

***STANDARD TENDER DOCUMENTS***

**Procurement of Goods  
(and associated services)**

2005

**European Bank  
for Reconstruction and Development**

This edition includes a number of amendments as summarised in the following table.

<b>Amendment No.</b>	<b>Date</b>	<b>Nature of Amendments</b>
1	7 May 1998	Volume Ii Instructions to Tenderers, Eligibility and qualification- new sub-para. 3.6 added
“	“	Volume Ii Instructions to Tenderers, Corrupt or fraudulent practices - new para. 32 added
“	”	Volume Ili General Conditions of Contract, Use of Contract Documents and Information; Inspection and Audit by the Bank, Clause 5- heading modified
“	“	Volume Ili General Conditions of Contract, Use of Contract Documents and Information; Inspection and Audit by the Bank - new sub-clause 5.4 added
“	“	Volume Ili General Conditions of Contract, Termination- new sub-clause 24.1(c) added
2	17 February 1999	Volume Ii Instructions to Tenderers, Tender Currencies - sub-para. 12.8 modified

## **Preface**

These Standard Tender Documents have been prepared by the European Bank for Reconstruction and Development (the Bank) for use by clients when procuring goods (and associated services) following open tendering procedures, in operations financed by the Bank.

Associated services normally include such items as design, supervision of installation, installation, associated works, and training, as appropriate.

These documents are derived from Standard Bidding Documents developed and in use by the World Bank, the Asian Development Bank and the Inter-American Development Bank.

The procedures and practices presented in them have been developed through broad international experience and shall be used in contracts to be procured following open tendering that are financed in whole or in part by the Bank.

Two of the sections in these documents are to be used without modification by simply copying them: Volume I.i, the Instructions to Tenderers; and Volume II.i, the General Conditions of Contract. The Tender Data, attached to the Instructions to Tenderers, should contain information and instructions specific to individual procurements. Conditions specific to individual contracts and any amendments to the General Conditions of Contract should be covered in the Special Conditions of Contract.

Clients or their procurement consultants should complete the documents by entering data specific to the procurement in question in the relevant sections; in some cases, this necessitates a selection from different alternatives presented in the documents. These alternatives are illustrative and not necessarily comprehensive. Other customised provisions may be required in certain cases. The following guidelines should be observed:

- (a) Specific details, such as the “name of the Purchaser”, “address for tender submission”, etc., should be entered where indicated.
- (b) Boxed guidance notes contain instructions which the drafter should follow. They are not part of the text, and should not be included in the final document.
- (c) The criteria for tender evaluation and the methods for applying such criteria in evaluation should be reviewed carefully. It may be appropriate to delete or to modify some of the criteria given in this document, or to use additional criteria. In any event, criteria must be quantified in monetary terms except in rare occasions where that is not practical.
- (d) The Special Conditions of Contract included in the documents are only illustrative of the most common provisions. All special conditions should be selected and/or drafted specifically for each procurement.

When submitting tender documents to the Bank for review, clients should state whether these Standard Tender Documents have been used. If so, the client should:

(a) confirm that the Instructions to Tenderers and the General Conditions of Contract have been used without change;

(b) highlight any proposed changes to the following:

- Tender Form
- Tender Security Form
- Manufacturer's Authorisation Form
- Letter of Acceptance
- Contract Agreement
- Performance Security Form
- Bank Guarantee for Advanced Payment;

(c) submit the following for Bank review:

- Invitation for Tenders
- Tender Data
- Price Schedules
- Special Conditions of Contract
- Schedule of Requirements
- Technical Specifications
- Drawings (if relevant to the tender)
- Any additional documentation to be incorporated in the documents.

Guidance Notes on using these documents appearing at the beginning of each Volume are for the use of the drafter and must not be included in the tender documents to be issued to potential tenderers.

## TABLE OF CONTENTS

Volume I.	The Tender	3
	Invitation for Tenders	5
I.i	Instructions to Tenderers	9
I.ii	Tender Data	26
I.iii	Tender Form	37
I.iv	Price Schedules	38
I.v	Tender Security Form	41
I.vi	Manufacturer's Authorisation Form	42
I.vii	Letter of Acceptance	43
Volume II.	The Contract	44
	II.i General Conditions of Contract	47
	II.ii Special Conditions of Contract	59
	II.iii Contract Form	69
	II.iv Securities	71
Volume III.	The Requirements	73
	III.i Schedule of Requirements	75
	III.ii Technical Specifications	77
	III.iii Drawings and Other Documentation	79



# **STANDARD TENDER DOCUMENTS**

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## **Procurement of Goods (and associated services)**

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**Volume I**

**The Tender**



*The Invitation for Tenders must be published in the Bank's periodical "Procurement Opportunities" and in a paper of wide circulation in the Purchaser's country. The notice should also be sent to potential suppliers that have responded to the General Procurement Notice and to local representatives of foreign countries with potential suppliers of the goods and services required.*

*Purchasers should maintain a register of all potential tenderers who have purchased the tender documents and make it available for inspection with the tender documents*

*The Invitation for Tenders must be incorporated into the tender documents. The information in the Invitation for Tenders must reflect and be consistent with the other sections of the tender documents.*

## INVITATION FOR TENDERS

[ country ]  
[ project title ]

### INVITATION FOR TENDERS

[ goods and services to be procured ]

This Invitation for Tenders follows the General Procurement Notice for this project which was published in *Procurement Opportunities*, [ state issue and date ].

[ Name of Purchaser ] hereinafter referred to as the Purchaser, intends using part of the proceeds of a loan from the European Bank for Reconstruction and Development (the Bank) towards the cost of [ specify project ].

The Purchaser now invites sealed tenders from [ suppliers / contractors ] for the following contract[s] to be funded from part of the proceeds of the loan:

- [ Include for each contract a concise description of the goods, works or services as applicable. State size and principal quantities. For contracts involving works, provide locations, estimated duration, and advise if any contracts are to be implemented concurrently ].

Tenders are invited for one or more lots. Each lot must be priced separately. Tenders for more than one lot may offer discounts and such discounts will be considered in the comparison of tenders.

***Delete the above paragraph if the tender does not involve more than one contract lot.***

Tendering for contracts to be financed with the proceeds of a loan from the Bank is open to firms from any country.

To be qualified for the award of a contract, tenderers must satisfy the following minimum criteria:

- [ *Indicate any particular postqualification requirements, which should be the same criteria set out in the Instructions to Tenderers.* ].

***Delete the above paragraph if not applicable.***

Tender documents may be obtained from the office at the address below upon payment of a non-refundable fee of [ *state currency and value* ] or equivalent in a convertible currency.

[ *Give instructions for payment by bank transfer or the like and requirements for submitting Bank receipt of payment to the Purchaser* ]. If requested, the documents will be promptly despatched by courier, but no liability can be accepted for loss or late delivery.

***Only a nominal fee should be charged for tender documents, solely to cover the costs of reproduction and of despatching the documents by courier.***

All tenders must be accompanied by a tender security of [ *state currency and amount deemed appropriate by the Purchaser. This should be consistent with paragraph 16.1 of the Instructions to Tenderers* ] or its equivalent in a convertible currency.

***Delete the above paragraph if no tender security is required.***

Tenders must be delivered to the office at the address below on or before [ *specify time and date of deadline for submission* ], at which time they will be opened in the presence of those tenderers' representatives who choose to attend.

***The date for submission of tenders should be not less than 45 days after the date of publication of this notice or the availability of the tender documents, whichever is the later. A period of 60 days is normal and preferable. A longer period would be necessary for complex or large contracts and for tenders requiring a pre-tender meeting or site visit.***

A register of potential tenderers who have purchased the tender documents may be inspected at the address below.

Prospective tenderers may obtain further information from, and inspect and acquire the tender documents at, the following office:

[ *Contact name* ]  
[ *Purchasing entity* ]  
[ *Address* ]  
[ *Tel:* ]  
[ *Fax:* ]

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

**VOLUME I**

**THE TENDER**

*Notes on Vol. I - The Tender*

*This section of the tender documents provides the information necessary for tenderers to prepare and submit responsive tenders, in accordance with the requirements of the Purchaser. It also provides information on submission and opening of tenders, evaluation of tenders and the award of the contract. Vol. I.i, The Instructions to Tenderers, should be used without change. Vol. I.ii, Tender Data, consists of complementary information specific to each tender, such as tender prices and currencies, and should be drafted very carefully. Any amendments to Vol. I.i should also be incorporated in the Tender Data. Matters governing the performance of the Supplier, obligations of the Purchaser or matters affecting the risks, rights, obligations or liabilities of the parties under the contract are not normally included in this section, but should be addressed in Vol. II, The Contract.*

*If duplication of a subject is inevitable in more than one section of the documents, care must be exercised to avoid contradictions between provisions dealing with the same matter. The Instructions to Tenderers and the Tender Data will not form part of the contract.*

## VOLUME Li

## INSTRUCTIONS TO TENDERERS

	<b>General</b>	<b>11</b>
1.	Scope	11
2.	Source of funds	11
3.	Eligibility and qualification	11
4.	Cost of tendering	12
5.	Pre-tender meeting or site visit	12
	<b>Tender documents</b>	<b>12</b>
6.	Content of tender documents	12
7.	Clarification of tender documents	13
8.	Amendment of tender documents	13
	<b>Preparation of tenders</b>	<b>13</b>
9.	Language of tender	13
10.	Documents comprising the tender	13
11.	Tender Form and tender prices	14
12.	Tender currencies	16
13.	Period of validity of tenders	16
14.	Tender Security	16
15.	Format and signing of tender	17
	<b>Submission of tenders</b>	<b>17</b>
16.	Sealing and marking of tenders	17
17.	Deadline for submission of tenders	18
18.	Late tenders	18
19.	Modification and withdrawal of tenders	18
	<b>Tender opening and evaluation</b>	<b>19</b>
20.	Opening of tenders by Purchaser	19
21.	Process to be confidential	19
22.	Clarification of tenders	19
23.	Examination of tenders	20
24.	Conversion to single currency	21
25.	Evaluation and comparison of tenders	21
26.	Postqualification	22
27.	Purchaser's right to accept or to reject any tender	23
	<b>Award of contract</b>	<b>23</b>

28.	Award criteria	23
29.	Notification of award	23
30.	Signing of Contract Agreement	23
31.	Performance Security	24
32.	Corrupt or fraudulent practices	24

## VOLUME Li

# INSTRUCTIONS TO TENDERERS

### General

#### 1. **Scope**

- 1.1 The Purchaser, as defined in the Tender Data, invites tenders for the supply of the goods and associated services described in these tender documents, in accordance with the procedures, conditions and contract terms prescribed in the tender documents.

#### 2. **Source of funds**

- 2.1 The Purchaser intends using part of the proceeds of a loan from the European Bank for Reconstruction and Development (the Bank) for eligible payments under the Contract(s) for which this Invitation for Tenders is issued. Payment by the Bank will be made only at the request of the Purchaser and upon approval by the Bank in accordance with the terms and conditions of the Loan Agreement and will be subject in all respects to the terms and conditions of that agreement. The proceeds of the Bank's loan will not be used for payments to persons or entities or for any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

#### 3. **Eligibility and qualification**

- 3.1 Subject to paragraph 2.1 above, this invitation for tenders is open to suppliers from any country unless otherwise specified in the Tender Data.
- 3.2 To qualify for award of the Contract, the tenderer shall meet the qualifying criteria referred to in paragraph 10.1(e)..
- 3.3 No affiliate of the Purchaser shall be eligible to tender or participate in a tender in any capacity whatsoever unless it can be demonstrated that there is not a significant degree of common ownership, influence or control amongst the Purchaser and the affiliate.
- 3.4 Where a firm, its affiliates or parent company, in addition to consulting, also has the capability to manufacture or supply goods or to construct works, that firm, its affiliates or parent company normally cannot be a supplier of goods or works on a project for which it provides consulting services, unless it can be demonstrated that there is not a significant degree of common ownership, influence or control.
- 3.5 A tenderer may submit or participate in any capacity whatsoever in only one tender for each contract. Submission or participation by a tenderer in more than one tender for a contract (other than alternatives which have been permitted or requested) will result in the disqualification of all tenders for that contract in which the party is involved. However, this does not limit the inclusion of the same subcontractor in more than one tender.

- 3.6 A tenderer shall not be eligible to participate where it has been determined to have engaged in corrupt or fraudulent practices in accordance with Sub-Paragraph 32.1(c).<sup>1</sup>

**4. Cost of tendering**

- 4.1 The tenderer shall bear all costs associated with the preparation and submission of its tender, and the Purchaser will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

**5. Pre-tender meeting or site visit**

- 5.1 The tenderer is advised to attend any pre-tender meeting or site visit scheduled in the Tender Data.

**Tender Documents**

**6. Content of tender documents**

- 6.1 The tender documents comprise the documents listed below, other documentation or drawings specified in the Tender Data and addenda issued in accordance with paragraph 8.

Vol.I	Invitation for Tenders
.i	Instructions to Tenderers
.ii	Tender Data
.iii	Tender Form
.iv	Price Schedule
.v	Tender Security Form
.vi	Manufacturer's Authorisation Form

Vol. II .i	General Conditions of Contract
.ii	Special Conditions of Contract
.iii	Contract Form
.iv	Securities

Vol. III .i	Schedule of Requirements
.ii	Technical Specifications

- 6.2 The tenderer is expected to examine the tender documents, including all instructions, forms, contract terms and specifications. Failure to furnish all information required by the tender documents or submission of a tender not substantially responsive to the documents in every respect will be at the tenderer's risk and may result in the rejection of its tender.

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<sup>1</sup> Added as part of Corrigendum No. 1 , dated 7 May 1998.

**7. Clarification of tender documents**

- 7.1 A prospective tenderer requiring any clarification on any aspect of the tender documents may notify the Purchaser in writing or by fax (hereinafter, “fax” includes cable and telex) at the Purchaser’s mailing address indicated in the Tender Data. All requests for clarification must be received by the Purchaser no later than twenty-eight (28) days prior to the deadline for the submission of tenders. The Purchaser will respond in writing to such requests for clarification of the tender documents which it receives. Copies of the Purchaser’s response (including a description of the enquiry but without identifying its source) will be sent to all prospective tenderers that have received the tender documents.

**8. Amendment of tender documents**

- 8.1 At any time prior to the deadline for submission of tenders, the Purchaser may amend the tender documents by issuing addenda.
- 8.2 Any addendum thus issued shall be part of the tender documents and shall be communicated in writing or by fax to all prospective tenderers that have received the tender documents. Prospective tenderers shall acknowledge receipt of each addendum by fax to the Purchaser.
- 8.3 To give prospective tenderers reasonable time in which to take an addendum into account in preparing their tenders, the Purchaser may, at its discretion, extend the deadline for the submission of tenders.

**Preparation of Tenders**

**9. Language of tender**

- 9.1 The tender and all documents and correspondence relating to the tender exchanged by the tenderer and the Purchaser shall be in the language of the tender as specified in the Tender Data. Supporting documents and printed literature furnished by the tenderer may be in another language provided they are accompanied by an accurate translation of their pertinent passages in the language of the tender, in which case, for purposes of interpretation of the tender, the translation shall govern.

**10. Documents comprising the tender**

- 10.1 The tender submitted by the tenderer shall comprise the following :
- (a) a Tender Form (in the format indicated in Volume I.iii) completed in the manner and detail indicated therein and signed by the tenderer;
  - (b) Attach. 1. Price Schedules (in the formats indicated in Volume I.iv) completed in the manner and detail indicated therein and in accordance with paragraphs 11 and 12;

- (c) Attach. 2. A Power of Attorney, duly authorised by a Notary Public indicating that the person(s) signing the tender have the authority to sign the tender and thus the tender is binding upon the tenderer;
- (d) Attach. 3. A Tender Security furnished in accordance with paragraph 14;
- (e) Attach. 4. Documentary evidence that the tenderer satisfies the qualifying requirements specified in the Tender Data and is otherwise qualified to perform the contract if its tender is accepted. Details of the documentation required are specified in the Tender Data.
- (f) Attach. 5. Documentary evidence establishing that the goods and services to be supplied by the tenderer in its tender conform to the tender documents. Details of the documentation required are specified in the Tender Data; and
- (g) Attach. 6. Any information or other materials required to be completed and submitted by the tenderers in accordance with these tender documents and specified in the Tender Data.

10.2 Tenders shall submit offers which comply with the requirements of the tender documents, including the basic technical requirements as indicated in the specifications. The attention of tenderers is drawn to the provision of paragraph 6.2 regarding the rejection of tenders which are not substantially responsive to the requirements of the tender documents. Alternatives will not be considered unless otherwise specified in the Tender Data.

## **11. Tender Form and tender prices**

- 11.1 The tenderer shall complete the Tender Form and the appropriate Price Schedule provided in the tender documents, indicating the goods to be supplied, a brief description of the goods, quality and price.
- 11.2 The tenderer shall indicate on the appropriate Price Schedule the unit price (where applicable) and total tender price of the goods it proposes to supply under the contract..
- 11.3 Prices indicated on the price schedule shall be entered separately in the following manner unless otherwise specified in the Tender Data:
  - (a) For goods to be supplied from within the Purchaser's country:
    - (i) the price of the goods, quoted EXW inclusive of all customs duties or import taxes and sales and other taxes already paid or payable on the components and raw materials used in the manufacture or assembly of goods, but exclusive of any sales and other taxes on the finished goods which will be payable in the Purchaser's country if this contract is awarded;

- (ii) any customs duties or other similar import taxes paid or payable on directly imported components incorporated or to be incorporated in the goods;
  - (iii) any VAT, sales and other similar taxes on the finished goods which will be payable in the Purchaser's country if this contract is awarded;
- (b) For goods to be supplied from outside the Purchaser's country:
  - (i) the price of the goods quoted CIP/CIF (border point or port of destination as specified in the Tender Data) exclusive of customs duties and other taxes payable in the Purchaser's country;
  - (ii) the price of the goods quoted on the basis of any other Incoterms specified in the Tender Data;
- (c) Associated services:
  - (i) the price for inland transportation, insurance and other local costs related to transportation of the goods (delivered EXW or CIP (border or port)) to their final destination, if specified in the Tender Data;
  - (ii) the price of incidental (associated) services outlined in the Tender Data and detailed in the Schedule of Requirements, the Conditions of Contract and Technical Specifications.

The price of associated services shall be inclusive of all taxes, duties, levies and charges payable in the Purchaser's country as of thirty (30) days prior to the deadline for submission of tenders, but exclusive of any VAT, sales or other similar taxes on the services which will be payable in the Purchaser's country if the contract is awarded.

- 11.4 The terms CIP, EXW etc., shall be governed by the rules prescribed in the current edition of Incoterms published by the International Chamber of Commerce, Paris.
- 11.5 The tenderer's separation of price components in accordance with paragraph 11.3 above will be solely for the purpose of facilitating the comparison of tenders by the Purchaser and will not in any way limit the Purchaser's right to contract on any of the terms offered.
- 11.6 Unless otherwise specified in the Tender Data, prices quoted by the tenderer shall be fixed during the tenderer's performance of the contract and not subject to variation on any account. A tender submitted with an adjustable price quotation which is not consistent with this paragraph will be rejected by the Purchaser as non-responsive.
- 11.7 Unless otherwise specified in the Tender Data, where tenders are being invited for a number of lots, tenderers offering to supply more than one lot may offer discounts for an award of contract for more than one lot, and such discounts shall be considered in the evaluation of tenders.

## **12. Tender currencies**

12.1 Prices shall be quoted in the following currencies unless otherwise specified in the Tender Data:

- (a) For goods and services that the tenderer will supply from within the Purchaser's country, the prices shall be quoted in the currency of the Purchaser's country; and
- (b) For goods and services that the tenderer will supply from outside the Purchaser's country, the prices may be quoted in any convertible currency or currencies (including euro) or a combination of these.<sup>2</sup>

## **13. Period of validity of tenders**

13.1 Tenders shall remain valid for the period specified in the Tender Data after the latest date for submission of tenders prescribed by the Purchaser, pursuant to paragraph 17. A tender valid for a shorter period will be rejected by the Purchaser as non-responsive.

13.2 In exceptional circumstances, the Purchaser may request that the tenderers extend the period of validity for a specified additional period. The request and the tenderers' responses shall be made in writing or by fax. A tenderer may refuse the request without forfeiting the tender security. A tenderer agreeing to the request will not be required or permitted to modify its tender, except as provided in paragraph 13.3 below. The Tender Security provided under paragraph 14 below shall also be suitably extended.

13.3 Where the tender is for a fixed price contract (not subject to price adjustment), if the period of tender validity is extended, the tender price of the successful tenderer will be adjusted up to the date of award of the contract, as provided for in the Tender Data, to arrive at the contract price. Tender evaluation will be based on the tender prices without taking into consideration the above adjustment.

## **14. Tender Security**

14.1 If required in the Tender Data, the tenderer shall furnish, as part of its tender, a Tender Security in the amount specified therein.

14.2 The Tender Security is required to protect the Purchaser against the risk of the tenderer's conduct which would warrant the forfeiture of the security, pursuant to paragraph 14.7.

14.3 The Tender Security shall be denominated in the currency of the tender or other freely convertible currency and shall be, at the tenderer's option, in the form of a cashier's or certified cheque, bank draft, stand-by letter of credit, or bank guarantee issued by a reputable bank located abroad or in the country of the Purchaser. The format of the bank guarantee shall be in accordance with the sample form of Tender Security

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<sup>2</sup> Amended as part of Corrigendum No. 2, dated 17 February 1999.

included in Volume I.v, or in another form acceptable to the Purchaser. The Tender Security shall be valid for twenty-eight (28) days beyond the validity of the tender.

- 14.4 Any tender not accompanied by an acceptable Tender Security will be rejected by the Purchaser as non-responsive pursuant to paragraph 23.4.
- 14.5 The Tender Security of unsuccessful tenderers will be returned within thirty (30) days of the expiration of the tender validity period.
- 14.6 The Tender Security of the successful tenderer will be discharged when the tenderer has signed the contract pursuant to paragraph 30, and furnished the Performance Security, pursuant to paragraph 31.
- 14.7 The Tender Security may be forfeited:
  - (a) if a tenderer
    - (i) withdraws its tender during the period of tender validity; or
    - (ii) invalidates its tender pursuant to paragraph 21.3;
  - (b) in the case of a successful tenderer, if the tenderer:
    - (i) fails to sign the contract in accordance with to paragraph 30.2;
    - (ii) fails to furnish the Performance Security in accordance with paragraph 31.1; or
    - (iii) fails or refuses to accept the correction of errors pursuant to paragraph 23.5.

## **15. Format and signing of tender**

- 15.1 The tenderer shall prepare the required number of copies of the tender as specified in the Tender Data, clearly marking each “ORIGINAL TENDER” and “COPY OF TENDER” as appropriate. In the event of any discrepancy between them, the original shall govern.
- 15.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorised to sign on behalf of the tenderer. The name and position held by each person signing must be typed or printed below the signature. Such authorisation shall be established by written Power of Attorney accompanying the tender. All pages of the tender, except for unamended printed literature, shall be initialled by the person or persons signing the tender.
- 15.3 Any interlineation, erasures or overwriting will be valid only if they are initialled by the person or persons signing the tender.

### **Submission of Tenders**

## **16. Sealing and marking of tenders**

- 16.1 The tenderers shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as “ORIGINAL TENDER” and “COPY OF TENDER”. The envelopes shall then be sealed in an outer envelope.
- 16.2 The inner and outer envelopes shall :
- (a) be addressed to the Purchaser at the address specified in the Tender Data;
  - (b) bear the identification specified in the Tender Data.
- 16.3 The inner envelope shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared late, pursuant to paragraph 18.
- 16.4 If the outer envelope is not sealed and marked as required above, the Purchaser will assume no responsibility for the misplacement or premature opening of the tender.

**17. Deadline for submission of tenders**

- 17.1 Tenders must be received by the Purchaser at the address stipulated in paragraph 16.2 no later than the time and date specified in the Tender Data.
- 17.2 The Purchaser may extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 8.1, in which case all rights and obligations of the Purchaser and tenderers previously subject to the original deadline will thereafter be subject to the deadline as extended.

**18. Late tenders**

- 18.1 Any tender received by the Purchaser after the deadline prescribed in paragraph 17 will be rejected and returned unopened to the tenderer.

**19. Modification and withdrawal of tenders**

- 19.1 The tenderer may modify or withdraw its tender after the tender’s submission, provided that written notice of the modification, including substitution or withdrawal of the tender, is received by the Purchaser prior to the deadline prescribed for submission of tenders.
- 19.2 The tenderer’s modification or withdrawal notice shall be prepared, signed, sealed, marked and delivered in accordance with paragraphs 15 and 16 with the outer and inner envelopes additionally marked “MODIFICATION” or “WITHDRAWAL” as appropriate.
- 19.3 No tender may be modified after the deadline for submission of tenders.
- 19.4 Withdrawal of the tender between the deadline for submission of tenders and the expiration of the period of tender validity may result in the forfeiture of the tender security, pursuant to paragraph 14.7.

## **Tender Opening and Evaluation**

### **20. Opening of tenders by Purchaser**

- 20.1 The Purchaser will open all tenders, including modifications and withdrawals made pursuant to paragraph 19, in the presence of tenderers' representatives who choose to attend, at the time and in the place specified in the Tender Data. The tenderers' representatives who are present shall sign a register evidencing their attendance.
- 20.2 No tender shall be rejected at tender opening, except for late tenders, which shall be returned unopened to the tenderer pursuant to paragraph 18.
- 20.3 Withdrawal notices shall be opened and announced first. Tenders for which a notice of withdrawal has been submitted pursuant to paragraph 19 shall not be opened, but will be returned to the tenderers.
- 20.4 The tenderers' names, the tender prices, any discounts, tender modifications, the amount of the tender security and such other details as the purchaser may consider appropriate, will be announced at the opening. Tenders (and modifications submitted pursuant to paragraph 19) that are not read out and recorded at tender opening will not be considered further for evaluation, irrespective of the circumstances.
- 20.5 The Purchaser will prepare minutes of the tender opening, including the information disclosed to those present in accordance with paragraph 20.4. A copy of the minutes will be sent to all tenderers who submitted a tender.

### **21. Process to be confidential**

- 21.1 The tender evaluation process up to the award of a contract is confidential.
- 21.2 Information relating to the evaluation of tenders will not be disclosed to tenderers or any other persons not officially concerned with such process until the award to the successful tenderer has been announced.
- 21.3 Any effort by a tenderer or its agents to influence the Purchaser's evaluation of tenders or award decisions, including the offering or giving of bribes, gifts or other inducement, may result in the invalidation of its tender and the forfeiture of its tender security, pursuant to paragraph 14.7.

### **22. Clarification of tenders**

- 22.1 To assist in the examination, evaluation and comparison of tenders the Purchaser may, at its discretion, ask any tenderer for clarification of its tender. Such clarification may be requested at any stage up to the contract award decision. Requests for clarification and the responses shall be in writing or by fax, and no change in the price or substance

of the tender shall be sought, offered or permitted except as required to confirm the correction of arithmetic errors discovered by the Purchaser in the examination of the tenders in accordance with paragraph 23.5.

**23. Examination of tenders**

23.1 Prior to the detailed evaluation of tenders, the Purchaser will examine the tenders to determine for each tender whether:

- (a) it is complete;
- (b) the documents have been properly signed;
- (c) it is accompanied by the required securities;
- (d) it is substantially responsive to the requirements of the tender documents; and
- (e) any computational errors have been made.

23.2 A substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tender documents, without material deviation, reservation or omission. A material deviation, reservation or omission is one:

- (a) which affects in any substantial way, the scope, quality or performance of the goods;
- (b) which limits in any substantial way, inconsistent with the tender documents, the Purchaser's rights or the tenderer's obligation under the contract; or
- (c) the rectification of which would affect unfairly the competitive position of other tenderers presenting substantially responsive tenders.

The Purchaser's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

23.3 The Purchaser may waive any minor informality, non-conformity or irregularity in a tender which does not constitute a material deviation, provided that such waiver does not prejudice or affect the relative ranking of any tenderer. Wherever practicable and appropriate, the tender price will be adjusted for such deviations in accordance with paragraph 25.4(c) for evaluation purposes only.

23.4 If a tender is not substantially responsive, it will be rejected by the Purchaser, and may not subsequently be made responsive by correction or withdrawal of the non-conformity.

23.5 Tenders determined to be substantially responsive will be checked by the Purchaser for any arithmetic errors. Errors will be corrected by the Purchaser as follows:

- (a) where there is a discrepancy between the amounts in words and in figures, the amount in words will govern;
- (b) where 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 govern and the total price shall be corrected, unless in the opinion of the Purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted will govern and the unit price will be corrected.

If the successful tenderer does not accept the correction of the errors pursuant to (a) and (b) above, this will be considered as invalidating its tender and the Tender Security may be forfeited pursuant to paragraph 14.7.

23.6 All items in the schedule of requirements must be priced. If a tenderer has included the price of associated items in the price of the main items this must be clearly stated and a price of zero must be entered for the respective associated items.

If a tenderer fails to price items that are not the primary subject of the tender and the omission is judged to be non-material in accordance with paragraph 23.2, the tender price will be adjusted for such omission in accordance with paragraph 25.4(c) for evaluation purposes only.

#### **24. Conversion to single currency**

24.1 To facilitate evaluation and comparison, the Purchaser will convert all tender prices expressed in the amounts in various currencies in which the tender price is payable to a single common currency as specified in the Tender Data.

#### **25. Evaluation and comparison of tenders**

25.1 The Purchaser will evaluate and compare only the tenders determined to be substantially responsive in accordance with paragraph 23.

25.2 The Purchaser's evaluation of a tender will exclude and not take into account:

- (a) in the case of goods to be supplied from within the Purchaser's country, or from abroad, sales and other similar taxes on the finished goods which will be payable in the Purchaser's country, if a contract is awarded to the tenderer;
- (b) in the case of goods to be supplied from within the Purchaser's country, customs duties or other similar import taxes on directly imported components incorporated or to be incorporated in the goods, payable in the Purchaser's country, if a contract is awarded to the tenderer;

- (c) in the case of goods of foreign origin to be supplied from abroad, customs duties and other similar import taxes on the goods, payable in the Purchaser's country, if a contract is awarded to the tenderer; and
  - (d) any allowance for price adjustment during the period of performance of the contract, if provided in the contract.
- 25.3. The Purchaser reserves the right to reject any deviations, variations or alternative offers which are not submitted in accordance with the tender documents. Deviations, variations, alternatives and other factors which exceed the requirements of the tender documents, or which otherwise result in unsolicited benefits for the Purchaser, shall not be factored into the tender evaluation.
- 25.4 The comparison shall be based on the EXW and CIP prices pursuant to paragraph 11.3. In evaluating each tender, the Purchaser will determine for each tender the evaluated tender price by adjusting the tender price as follows:
- (a) making any corrections for errors pursuant to paragraph 23.5;
  - (b) making any necessary adjustments to reflect modifications offered in accordance with paragraph 19.1;
  - (c) making appropriate adjustments as specified in the Tender Data for any non-material deviations and omissions pursuant to paragraph 23.3 and paragraph 23.6;
  - (d) making appropriate adjustments to reflect additional factors in the manner and to the extent indicated in the Tender Data and in the technical specifications.

## **26. Postqualification**

- 26.1 The Purchaser will determine to its satisfaction that the tenderer selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.
- 26.2 The determination will take into account the tenderer's financial, technical and production capabilities and experience. It will be based upon an examination of the documentary evidence of the tenderer's qualifications submitted by the tenderer pursuant to paragraph 10.1(e), as well as such other information as the Purchaser deems necessary and appropriate.
- 26.3 A positive determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the tenderer's tender, in which event the Purchaser will proceed to the next lowest evaluated tender to make a similar determination of that tenderer's capabilities to perform satisfactorily.
- 26.4 If the tender of the successful tenderer is seriously unbalanced or front-loaded, the Purchaser may require the tenderer to produce detailed price analyses for any or all items of the Schedule of Requirements, to demonstrate the internal consistency of

those prices. After evaluation of the price analyses, the Purchaser may require that the amount of the Performance Security set forth in paragraph 31.1 be increased at the expense of the successful tenderer, to a level sufficient to protect the Purchaser against financial loss in the event of default of the successful tenderer under the contract.

**27. Purchaser's right to accept or to reject any tender**

27.1 Notwithstanding paragraph 28, the Purchaser reserves the right to accept or reject any tender, and to cancel the tender process and reject all tenders at any time prior to award of the contract, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the Purchaser's action.

**Award of Contract**

**28. Award criteria**

28.1 Subject to paragraph 27 the Purchaser will award the contract to the successful tenderer whose tender has been determined to be substantially responsive and has been determined as the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

28.2 The Purchaser reserves the right at the time of award of the contract to increase or decrease the quantity of goods and services specified in the schedule of requirements up to the percentage specified in the Tender Data, without any change in the unit prices for such goods and services, or other terms and conditions.

**29. Notification of award**

29.1 Prior to the expiration of the period of tender validity, the Purchaser will notify the successful tenderer by fax, confirmed in writing by registered letter, that its tender has been accepted.

29.2 The notification of award (hereinafter called the "Letter of Acceptance") will constitute the formation of the contract.

29.3 Upon the furnishing by the successful tenderer of a performance security, the Purchaser will promptly notify the other tenderers that their tenders have been unsuccessful and will discharge their tender security, pursuant to paragraph 14.5.

**30. Signing of Contract Agreement**

30.1 At the same time as the Purchaser issues the Letter of Acceptance to the successful tenderer, the Purchaser will send the tenderer the Contract Form pursuant to Volume II.iii, incorporating the understanding between the parties.

30.2 Within twenty-eight (28) days of receipt of the Contract Form, the successful tenderer shall sign and date the Contract Form referred to in paragraph 30.1 and return it to the Purchaser.

**31. Performance Security**

- 31.1 Within twenty-eight (28) days of receipt of the Letter of Acceptance from the Purchaser, the successful tenderer shall furnish to the Purchaser a Performance Security in accordance with the Conditions of Contract, in the form provided in Volume II.iv or in another form acceptable to the Purchaser.
- 31.2 Failure of the successful tenderer to comply with the requirements of paragraph 30. 2 or paragraph 31.1 shall constitute sufficient grounds for the cancellation of the contract award and forfeiture of the Tender Security.

**32. Corrupt or fraudulent practices<sup>3</sup>**

- 32.1 The Bank requires that clients (including beneficiaries of Bank loans), as well as tenderers, suppliers, contractors, concessionaires and consultants under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Bank:

(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 of any thing of value to influence the action of a public official, or the threatening of injury to person, property or reputation, in connection with the procurement process or in contract execution in order to obtain or retain business or other improper advantage in the conduct of business; and

(ii) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the client, and includes collusive practices among tenderers (prior to or after tender submission) designed to establish tender prices at artificial, non-competitive levels and to deprive the client of the benefits of free and open competition;

(b) will reject a proposal for award if it determines that a tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;

(c) will declare a firm ineligible indefinitely or for a stated period of time, to be awarded a Bank-financed contract if it at any time determines that:

(i) the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a Bank-financed contract; or

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<sup>3</sup> Added as part of Corrigendum No. 1, dated 7 May 1998.

(ii) the firm has been found by a judicial process or other official inquiry to have engaged in corrupt or fraudulent practices.

32.2 Furthermore, tenderers shall be aware of the provisions stated in Sub-Clauses 5.4 and 24.1 of the General Conditions of Contract.”

VOLUME I.ii

**TENDER DATA**

*This attachment contains information specific to the procurement in question, which is needed for the paragraphs indicated. It should be completed by the Purchaser before issuance of the tender documents. These provisions are only illustrative and for guidance in drafting.*

**Instructions to tenderers -**

para. ref.

**para. 1.1: Name of Purchaser** [specify the name of the Purchaser]

**para. 3.1 Eligibility** [specify any restriction on eligibility consistent with the Bank's Policies and Rules]

*The Bank permits firms and individuals from all countries to offer goods, works and services for Bank-financed projects, regardless of whether the country is a member of the Bank. Clients will not exclude a firm from open competition for a contract for reasons unrelated to its capability to perform the contract in question unless, as a matter of law or official regulations, the Client's country prohibits commercial relations with the firm's country. Any such restriction must be explicitly specified in the Tender Data and is subject to the Bank's prior approval.*

**para. 5.1: Pre-tender meeting or site visit** [specify the date and location of pre-tender meeting or site visit if any]

**para. 6.1: Content of tender documents** [specify other documentation or drawings which are included in the tender documents, if relevant]

**para. 7.1: Purchaser's mailing address** [specify address of Purchaser; contact name, telephone, telex and facsimile number]

**para. 9.1: Language of tender** [specify the language of the tender]

*Tender documentation, including all published procurement notices, shall be prepared in one of the Bank's working languages, which shall be specified in the tender documents as the governing language. In the interest of open competition as well as economy and efficiency, the Bank may require that tender documentation also be provided in another working language of the Bank, in which case this would be the governing language. In addition, at the Client's option further sets of the tender documentation may be prepared in the local language.*

**para. 10.1(e):Tenderer's qualifications** [specify any other qualifying requirements as necessary and appropriate. Wherever practicable]

*and appropriate, minimum qualification requirements to be met by the lowest evaluated tenderer should be specified.]*

**EXAMPLE:**

Pursuant to paragraph 10.1(e) the tenderer shall furnish, as part of its tender, documentary evidence establishing the tenderer's qualification to perform the Contract if its tender is accepted.

The documentary evidence of the tenderer's qualifications to perform the Contract if its tender is accepted shall establish to the Purchaser's satisfaction that:

- (a) in the case of a tenderer offering to supply goods under the Contract which the tenderer does not manufacture or otherwise produce, the tenderer has been duly authorised by the goods' manufacturer or producer to supply the goods in the Purchaser's country;
- (b) the tenderer, including manufacturers of the goods and suppliers of the services, as appropriate, has the financial, technical and production capability and capacity necessary to perform the Contract;
- (c) the tenderer has satisfactorily supplied similar goods and services to other purchasers;
- (d) the tenderer or its agent will be able to carry out the supplier's maintenance, repair and spare parts stocking obligations prescribed in these tender documents; and
- (e) the tenderer meets any other qualifying requirements specified below [*specify other qualifying criteria*]

**para. 10.1(f): Conformity of goods and services** [*specify any other requirements as necessary and appropriate*]

**EXAMPLE:**

Pursuant to paragraph 10.1(f) the tenderer shall furnish, as part of its tender, documentary evidence establishing the conformity to the tender documents of all goods and services which the tenderer proposes to supply under the Contract.

The documentary evidence of the goods' and services' conformity to the tender documents may be in the form of literature, drawings and data, and shall consist of:

- (a) a detailed description of the essential technical and performance characteristics of the goods;
- (b) a list giving full particulars, including available sources and current prices, of spare parts, special tools, etc., necessary for the proper and continuing functioning of the goods for a period of (\_\_\_ years), following commencement of the use of the goods by the Purchaser;
- (c) a paragraph-by-paragraph commentary on the Purchaser's Technical Specifications demonstrating substantial responsiveness of the goods and services to those specifications or a statement of deviations and exceptions to the provisions of the Technical Specifications; and
- (d) any other requirements specified below [*specify other requirements*].

For purposes of the commentary to be furnished pursuant to paragraph (c) above, the tenderer shall note that, unless the Technical Specifications specifically provide otherwise, standards for workmanship, material and equipment, and references to brand names or catalogue numbers designated by the Purchaser in the Technical

Specifications, are intended to be descriptive only and not restrictive. The tenderer may substitute alternative standards, brand names and/or catalogue numbers in its tender, provided that it demonstrates to the Purchaser's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

**para. 10.1(g) Other material comprising tender** [specify if any other materials are to be submitted by tenderers]

**para. 10.2: Alternative offers** [state whether alternative offers will be accepted and how they will be treated in evaluation]

*The following to be used when technical alternatives are accepted, but only that of the lowest evaluated conforming tenderer is considered.*

**EXAMPLE:**

Tenderers wishing to offer technical alternatives to the requirements of the tender documents must first price the Purchaser's technical specifications as described in the tender documents and shall further provide all information necessary for a complete evaluation of the alternative by the Purchaser, including, as appropriate, drawings, design calculations, Technical Specifications, breakdown of prices, and other relevant details. Only the technical alternatives, if any, of the lowest evaluated responsive tenderer shall be considered by the Purchaser.

*The following to be used when technical alternatives are accepted and such alternatives shall be considered on their own merits if the base tender is priced.*

**EXAMPLE:**

Tenderers wishing to offer technical alternatives to the requirements of the tender documents must first price the Purchaser's technical specifications as described in the tender documents and shall further provide all information necessary for a complete evaluation of the alternative by the Purchaser, including, as appropriate, drawings, design calculations, Technical Specifications, breakdown of prices, and other relevant details. Technical alternatives which comply with the performance specifications for the goods shall be considered by the Purchaser on their own merits.

*The following to be used when unspecified financial or administrative alternatives are accepted, but only that of the lowest evaluated conforming tender is considered.*

**EXAMPLE:**

Tenderers wishing to qualify their tenders or otherwise deviate from the requirements of the tender documents on matters of a financial/administrative nature shall present such qualifications or deviations in the form of an alternative offer to the basic tender requirements, provided always that, for the alternative to be considered, the tenderer must supply a fully priced conforming tender. The attention of tenderers is drawn to the provisions of paragraph 6.2 regarding the rejection of tenders which are not substantially responsive to the requirements of the tender documents. Each alternative offer shall be accompanied by a detailed description and price breakdown indicating the tenderer's estimate of the cost implications to the Purchaser if the alternative offer were to be accepted by the Purchaser and incorporated in the Contract. Tenders containing qualifications and deviations which are not so detailed and priced as alternative offers may be rejected. After evaluation, in accordance with paragraph 27 the Purchaser reserves the right to accept or reject any alternative offer submitted pursuant to this paragraph by the lowest evaluated responsive tenderer.

**para. 11.3(B)(i) Incoterms destination**

*[specify border point of entry to be used for CIP price or other named destination]*

***For supply and installation contracts the place of delivery is often the site of the installation.***

**para. 11.3(b)(ii) Other Incoterms**

*[specify other Incoterms if appropriate]*

**para. 11.3(c)(i) Final destination**

*[specify final destination, if appropriate]*

**para. 11.3(c)(ii) Associated Services**

*[specify associated services with reference to Schedule of Requirements, the Conditions of Contract and other sections of the tender documents as appropriate]*

**para. 11.6 Price adjustment during contract performance**

*[specify if contract price will be subject to price adjustment during the performance of the contract]*

**para. 11.7 Discounts for lots**

*[specify if discounts are invited for lots]*

**para. 12.1: Tender currencies**

*[specify any changes or additions to tender currencies paragraph]*

**para. 13.1: Period of tender validity**

*[specify the period of tender validity]*

***Insert the number of days deemed appropriate by the Purchaser. The period should be sufficient to permit completion of evaluation and comparison of tenders, review of the evaluation report by the Bank (if so required), obtaining of all necessary approvals, and notification of the award. Normally, the validity period should be 90 days. For major and complex plant and equipment, the validity period may be longer. A realistic period should be specified in order to avoid the need for extensions.***

**para. 13.3 Extension of period of tender validity**

**EXAMPLE:**

The adjustment of the tender price in accordance with paragraph 13.3 shall be from the original expiry date of the tender validity, pro rata up to the date of award of the contract and shall be calculated on the basis of an annual increase for foreign costs of (\_\_\_) percent and an annual increase for local costs of (\_\_\_) percent.

*The value of the foreign cost factor should be based on, or comparable to, the expected annual increase in international prices. The value of the local cost factor, if denominated in the local currency, should be based on the projected inflation in the Purchaser's country for the period in question. If local costs are denominated in a hard currency, then the expected annual increase in international prices should be used. Alternatively the local cost component could be converted to a currency widely used in international trade on the date of notification of award and adjusted using the same index as the foreign cost component.*

**para. 14.1: Tender security** [specify amount of tender security if required]

*Insert amount deemed appropriate by the Purchaser. The amount may be expressed either as a fixed amount or as an amount not less than a specified percentage of the tenderer's tender price (preferably the former). Tender security will be normally in the range of 2-5 per cent of the tender amount. The bank issuing the tender guarantee should have a credit rating equal to or better than:*

- (i) long-term debt of "A" or higher, according to criteria set by Moodys; or*
- (ii) short-term commercial paper of "A1" or higher, according to criteria set by Standard & Poors; or*
- (iii) a rating equivalent to (i) or (ii) above.*

**para. 15.1: Copies of tender** [specify number of copies of tender]

**para. 16.2(A): Address of Purchaser** [specify address of Purchaser]

**para. 16.2(b): Tender identification** [specify identification to be recorded on the tender envelopes]

**EXAMPLE:**

The tenderer shall enter the Purchaser's name and address, the tender identification and the words "DO NOT OPEN BEFORE [the date and time prescribed for the opening of tenders.]"

**para. 17.1: Deadline for submission of tenders** [specify time and date of deadline for submission of tenders]

**para. 20.1: Opening of tenders by Purchaser** [specify the date, time and location of tender opening]

*The date shall be the same as for tender submission specified under paragraph 17.1 above, and the time should also be the same as specified under paragraph 17.1 or immediately thereafter.*

Tenders will be opened at the address specified for the submission of tenders, immediately after the deadline for submission of tenders specified in paragraph 17.1 above.

**para. 24.1:**           **Conversion to single currency**                           *[specify currency, source and date]*

*The Purchaser shall state the currency to which prices will be converted. Conversion shall be at the selling exchange rate published by the central bank or any commercial bank in the Purchaser's country. The Purchaser must enter the name of the bank, and the date for which the exchange rate shall be used. That date must be no earlier than 30 days prior to the deadline specified for the submission of tenders and no later than the expiry of the initial validity period specified in paragraph 13. It is customary to use the deadline specified for the submission of tenders.*

**EXAMPLE:**

To facilitate evaluation and comparison, the Purchaser will convert all tender prices expressed in the amounts in various currencies in which tender price is payable, into the local currency of the Purchaser's country, at the selling exchange rate established by the central bank or any commercial bank in the Purchaser's country, for similar transactions on *[ insert a specific date not earlier than thirty (30) days prior to the deadline for submission of tenders and not later than the expiry of the initial tender validity period specified in paragraph 13 ]*.

**para. 25.4(c):**                   **Non-material deviations and omissions**

**EXAMPLE:**

Non-substantive deviations or omissions (commercial and technical) in the tender will not constitute cause for rejection but shall be reflected in the evaluation wherever practicable and appropriate. The cost of all quantifiable deviations or omissions will be added to the tender price in question. A reasonable estimate of the cost will be made by the Purchaser, taking into consideration the corresponding quotations of other responsive tenderers or other appropriate market prices. Such costs will be at the Purchaser's sole discretion. A tenderer will not be requested or permitted to offer a price adjustment for rectifying such deviations or omissions.

**para. 25.4(d):**                   **Evaluation and comparison of tenders**

*The following paragraphs are optional and should only be used if factors other than tender prices are to be considered in the evaluation. The examples illustrated here should only be used where appropriate and the others should be deleted. Additional factors may be necessary for certain very specific tenders. Evaluation factors should meet the following criteria:*

- *the factor could have an impact on the contract price and on contract performance (including the rights and obligations of the Purchaser and the supplier), in terms of contract time, quality (including technical performance) and risk;*
- *there would potentially be a measurable variation between performance of different tenders because of the factor;*
- *the factor's variations and impact on performance and price can be reasonably quantified in a reliable, fair and objective manner.*

Pursuant to paragraph 25.4(d) the following evaluation factors will be applied:

**EXAMPLE:**

(a) Inland Transportation, Insurance and Incidentals:

Inland transportation, insurance and other incidental costs, for delivery of the goods, from EXW/port of entry/border point to the project site will be computed for each tender by the Purchaser on the basis of published tariffs by the rail/road transport agencies, insurance companies and/or other appropriate sources. To facilitate such computation, tenderers shall furnish the dimensions and shipping weight and the approximate EXW/CIP value of each package. These costs will be added to the EXW/CIP/CIF price.

*The above would only be used if prices are requested CIP/CIF (border/port of entry) and EXW (local suppliers). Ensure that the Incoterms used are consistent with those set out in paragraph 11.3 and the Price Schedules.*

**EXAMPLE:**

(b) Delivery or Completion Schedule:

(i) The Purchaser requires delivery of the goods covered under the invitation, within the time specified in the schedule of requirements. Tenderers offering delivery beyond this time will be rejected as non-responsive. No benefits will be given for early delivery.

OR

(ii) The Purchaser requires that the goods covered under the invitations for tenders shall be delivered (shipped) at the time specified in the Schedule of Requirements. The estimated time of arrival of the goods at the project site will be calculated for each tender after the scheduled time of arrival as the base, a delivery "adjustment" will be calculated for other tenders at ( ) per cent of the tenderer's CIP price of the goods for each week of delay beyond the base and this will be added to the tender price for evaluation up to a maximum of ( ) per cent of the CIP price of the goods. No credit will be given for early delivery.

OR

(iii) The goods covered under this invitation are required to be delivered ( ) months after signing of the Contract and opening of the Letter of Credit. No credit will be given to earlier deliveries and tenders offering delivery beyond ( ) months of signing the Contract and opening of the Letter of Credit will be treated as unresponsive. Within this acceptable range of ( ) to ( ) months, an adjustment of ( ) per week will be made to tenders offering deliveries later than ( ) weeks.

*Percentage figures of 0.5 percent per week would be reasonable and a maximum deduction of 10 percent. These percentage figures should be the same as or less than those specified for liquidated damages for delay in the Conditions of Contract.*

*The adjustment can be either a percentage of the tender price or a fixed amount, denominated in the currency used for comparison of tenders.*

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***If the contract involves supply and installation of goods, the commissioning date rather than the delivery date should be used for determining anticipated contract performance and completion and the total tender price should be adjusted for evaluation purposes.***

**EXAMPLE:**

## (c) Deviation in Payment Schedule:

- (i) Tenderers shall state their tender price for the payment schedule outlined in the Schedule of Requirements. Tenders will be evaluated on the basis of this base price. Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in tender price they wish to offer for such alternative payment schedule. The Purchaser may consider the alternative payment schedule offered by the selected tenderer.

OR

- (ii) The Special Conditions of Contract indicate the payment schedule offered by the Purchaser. If a tender deviates from the schedule and if such deviation is considered acceptable to the Purchaser, the tender will be evaluated by calculating interest earned for any earlier payments involved in the terms outlined in the tender as compared to those stipulated in this invitation, at a rate of (\_\_\_) percent per annum.

**EXAMPLE:**

## (d) Cost of Spare Parts:

- (i) The list of the items and quantities of major assemblies, components and selected spare parts likely to be required during the initial (\_\_\_) year period of operation is annexed to the Technical Specifications. The total cost of these items at the unit prices quoted in each tender will be added to the tender price.

OR

- (ii) The Purchaser will draw up a list of high usage and high value items of components and spare parts, along with estimated quantities of usage in the initial (\_\_\_) year period of operation. The total cost of these items and quantities will be computed from spare parts unit prices submitted by the tenderer and added to the tender price.

OR

- (iii) The Purchaser will estimate the cost of spare parts usage in the initial (\_\_\_) year period of operation, based on information furnished by each tenderer, as well as on past experience of the Purchaser or other purchasers in similar situations. Such costs shall be added to the tender price.

**EXAMPLE:**

- (e) Spare Parts and After Sales Service Facilities in the Purchaser's Country:

The cost to the Purchaser of establishing the minimum service facilities and parts inventories, as outlined in the Schedule of Requirements or the Technical Specifications, if quoted separately, shall be added to the tender price.

**EXAMPLE:**

- (f) Operating and Maintenance Costs:

Since the operating and maintenance costs of the goods under procurement form a major part of the life cycle costs of the equipment, these costs will be evaluated in accordance with the following criteria:

- (i) Operating costs: fuel cost (and/or other inputs) shall be based on (\_\_\_) kms/hour of operation per year for (\_\_\_) years at a fuel price of (\_\_\_\_\_);
- (ii) Maintenance costs: spare parts costs (and/or other inputs) shall be based on (\_\_\_) kms/hours of operation based on the guaranteed figures provided by the tenderer in response to (\_\_\_\_\_) of the Technical Specifications;
- (iii) all future costs will be discounted to present value at a discount factor of (\_\_\_) percent.

**EXAMPLE:**

- (g) Performance and Productivity of the Equipment:

- (i) Tenderers shall state the guaranteed performance or efficiency in response to the Technical Specifications. For each drop in the performance or efficiency below the norm of 100, an adjustment of (\_\_\_\_\_) will be added to the tender price, representing the capitalised cost of additional operating costs over the life of the plant, using the following methodology:

[specify methodology]

OR

- (ii) Equipment offered shall have a minimum productivity specified under the relevant provision in the Technical Specifications to be considered responsive. Evaluation shall be based on the cost per unit of the actual productivity of goods offered in the tender, and adjustment will be added to the tender price using the following methodology:

[specify methodology]



**Methodology:** specify the applicable procedure and the adjustment factor as required. The adjustment factor should apply to the norm that shall be used and that shall either be specified in the Technical Specifications or shall be the value committed in the responsive tender with the best guaranteed performance or productivity; the contractual liquidated damages specified in the Special Conditions of Contract shall be equal to or higher than the evaluation advantage.

**EXAMPLE:**

(h) Merit Points

*In addition to criteria (a) to (g) above, which can normally be quantified in monetary terms, under exceptional conditions there may be important criteria which cannot be evaluated in monetary terms and which can instead be evaluated using comparative merit points. Criteria for allocating merit points to each factor should be specified. The total weighting allocated to such criteria should normally account in total for no more than 5-10 percent of the evaluation and should not exceed 15 percent.*

The following additional criteria will be evaluated using comparative merit points as follows:

	(max points)
Technical features	3
Service and spare parts availability	3
Quality of the training	2
Standardisation	<u>2</u>
Maximum Merit Points	10

The evaluated tender price shall be converted to merit points as follows:

$$\frac{L1}{Lx} \times P = Px$$

Where L1 = lowest evaluated tender price

Lx = evaluated tender price of tenderer x

P = maximum points allocated to the evaluated tender price (normally 90)

Px = points for tenderer x

The points for the evaluated tender price and the merit points shall be combined as follows:

	(max points)
Evaluated tender price of the goods and services including all factors which can be quantified in monetary terms [(a) to (g) above]	90
Merit points for (h) above	<u>10</u>
TOTAL Maximum	100

The tenderer scoring the highest number of points will be deemed to be the lowest evaluated tenderer.

**para. 28.1: Award criteria for lots**

*This provision is to be used where tenders are invited for a number of lots and tenderers have been invited to offer discounts for the supply of more than one lot.*

**EXAMPLE:**

Subject to paragraph 27, the Purchaser will award the contract(s) to the tenderer(s) whose tender(s) has been determined to be substantially responsive and the combination of which, including any discounts offered, yield the lowest total evaluated price, provided further that the tenderers are determined to be qualified to perform the contract satisfactorily.

The contract award will be to a single tenderer if its tender offers the lowest total evaluated price and the tenderer is determined to be qualified to perform the Contract satisfactorily.

**para. 28.2: Variation of quantities at time of award**

*[specify the permitted variation, either as a percentage or in numerical terms]*

*This is an optional paragraph, to be used only where appropriate. The variation should not normally exceed 15 pe cent.*

## VOLUME I.iii

## EXAMPLE:

## TENDER FORM

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

Tender/Contract No.: \_\_\_\_\_

TO: [*Name and Address of Purchaser*]

Dear Sirs:

Having examined the Tender Documents including Addenda Nos. [ *insert numbers* ], the receipt of which is hereby duly acknowledged, we, the undersigned, offer to supply and deliver [ *description of goods and services* ] in conformity with the said Tender Documents for the sum of [ *total tender amount in words and figures* ] or such other sums as may be ascertained in accordance with the Price Schedules attached herewith and made part of this tender.

We undertake, if our tender is accepted, (1) to commence delivery within [ *number* ] days and to complete delivery of all the items specified in the contract within [ *number* ] days calculated from the commencement date specified in the Schedule of Requirements, and (2) to complete all associated services specified in the contract within [ *number* ] days calculated from the commencement date specified in the Schedule of Requirements.

If our tender is accepted we will obtain the guarantee of a bank in a sum equivalent to ( \_\_\_\_\_ ) per cent of the contract price for the due performance of the Contract, in the form prescribed by the Purchaser.

We agree to abide by this tender for a period of [ *number* ] days from the date fixed for the submission of tenders under paragraph 17 of the instructions to tenderers and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

Until a formal contract is prepared and executed, this tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.

We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

\_\_\_\_\_  
signature

\_\_\_\_\_  
name

\_\_\_\_\_  
[In the capacity of]

Duly Authorised to sign tender for and on behalf of \_\_\_\_\_

VOLUME I.iv

EXAMPLE:

**PRICE SCHEDULE FOR GOODS TO BE SUPPLIED FROM  
WITHIN THE PURCHASER'S COUNTRY**

Name of tenderer \_\_\_\_\_

Page \_\_ of \_\_

Tender identification no. \_\_\_\_\_

1	2	3	4	5	6	7
Item	Description	Quantity	Unit Price EXW ref. 11.3(a)(i)	Import duties and taxes on directly imported components. ref. 11.3(a)(ii)	Sales and other taxes payable if Contract is awarded ref. 11.3(a)(iii)	Total price per item (3 x 4)
Total Amount (Goods)						

Signature of tenderer \_\_\_\_\_

Note:

1. In case of discrepancy between unit price and total, these will be adjusted in accordance with the Instructions to Tenderers.
2. Prices and currencies to be in accordance with the Instructions to Tenderers.
3. All items in the Schedule of Requirements must be entered and priced in the appropriate Price Schedule. Items not priced will be treated in accordance with the Instructions to Tenderers.

**VOLUME I.iv**

**EXAMPLE:**

**PRICE SCHEDULE FOR GOODS TO BE SUPPLIED FROM  
OUTSIDE THE PURCHASER'S COUNTRY**

Name of tenderer \_\_\_\_\_

Page \_\_ of \_\_

Invitation to tender no \_\_\_\_\_

1	2	3	4	5	6
Item	Description	Quantity	Unit price CIP (border) ref. 11.3(b)(i)	Unit price (other Incoterms) ref. 11.3(b)(ii)	Total price per item (3 x 4)
Total amount (Goods)					

Signature of tenderer \_\_\_\_\_

Note:

1. In case of discrepancy between unit price and total, these will be adjusted in accordance with the Instructions to Tenderers.
2. Prices and currencies to be in accordance with the Instructions to Tenderers.
3. All items in the Schedule of Requirements must be entered and priced in the appropriate Price Schedule. Items not priced will be treated in accordance with the Instructions to Tenderers.

VOLUME I.iv

**EXAMPLE:**

**PRICE SCHEDULE FOR SERVICES TO BE SUPPLIED**

Name of tenderer \_\_\_\_\_

Page \_\_ of \_\_

Tender identification no. \_\_\_\_\_

1	2	3	4	5		6	
Item	Description	Quantity	Charges for inland delivery to final destination ref. 11.3(c)(i)	Price of associated services ref. 11.3(c)(ii)		Total	
				Foreign currency (A)	Local currency (B)	Foreign currency (5A)	Local currency (4 + 5B)
Total amount (Services)							

Signature of tenderer \_\_\_\_\_

Note:

1. In case of discrepancy between unit price and total, these will be adjusted in accordance with the Instructions to Tenderers.
2. Prices and currencies to be in accordance with the Instructions to Tenderers.
3. All items in the Schedule of Requirements must be entered and priced in the appropriate Price Schedule. Items not priced will be treated in accordance with the Instructions to Tenderers.
4. Column 4 should only be used where prices are requested CIP/CIF (port of entry) and EXW (local suppliers).

VOLUME I.v

**EXAMPLE:**

**TENDER SECURITY FORM**

Whereas \_\_\_\_\_ (hereinafter called “the Tenderer”) has submitted its tender dated \_\_\_\_\_ for the supply of \_\_\_\_\_ (hereinafter called “the Tender”) \_\_\_\_\_ KNOW ALL MEN by these presents that WE \_\_\_\_\_ of \_\_\_\_\_ having our registered office at \_\_\_\_\_ (hereinafter called “the Bank”) are bound unto \_\_\_\_\_ (hereinafter called “the Purchaser”) in the sum of \_\_\_\_\_ for which payment well and truly to be made to the said Purchaser, the Bank binds itself, its successors and assigns by these presents. Duly authorised [sealed] and signed by the said Bank this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_ .

THE CONDITIONS of this obligation are:

1. If the Tenderer withdraws or invalidates its tender during the period of tender validity specified by the Tenderer on the tender form; or
2. If the Tenderer, having been notified of the acceptance of its tender by the Purchaser during the period of tender validity:
  - (a) fails or refuses to execute the Agreement, if required; or
  - (b) fails or refuses to furnish the performance security, in accordance with the instructions to tenderers;

we undertake to pay to the Purchaser up to the above amount upon receipt of its first written demand, without the Purchaser having to substantiate its demand, provided that in its demand the Purchaser will note that the amount claimed by it is due to it owing to the occurrence of one or more of the above conditions, specifying the occurred condition or conditions.

This guarantee will remain in force up to and including twenty-eight (28) days after the period of tender validity, and any demand in respect thereof should reach the Bank not later than the above date.

\_\_\_\_\_  
(Signature of the Bank)

VOLUME I.vi

**EXAMPLE:**

**MANUFACTURER'S AUTHORISATION FORM**

[date]

TO: [Name of the Purchaser]

WHEREAS [ name of the Manufacturer ] who are established and reputable manufacturers of [ name and/or description of the goods ] having factories at [ address of factory ] do hereby authorise [ name and address of Agent ] to submit a tender, and subsequently negotiate and sign the Contract with you for the above goods manufactured by us.

We hereby extend our full guarantee and warranty as per Clause 23 of the General Conditions of Contract for the goods offered for supply by the above firm against this Invitation for Tenders.

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[Signature for and on behalf of Manufacturer]

**Note:**

***This letter of authority should be on the letterhead of the Manufacturer and should be signed by a person competent and having the power of attorney to bind the Manufacturer. It should be included by the Tenderer in its tender.***

VOLUME I.vii

EXAMPLE:

LETTER OF ACCEPTANCE

[Date]

TO: [Name of successful tenderer]  
[Address of successful tenderer]

This is to notify you that your tender dated [ enter date ] for the execution of the [ name of the contract as given in the tender data ] for the Contract Price of the equivalent of [ amount in numbers and words, and name of currency/currencies ], as corrected and modified in accordance with the Instructions to Tenderers, is hereby accepted by us.

You are hereby required:

- (a) to submit the performance security [ specify as provided in the tender documents ];
- (b) sign the attached Agreement and return [ specify as provided in the tender documents ]; and
- (c) to commence performance of the said contract in accordance with the Contract Documents.

Authorised Signature.....

Name and Title of Signatory.....

Name of Purchaser.....

Attachment: Agreement

**Note: This Letter of Acceptance should be on the letterhead of the Purchaser and should be signed by a person competent and having Power of Attorney to bind the Purchaser.**

# STANDARD TENDER DOCUMENTS

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## Procurement of Goods (and associated Services)

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### Volume II The Contract

*The Contract in this document is the Standard Contract from the World Bank's Standard Bidding Documents - Procurement of Goods, January 1995.*



### **NOTES ON THE CONTRACT**

*The Contract in this document is the Standard Contract from the World Bank's Standard Bidding Documents - Procurement of Goods, January 1995. Reference to the World Bank in the Contract has been removed.*

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

*The General Conditions of Contract herein shall not be altered. Any changes and complementary information, which may be needed, shall be introduced only through the Special Conditions of Contract.*

*The clauses in the Special Conditions are intended to assist the Purchaser in providing contract-specific information in relation to corresponding clauses in the General Conditions.*

*The provisions of the Special Conditions complement the General Conditions; specifying contractual requirements linked to the special circumstances of the Purchaser, the Purchaser's country, the sector, the project and the goods and services being procured.*

*In preparing the Special Conditions the following aspects should be addressed:*

- (a) information that complements provisions of the General Conditions must be incorporated*
- (b) amendments and/or supplements to provisions of the General Conditions, as necessitated by the circumstances of the specific procurement, must also be incorporated.*

*The Contract Form should be finalised at the time of contract award and should incorporate any corrections or modifications to the accepted tender resulting from arithmetic corrections, adjustments for acceptable deviations, spare parts or quantity variations. The Price Schedule and the Schedule of Requirements deemed to form part of the contract should also be modified accordingly.*

*The Performance Security and Bank Guarantee for Advance Payment forms should not be completed by the tenderer at the time of their tender preparation. Only the successful tenderer will be required to provide these guarantees*

*While these tender documents have been prepared with great care, taking into account international procurement and contracting experience, the Bank does not assume any responsibility that the contract forms contained in these Standard Tender Documents are suitable, adequate and complete in respect of any particular contract. Parties wishing to use these contract forms are advised to seek their own legal counsel.*

## **VOLUME II.i**

### **GENERAL CONDITIONS OF CONTRACT**

#### **Table of Clauses**

1.	Definitions
2.	Applications
3.	Country of origin
4.	Standards
5.	Use of contract documents and information; Inspection and Audit by the Bank
6.	Patent rights
7.	Performance security
8.	Inspections and tests
9.	Packing
10.	Delivery and documents
11.	Insurance
12.	Transportation
13.	Incidental Services
14.	Spare parts
15.	Warranty
16.	Payment
17.	Prices
18.	Change orders
19.	Contract amendments
20.	Assignment
21.	Subcontracts
22.	Delays in the Supplier's performance
23.	Liquidated damages for delays
24.	Termination for default
25.	Force majeure
26.	Termination for insolvency
27.	Termination for convenience
28.	Resolution of disputes
29.	Governing language
30.	Applicable law
31.	Notices
32.	Taxes and duties

**VOLUME II.i**

**GENERAL CONDITIONS OF CONTRACT**

**1. Definitions**

1.1 In this Contract, the following terms shall be interpreted as indicated:

- (a) “The Contract” means the agreement entered into between the Purchaser and the Supplier, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (b) “The Contract Price” means the price payable to the Supplier under the Contract for the full and proper performance of its contractual obligations.
- (c) “The Goods” mean all of the equipment, machinery, and/or other materials which the Supplier is required to supply to the Purchaser under the Contract.
- (d) “The Services” mean those Services ancillary to the supply of the Goods, such as transportation and insurance, and any other incidental Services, such as installation, commissioning, provision of technical assistance, training and other such obligations of the Supplier covered under the Contract.
- (e) “GCC” means the General Conditions of Contract contained in this section.
- (f) “SCC” means the Special Conditions of Contract.
- (g) “The Purchaser” means the organisation purchasing the Goods as named in the SCC.
- (h) “The “Purchaser’s country” is the country named in the SCC.
- (i) “The Supplier” means the individual or firm supplying the Goods and Services under this Contract as named in the SCC.
- (j) “The Project Site”, where applicable, means the place or places named in the SCC.
- (k) “Days” are calendar days

**2. Application**

2.1 These General Conditions shall apply to the extent that they are not superseded by provisions in other parts of the Contract.

**3. Country of origin**

- 3.1 The Suppliers, manufacturers, subcontractors and Goods and Services supplied under the Contract can have their origin in any country unless otherwise specified in the SCC.

#### **4. Standards**

- 4.1 The Goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications and, when no applicable standard is mentioned, to the authoritative standard appropriate to the Goods' country of origin. Such standards shall be the latest issued by the concerned institution.

#### **5 Use of Contract Documents and Information; Inspection and Audit by the Bank<sup>4</sup>**

- 5.1 The Supplier shall not, without the Purchaser's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern sample or information furnished by or on behalf of the Purchaser in connection therewith, to any person other than a person employed by the Supplier in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for the purposes of such performance.

- 5.2 The Supplier shall not, without the Purchaser's prior written consent, make use of any document or information enumerated in GCC Clause 5.1 except for purposes of performing the contract.

- 5.3 Any document, other than the Contract itself, enumerated in GCC Clause 5.1 shall remain the property of the Purchaser and shall be returned (in all copies) to the Purchaser on completion of the Supplier's performance under the contract if so required by the Purchaser.

- 5.4 The Supplier shall permit the Bank to inspect the Supplier's accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the Bank, if so required by the Bank.<sup>5</sup>

#### **6. Patent rights**

- 6.1 The Supplier shall indemnify the Purchaser against all third-party claims of infringement of patent, trademark or industrial design rights arising from use of the Goods or any part thereof in the Purchaser's country.

#### **7. Performance security**

- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful tenderer shall furnish to the Purchaser the performance security in the amount specified in the SCC.

- 7.2 The proceeds of the performance security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.

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<sup>4</sup> This heading was originally modified as part of Corrigendum No. 1, dated 7 May 1998.

<sup>5</sup> This sub-clause was originally added as part of Corrigendum No. 1, dated 7 May 1998.

- 7.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Purchaser and shall be in one of the following forms:
- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the Purchaser's country or abroad, acceptable to the Purchaser, in the form provided in the tender documents or another form acceptable to the Purchaser; or
  - (b) a cashier's or certified cheque.
- 7.4 The performance security will be discharged by the Purchaser and returned to the Supplier not later than thirty (30) days following the date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the SCC.

## **8. Inspections and tests**

- 8.1 The Purchaser or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract specifications at no extra cost to the Purchaser. The SCC and the Technical Specifications shall specify what inspections and tests the Purchaser requires and where they are to be conducted. The Purchaser shall notify the Supplier in writing, in a timely manner, of the identity of any representatives retained for these purposes.
- 8.2 The inspections and tests may be conducted on the premises of the Supplier or its subcontractor(s), at point of delivery and/or at the Goods' final destination. If conducted on the premises of the Supplier or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.
- 8.3 Should any inspected or tested Goods fail to conform to the Specifications, the Purchaser may reject the Goods, and the Supplier shall either replace the rejected Goods or make alterations necessary to meet specification requirements free of cost to the Purchaser.
- 8.4 The Purchaser's right to inspect, test and, where necessary, reject the Goods after the Goods' arrival in the Purchaser's country shall in no way be limited or waived by reason of the Goods having previously been inspected, tested and passed by the Purchaser or its representative prior to Goods shipment from the country of origin.
- 8.5 Nothing in GCC Clause 8 shall in any way release the Supplier from any warranty or other obligations under this Contract.

## **9. Packing**

- 9.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination as indicated in the Contract. The packing shall be sufficient to withstand, without limitation, rough handling during

transit and exposure to extreme temperatures, salt and precipitation during transit and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods' final destination and the absence of heavy handling facilities at all points in transit.

- 9.2 The packing, marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the SCC, and in any subsequent instructions ordered by the Purchaser.

## **10. Delivery and documents**

- 10.1 Delivery of the Goods shall be made by the Supplier in accordance with the terms specified in its Schedule of Requirements. The details of shipping and/or documents to be furnished by the Supplier are specified in the SCC.
- 10.2 For purposes of the Contract, "EXW", "FOB", "FCA", "CIF", "CIP", and other trade terms used to describe the obligations of the parties shall have the meanings assigned to them by the current edition of Incoterms, published by the International Chamber of Commerce, Paris.
- 10.3 Documents to be submitted by the Supplier are specified in the SCC.

## **11. Insurance**

- 11.1 The Goods supplied under the Contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.
- 11.2 Where delivery of the Goods is required by the Purchaser on a CIF or CIP basis, the Supplier shall arrange and pay for cargo insurance, naming the Purchaser as the beneficiary. Where delivery is on an FOB or FCA basis, insurance shall be the responsibility of the Purchaser.

## **12. Transportation**

- 12.1 Where the Supplier is required under the Contract to deliver the Goods FOB, transport of the Goods, up to and including the point of putting the Goods on board the vessel at the specified port of loading, shall be arranged and paid for by the Supplier and the cost thereof shall be included in the Contract Price. Where the Supplier is required under the Contract to deliver the Goods FCA, transport of the Goods and delivery into the custody of the carrier at the place named by the Purchaser or other agreed point shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.
- 12.2 Where the Supplier is required under the Contract to deliver the Goods CIF or CIP, transport of the Goods to the port of destination or such other named place of destination in the Purchaser's country, as shall be specified in the Contract, shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.

- 12.3 Where the Supplier is required under the Contract to transport the Goods to a specified place of destination within the Purchaser's country, defined as the Project Site, transport to such place of destination in the Purchaser's country, including insurance and storage, as shall be specified in the Contract, shall be arranged by the Supplier, and the related costs shall be included in the Contract Price.
- 12.4 Where the Supplier is required under the Contract to deliver the Goods CIF or CIP, no restriction shall be placed on the choice of the carrier. Where the Supplier is required under the Contract (a) to deliver the Goods FOB or FCA, and (b) to arrange on behalf and at the expense of the Purchaser for international transportation on specified carriers or on national flag carriers of the Purchaser's country, the Supplier may arrange for such transportation on alternative carriers if the specified carriers or national flag carriers are not available to transport the Goods within the period(s) specified in the Contract.

### **13. Incidental Services**

- 13.1 The Supplier may be required to provide any or all of the following Services, including additional Services, if any, specified in the SCC:
- (a) performance or supervision of on-site assembly and/or start-up of the supplied Goods;
  - (b) furnishing of tools required for assembly and/or maintenance of the supplied Goods;
  - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied Goods;
  - (d) performance or supervision or maintenance and/or repair of the supplied Goods, for a period of time agreed by the parties, provided that this service shall not relieve the Supplier of any warranty obligations under this Contract; and
  - (e) training of the Purchaser's personnel, at the Supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Goods.
- 13.2 Prices charged by the Supplier for incidental Services, if not included in the Contract Price for the Goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged for other parties by the Supplier for similar Services.

### **14. Spare parts**

- 14.1 As specified in the SCC, the Supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the Supplier:
- (a) such spare parts as the Purchaser may elect to purchase from the Supplier, provided that this election shall not relieve the Supplier of any warranty obligations under the Contract; and

- (b) in the event of termination of production of the spare parts:
  - (i) advance notification to the Purchaser of the pending termination, in sufficient time to permit the Purchaser to procure needed requirements; and
  - (ii) following such termination, furnishing at no cost to the Purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

## **15. Warranty**

- 15.1 The Supplier warrants that the Goods supplied under the Contract 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. The Supplier further warrants that all Goods supplied under this Contract shall have no defect, arising from design, materials or workmanship (except insofar as the design and/or material is required by the Purchaser's specifications) or from any act or omission of the Supplier, that may develop under normal use of the supplied Goods in the conditions obtaining in the country of final destination.
- 15.2 This warranty shall remain valid for 12 months after the Goods, or any portion thereof as the case may be, have been delivered to or accepted at the final destination indicated in the Contract, or for 18 months after the date of shipment from the port of loading in the source country, whichever period concludes earlier, unless specified otherwise in the SCC.
- 15.3 The Purchaser shall promptly notify the Supplier in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the Supplier shall, within the period specified in the SCC, and with all reasonable speed, repair or replace the defective Goods or parts thereof, without costs to the Purchaser other than, where applicable, the cost of inland delivery of the repaired or replaced Goods or parts from EXW or the port or place of entry to the final destination.
- 15.5 If the Supplier, having been notified, fails to remedy the defect(s) within the period specified in the SCC, within a reasonable period, the Purchaser may proceed to take such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

## **16. Payment**

- 16.1 The method and conditions of payment to be made to the Supplier under the Contract shall be specified in the SCC.
- 16.2 The Supplier's request(s) for payment shall be made to the Purchaser in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and Services performed, and by documents submitted pursuant to GCC Clause 10 and upon fulfilment of other obligations stipulated in the Contract.

16.3 Payments shall be made promptly by the Purchaser, but in no case later than sixty (60) days after of submission of an invoice or claim by the Supplier.

16.4 The currency or currencies in which payment is made to the Supplier under this Contract shall be specified in the SCC subject to the following general principle: payment will be made in the currency or currencies in which the payment has been requested in the Supplier's tender.

## **17. Prices**

17.1 Prices charged by the Supplier for Goods delivered and Services performed under the Contract shall not vary from the prices quoted by the Supplier in its tender, with the exception of any price adjustments authorised in the SCC or in the Purchaser's request for tender validity extension, as the case may be.

## **18. Change orders**

18.1 The Purchaser may at any time, by a written order given to the Supplier pursuant to GCC Clause 31, make changes within the general scope of the Contract in any one or more of the following:

- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
- (b) the method of shipment or packing;
- (c) the place of delivery; and/or
- (d) the Services to be provided by the Supplier.

18.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or delivery schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this clause must be asserted within thirty (30) days from the date of the Supplier's receipt of the Purchaser's change order.

## **19. Contract amendments**

19.1 Subject to GCC Clause 18, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

## **20. Assignment**

20.1 The Supplier shall not assign, in whole or in part, its obligations to perform under the Contract, except with the Purchaser's prior written consent.

**21. Subcontracts**

- 21.1 The Supplier shall notify the Purchaser in writing of all subcontracts under this Contract, if not already specified in its tender. Such notification, in the original tender or later, shall not relieve the Supplier from any liability or obligation under the Contract.
- 21.2 Subcontracts must comply with the provisions of GCC Clause 3.

**22. Delays in the Supplier's performance**

- 22.1 Delivery of the Goods and performance of Services shall be made by the Supplier in accordance with the time schedule prescribed by the Purchaser in the Schedule of Requirements.
- 22.2 If at any time during performance of the Contract, the Supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the Goods and performance of Services, the Supplier shall promptly notify the Purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, with or without liquidated damages, in which case the extension shall be ratified by the parties by amendment of the Contract.
- 22.3 Except as provided under GCC Clause 25, a delay by the Supplier in the performance of its delivery obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 23, unless an extension of time is agreed upon pursuant to GCC Clause 22.2 without the application of liquidated damages.

**23. Liquidated damages for delays**

- 23.1 Subject to GCC Clause 25, if the Supplier fails to deliver any or all of the Goods or perform the Services within the time period(s) specified in the Contract, the Purchaser shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the SCC of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in the SCC. Once the maximum is reached, the Purchaser may consider termination of the Contract pursuant to GCC Clause 24.

**24. Termination for default**

- 24.1 The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate this Contract in whole or in part:
  - (a) if the Supplier fails to deliver any or all of the Goods within the time period(s) specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause 22;
  - (b) if the Supplier fails to perform any other obligation(s) under the Contract.

- (c) If the Supplier, in the judgement of the Purchaser has engaged in corrupt or fraudulent practices in competing for or in the executing the Contract. For the purpose of this Clause:

“corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official, or the threatening of injury to person, property or reputation, in connection with the procurement process or in contract execution in order to obtain or retain business or other improper advantage in the conduct of business; and

“fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the client, and includes collusive practices among tenderers (prior to or after tender submission) designed to establish tender prices at artificial, non-competitive levels and to deprive the client of the benefits of free and open competition.<sup>6</sup>

- 24.2 In the event the Purchaser terminates the Contract in whole or in part pursuant to GCC Clause 24.1, the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Services similar to those undelivered, and the Supplier shall be liable to the Purchaser for any excess costs for such similar Goods or Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

## **25. Force majeure**

- 25.1 Notwithstanding the provisions of GCC Clauses 22, 23 and 24, the Supplier shall not be liable for forfeiture of its performance security, liquidated damages or termination for default, if and to the extent that, its delay in performance or other failure to perform its obligations under the Contract is the result of an event of “Force Majeure”.

- 25.2 For the purposes of this Clause, “Force Majeure” means an event beyond the control of the Supplier and not involving the Supplier’s fault or negligence and not foreseeable. Such events may include, but are not restricted to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

- 25.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

## **26. Termination for insolvency**

- 26.1 The Purchaser may at any time terminate the Contract by giving written notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Supplier, provided that such termination

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<sup>6</sup> This clause was originally added as part of Corrigendum No. 1, dated 7 May 1998.

will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Purchaser.

**27. Termination for convenience**

- 27.1 The Purchaser, by written notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- 27.2 The Goods that are complete and ready for shipment within thirty (30) days of the Supplier's receipt of notice of termination, shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:
- (a) to have any portion completed and delivered at the Contract terms and prices; and/or
  - (b) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Services and for materials and parts previously procured by the Supplier.

**28. Resolution of disputes**

- 28.1 The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- 28.2 If, after thirty (30) days from the commencement of such informal negotiation, the Purchaser and the Supplier have been unable to resolve amicably a Contract dispute, either party may require that the dispute be referred to the formal mechanisms specified in the SCC. These mechanisms may include, but are not restricted to, conciliation mediated by a third party, adjudication in an agreed national or international forum, and/or international arbitration.

**29. Governing language**

- 29.1 The Contract shall be written in the language specified in the SCC. Subject to GCC Clause 30, the version of the Contract written in the specified language shall govern its interpretation. All correspondence and other documents pertaining to the Contract which are exchanged by the parties shall be written in the same language.

**30. Applicable law**

30.1 The Contract shall be interpreted in accordance with the laws of the Purchaser's country, unless otherwise specified in the SCC.

**31. Notices**

31.1 Any notice given by one party to the other pursuant to this Contract shall be sent to the other party in writing or by cable, telex or facsimile and confirmed in writing to the other party's address specified in the SCC.

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

**32. Taxes and duties**

32.1 A foreign Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Purchaser's country.

32.2 A local Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Purchaser.

**VOLUME II.ii**  
**SPECIAL CONDITIONS OF CONTRACT**

**Table of Clauses**

<b>Cross-reference to GCC</b>	<b>Topic</b>	<b>Page no.</b>
Clause 1	Definitions	60
Clause 7	Performance security	61
Clause 8	Inspections and tests	61
Clause 9	Packing	61
Clause 10	Delivery and documents	61
Clause 11	Insurance	63
Clause 13	Incidental Services	63
Clause 14	Spare parts	63
Clause 15	Warranty	63
Clause 16	Payment	64
Clause 17	Prices	65
Clause 23	Liquidated damages	67
Clause 28	Resolution of disputes	67
Clause 29	Governing language	68
Clause 31	Notices	68

VOLUME II.ii

SPECIAL CONDITIONS OF CONTRACT

*These Special Conditions are only illustrative and for guidance in drafting. The Purchaser must draft specific conditions appropriate for each Contract.*

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

*Instructions for completing the Special Conditions of Contract are provided, as needed, in the notes in italics mentioned for the relevant special condition. Where sample provisions (EXAMPLES) are furnished, they are only illustrative of the provisions that the Purchaser should draft specifically for each Contract.*

**(GCC Clause 1) Definitions**

- (g) The Purchaser is [ *name of Purchaser* ].
- (h) The Purchaser's country is [ *name of Purchaser's country* ].
- (i) The Supplier is [ *name of Supplier* ].
- (j) The Project Site is [ *specify and define the project site, if applicable* ].
- (k) "acceptance" means acceptance by the Purchaser of the Goods and Services (or any part of the Goods and Services where the contract provides for acceptance in parts) which certifies the Supplier's fulfilment of the contract in respect of the performance specified in the Contract. Such acceptance shall be evidenced by an acceptance certificate issued by the Purchaser or its agent.
- (l) "the commencement date" shall be the date from which the Supplier's delivery obligation starts and shall be specified in the Schedule of Requirements.

**(GCC Clause 7) Performance security**

- 7.1 The amount of performance security as a percentage of the Contract Price shall be [*specify percentage: five (5) to ten (10) percent of the Contract Price is reasonable; it should not normally exceed ten (10) percent* ].
- 7.4 After delivery and acceptance of the Goods, the performance security shall be reduced to two (2) percent of the Contract Price to cover the Supplier's warranty obligations in accordance with GCC Clause 15.2.

***The above provision should be used in the case of Goods having warranty obligations.***

**(GCC Clause 8) Inspections and tests**

- 8.6 Inspection and tests prior to shipment of Goods, and at final acceptance are as follows:  
[*specify tests and time for tests, i.e. prior to the shipment of goods or at final inspection*]

**(GCC Clause 9) Packing**

- 9.3 [*specify only if packing requirements change or supplement GCC Clause 9.2*].

**(GCC Clause 10) Delivery and documents**

**EXAMPLE:**

***The following text is appropriate for contracts placed CIP or CIF. Different conditions documents may be required depending upon the Incoterms used.***

- 10.3 (a) For Goods supplied from outside the Purchaser's country: the Goods shall be delivered CIP (place of destination).

Upon shipment, the Supplier shall notify the Purchaser and the Insurance Company by fax of the full details of the shipment, including: Contract number; description of Goods; quantity; the number and date of the usual transport document (such as railway or road consignment note, bill of lading, or multimodal transport document); date of shipment; expected date of arrival; vessel and ports of loading and discharge, if appropriate.

The Supplier shall mail the following documents to the Purchaser, with a copy to the Insurance Company:

- (i) copies of the Supplier's invoice showing the Goods' description, quantity, unit price and total amount;
- (ii) original and (\_\_\_\_\_) copies of the negotiable, clean, on-board bill of lading marked "freight prepaid" and (\_\_\_\_\_) copies of non-negotiable bill of lading;
- (iii) copies of packing list identifying contents of each package;
- (iv) insurance certificate;
- (v) Manufacturer's/Supplier's warranty certificate;
- (vi) inspection certificate, issued by the nominated inspection agency and the Supplier's factory inspection report;
- (vii) certificate of origin

The above documents shall be received by the Purchaser at least one week before arrival of the Goods at the port or place of arrival, and, if not received, the Supplier will be responsible for any consequent expenses.

**EXAMPLE:**

10.3 (b) For Goods supplied from within the Purchaser's country:

Upon delivery of the Goods to the transporter, the Supplier shall notify the Purchaser and mail the following documents to the Purchaser:

- (i) copies of the Supplier's invoice showing the Goods' description, quantity, unit price and total amount;
- (ii) delivery note, railway receipt or truck receipt;
- (iii) Manufacturer's or Supplier's warranty certificate;
- (iv) inspection certificate issued by the nominated inspection agency, and the Supplier's factory inspection report;
- (v) evidence of payment of customs duties or other similar import taxes on directly imported components incorporated in the Goods.

The above documents shall be received by the Purchaser before arrival of the Goods and, if not received, the Supplier will be responsible for any consequent expenses.

**EXAMPLE:**

10.3 (c) Services:

- (i) copy of the Supplier's invoice, which should provide a full description of the Services performed

**(GCC Clause 11) Insurance**

11.1 The insurance shall be in an amount equal to 110 percent of the CIF or CIP value of the Goods from “warehouse to warehouse” on an “All Risks” basis, including War Risks and Strikes.

**(GCC Clause 13) Incidental Services**

13.1 Incidental services to be provided are: *[specify incidental and associated services to be performed by the supplier]*

*Selected services covered under GCC Clause 13 and/or others should be specified with the desired features.*

**(GCC Clause 14) Spare parts**

14.1 Additional spare parts requirements are:

**EXAMPLE:**

The Supplier shall carry sufficient inventories to assure ex-stock supply of consumable spares for the Goods. Other spare parts and components shall be supplied as promptly as possible but in any case within six (6) months of placement of order and opening the letter of credit.

**(GCC Clause 15) Warranty**

**EXAMPLE:**

In partial modification of the provisions, the warranty period shall be (\_\_\_\_\_) hours of operation or (\_\_\_\_\_) months from date of acceptance of the Goods or (\_\_\_\_\_) months from the date of shipment, whichever occurs earlier. The Supplier shall, in addition, comply with the performance and/or consumption guarantees specified under the contract. If, for reasons attributable to the Supplier, these guarantees are not attained in whole or in part, the Supplier shall, at its discretion, either:

- (a) make such changes, modifications, and/or additions to the Goods or any part thereof, as may be necessary in order to attain the contractual guarantees specified in the Contract at its own cost and expense, and to carry out further performance tests in accordance with Clause 4;

OR

- (b) pay liquidated damages to the Purchaser with respect to the failure to meet the contractual guarantees. The rate of these liquidated damages shall be (\_\_\_\_\_).

***The rate shall be equal to or higher than the adjustment rate used in the tender evaluation for the respective performance factors.***

**EXAMPLE:**

Without prejudice to Clauses 15.3, 15.4 and 15.5, the Supplier shall promptly correct, at no cost to the Purchaser, any defect in any goods or parts repaired or replaced pursuant to Clauses 15.3, 15.4 and 15.5 above, upon receipt of a written notice of defect within 12 months of the acceptance of the repaired or replaced goods or parts.

**(GCC Clauses 15.4 and 15.5)**

The period for correction of defects in the warranty period is [ *specify period* ].

**(GCC Clause 16) Payment**

**EXAMPLE**

16.1 The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:

(a) Payment for Goods supplied from outside the Purchaser's country shall be made in (\_\_\_\_\_) [ *currency or currencies specified in the Supplier's tender* ] in the following manner:

(i) *Advance payment:* Ten (10) percent of the Contract Price shall be paid within thirty (30) days of signing the Contract, and upon submission of a claim and a bank guarantee in a form acceptable to the Purchaser, for an equivalent amount valid until the Goods are delivered;

(ii) *On shipment:* Eighty (80) percent of the Contract Price of the Goods shipped shall be paid through an irrevocable confirmed letter of credit opened in favour of the Supplier in a bank in its country, upon submission of documents specified in Clause 10; and

(iii) *On acceptance:* Ten (10) percent of the Contract Price of the Goods received shall be paid within thirty (30) days of receipt of the Goods, upon submission of a claim supported by the acceptance certificate issued by the Purchaser for the respective delivery.

(b) Payment for Goods supplied from within the Purchaser's country shall be made in (\_\_\_\_\_) [ *currency specified in the tender documents for local expenditure* ] in the following manner:

- (i) *Advance payment:* Ten (10) percent of the Contract Price of the Goods delivered shall be paid within thirty (30) days of signing the Contract against a simple receipt and a bank guarantee in a form acceptable to the Purchaser for an equivalent amount valid until the Goods are delivered;
- (ii) *On delivery:* Eighty (80) percent of the Contract Price of the Goods delivered shall be paid on receipt of Goods and upon submission of the documents specified in Clause 10.
- (iii) *On acceptance:* Ten (10) percent of the Contract Price of the Goods received shall be paid within thirty (30) days of receipt of the Goods upon submission of a claim supported by the acceptance certificate issued by the Purchaser for the respective delivery.

Payment against import duties and taxes on directly imported components incorporated in the Goods will only be made for the amounts evidenced as paid, up to and not exceeding the amount specified for such import duties and taxes in the Supplier's tender price.

- (c) Payment for Services, including local transport, shall be made within thirty (30) days of receipt of an invoice supported by a certificate issued by the Purchaser declaring that the contracted Services have been performed.

Payment will be made in (\_\_\_\_\_) [ *currency or currencies specified in the Supplier's tender and in the tender documents for the Services in question* ].

#### **(GCC Clause 17) Prices**

***If no price adjustment is to be paid under the contract, this paragraph should state: "No price adjustment is payable under this Contract as a result of changes in the costs of labour and material components".***

- 17.1 Prices payable to the Supplier as stated in the Contract shall be subject to adjustment during performance of the Contract to reflect changes in the cost of labour and material components in accordance with the formula:

$$P_1 = P_0 \times \{a + b(L_1 / L_0) + c(M_1 / M_0)\} - P_0$$

In which:

$P_1$  = adjustment amount payable to the Supplier

$P_0$  = Contract Price (base price)

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

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

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

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

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

***The coefficients  $a$ ,  $b$  and  $c$  shall be specified by the Purchaser in the tender documents. The sum of the three coefficients should be one (1) in every application of the formula.***

The tenderer shall indicate the source of the indices and the base date indices in its tender.

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

Date of adjustment = (\_\_\_) weeks prior to date of shipment (representing the mid-point of the period of manufacture).

3. The above price adjustment formulae shall be invoked by either party subject to the following conditions:
  - (a) Price adjustment will be applied only if the resulting increase or decrease is more than (\_\_\_) percent of the Contract Price;

***Two (2) percent would be an acceptable percentage.***

- (b) No price increase shall be allowed beyond the original delivery dates unless specifically stated in the extension letter. No price adjustment shall be allowed for

periods of delay for which the Supplier is entirely responsible. The Purchaser will however be entitled to any decrease in the prices of the Goods and Services subject to adjustment.

- (c) The total adjustment under this clause shall be subject to a ceiling of plus or minus (\_\_\_) per cent of the Contract Price.

***Ten (10) percent would be an acceptable percentage.***

- (d) If the currency in which the Contract Price  $P_0$  is expressed is different from the currency of the country of origin of the labour and materials indices, a correction factor will be applied to avoid incorrect adjustments of the Contract Price. The correction factor shall correspond to the ratio of exchange rates between the two currencies on the base date and the date for adjustment as defined above;
- (e) no price adjustment shall be payable on the portion of the Contract Price paid to the Supplier as advance payment.

**(GCC Clause 23) Liquidated damages**

23.1 Applicable Rate:

Maximum deduction:

***Applicable rate shall not exceed one half (0.5) percent per week, and the maximum deduction shall not exceed ten (10) percent of the Contract Price.***

**(GCC Clause 28) Resolution of disputes**

28.3 The dispute resolution mechanism to be applied pursuant to GCC Clause 28 shall be as follows:

**EXAMPLE:**

- (a) In the case of a dispute between the Purchaser and a Supplier which is a national of the Purchaser's country, the dispute shall be referred to adjudication/arbitration in accordance with the laws of the Purchaser's country.
- (b) In the case of a dispute between the Purchaser and a foreign Supplier, the dispute shall be settled by arbitration in accordance with the provisions of the UNCITRAL Arbitration Rules.

- (c) The place of arbitration shall be [ *insert* ].
- (d) The arbitration proceedings shall be conducted in the language governing the Contract.

Notwithstanding any referral of a dispute to arbitration herein:

- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
- (b) the Purchaser shall pay the Supplier any monies due the Supplier.

**(GCC Clause 29) Governing language**

29.1 The governing language shall be: [ *this shall be the language specified in the Instructions to Tenderers*].

**(GCC Clause 31) Notices**

31.1 Purchaser's address for notice purposes:

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Supplier's address for notice purposes:

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**VOLUME II.iii**

**CONTRACT FORM**

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_ between [ *name of Purchaser* ] of [ *country of Purchaser* ] (hereinafter called “the Purchaser”) of the one part and [ *name of Supplier* ] of [ *city and country of Supplier* ] (hereinafter called “the Supplier”) of the other part:

WHEREAS the Purchaser invited tenders for certain goods and ancillary services VIZ (brief description of goods and services) and has accepted a tender by the Supplier for the supply of those goods and services in the sum of [ *contract price in words and figures* ] (hereinafter called “the Contract Price).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz.:
  - (a) the Tender Form and the Price Schedule submitted by the Tenderer;
  - (b) the Schedule of Requirements;
  - (c) the Technical Specifications;
  - (d) the General Conditions of Contract;
  - (e) the Special Conditions of Contract; and
  - (f) the Purchaser’s Notification of Award.
3. In consideration of the payments to be made by the Purchaser to the Supplier as hereinafter mentioned, the Supplier hereby covenants with the Purchaser to provide the goods and services and to remedy defects therein in conformity in all respects with the provisions of the Contract.

4. The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the goods and services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

The parties agree that, in the event of a dispute between them under or in connection with the contract, the mechanisms for the resolution of disputes outlined in the Conditions of Contract shall be followed in the manner specified therein.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with their respective laws the day and year first above written.

Signed, Sealed and Delivered by the said \_\_\_\_\_ (for the Purchaser)

in the presence of \_\_\_\_\_ [*name of witness*]

Signed, Sealed and Delivered by the said \_\_\_\_\_ (for the Supplier)

in the presence of \_\_\_\_\_ [*name of witness*]

**VOLUME II.iv**

**SECURITIES**

**EXAMPLE:**

**Performance Security Form**

To \_\_\_\_\_ [ *name of Purchaser* ]

WHEREAS \_\_\_\_\_ [ *name of Supplier* ]

(hereinafter called "the Supplier") has undertaken, in pursuance of Contract No. \_\_\_ dated \_\_\_\_\_ 19\_\_\_ to supply [ *description of Goods and Services* ] hereinafter called "the Contract".

AND WHEREAS it has been stipulated by you in the said Contract that the Supplier shall furnish you with a bank guarantee by a reputable bank for the sum specified therein as security for compliance with the Supplier's performance obligations in accordance with the Contract.

AND WHEREAS we have agreed to give the Supplier a guarantee:

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the Supplier, up to a total of [ *amount of the guarantee in words and figures* ] and we undertake to pay you, upon your first written demand declaring the Supplier to be in default under the Contract and without cavil or argument, any sum or sums within the limits of [ *amount of guarantee* ] as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This Guarantee is valid until the \_\_\_\_\_ day of \_\_\_\_\_ 1996.

Signature and Seal of the Guarantors

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

Date \_\_\_\_\_

Address \_\_\_\_\_

**EXAMPLE:**

**Bank Guarantee for Advance Payment**

TO: [ *name of Purchaser* ] \_\_\_\_\_

[ *name of Contract* ] \_\_\_\_\_

In accordance with the payment provision included in the Special Conditions of Contract, which amends Clause 16 of the General Conditions of Contract to provide for advance payment, [ *name and address of Supplier* ] (hereinafter called “the Supplier”) shall deposit with the Purchaser a bank guarantee to guarantee its proper and faithful performance under the said Clause of the Contract in an amount of [ *amount of guarantee in figures and words* ].

We, the [ *bank or financial institution* ], as instructed by the Supplier, agree unconditionally and irrevocably to guarantee as primary obligator and not as surety merely, the payment to the Purchaser on its first demand without whatsoever right of objection on our part and without its first claim to the Supplier, in the amount not exceeding [ *amount of guarantee in figures and words* ].

We further agree that no change or addition to or other modification of the terms of the Contract to be performed thereunder or of any of the Contract documents which may be made between the Purchaser and the Supplier, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition, or modification.

This guarantee shall remain valid and in full effect from the date of the advance payment received by the Supplier under the Contract until [ *specify date or event(s)* ].

Yours truly,

Signature and seal of the Guarantors: \_\_\_\_\_

[ *name of bank or financial institution* ] \_\_\_\_\_

[ *address* ] \_\_\_\_\_

[ *date* ] \_\_\_\_\_

# **STANDARD TENDER DOCUMENTS**

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## **Procurement of Goods (and associated services)**

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### **Volume III**

#### **The Requirements**



## VOLUME III.i

**SCHEDULE OF REQUIREMENTS***Schedule of Requirements*

*The Schedule of Requirements shall be included in the tender documents by the Purchaser, and shall cover, at a minimum, a description of the goods and services to be supplied and the delivery schedule.*

*The objective of the Schedule of Requirements is to provide sufficient information to enable tenderers to prepare their tenders efficiently and accurately, in particular, the Price Schedule, for which a form is provided in (\_\_\_\_\_). In addition, the Schedule of Requirements, together with the Price Schedule, should serve as a basis for any quantity variation at the time of award of contract pursuant to paragraph (\_\_\_\_\_) of the Instructions to Tenderers.*

*The date or period for delivery should be carefully specified, taking into account (a) the implications of delivery terms stipulated in the Instructions to Tenderers pursuant to the Incoterms Rules (i.e. EXW, or CIF, CIP, FOB, FCA terms - that "delivery" takes place when goods are delivered to the carriers), and (b) the date prescribed herein from which the Supplier's delivery obligations starts (i.e. notice of award, contract signature, opening or confirmation of letter of credit). If the contract involves supply and installation of goods, the commissioning date rather than the delivery date should be used for the purpose of determining contract completion.*

**EXAMPLE:**

The delivery schedule expressed as weeks/months stipulates hereafter a delivery date which is the date of delivery (i) at EXW premises or (ii) to the carrier at the port of shipment when the contract is placed on FOB or CIF terms, or (iii) to the first carrier when the contract is based on FCA or CIP terms. In order to determine the correct date of delivery hereafter specified, the Purchaser has taken into account the additional time that will be needed for international or national transit to the Project Site or to another common place.

*The delivery may be specified for a single shipment, or for several partial shipments, for a specific date, or range of acceptable delivery periods.*

Ref. number	Brief description	Quantity	Delivery schedule
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in (weeks/months) from  
Commencement Date

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### **Spare Parts**

#### **EXAMPLE:**

The Supplier shall provide spares corresponding to his estimated requirements for normal spare parts usage sufficient for two years normal usage or (\_\_\_\_\_) kilometres travelled or (\_\_\_\_\_) hours of operation, whichever occurrence is the later.

### **The Commencement Date**

*The Purchaser must specify in this Schedule the date from which the delivery schedule will start (“the Commencement Date”). That date should be either the date of contract award or the date of contract signature or the date of opening of letter of credit or the date of confirmation of the letter of credit or the date the advance payment is made, as appropriate. The Tender Form should include a cross-reference to this Schedule.*

#### **EXAMPLE:**

The Commencement Date shall be the date of receipt of the Notification of Award or opening of the Letter of Credit, which ever is the later.

#### **EXAMPLE**

The Commencement Date shall be the date of confirmation of the Letter of Credit or receipt of the Advance Payment, which ever is the earlier.

## VOLUME III.ii

## TECHNICAL SPECIFICATIONS

*Preparing the Technical Specifications*

*A set of precise and clear specifications is a prerequisite for tenderers to respond realistically and competitively to the requirements of the Purchaser without qualifying their tenders. The specifications must be drafted to permit the widest possible competition and, at the same time, present a clear statement of the required standards of workmanship, materials, and performance of the goods and services to be procured. This is consistent with realising the objectives of economy, efficiency and fairness, will ensure the responsiveness of tenders and will facilitate the task of tender evaluation and transparency of the award. The specifications should require that all goods and materials to be incorporated in the goods be new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials unless otherwise provided for in the Specifications.*

*Where ever appropriate standardised general technical specifications covering workmanship, materials, manufacturing, quality assurance and testing, should be used, with deletions or addenda for the particular procurement.*

*Care must be taken in drafting specifications to ensure that they are not restrictive. Recognised international standards should be used wherever possible. Where other particular standards are used, i.e. national standards of the Purchaser's country, the specifications should clearly state that equipment, materials, and workmanship that meet other authoritative standards, and which ensure at least a substantially equal quality or performance as the standards mentioned, will also be acceptable.*

*Reference to brand names and catalogue numbers should be avoided as far as possible; where unavoidable they should always be followed by the words "or at least equivalent"*

*Text of Technical Specifications to be inserted in the tender documents by the Purchaser, as applicable*

**EXAMPLE:**

**Equivalence of Standards and Codes**

Wherever reference is made in the Technical Specifications to specific standards and codes to be met by the goods and materials to be furnished or tested, the provisions of the latest current edition or revision of the relevant standards or codes in effect shall apply, unless otherwise expressly stated in the Specifications. Where such standards and codes are national or related to a particular country or region, other authoritative standards that ensure substantial equivalence to the standards and codes specified will be acceptable.

**VOLUME III.iii**

**DRAWINGS AND OTHER DOCUMENTATION**

*Where appropriate, the Purchaser should attach other pertinent documentation such as drawings, diagrams, site plan, etc. which would assist tenders to submit a responsive tender.*

*The Supplier may be requested to provide drawings or samples either with its tender or more commonly, for prior review prior to delivery during contract implementation.*