the Contract, or in a freely convertible currency acceptable to the Procuring entity.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

Date of issue:.....

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

Position:.....

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

Seal:.....

on behalf of *[name of Contractor]* in the capacity of *[insert title(s)]*

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

<p>Bibonywe kugira ngo bishyirwe ku mugereka w'Iteka rya Minisitiri N° ryo ku wa rishyiraho amabwiriza agenga amasoko ya Leta, ibitabo by'amabwiriza agenga ipiganwa n'amasezerano by'icyitegererezo</p>		<p>Vu pour être annexé à l'Arrêté Ministériel N° du portant réglementation des marchés publics, des dossiers types d'appels d'offres et contrats types</p>
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Kigali,

<p>GATETE Claver Minisitiri w'Imari n'Igenamigambi</p>	<p>GATETE Claver Minister of Finance and Economic Planning</p>	<p>GATETE Claver Ministre des Finances et de la Planification Economique</p>
<p>Bibonywe kandi bishyizweho Ikirango cya Repubulika:</p> <p>BUSINGYE Johnston Minisitiri w'Ubutabera/Intumwa Nkuru ya Leta</p>	<p>Seen and sealed with the Seal of the Republic:</p> <p>BUSINGYE Johnston Minister of Justice/Attorney General</p>	<p>Vu et scellé du Sceau de la République:</p> <p>BUSINGYE Johnston Ministre de la Justice/Garde des Sceaux</p>