

Bid Proposal Sample for Construction Contract

Introduction

[This section is only for information of the MCA Entity/Employer, and should be removed when finalizing Bidding Documents prior to their release.]

These Standard Bidding Documents for the Procurement of Design-Build (“Standard Bidding Documents”) have been prepared by the Millennium Challenge Corporation (“MCC”) for use by the Millennium Challenge Account Entities (“MCA Entities”) receiving funding from MCC for projects involving works which are to be largely designed by the contractor who will then construct the works in accordance with the approved designs. These Standard Bidding Documents are consistent with the MCC Program Procurement Guidelines¹.

These Standard Bidding Documents are to be used to prepare bidding documents for the procurement of fixed rate contracts through Competitive Bidding (“CB”).

These Standard Bidding Documents have been prepared based on the assumption that pre-qualification has taken place before bidding. The process of pre-qualification shall follow the procedure indicated in the *Standard Bidding Documents: Pre-Qualification Document: Procurement of Works*, issued by MCC (insert website address). In cases where no pre-qualification has taken place, (pre-qualification is not a mandatory requirement of MCC), this document can be used with some modifications. An alternative form of Invitation for Bids is provided and suggested modifications to the Instructions to Bidders are included at the end of this introduction. In any event, post qualification is recommended in all cases to reconfirm and verify the information provided by the bidders.

Bidding documents prepared in accordance with these Standard Bidding Documents (“Bidding Documents”) will consist of the following sections. The Invitation for Bids (“IFB”) included in these Standard Bidding Documents is not a part of the Bidding Documents submitted to potential bidders and is included in these Standard Bidding Documents for information purposes only. The IFB provides information that enables potential bidders to decide whether to participate.

Section I Instructions to Bidders (“ITB”)

This section provides information to help potential bidders prepare their bids. Information is also provided on the submission, opening, and evaluation of bids and on the award of contracts.

Section II Bid Data Sheet (“BDS”)

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

¹ The MCC Program Procurement Guidelines can be found at: <http://www.mcc.gov/documents/mcc-guidelines-programprocurement.pdf>.

Section III Evaluation and Qualification Criteria

This section contains the criteria to determine the lowest evaluated responsive bid and to ascertain the continued qualification of the bidder to perform the contract.

Section IV Bidding Forms

This section contains the forms which are to be completed by the bidder and submitted as part of its bid.

Section V General Conditions of Contract (“GCC”)

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

Section VI Conditions of Particular Application (“COPA”)

This section contains special conditions of contract that have been developed by MCC to supplement the GCC and that shall be used by MCA Entities in the procurement of design-build. The text of the clauses in this section shall not be modified except in limited circumstances and only where noted in the introduction to Section VI. Additional project-specific COPAs may be developed by the MCA Entity, to the extent necessary.

Section VII Forms of Agreement, Performance Security, and Advance Payment Guarantee

This Section contains forms which, once completed, will form part of the contract and which shall only be completed by the successful bidder after contract award.

In addition, the MCA Entity shall prepare additional volumes of information to more fully describe the works. At a minimum, the MCA Entity shall prepare the following:

Section VIII Schedule of Prices

This section, which may include one or more Bills of Quantities, shall contain an itemized description and listing of the quantities of works to be performed or listing of the milestones to be completed. The quantities given in the Bill of Quantities are estimated and provisional, based on the Employer’s Requirements and the Drawings (set out in Sections IX and X), and are given to enable bidders to prepare priced bids. When the contract has been entered into, the priced Schedule of Prices will be used in the periodic valuation of works executed.

Section IX Employer’s Requirements

This section shall set out a description of the scope of the works to be designed and constructed and shall present a clear statement of the required standards for materials, plant, supplies, and workmanship to be provided. The Employer Requirements shall also present the environmental, health and safety requirements to be satisfied by the contractor in designing and executing the works. The Employer Requirements should reference applicable standards and codes. Where

applicable, the Employer's Requirements should specify the performance-based indicators to be achieved by the completed Works.

Section X Drawings

This section shall contain drawings, noting approximate completion level, to allow bidders to understand the type and complexity of the work involved and to price their bids.

Amendments to the Instructions to Bidders (w/o pre-qualification)

The following Sub-Clauses of the Instructions to Bidders shall be amended for use in procurement without pre-qualification.

- 4. Eligible Bidders** 4.8 Modify ITB 4.8 to substitute the word “pre-qualified” with the word “registered”.
- 17. Documents**
Establishing the
Qualifications of
the Bidder 17.1 Replace ITB 17.1 with the following:
“Bidders shall be qualified based on the qualification criteria described in Section III, Evaluation and Qualification Criteria. Bidders shall submit evidence of their qualifications in sufficient detail to demonstrate the Bidders’ capacity to undertake the Works described herein in accordance with the requirements of Section III, Evaluation and Qualification Criteria and Section IV, Bidding Forms.”
- 36. Qualification of**
the Bidder 36.1 Replace ITB 36.1 with the following:
“The Employer shall determine to its satisfaction whether the Bidder having submitted the lowest evaluated and substantially responsive Bid meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.”

Part I

INVITATION FOR BIDS
IFB/[Procurement Method]/[IFB number]

[MCA Entity]
On Behalf of:
The Government of [Country]
[Millennium Challenge Account Entity]
Program

Funded by
THE UNITED STATES OF AMERICA
THROUGH
THE MILLENNIUM CHALLENGE
CORPORATION

[TITLE OF DESIGN-BUILD PROJECT]

[DATE]

INVITATION FOR BIDS

Invitation for Bids

[City, Country]

[Day, Month, Year]

IFB#: MCA Entity/the Employer [Procurement Method, Number]

[Project Name]

Dear Madam/Sir:

This Invitation for Bids (“IFB”) is issued to the entities and persons that have been pre-qualified by the [full legal name of the MCA Entity] (the “Employer”) for the procurement identified above.

The Millennium Challenge Corporation (“MCC”) and the Government of [Country] (the “Government” or “[Go_]”) have entered into a Millennium Challenge Compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in [Country] (the “Compact”) in the amount of approximately [Amount] USD (“MCC Funding”). The Government, acting through the Employer, intends to apply a portion of the proceeds of MCC Funding to eligible payments under a contract associated with this IFB. Any payments made under the proposed contract will be subject, in all respects, to the terms and conditions of the Compact and related documents, including restrictions on the use of MCC funding and conditions to the disbursement of MCC funding. No party other than the Government and the Employer shall derive any rights from the Compact or have any claim to the proceeds of MCC Funding.

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

The Employer now invites sealed bids (“Bids”) from eligible and pre-qualified entities or persons (“Bidders”) to provide the design-build referenced above (the “Works”), which is being offered as a fixed price contract.

A Bidder will be selected under the competitive bidding procedures described in the bidding documents associated with this IFB (the “Bidding Documents”). Bidders are advised that these procedures are

governed by the MCC Program Procurement Guidelines². Bidders should note that MCC procurement procedures and guidelines are similar to the World Bank procurement procedures and guidelines, but there are significant differences. It is a Bidder's responsibility to fully understand MCC program procurement procedures and guidelines.

Please note that a pre-Bid meeting [**will/will not**] be held.

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

[List]

It is not permissible to transfer this invitation to any other contractor.

The Bidding Documents consist of the following:

Part I – Bidding Procedures

Section I – Instructions to Bidders (ITB)

Section II – Bid Data Sheet (BDS)

Section III – Evaluation and Qualification Criteria

Section IV – Bidding Forms

Part II – Conditions of Contract

Section V – General Conditions of Contract (GCC)

Section VI – Conditions of Particular Application (COPA)

Section VII – Forms of Agreement and Security

Part III – Works Requirements

Section VIII – Schedule of Prices³

Section IX – Employer's Requirements

Section X – Drawings

[The list of contents of the Bidding Documents may be adjusted as necessary for the particular procurement. In addition, background or supplemental information, such as geo-technical reports and hydrological studies, may be provided to aid Bidders in the preparation of their bids but such reports are not part of the Bidding Documents.]

Please inform us in writing at the following address upon receipt:

- a) that you received this IFB; and
- b) whether you will submit a Bid alone or in association.

² The MCC Program Procurement Guidelines can be found at: <http://www.mcc.gov/documents/mcc-guidelines-programprocurement.pdf>.

³ In the event that, in addition to the Schedule of Prices, there are one or more Bills of Quantities, edit to read "Schedule of Prices and Bill of Quantities".

[Contact name and title, Procurement Agent or MCA Entity/Employer, address, telephone and fax numbers, and email address of submission location]

All Bids must be accompanied by a security in the form and amount specified in the Bidding Documents, and must be delivered to the address given below no later than **[insert local time and date]**. Bidders should be aware that distance and customs formalities may require longer than expected delivery time.

Bids will be opened immediately thereafter in the presence of Bidders' representatives who presented Bids and who choose to attend. Late Bids will be rejected and returned unopened. Submissions from Bidders will be evaluated by a qualified technical review panel. The evaluation will include an assessment of the Bidders' ability to carry out both the design and construction of the works and also of the Bidders' proposed prices, all in accordance with Section III of the Bidding Documents.

Yours sincerely,
[Procurement Officer],
[The Employer/MCA Entity]
[Address]
[Telephone number]
[Fax number]
[Email address]

Alternative Invitation for Bids (w/o pre-qualification)

[City, Country]

[Month, Day, Year]

IFB#: the Employer [Method, Number]

To: All Bidders

The Millennium Challenge Corporation (“MCC”) and the Government of [Country] (the “Government” or “[Go_]”) have entered into a Millennium Challenge Compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in [Country] (the “Compact”) in the amount of approximately [Amount] USD (“MCC Funding”). The Government, acting through the Employer, intends to apply a portion of the proceeds of MCC Funding to eligible payments under a Contract associated with this Invitation for Bids (“IFB”). Any payments made under the proposed contract will be subject, in all respects, to the terms and conditions of the Compact and related documents, including restrictions on the use of MCC funding and conditions to the disbursement of MCC funding. No party other than the Government and the Employer shall derive any rights from the Compact or have any claim to the proceeds of MCC Funding.

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

The Employer now invites sealed bids (“Bids”) from eligible and qualified entities or persons (“Bidders”) to provide the design-build referenced above (the “Works”), which is being offered as a fixed price contract.

Bidding will only be open to registered Bidders. Bidders must register by completing the Registration Form available at **[website of the MCA Entity]**, and sending it in PDF format to the Employer’s Procurement Agent’s e-mail address: **[e-mail address of the Procurement Agent]**. Registration will be completed when a potential Bidder receives a registration number from the Procurement Agent. Potential Bidders may elect on the Registration Form to receive the bidding documents associated with this IFB (the “Bidding Documents”) in the following manner:

[Provide method, contact name and title, Procurement Agent or Employer/MCA Entity, address, telephone and fax numbers]

Please note that a pre-Bid meeting **[will/will not]** be held.

The Bidding Documents consist of the following:

Part I – Bidding Procedures

Section I – Instructions to Bidders (ITB)

Section II – Bid Data Sheet (BDS)

Section III – Evaluation and Qualification Criteria
Section IV – Bidding Forms
Part II – Conditions of Contract
Section V – General Conditions of Contract (GCC)
Section VI – Conditions of Particular Application (COPA)
Section VII – Forms of Agreement and Security
Part III – Works Requirements
Section VIII – Schedule of Prices⁴
Section IX – Employer’s Requirements
Section X – Drawings

[The list of contents of the Bidding Documents may be adjusted as necessary for the particular procurement. In addition, background or supplemental information, such as geo-technical reports and hydrological studies, may be provided to aid Bidders in the preparation of their bids but such reports are not part of the Bidding Documents.]

A winning Bidder will be selected under the Competitive Bidding procedures described in the Bidding Documents. Bidders are advised that these procedures are governed by the MCC Program Procurement Guidelines⁵. Bidders should note that MCC procurement procedures and guidelines are similar to the World Bank procurement procedures and guidelines, but there are significant differences. It is a Bidder’s responsibility to fully understand MCC program procurement procedures and guidelines.

All Bids must be accompanied by a security in the form and amount specified in the Bidding Documents, and must be delivered to the address given below no later than **[insert local time and date]**. Bids will be opened immediately thereafter in the presence of Bidders’ representatives who presented Bids and who choose to attend.

Bidders should be aware that distance and customs formalities may require longer than expected for delivery time.

Yours sincerely,
[Procurement Officer],
[The Employer/MCA Entity]
[Address]
[Telephone number]
[Fax number]
[Email address]

⁴ In the event that, in addition to the Schedule of Prices, there are one or more Bills of Quantities, edit to read “Schedule of Prices and Bill of Quantities”.

⁵ The MCC Program Procurement guidelines can be found at: <http://www.mcc.gov/documents/mcc-guidelines-programprocurement.pdf>.

SECTION I

**INSTRUCTIONS TO BIDDERS
(ITB)**

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Instructions to Bidders

A. General

1. Scope of Bid

- 1.1 In connection with the IFB number as indicated in the Invitation for Bids, the entity identified in the **BDS** (hereinafter called the Employer), issues these bidding documents for the procurement of design and build of works as specified in Section IX, Employer's Requirements and Section X, Drawings of Part III, Works Requirements (these "Bidding Documents"). The name and identification number of this procurement are provided in the **BDS**.
- 1.2 Throughout these Bidding Documents, unless otherwise indicated, capitalized terms have the meaning indicated in the form of the proposed contract set forth in Sections V and VI, provided that:
- (a) the term "in writing" means communicated in written form and delivered against receipt;
 - (b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and
 - (c) "day" means calendar day.

2. Source of Funds

- 2.1 The Millennium Challenge Corporation ("MCC") and the Government of the Country named in the **BDS** (the "Government" and the "Country") have entered into a Millennium Challenge Compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in the Country (the "Compact") in the approximate amount specified in the **BDS** ("MCC Funding"). The Government, acting through the Employer, intends to apply a portion of the proceeds of the MCC Funding to eligible payments under a proposed contract associated with these Bidding Documents for the project named in the **BDS**. Any payments made under the proposed contract will be subject, in all respects, to the terms and conditions of the Compact and related documents, including restrictions on the use of MCC Funding and conditions to disbursement. No party other than the Government and the Employer shall derive any rights from the Compact or have any claim to any proceeds
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of the MCC Funding.

2.2 The Compact provides a grant over a period specified in the **BDS** to fund projects focused on reducing poverty through sustainable economic growth. The Compact program is as briefly described in the **BDS**. The Compact and its related documents are available at www.mcc.gov or at the website of the Employer.

3. Corrupt and Fraudulent Practices

3.1 MCC requires that all beneficiaries of MCC funding, including the Employer, any bidders, suppliers, contractors, subcontractors, and consultants under any MCC-funded contracts, observe the highest standards of ethics during the procurement and execution of such contracts. In pursuance of this policy, the following provisions shall apply.

(a) For the purposes of these provisions, the terms set forth below are defined as follows:

(i) ***“coercive practice”*** means impairing or harming or threatening to impair or harm, directly or indirectly, persons or their property, to influence their participation in a procurement process, or affect the execution of a contract;

(ii) ***“collusive practice”*** means a scheme or arrangement between two or more parties, with or without the knowledge of the Employer, designed to establish prices at artificial, noncompetitive levels or to otherwise deprive the Employer of the benefits of free and open competition;

(iii) ***“corrupt practice”*** means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of a public official (including Employer and MCC staff and employees of other organizations taking or reviewing selection decisions) in the selection process or in contract execution or the making of any payment to any third party, in connection with or in furtherance of a contract, in violation of (A) the United States Foreign Corrupt Practices Act of 1977, as amended (15 USC 78a et seq.) (“FCPA”), or any other actions taken that otherwise would be in violation of the FCPA if the FCPA were applicable, or (B) any applicable law in the Country;

- (iv) ***“fraudulent practice”*** means any act or omission, including any misrepresentation, in order to influence (or attempt to influence) a selection process or the execution of a contract to obtain a financial or other benefit or to avoid (or attempt to avoid) an obligation;
 - (v) ***“obstructive practice”*** means:
 - (aa) destroying, falsifying, altering or concealing evidence material to the investigation or making false statements to investigators in order to impede an investigation into allegations of a coercive, collusive, corrupt, fraudulent, or prohibited practice; and threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, and
 - (bb) acts intended to impede the exercise of the inspection and audit rights of MCC provided under the Compact and related agreements; and
 - (vi) ***“prohibited practice”*** means any action that violates Section E (Compliance with Anti-Corruption, Anti-Money Laundering and Terrorist Financing Statutes and Other Restrictions) of Annex A (Additional Provisions”) attached to the Conditions of Particular Application of the Contract.
- (b) The Employer will reject a Bid if it determines that the Bidder recommended for award has, directly or through an agent, engaged in coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices in competing for the Contract.
- (c) The Employer has the right to sanction a Bidder or Contractor, including declaring the Bidder or Contractor ineligible, either indefinitely or for a stated period of time, to be awarded an MCC-funded contract if at any time it determines that the Bidder or Contractor has, directly or through an agent, engaged in coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices in competing for, or in executing,
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such a contract.

- (d) The Employer has the right to require that a provision be included in the Contract requiring the Contractor to permit the Employer, MCC, or any designee of MCC, to inspect its accounts, records and other documents relating to the submission of its Bid or performance of the Contract and to have such accounts, records and other documents audited by auditors appointed by MCC or by the Employer with the approval of MCC.

In addition, MCC has the right to cancel the portion of MCC Funding allocated to the Contract if it determines at any time that representatives of a beneficiary of the MCC Funding engaged in coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices during the selection process or the execution of the Contract, without the Employer or the beneficiary having taken timely and appropriate action satisfactory to MCC to remedy the situation.

MCC may also invoke any of the rights identified for the Employer in paragraphs 3.1(b)-(d) above.

4. Eligible Bidders

- 4.1 A Bidder may be a natural person, private entity, government-owned entity—subject to ITB 4.4—or any combination of such entities supported by a letter of intent to enter into an agreement or under an existing agreement in association in the form of a joint venture or other consortium. In the case of a joint venture or other consortium:
 - (a) all members shall be jointly and severally liable for the execution of the Contract, and
 - (b) the association shall nominate a representative who shall have the authority to conduct all business for and on behalf of any and all the members of the joint venture or the consortium during the bidding process and, in the event the joint venture or consortium is awarded the Contract, during Contract execution.
 - 4.2 A Bidder, all parties constituting the Bidder, any subcontractors and suppliers, and their respective personnel and affiliates, may have the nationality of any country, subject to the restrictions specified in the paragraphs below. A person or entity shall be deemed to have the nationality of a country if such person or entity is a citizen or is constituted, incorporated, or registered in, and operates in
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conformity with, the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related services.

- 4.3 A Bidder, all parties constituting the Bidder, any subcontractors and suppliers, and their respective personnel and affiliates, shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A person or entity may be considered to have a conflict of interest with one or more parties in this bidding process, if:
- (a) they have at least one controlling partner in common; or
 - (b) they have the same legal representative for purposes of this Bid; or
 - (c) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or
 - (d) they participate in more than one Bid in this bidding process; participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which the party is involved; however, this provision does not limit the inclusion of the same subcontractor in more than one Bid; or
 - (e) they are, or have been associated in the past, with a person or entity which has been engaged to provide consulting services for the preparation of the design, specifications, or other documents to be used for the procurement and provision of the design and construction of the Works under the Contract; or
 - (f) they or any of their affiliates have been hired (or are proposed to be hired) by the Employer as Engineer for the Contract; or
 - (g) they are themselves, or have a business or family relationship with, a member of the Employer's board of directors or staff, or with the Procurement Agent or Fiscal Agent (as defined in the Compact or related agreements) hired by the Employer, who is directly or indirectly involved in any part of (i) the preparation of
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these Bidding Documents, (ii) the Bid selection process, or (iii) supervision of the Contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to MCC throughout the process of preparing the Bidding Documents and awarding and executing the Contract.

Bidders and the Contractor have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of the Employer, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Bidder or Contractor or the termination of the Contract.

- 4.4 Government-owned entities in the Employer's country shall be eligible only if they can establish that they (a) are legally and financially autonomous, (b) operate under commercial law, and (c) are not a dependent agency of the Employer.
 - 4.5 Bidders shall provide such evidence of their continued eligibility, in a manner satisfactory to the Employer, as the Employer may reasonably request.
 - 4.6 A Bidder, all parties constituting the Bidder, any subcontractors and suppliers, and their respective personnel and affiliates, shall not be any person or entity under a declaration of ineligibility for engaging in coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices in accordance with ITB 3.1 above or that has been declared ineligible for participation in a procurement in accordance with the procedures set out in the MCC Program Procurement Guidance paper entitled "Excluded Parties Verification Procedures in MCA Entity Program Procurements" that can be found on MCC's website at www.mcc.gov. This would also remove from eligibility for participation in a procurement any person or entity that is organized in or has its principal place of business or a significant portion of its operations in any country that is subject to sanction or restriction by law or policy of the United States. Those countries that are subject to sanction or restriction by law or policy of the United States as of the date of these Bidding Documents are specified in the **BDS**. However the countries subject to these sanctions and restrictions are subject to change from time to time and it is necessary to refer to the websites identified in the guidance paper referenced above for the most current listing of
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sanctioned and restricted countries.

- 4.7 A Bidder, parties constituting the Bidder, any subcontractors and suppliers, and their respective personnel and affiliates not otherwise made ineligible for a reason described in ITB 4.6 shall be excluded if:
- (a) as a matter of law or official regulation, the Government prohibits commercial relations with the country of the Bidder, its associates, subcontractors or their respective personnel;
 - (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Government prohibits any import of goods from the country of the Bidder, its associates or their respective personnel or any payments to persons or entities in such country; or
 - (c) such Bidder, any parties constituting the Bidder, any subcontractor or supplier or their respective personnel are otherwise deemed ineligible by MCC pursuant to any policy or guidance that may, from time to time, be in effect as posted on the MCC website at www.mcc.gov.

4.8 This bidding procedure is open only to pre-qualified Bidders.

5. Eligible Materials, Equipment, and Services

- 5.1 The materials, equipment and services to be supplied under the Contract may have their origin in any country subject to the same restrictions specified for Bidders and their associates and personnel set forth in ITB 4. At the Employer's request, Bidders will be required to provide evidence of the origin of materials, equipment and services.
- 5.2 For purposes of ITB 5.1 above, "origin" means the place where the materials and equipment are mined, grown, cultivated, produced, manufactured or processed, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized article results that differs substantially in its basic characteristics, purposes or utility from its underlying components.
- 5.3 The origin of materials, equipment and services is distinct from the nationality of the Bidder.
- 5.4 Country of origin for major items of plant, materials, goods and services provided under the Contract must be indicated
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in the Appendix to Bid included in Section IV.

B. Contents of Bidding Documents

- 6. Sections of Bidding Documents**
- 6.1 These Bidding Documents consist of all the sections indicated below, and should be read in conjunction with any addenda issued in accordance with ITB 8.
- Part I—Bidding Procedures*
- Section I. Instructions to Bidders (ITB)
- Section II. Bid Data Sheet (BDS)
- Section III. Evaluation and Qualification Criteria
- Section IV. Bidding Forms
- Part II – Conditions of Contract*
- Section V. General Conditions of Contract (GCC)
- Section VI. Conditions of Particular Application (COPA)
- Section VII. Forms of Agreement and Security
- Part III -- Works Requirements*
- Section VIII. Schedules of Prices⁶
- Section IX. Employer's Requirements
- Section X. Drawings
- 6.2 The Invitation for Bids issued by the Employer is not part of the Bidding Documents.
- 6.3 The Employer may provide Bidders with a separate background information document (“Background Information Document”) if so indicated in the **BDS**. The Background Information Document, if provided, is not part of these Bidding Documents.
- 6.4 The Employer is not responsible for the completeness of the Bidding Documents and their addenda, if they were not obtained directly from the Employer. No representation or warranty, express or implied, is made and no responsibility of any kind is accepted by the Employer for the completeness or accuracy of any information contained in the Bidding Documents or provided during the bidding

⁶ In the event that, in addition to the Schedule of Prices, there are one or more Bills of Quantities, edit to read “Schedule of Prices and Bill of Quantities”.

process or during the term of the Contract.

- 6.5 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents. Each Bidder is solely responsible for conducting its own due diligence and investigation in support of the preparation of Bids, negotiation of agreements, and the subsequent delivery of all services to be provided by the successful Bidder. Failure to furnish all information or documentation required by the Bidding Documents may result in the rejection of the Bid.

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

- 7.1 A prospective Bidder requiring any clarification of the Bidding Documents shall contact the Employer in writing at the Employer's address indicated in the **BDS** or raise his or her inquiries during the pre-Bid meeting if provided for in accordance with ITB 7.4. The Employer will respond in writing to any request for clarification, provided that such request is received no later than the number of days indicated in the **BDS** prior to the deadline for submission of Bids specified in **BDS** 22.1. The Employer shall forward copies of its response within the time specified in the **BDS** to all Bidders who have acquired the Bidding Documents in accordance with ITB 6.4, including a description of the inquiry but without identifying its source. Should the Employer deem it necessary to amend the Bidding Documents as a result of a request for clarification, it shall do so following the procedure under ITB 8 and ITB 22.2.
- 7.2 A Site visit will be organized by the Employer if so specified in the **BDS**. If no Site visit is organized, the Bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the Bid and entering into a contract for design and construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense.
- 7.3 If permission is required to gain access to the Site, the Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon the premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs,

and expenses incurred as a result of the inspection.

- 7.4 The Bidder's designated representative is invited to attend a pre-Bid meeting, if provided for in the **BDS**. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 7.5 Minutes of any pre-Bid meeting, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who acquired the Bidding Documents in accordance with ITB 6.4. Any modification to the Bidding Documents that may become necessary as a result of the pre-Bid meeting will be made by the Employer exclusively through the issuance of an addendum pursuant to ITB 8 and not through the minutes of the pre-Bid meeting.
- 7.6 Non-attendance at the pre-Bid meeting will not be a cause for disqualification of a Bidder.

8. Amendment of Bidding Documents

- 8.1 At any time prior to the deadline for submission of Bids, the Employer may amend the Bidding Documents by issuing addenda.
- 8.2 Any addendum issued shall become part of the Bidding Documents and shall be communicated in writing to all who have obtained the Bidding Documents from the Employer.
- 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Employer may, at its discretion, extend the deadline for the submission of Bids, pursuant to ITB 22.2.

C. Preparation of Bids

9. Cost of Bidding

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

10. Language of Bid

- 10.1 The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Employer, shall be written in English and, at the discretion of the Employer, in another language if so specified in the **BDS**. Supporting documents and printed literature that are part of the Bid may be in another language provided they

are accompanied by an accurate translation of the relevant passages in English, in which case, for purposes of interpretation of the Bid, the English version shall govern.

11. Documents Comprising the Bid

11.1 The Bid shall comprise the following:

- (a) Letter of Bid and Appendix to Bid;
- (b) completed forms and schedules as required, including priced Schedule of Prices⁷, in accordance with ITB 12 and 14;
- (c) Bid Security, in accordance with ITB 19;
- (d) alternative Bids, if permissible, in accordance with ITB 13;
- (e) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2;
- (f) documentary evidence in accordance with ITB 17 establishing the Bidder's qualifications to perform the Contract if its Bid is accepted;
- (g) Technical Offer (including Design Proposal) in accordance with ITB 16;
- (h) in the case of a Bid submitted by a joint venture or other consortium, a description indicating at least the parts of the design and construction of the Works to be executed by the respective members of the joint venture or consortium; and
- (i) any other document required in the **BDS**.

11.2 In addition to the requirements under ITB 11.1, Bids submitted by a joint venture or other consortium shall include a copy of the joint venture/consortium agreement entered into by all members. Alternatively, a letter of intent or similar instrument to execute a joint venture/consortium agreement in the event of a successful Bid shall be signed by all members and submitted with the Bid, together with a copy of the proposed joint venture/consortium agreement.

12. Letter of Bid and Schedules

12.1 The Letter of Bid and Schedules, including the Schedule of Prices⁸, shall be prepared using the relevant forms furnished in Section IV, Bidding Forms and Section VIII,

⁷ In the event that, in addition to the Schedule of Prices, there are one or more Bills of Quantities, edit to read "Schedule of Prices and Bill of Quantities".

⁸ In the event that, in addition to the Schedule of Prices, there are one or more Bills of Quantities, edit to read "Schedule of Prices and Bill of Quantities".

Schedules of Prices⁹. The forms must be completed without any alterations to the text, and no substitutes shall be accepted, except as provided under ITB 20.2. All blank spaces shall be filled in with the information requested.

13. Alternative Bids

- 13.1 Unless otherwise indicated in the **BDS**, alternative Bids shall not be considered.
- 13.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the **BDS**, as will the method of evaluating different times for completion.
- 13.3 Except as provided under ITB 13.4 below, Bidders wishing to offer technical alternatives to the requirements of the Bidding Documents must first price the Employer's design as described in the Bidding Documents and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Employer.
- 13.4 When specified in the **BDS**, Bidders are permitted to submit alternative technical solutions for specified parts of the design and construction of the Works, and such parts will be identified in the **BDS**, as will the method for their evaluation, and will be described in Section IX, Employer's Requirements and Section X, Drawings of Part III, Works Requirements.

14. Bid Prices and Discounts

- 14.1 The prices and discounts quoted by the Bidder in the Letter of Bid and in the Schedule of Prices¹⁰ shall conform to the requirements specified below.

⁹ In the event that, in addition to the Schedule of Prices, there are one or more Bills of Quantities, edit to read "Schedule of Prices and Bill of Quantities".

¹⁰ In the event that, in addition to the Schedule of Prices, there are one or more Bills of Quantities, edit to read "Schedule of Prices and Bill of Quantities".

- 14.2 The Bidder shall fill in prices for all items of the design and construction of the Works described in the Schedule of Prices¹¹. The Bidder shall propose a lump sum fixed price for all design services. In addition, the Bidder shall fill in prices for all construction of the Works described in the Schedule of Prices. Items against which no price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the prices in the Schedule of Prices.¹²
- 14.3 The price to be quoted in the Letter of Bid, in accordance with ITB 12.1, shall be the total price of the Bid, excluding any discounts offered. Required details of the prices to be presented by the Bidders are provided in the **BDS**. This price, subject to any adjustments pursuant to the Conditions of Contract (the sections making up Part II of these Bidding Documents), will be the Accepted Contract Amount.
- 14.4 The Bidder shall quote any unconditional discounts and the methodology for their application in the Letter of Bid, in accordance with ITB 12.1.
- 14.5 The Contract prices quoted by the Bidder are not subject to adjustment during the initial period specified in the **BDS**. Beyond that initial period, adjustments may be allowed if so specified in the **BDS**. In such a case, the Bidder shall furnish the indices and weightings for the price adjustment formulae in the “Schedule of Adjustment Data” as given in the Appendix to Bid in Section IV, Bidding Forms, and the Employer may require the Bidder to justify its proposed indices and weightings during negotiations.
- 14.6 If so indicated in the **BDS**, Bids are being invited for individual lots or for any combination of lots (packages). Bidders wishing to offer any price reduction for the award of more than one lot shall specify in their Bid the price reductions applicable to each package, or alternatively, to individual lots within the package. Price reductions or discounts shall be submitted in accordance with ITB 14.4,

¹¹ In the event that, in addition to the Schedule of Prices, there are one or more Bills of Quantities, edit to read “Schedule of Prices and Bill of Quantities”.

¹² In the event that the Schedule of Prices is to include Bills of Quantities for which unit rates are to be provided by Bidders, amend this paragraph as follows:

“In addition, the Bidder shall fill in rates and prices for all construction of the Works described in the Schedule of Prices and Bill of Quantities. Rates quoted in the priced Bill of Quantities will be used when preparing possible variation orders and for the calculation of Interim Payments. Items against which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the rates and prices in the Schedule of Prices and Bill of Quantities.”

provided the Bids for all lots are submitted and opened at the same time.

- 14.7 Clause 21 of the Conditions of Particular Application (Section VI) sets forth the tax provisions of the Contract. Bidders should review this clause carefully in preparing their Bid.
- 15. Currencies of Bid and Payment** 15.1 The currency(ies), or combinations thereof, of the Bid and of the payments shall be as specified in the **BDS**.
- 16. Documents Comprising the Technical Offer** 16.1 The Bidder shall furnish a Technical Offer (including Design Proposal), statement of work methods, equipment, personnel, schedule and any other information as stipulated in the **BDS** and in Section IV, Bidding Forms, in sufficient detail to demonstrate the adequacy of the Bidder's proposal to meet the design and construction requirements of the Employer's Requirements (Section IX) and the completion time.
- 17. Documents Establishing the Qualifications of the Bidder** 17.1 In accordance with Section III, Evaluation and Qualification Criteria, to establish that the Bidder continues to meet the qualification criteria used at the time of pre-qualification, the Bidder shall provide in the corresponding information sheets included in Section IV, Bidding Forms, updated information on any assessed aspect that changed from that time.
- 18. Period of Validity of Bids** 18.1 Bids shall remain valid for the period specified in the **BDS** after the Bid submission deadline date specified in the **BDS 22.1**. A Bid valid for a shorter period shall be rejected by the Employer as non-responsive.
- 18.2 In exceptional circumstances, prior to the expiration of the Bid validity period, the Employer may request Bidders to extend the period of validity of their Bids. The request and the Bidder's responses shall be made in writing. The Bid Security shall also be extended for twenty-eight (28) days beyond the deadline of the extended Bid validity period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its Bid, except if the award is delayed by a period exceeding eighty-four (84) days beyond the expiry of the initial Bid validity; in which case, the Contract price shall be the Bid price adjusted by the factor specified in the **BDS**.
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19. Bid Security

- 19.1 The Bidder shall furnish as part of its Bid, a bid security in original form and in the amount and currency specified in the **BDS** (the “Bid Security”). If a Bidder is bidding on multiple lots or is submitting alternative Bids, only one Bid Security is required for all lots and for both base and alternative Bids.
- 19.2 The Bid Security shall be a demand guarantee at the Bidder’s option, in any of the following forms:
- (a) an unconditional bank guarantee; or
 - (b) an irrevocable letter of credit,
- from a reputable source from an eligible country (determined in accordance with ITB 4). If the unconditional bank guarantee or irrevocable letter of credit is issued by a bank located outside the Employer’s country, the issuer shall have a correspondent financial institution located in the Employer’s country, satisfactory to the Employer, to make it enforceable. In the case of a bank guarantee, the Bid Security shall be submitted either using the Bid Security Form included in Section IV, Bidding Forms, or in another substantially similar format approved by the Employer prior to Bid submission. In either case, the form must include the complete name of the Bidder. The Bid Security shall be valid for twenty-eight (28) days beyond the original validity period of the Bid, or beyond any period of extension if requested under ITB 18.2.
- 19.3 Any Bid not accompanied by an enforceable and compliant Bid Security shall be rejected by the Employer as non-responsive.
- 19.4 The Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder’s furnishing of the Performance Security.
- 19.5 The Bid Security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required Performance Security.
- 19.6 The Bid Security may be forfeited:
- (a) if a Bidder withdraws its Bid during the period of Bid validity specified by the Bidder in the Letter of Bid, except as provided in ITB 18.2;
 - (b) if the Bidder does not accept the correction of its Bid
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Price pursuant to ITB Sub-Clause 31.2; or

- (c) if the successful Bidder fails to:
 - (i) sign the Contract in accordance with ITB 40.2; or
 - (ii) furnish a Performance Security in accordance with Sub-Clause 4.2 of the Contract as described in ITB 41.

19.7 The Bid Security of a joint venture or other consortium shall be in the name of the entity that submits the Bid. If the joint venture or other consortium has not been legally constituted at the time of bidding, the Bid Security shall be in the names of all future members as named in the letter of intent referred to in ITB 4.1.

20. Format and Signing of Bid

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

20.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the **BDS** and shall be attached to the Bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Bid where entries or amendments have been made shall be signed or initialed by the person signing the Bid.

20.3 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.

D. Submission and Opening of Bids

21. Submission, Sealing and Marking of Bids

21.1 Bidders shall submit their Bids by mail or by hand. The Bidder shall enclose the original and all copies of the Bid, including alternative Bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the

envelopes as **ORIGINAL**, **ALTERNATIVE** and **COPY**. These envelopes containing the original and the copies shall then be enclosed in one single envelope. The alternative Bid must be placed by itself in a separate envelope. If multiple alternative Bids are submitted, they all must be placed in one single separate envelope.

21.2 The inner and outer envelopes shall:

- (a) bear the name and address of the Bidder;
- (b) be addressed to the Employer in accordance with ITB 22.1;
- (c) bear the specific identification of this bidding process indicated in the **BDS** 1.1; and
- (d) bear a warning not to open before the time and date for Bid opening.

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

22. Deadline for Submission of Bids

22.1 Bids must be received by the Employer at the address and no later than the date and time indicated in the **BDS**.

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

23. Late Bids

23.1 The Employer will not consider any Bid that arrives after the deadline for submission of Bids, in accordance with ITB 22. Any Bid received by the Employer after the deadline for submission of Bids shall be declared late, rejected, and returned unopened to the Bidder.

24. Withdrawal, Substitution, and Modification of Bids

24.1 A Bidder may withdraw, substitute, or modify its Bid after it has been submitted but before the deadline for submission by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 20.2. The corresponding substitution or modification of the Bid must accompany the respective written notice. All notices, substitutions and modifications must be:

- (a) prepared and submitted in accordance with ITB 20 and ITB 21 (except that withdrawal notices do not require

copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” “SUBSTITUTION,” or “MODIFICATION;” and

- (b) received by the Employer prior to the deadline prescribed for submission of Bids, in accordance with ITB 22.

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

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

25. Bid Opening

25.1 The Employer shall open the Bids in public, in the presence of Bidders’ designated representatives who choose to attend, and at the address, date and time specified in the **BDS**. If electronic bidding is permitted, in accordance with ITB 21.1, the procedure for opening them shall be as specified in the **BDS**.

25.2 First, envelopes marked **WITHDRAWAL** shall be opened and read out and the envelope with the corresponding Bid shall not be opened, but returned to the Bidder. No Bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Bid opening. Next, envelopes marked **SUBSTITUTION** shall be opened and read out and exchanged with the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Bid opening. Envelopes marked **MODIFICATION** shall be opened and read out with the corresponding Bid. No Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Bid opening. Only Bids that are opened and read out at Bid opening shall be considered further.

25.3 All other envelopes shall be opened one at a time, and the official shall read aloud: the name of the Bidder and whether there is a modification; the Bid price(s), including any discounts and alternative offers; the presence of a Bid Security; and any other details as the Employer may

consider appropriate. Only discounts and alternative offers read out at Bid opening shall be considered for evaluation. No Bid shall be rejected at Bid opening except for late Bids, in accordance with ITB 23.1.

- 25.4 The Employer shall prepare a record of the Bid opening that shall include, at a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid price, per lot if applicable, including any discounts and alternative offers; and the presence or absence of a Bid Security. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders.

E. Evaluation and Comparison of Bids

26. Confidentiality; Undue Influence

- 26.1 Information relating to the evaluation of Bids and recommendations of Contract award shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on Contract award is announced pursuant to ITB 39.1. The undue use by any Bidder of confidential information related to the process may result in the rejection of its Bid.
- 26.2 Any attempt by a Bidder to influence the Employer in the evaluation of the Bids or Contract award decisions may result in the rejection of its Bid and may subject the Bidder to the provisions of the Government's, the Employer's and MCC's anti-fraud and corruption policies..
- 26.3 Notwithstanding ITB 26.2, from the time of Bid opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the bidding process, it may do so in writing at the address specified in the **BDS**.

27. Clarification of Bids

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

27.2 If a Bidder does not provide clarifications of its Bid by the date and time set in the Employer's request for clarification, its Bid may be rejected.

**28. Deviations,
Reservations, and
Omissions**

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

- (a) "*deviation*" is a departure from the requirements specified in the Bidding Documents;
- (b) "*reservation*" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Documents; and
- (c) "*omission*" is the failure to submit part or all of the information or documentation required in the Bidding Documents.

**29. Determination of
Responsiveness**

29.1 The Employer's determination of a Bid's responsiveness is to be based on the contents of the Bid itself, as defined in ITB 11.

29.2 A substantially responsive Bid is one that meets the requirements of the Bidding Documents without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,

- (a) if accepted, would
 - (i) affect in any substantial way the scope, quality, or performance of the design and construction of the Works specified in the Contract; or
 - (ii) limit in any substantial way, inconsistent with the Bidding Documents, the Employer's rights or the Bidder's obligations under the Contract; or
- (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Bids.

29.3 The Employer shall examine the technical aspects of the Bid submitted in accordance with ITB 16, in particular, to confirm that all requirements of Section IV, Bidding Forms, Section VIII, Schedules of Prices¹³, Section IX, Employer's Requirements, and Section X, Drawings, and have been met without any material deviation, reservation, or

¹³ In the event that, in addition to the Schedule of Prices, there is one or more Bill(s) of Quantities, edit to read "Schedule of Prices and Bill of Quantities".

omission.

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

**30. Nonmaterial
Nonconformities**

30.1 Provided that a Bid is substantially responsive, the Employer may waive any nonconformities in the Bid that do not constitute a material deviation, reservation or omission.

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

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

**31. Correction of
Arithmetical Errors**

31.1 Provided that the Bid is substantially responsive, the Employer shall correct arithmetical errors on the following basis:

- (a) if there is a discrepancy between the lump sum price for a line item and the total lump sum price that is obtained by adding the lump sum prices for all line items, the line item lump sum price shall prevail and the total lump sum price shall be corrected, unless in the opinion of the Employer there is an obvious misstatement of the lump sum price for a line item, in which case the total lump sum price as quoted in the priced Schedule of Prices shall govern and the lump

sum price for the line item shall be corrected;¹⁴

- (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

31.2 If the Bidder that submitted the lowest-evaluated Bid does not accept the correction of errors, its Bid shall be rejected and the Bid Security may be forfeited in accordance with ITB Sub-Clause 19.6.

32. Conversion to Single Currency

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

33. No Margin of Preference

33.1 A margin of preference for domestic Bidders shall not apply.

34. Evaluation of Bids

34.1 The Employer shall use the criteria and methodologies listed in Section III, Evaluation and Qualification Criteria.

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

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

34.4 If the Bid, which results in the lowest evaluated Bid price, is seriously unbalanced or front loaded in the opinion of the

¹⁴ In the event that, in addition to the Schedule of Prices, there is also one or more Bill(s) of Quantities, add the following as sub-paragraph (b), renumber the other sub-paragraphs accordingly, and in the renumbered sub-paragraph (d), refer to "(a) to (c) above".

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

Employer, the Employer may require the Bidder to produce detailed price analyses for any or all items of the Schedule of Prices¹⁵ to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the Employer may require that the amount of the Performance Security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.

34.5 At any time during the evaluation process, the Employer reserves the right to conduct a verification of market-reasonableness of the rates and prices offered, and a negative determination (either unreasonably high or unreasonably low) may be a reason for rejection of the Bid at the discretion of the Employer. The Bidder shall not be permitted to revise its Bid after such determination.

35. Comparison of Bids

35.1 The Employer shall compare all substantially responsive Bids to determine the lowest evaluated Bid, in accordance with the Evaluation Criteria listed in Section III, Evaluation and Qualification Criteria.

36. Qualification of the Bidder

36.1 The Employer shall determine to its satisfaction whether the Bidders meet the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

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

36.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the Bid.

37. Employer's Right to Accept Any Bid, and to Reject Any or All Bids

37.1 Subject to MCC's Program Procurement Guidelines and notwithstanding ITB 38.1, the Employer reserves the right to accept or reject any Bid, and to annul the bidding process and reject all Bids at any time prior to Contract award, without thereby incurring any liability to Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for the Employer's actions. In case of annulment, all Bids submitted and specifically, Bid securities, shall be

¹⁵ In the event that, in addition to the Schedule of Prices, there is one or more Bill(s) of Quantities, edit to read "Schedule of Prices and Bill of Quantities".

promptly returned to the Bidders.

F. Award of Contract

- 38. Award Criteria** 38.1 Subject to ITB 37.1, the Employer shall award the Contract to the Bidder determined to be qualified to perform the Contract satisfactorily and whose offer is substantially and technically responsive to the Bidding Documents and whose Bid has been determined to be the lowest evaluated Bid.
- 39. Notification of Award** 39.1 Prior to the expiration of the period of Bid validity, the Employer shall notify the successful Bidder, in writing, that its Bid has been accepted. The Letter of Acceptance will specify the Accepted Contract Amount and the requirement for the Contractor to remedy any defects as prescribed by the Contract. At the same time, the Employer shall also notify all other Bidders of the results of the bidding and shall publish in *UNDBOnline*, in *dgMarket* and on the Employer's website the results identifying the Bid and lot numbers and the following information:
- (i) the name of each Bidder who submitted a Bid;
 - (ii) the name of the winning Bidder;
 - (iii) the winning Bid Price; and
 - (iv) the duration and the summary scope of the Contract awarded.
- 39.2 Until a formal Contract is prepared and executed, the Letter of Acceptance shall constitute a binding Contract.
- 39.3 The Employer shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 39.1, requests in writing the grounds on which its Bid was not selected.
- 39.4 Any Bidder has the right to complaint and appeal, but must do so in the manner and format as set down in the Bid challenge system specified in the **BDS**.
- 40. Signing of Contract** 40.1 Promptly after notification, and after providing for the time period for receipt of Bid Challenges, the Employer shall send the successful Bidder the Contract Agreement.
- 40.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and
-

return it to the Employer.

**41. Performance
Security**

41.1 Subject to ITB 34.4, within twenty-eight (28) days of the receipt of the Letter of Acceptance, the successful Bidder shall furnish the Performance Security pursuant to Sub-Clause 4.2 of the Contract, using for that purpose the Performance Security Form included in Section VII, Forms of Agreement and Security, or another form acceptable to the Employer. A foreign institution providing a Performance Security shall have a correspondent financial institution located in the Employer's country, satisfactory to the Employer.

41.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or to sign the Contract within twenty-eight (28) days of the receipt of the Letter of Acceptance shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security. In that event the Employer may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.

**42. Compact
Conditionalities**

42.1 Bidders are advised to examine and consider carefully the provisions that are set forth in Annex A (Additional Provisions) attached to the Conditions of Particular Application of the Contract as these are a part of the Government's and the Employer's obligations under the Compact and related documents which, under the terms of the Compact and related documents, are required to be transferred onto any bidder, contractor or subcontractor who partakes in procurement or subsequent contracts in which MCC funding is involved.

42.2 The provisions set forth in Annex A attached to the Conditions of Particular Application of the Contract apply during the bidding procedures as well as throughout the performance of the Contract.

SECTION II

**BID DATA SHEET
(BDS)**

Bid Data Sheet

A. General	
ITB 1.1	<p>The name of the Employer is: <u>[insert name]</u> .</p> <p>The identification number of the IFB is: <u>[insert number of IFB]</u> .</p> <p>The name of the procurement and of the contract comprising this IFB is: <u>[insert information]</u> .</p>
ITB 2.1	<p>The name of the Country and Government receiving the MCC Funding is: <u>[insert name]</u> .</p> <p>The approximate amount of the MCC Funding is: <u>[insert amount]</u> .</p> <p>The name of the project to be funded under the Compact is: <u>[insert name]</u> .</p>
ITB 2.2	<p>The grant period of the Compact is: <u>[insert number of years]</u>, dating from <u>[insert date of Compact's Entry into Force]</u>.</p> <p>The Compact program is comprised of: <u>[insert brief description of Compact program]</u>.</p>
ITB 4.6	<p>As of the date of these Bidding Documents, the countries that are subject to sanction or restriction by law or policy of the United States include [Cuba, Iran, North Korea, Sudan and Syria].</p> <p>[The list of countries must be confirmed and updated as necessary each time this SBD is used in a specific procurement. For example, at the time this version of this SBD was finalized, it was expected North Korea would be removed from the list.]¹⁶</p>
B. Contents of Bidding Documents	
ITB 6.3	<p>A Background Information Document <u>[will / will not]</u> be provided by the Employer.</p> <p>If a Background Information Document is to be provided, it will contain the following information and be provided to Bidders in the following manner:</p> <p><u>[insert informational contents]</u></p> <p><u>[insert means of distribution]</u></p>
ITB	For purposes of clarifications , the Employer's address is:

¹⁶ This list is subject to revision. Please check with the relevant attorney in the MCC Office of General Counsel prior to the use of this form in any specific Bidding Documents.

7.1	<p>Attention: <u>[insert information]</u></p> <p>Street Address: <u>[insert information]</u></p> <p>City: <u>[insert information]</u></p> <p>Country: <u>[insert information]</u></p> <p>Facsimile number: <u>[insert information]</u></p> <p>Electronic mail address: <u>[insert information]</u></p> <p>The minimum number of days prior to the deadline for submission of Bids to receive any request for clarification is: <u>[insert number of days]</u> days.</p> <p>The minimum number of days prior to the deadline for submission of Bids that the Employer will respond is: <u>[insert number of days]</u> days.</p>
ITB 7.2	<p>A Site visit <u>[shall / shall not]</u> be organized.</p> <p>[If a Site visit is to be organized, complete the following:]</p> <p>The Site visit shall take place at the following date, time and place:</p> <p>Date: <u>[insert information]</u></p> <p>Time: <u>[insert information]</u></p> <p>Place: <u>[insert information]</u></p>
ITB 7.4	<p>A pre-bid meeting <u>[shall / shall not]</u> be held.</p> <p>[If a pre-bid meeting is to be organized, complete the following:]</p> <p>The pre-bid meeting shall take place at the following date, time and place:</p> <p>Date: <u>[insert information]</u></p> <p>Time: <u>[insert information]</u></p> <p>Place: <u>[insert information]</u></p>
C. Preparation of Bids	
ITB 10.1	Bids shall be submitted in the following languages: [<u>“English” or “English and [another language]”</u>].
ITB 11.1 (i)	The Bidder shall submit with its Bid the following additional documents: <u>[insert details here or “NA”]</u>
ITB 13.1	Alternative Bids <u>[are/are not]</u> permitted. If Alternative Bids are permitted, each page of any alternative Bid must bear the marking “Alternative Bid”.

<p>ITB 13.2</p>	<p>Alternative times for completion <u>[are/are not]</u> permitted. If alternative times for completion are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria.</p>
<p>ITB 13.4</p>	<p>Alternative technical solutions <u>[shall/shall not]</u> be permitted for the following parts of the design and construction of the Works: <u>[Fill in detail of those parts for which Bidders will be allowed to submit alternatives]</u>. If alternative technical solutions are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria.</p>
<p>ITB 14.3</p>	<p>The price quoted by the Bidder shall include the following details: <u>[insert details]</u>.¹⁷</p>
<p>ITB 14.5</p>	<p>The prices quoted by the Bidder shall not be subject to adjustment during the initial period of <u>[insert number]</u> months after the Contract is awarded. Following the initial period, prices will be subject to adjustment every <u>[insert number]</u> months. If prices are subject to adjustment, the indices and weightings for the price adjustment formulae will be set by the Bidder as specified in the Schedule of Adjustment Data of the Appendix to Bid in Section IV, Bidding Forms and as accepted by the Employer.</p>
<p>ITB 14.6</p>	<p>Bids <u>[are/are not]</u> being invited for lots. If Bids are being invited for lots, the individual lots and permitted combinations are as follows: <u>[Insert relevant information.]</u> If Bids are permitted for multiple lots, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria.</p>
<p>ITB 15.1</p>	<p>The currency(ies) of the Bid shall be as follows: <u>[insert details here]</u>. The currency(ies) of the payment shall be as follows: <u>[insert details here]</u>.</p>
<p>ITB 16.1</p>	<p>Other documents comprising the Technical Offer shall include the following: <u>[insert additional requirements]</u></p>
<p>ITB 18.1</p>	<p>The Bid validity period shall be: <u>[insert number of days]</u> days following the Bid submission deadline.</p>
<p>ITB 18.2</p>	<p>The adjustment factor is: <u>[insert adjustment factor]</u></p>
<p>ITB 19.1</p>	<p>The form, amount and currency of the Bid Security shall be: <u>[insert details here]</u>.</p>

¹⁷ Add reference to the Schedule of Prices and Bill of Quantities as may be appropriate.

ITB 20.1	In addition to the original of the Bid, the number of required copies is: <u>[insert number of copies]</u> in English and <u>[insert number of copies]</u> in <u>[specify other language]</u> .
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ITB 20.2	The written confirmation of authorization to sign on behalf of the Bidder shall consist of: <u>[insert details here]</u> .
---------------------	--

D. Submission and Opening of Bids

ITB 22.1	<p>For Bid submission purposes only, the submission address is :</p> <p>Attention: <u>[insert information]</u></p> <p>Street Address: <u>[insert information]</u></p> <p>City: <u>[insert information]</u></p> <p>Country: <u>[insert information]</u></p> <p>Facsimile Number: <u>[insert information]</u></p> <p>The deadline for Bid submission is:</p> <p>Date: <u>[insert information]</u></p> <p>Time: <u>[insert information]</u></p>
---------------------	--

ITB 25.1	<p>The Bid opening shall take place at:</p> <p>Street Address: <u>[insert information]</u></p> <p>City : <u>[insert information]</u></p> <p>Country: <u>[insert information]</u></p> <p>Date: <u>[insert information]</u></p> <p>Time: <u>[insert information]</u></p>
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E. Evaluation and Comparison of Bids

ITB 26.3	<p>Any appropriate correspondence may be addressed to the Employer at:</p> <p>Attention: <u>[insert information]</u></p> <p>Street Address: <u>[insert information]</u></p> <p>City: <u>[insert information]</u></p> <p>Country: <u>[insert information]</u></p> <p>Facsimile number: <u>[insert information]</u></p> <p>Electronic mail address: <u>[insert information]</u></p>
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ITB 32.1	<p>The currency that shall be used for Bid evaluation and comparison is: <u>[insert details here]</u>.</p> <p>The basis for conversion shall be: [Specify the source for the exchange rate, such as the Central Bank rate, a published rate that is widely available,</p>
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	etc.]
F. Award of Contract	
ITB 39.4	The Bid Challenge Procedure is <u>[insert in brief]</u> . Details can be found at <u>[insert web address]</u> .

SECTION III

EVALUATION AND QUALIFICATION CRITERIA

Evaluation and Qualification Criteria

This Section contains criteria that the Employer will use to qualify Bidders, evaluate Technical Offers, and evaluate Bids. To demonstrate its qualifications and develop its Technical Offer, each Bidder shall provide all the information requested in the forms provided in Section IV, Bidding Forms.

A. Eligibility and Qualifications

1. Information on Bidders

The Technical Review Panel shall first establish that the Bidders continue to meet the eligibility and qualification criteria used at the time of pre-qualification in accordance with the eligibility and qualifications factors set out in part D of this Section III¹⁸:

1. **Eligibility**
2. **Historical Contract Performance**
3. **Financial Situation**
4. **Experience** -- general, similar and specific -- as it relates to both design and construction of similar projects.

2. Personnel

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

No.	Position	Total Related Work Experience (years)	Experience in Similar Designs and/or Works (years)
1			
2			
3			
4			
5			

¹⁸ In the event of procurement without pre-qualification, edit this paragraph by deleting the following: "continue to" and "used at the time of pre-qualification".

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

3. Equipment

The Bidder must demonstrate that it has or can get access to the key equipment listed hereafter:

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

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

Submittals of Bidders found by the Technical Review Panel not to meet the eligibility requirements and the financial and technical capabilities qualifications criteria shall not be considered further.

B. Evaluation of Technical Offer

1. Technical Offer

The Technical Offer shall be comprised of the Design Proposal for the Works and other forms as called for in Section IV, Bidding Forms. The Employer, with the assistance of the Technical Review Panel, shall then consider the Technical Offers of the Bidders who have been found qualified. In so doing, they will examine and analyze the technical aspects of each Bid on the basis of the information supplied by Bidders, taking into account the completeness, consistency and level of detail provided. Consideration shall be given to the following:

1. **Adequacy of Design Proposal with Employer's Requirements**, as it relates to the Works, in accordance with ITB 16.
2. **Adequacy of Technical Offer with Works Requirements**, as it relates to the whole of the Works, in accordance with ITB 16.

[In the event that there are multiple lots or sections of the Works, the above may be adapted to take that into account.]

3. **Adequacy of Environmental & Social Impact Documents**, as submitted by the Bidder.

4. **Adequacy of Health & Safety Documents**, as submitted by the Bidder.

Each element of the Technical Offer enumerated above shall be considered on a pass/fail basis. Technical Offers of Bidders found by the Technical Review Panel not to be substantially responsive shall not be considered further.

2. Alternative Completion Times

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

3. Technical Alternatives

Technical Alternatives, if permitted under ITB 13.4, will be evaluated as follows:
.....
.....

4. Multiple Lots

Multiple lots, if permitted under ITB 34.3, will be evaluated as follows:
.....
.....

C. Evaluation of Price Proposal

The Technical Review Panel shall then consider the Bids of qualified Bidders whose Technical Offers have been determined to be substantially responsive. The Technical Review Panel shall first determine whether the financial submissions are complete and compliant with the Instructions to Bidders. Then, they shall examine the following:

1. The Bid Price, excluding Provisional Sums and the provision, if any, for contingencies in the Summary Schedule of Prices¹⁹, but including Daywork items, where priced competitively.
2. Price adjustment for correction of arithmetic errors in accordance with ITB 31.1.
3. Price adjustment due to discounts offered in accordance with ITB 14.4, if any.
4. Adjustment for nonconformities in accordance with ITB 30.3.

¹⁹ In the event that, in addition to the Schedule of Prices, there is one or more Bill(s) of Quantities, edit to read "Schedule of Prices and Bill of Quantities".

As provided in the Schedule of Prices²⁰, Bidders shall submit:

- (a) a lump sum fixed price for the Works, including design and construction; plus
- (b) **[in the event of Bills of Quantities for construction of all or sections of the Works, add, as may be necessary, e.g., “fixed price for the Works resulting from multiplying unit rates provided by the Bidder by quantities estimated by the Employer in the Bill of Quantities”];**
- (c) **[in the event of multiple lots or sections of the Works, add, as may be necessary for each lot or section].**

This **[sum of items (a), (b), and (c) above]** is the total Bid Price for each Bidder and, subject to any adjustments pursuant to the Instructions to Bidders and Conditions of Contract, shall be the Accepted Contract Amount of the successful Bidder.

The Technical Review Panel shall recommend award of the Contract to the Bidder with the lowest evaluated Bid that has been determined to be eligible, qualified, and substantially and technically responsive.

²⁰ In the event that, in addition to the Schedule of Prices, there is one or more Bill(s) of Quantities, edit to read “Schedule of Prices and Bill of Quantities”.

D. Qualification

Factor	1. Eligibility					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture or Other Consortium			
			All members combined	Each member	At least one member	
1.1 Nationality	Nationality in accordance with ITB 4.2.	Must meet requirement	Existing or intended joint venture or other consortium must meet requirement	Must meet requirement	N / A	Bidder's Information Sheet and Joint Venture Information Sheet, with attachments
1.2 Conflict of Interest	No conflicts of interests per ITB 4.3.	Must meet requirement	Existing or intended joint venture or other consortium must meet requirement	Must meet requirement	N / A	Letter of Bid
1.3 Ineligibility	Not having been deemed ineligible based on any criteria set forth in ITB 4.	Must meet requirement	Existing or intended joint venture or other consortium must meet requirement	Must meet requirement	N / A	Letter of Bid

1.4 Government Owned Entity	Compliance with conditions of ITB 4.4.	Must meet requirement	Must meet requirement	Must meet requirement	N / A	Bidder's Information Sheet and Joint Venture Information Sheet, with attachments
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Factor	2. Historical Contract Non-Performance					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture or Other Consortium			
All members combined			Each member	At least one member		
<p>2.1 History of Non-performing Contracts</p>	<p>Non-performance of a contract did not occur within the last five (5) years prior to the deadline for Bid submission based on all information on fully settled disputes or litigation. A fully settled dispute or litigation is one that has been resolved in accordance with the dispute resolution mechanism under the respective contract, and where all appeal instances available to the Bidder have been exhausted.</p>	<p>Must meet requirement by itself or as member to past or existing joint venture or other consortium</p>	<p>N / A</p>	<p>Must meet requirement by itself or as member to past or existing joint venture or other consortium</p>	<p>N / A</p>	<p>Form: Contract Performance</p>

2.2 Failure to Sign a Contract	Failure to sign a contract after submitting a bid security has not occurred in the past five (5) years. Any deviation should be explained in the enclosed Contract Non-Performance form.	Must meet requirement	Must meet requirement	Must meet requirement	N / A	Form: Contract Performance
2.3 Pending Litigation	All pending litigation shall in total not represent more than ten percent (10%) of the Bidder's net worth and shall be treated as resolved against the Bidder.	Must meet requirement by itself or as member to past or existing joint venture or other consortium	N / A	Must meet requirement by itself or as member to past or existing joint venture or other consortium	N / A	Form: Pending Litigation

Factor	3. Financial Situation					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture or Other Consortium			
			All members combined	Each member	At least one member	
3.1 Historical Financial Performance	Submission of audited financial statements including balance sheets, income statements, and cash flow statements, or, if not required by the law of the Bidder's country, other financial statements acceptable to the Employer, for the last five (5) years to demonstrate the current soundness of the Applicant's financial position and its prospective long term profitability. a.1 Average coefficient of Current ratio (Current Assets/Current Liabilities) \geq [insert ratio] a.2 Average coefficient of Debt ratio (Total Debt / Total Assets) \leq [insert ratio] .	Must meet requirement	N / A	Must meet requirement	N / A	Form: Financial Situation, with attachments

Factor	3. Financial Situation					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture or Other Consortium			
				All members combined	Each member	At least one member
3.2 Average Annual Construction Turnover	Minimum average annual construction turnover of USD [insert dollar amount] or equivalent, calculated as total certified payments received for contracts in progress or completed, within last five (5) years.	Must meet requirement	Must meet requirement	Must meet twenty-five percent (25%) of the requirement	Must meet fifty-five percent (55%) of the requirement	Form: Average Annual Construction Turnover

<p>3.3 Financial Resources</p>	<p>Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet: (i) the following cash-flow requirement: cash flow amount of USD [insert dollar amount] or equivalent; and (ii) the overall cash flow requirements for this Contract and its current commitments.</p>	<p>Must meet requirement</p>	<p>Must meet requirement</p>	<p>Must meet twenty-five percent (25%) of the requirement</p>	<p>Must meet fifty-five percent (55%) of the requirement</p>	<p>Forms: Financial Resources; Current Contract Commitments/Works in Progress</p>
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Factor	4. Experience					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture or Other Consortium			
All members combined			Each member	At least one member		
<p>4.1 General Design Experience</p>	<p>Experience under contracts in the role of designer for at least the last five (5) years prior to Bid submission deadline, and with activity in at least nine (9) months each year.</p>	<p>Must meet requirement</p>	<p>N/A</p>	<p>Must meet requirement</p>	<p>N/A</p>	<p>Form: General Design Experience</p>
<p>4.2 Similar Design Experience</p>	<p>Participation as designer in at least two (2) contracts within the last five (5) years, each with a value of at least USD [insert dollar amount] or equivalent, that have been successfully and substantially completed and that are similar to the proposed Works. Similarity shall be based on the physical size, complexity, methods, technology or other characteristics as described in Section VIII, Employer’s Requirements.</p>	<p>Must meet requirement</p>	<p>Must meet requirements for all characteristics</p>	<p>N / A</p>	<p>Must meet requirement for all characteristics</p>	<p>Form: Similar Design Experience</p>

4.3 Specific Design Experience in Key Activities	For the above or other contracts executed during the period stipulated in 4.2 above, experience in the following key activities: a. [insert key activities] b. c.	Must meet requirements	Must meet requirements	N / A	Must meet requirements	Form: Specific Design Experience in Key Activities
4.4 General Construction Experience	Experience under contracts in the role of contractor, subcontractor, or management contractor for at least the last five (5) years prior to Bid submission deadline, and with activity in at least nine (9) months each year.	Must meet requirement	N/A	Must meet requirement	N/A	Form: General Construction Experience

4.5 Similar Construction Experience	Participation as contractor, management contractor, or subcontractor, in at least [insert number] contracts within the last five (5) years, each with a value of at least USD [insert dollar amount] or equivalent, that have been successfully and substantially completed and that are similar to the proposed Works. Similarity shall be based on the physical size, complexity, methods, technology or other characteristics as described in Section VIII, Employer's Requirements.	Must meet requirement	Must meet requirement	N / A	Must meet requirement	Form: Specific Construction Experience
4.6 Specific Construction Experience in Key Activities	For the above or other contracts executed during the period stipulated in 4.5 above, experience in the following key activities: a. [insert key activities] b. c. d.	Must meet requirements	Must meet requirements	N / A	Must meet the following requirements (can be specialist subcontractor): 55% of the requirements.	Form: Specific Construction Experience in Key Activities

SECTION IV

BIDDING FORMS

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A. Bid Submission Forms

Form of Letter of Bid

Name of Contract: [Insert name of project] (Design-Build)

To: The Employer/Procurement Agent
 Address

Gentlemen:

We, the undersigned, declare that:

1. We have examined and we have no reservations to the Bidding Documents, including addenda thereto issued in accordance with the Instructions to Bidders.

2. In accordance with the Conditions of Contract, Employer's Requirements, Drawings, and Schedules of Prices and Addenda Nos. **[insert Addenda Nos.]** for the execution of the above-named Works, we offer to design, construct and install such Works and remedy any defects therein in conformity with the Conditions of Contract, Employer's Requirements, Drawings, Schedules of Prices, and Addenda for the sum of **[insert amount in numbers and words]** as specified in the Appendix to Bid or such other sums as may be ascertained in accordance with the conditions.²¹

In case we are awarded another lot in addition to this lot, we will provide a discount of **[insert amount of discount in numbers and words]** to be applied as follows: **[describe the methodology for applying the discount.]**

3. We acknowledge that the Appendix to Bid forms part of our Bid.

4. We undertake, if our Bid is accepted, to obtain a Performance Security in accordance with the Bidding Documents and commence the Works as soon as is reasonably possible after the receipt of the Engineer's notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix to Bid.

5. We agree to abide by this Bid until the date specified in ITB Clause 18 **[insert date]**, and it shall remain binding upon us and may be accepted at any time before that date.

6. Unless and until a formal Contract is prepared and executed, this Bid, together with your written acceptance thereof, shall constitute a binding contract between us.

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

8. We certify that we, including any subcontractors and suppliers for any part of the Contract have or will have nationalities from eligible countries in accordance with ITB 4.2.

²¹ In the event that, in addition to the Schedule of Prices, there is one or more Bill(s) of Quantities, edit in two places to read "Schedule of Prices and Bill of Quantities".

9. We certify that we and any subcontractors and suppliers for any part of the Contract comply with the requirements of ITB Clauses 3 and 4 of the Bidding Documents. By that, we mean that we, including any subcontractors or suppliers for any part of the Contract, do not have any conflict of interest in accordance with ITB 4.3; have not been declared ineligible as described in ITB 4.6 and ITB 3.1(c); and have not been excluded as a result of the laws of [**Country**] or official regulations, or by an act of compliance with a decision of the United Nations Security Council in accordance with ITB 4.7.

10. Commissions or gratuities, if any, paid or to be paid by us to agents relating to this Bid, and to Contract execution if we are awarded the Contract, are listed below:

Name and address of agent	Amount and currency	Purpose of commission or gratuity
_____	_____	_____
_____	_____	_____

(if none, state "none")

11. We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in bribery.

Dated this _____ day of _____ 20 _____

Signature _____ In the capacity of _____

Duly authorized to sign Bids for and on behalf of _____

[in block capitals or typed]

Address: _____

Witness: _____

Address: _____

Occupation: _____

Appendix to Bid

Bidders should fill in the remaining blank spaces in the Appendix to Bid. Bidders are required to sign each page of the Appendix to Bid. The Appendix to Bid of the successful Bidder shall become Annex B to the Conditions of Particular Application.

Conditions of Contract Sub-Clause

Parties and Persons	1.1.2.2	Employer is: <u>[insert name]</u> .
	1.1.2.4	Engineer is: <u>[insert information]</u> _____.
Dates, Tests, Periods and Completion	1.1.3.3	Time for Completion from the Commencement Date is: <u>[insert period or date]</u> .
Defects Notification Period	1.1.3.7	Defects Notification Period shall be: <u>[insert duration]</u> .
Works and Goods	1.1.5.6	Sections of the Works shall be as follows: <u>[insert information]</u> _____.
Interpretation	1.2	Profit shall be: <u>[insert percent]</u> of the Cost ²² .
Communications	1.3(a)	Agreed systems of electronic transmission are: <u>[insert information]</u> _____.
	1.3(b)	Address of the Employer is: <u>[insert information]</u> _____.
	1.3(b)	Address of the Engineer is: <u>[insert information]</u> _____.
	1.3(b)	Address of the Contractor is: <u>[insert information]</u> _____.
Law and Language	1.4	Law in force governing the Contract is that of: <u>[insert country]</u> .
	1.4	Ruling language of the Contract is: <u>English</u> .
	1.4	Language for communication is: <u>English</u> .
Right of Access to the Site	2.1	Employer shall give the Contractor access to the Site: <u>[insert number of days]</u> days after the Commencement Date. ²³
Engineer's Duties and Authority	3.1(ii)	Engineer's authority to instruct a Variation is

²² The profit is generally defined to be five (5) percent of the Cost.

²³ Where a number of days is to be inserted, the number of days should be a multiple of seven (7) for consistency with the General Conditions of Contract. If access is to be granted on a sectional basis, provide relevant information for sectional access dates here in the Appendix to Bid.

		limited to: <u>[]²⁴ percent ([]%) of the Contract Price.</u>
	3.1(iii)	Engineer's authority to approve a proposal for Variation submitted by the Contractor is limited to: <u>[]²⁵ percent ([]%) of the Contract Price.</u>
Performance Security	4.2	Performance Security will be in a form acceptable to Employer in the amount of: <u>[] percent ([]%)²⁶ of the Accepted Contract Amount, payable in the currencies and proportions of the Accepted Contract Amount.</u>
General Design Obligations	5.1	Contractor's obligation to notify the Employer of errors, faults or defects in the Employer's Requirements is: <u>[insert number of days] days from the Commencement Date.</u>
Working Hours	6.5	Normal working hours are: _____.
Delay Damages	8.7	Delay damages shall be in the amount of: <u>[]% of the final Contract Price per day [or USD [] per day], in the currencies and proportions in which the Contract Price is payable.</u>
	8.7	Maximum amount of delay damages shall be: <u>[] percent ([]%)²⁷ of the final Contract Price.</u>
Provisional Sums	13.5(b)(ii)	Percentage for overhead charges and profits for adjustment of Provisional Sums shall be: <u>[] percent ([]%).</u>
Adjustments for Changes in Cost	13.8	See Schedule of Adjustment Data below.
Advance Payment	14.2	Total advance payment shall be: <u>[] percent ([]%) of the Accepted Contract Amount.²⁸</u>
		Number and timing of installments of the advance payment shall be: _____.
		Currency in which the advance payment shall be paid is: <u>in proportion of the currencies of the Accepted Contract Amount.</u>
	14.2	Repayment of the advance payment shall start after

²⁴ Before setting a limit on the Engineer's authority, consult the Program Procurement Guidelines for the MCA Entity.

²⁵ Before setting a limit on the Engineer's authority, consult the Program Procurement Guidelines for the MCA Entity.

²⁶ It is advised that the Performance Security be in the amount of ten (10) percent of the Accepted Contract Amount.

²⁷ The maximum amount of delay damages is generally set at ten (10) percent of the final Contract Price.

²⁸ The advance payment be limited to fifteen (15) percent of the Accepted Contract Amount for works procurements; however, if circumstances warrant, higher percentages may be requested as a waiver to the MCC Program Procurement Guidelines, subject to MCC approval.

		certification of: <u>[] percent ([]%) of the Accepted Contract Amount.</u> ²⁹
	14.2	Recovery of the advance payments shall be in the amount of: <u>[] percent ([]%) of the amount of monthly Interim Payment Certificates.</u> ³⁰
	14.2	Advance payment shall be recovered in full prior to the time when: <u>[] percent ([]%) of the Accepted Contract Amount has been certified for payment.</u> ³¹
Application for Interim Payment Certificates	14.3(c)	Amount to be retained shall be: <u>[] percent ([]%)³² of Interim Payment Certificates.</u>
	14.3(c)	Limit of retention money shall be: <u>[] percent ([]%)³³ of the Contract Price.</u>
Plant and Materials intended for the Works	14.5(b)(i) 14.5(c)(i)	See table of Plant and Materials below.
Issue of Interim Payment Certificates	14.6	Minimum amount of an Interim Payment Certificates shall be: <u>USD [] (or equivalent), with no more than one (1) submission per month.</u>
Delayed Payment	14.8	Financing charges shall be: <u>For USD, London Inter-bank Lending Rate (LIBOR) plus [] percent ([]%);</u> <u>For local currency, <i>[insert information]</i>.</u>
Payment of Retention Money	14.9	Payment for each Section shall be as follows: <u><i>[insert information]</i> .</u>
Currencies of Payment	14.15	Currencies of payment shall be: <u>US Dollar (USD) and/or <i>[insert currency of the MCA Entity/Employer country]</i>, in the following proportions, as nominated by the Contractor:</u> <u>[] percent ([]%) -- USD</u> <u>[] percent ([]%) – <i>[local currency named above]</i></u> The basis for conversion shall be: the rate as published by <u><i>[insert source of exchange rate]</i> in effect on the date twenty-eight (28) days before the</u>

²⁹ It is recommended that the repayment of the advance payment commence when the certified payments reach twenty (20) percent of the Accepted Contract Amount.

³⁰ It is recommended, once the recovery of the advanced payment has commenced, that the advance payment be recovered at the rate of twenty (20) percent of the Interim Payment Certificates.

³¹ It is recommended that the advance payment be fully recovered by the time seventy (70) percent of the Accepted Contract Amount has been certified for payment.

³² It is recommended that ten (10) percent of the Interim Payment Certificates be retained.

³³ It is advised that the amount of retention be set at ten (10) percent of the Contract Price.

		<u>Bid submission deadline date.</u>
General Requirements for Insurances	18.1	Insuring Party shall submit evidence of insurance: <u>within [] ([]) days of the Commencement Date.</u>
		Insuring Party shall submit copies of insurance policies: <u>within [] ([]) days of the Commencement Date.</u>
Insurance for Works and Contractor's Equipment	18.2(d)	Deductibles per occurrence shall not exceed: <u>USD [] per occurrence.</u>
Insurance against Injury to Persons and Damage to Property	18.3	Limit per occurrence shall not be less than: <u>USD [] per occurrence.</u>
Insurance for Design	18.5	Limit for insurance shall not be less than: <u>USD [].</u>
Appointment of the Dispute Adjudication Board	20.2	DAB shall comprise: <u>[] ([]) members.</u>
Failure to Agree Dispute Adjudication Board	20.3	Appointing entity shall be: <u><i>[insert information]</i></u> .
Arbitration	20.6(a)(i)	International arbitration institution shall be: <u><i>[insert information]</i></u> .

The items below are to be filled in by the Bidder as part of its Bid, as indicated in Conditions of Contract Sub-Clauses 13.8 and 14.5.

Adjustments for Changes in Cost 13.8

In the Schedule of Adjustment Data immediately below, the Bidder shall (a) indicate the proposed source and base values of indices for the different input elements, including the currencies thereof, (b) derive their proposed weightings, and (c) indicate the currencies of payment.

Schedule of Adjustment Data

<i>Index code</i>	<i>Index description</i>	<i>Source of index</i>	<i>Base value and date</i>	<i>Related source currency in type/amount</i>	<i>Bidders's proposed weighting</i>
	Nonadjustable	—	—	—	A: _____** B: _____ C: _____ D: _____ E: _____
Total					1.00

** In all cases, the Employer shall specify the weighting for the nonadjustable portion.

Plant and Materials intended for the Works 14.5(b)(i)
14.5(c)(i)

In the table of Plant and Materials immediately below, Bidders shall indicate the major items of Plant and Materials and the proposed country of origin for each.

Table of Plant and Materials

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

Form of Bid Security (Bank Guarantee)

_____ [Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: _____ [Name and Address of Employer]

Date: _____

BID GUARANTEE No.: _____

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

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

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

- (a) has withdrawn its Bid during the period of Bid validity specified by the Bidder in the Form of Bid; or
- (b) having been notified of the acceptance of its Bid by the Employer during the period of Bid validity, (i) fails or refuses to execute the Contract, or (ii) fails or refuses to furnish the Performance Security, in accordance with the Instructions to Bidders and the Contract.

This guarantee will expire: (a) if the Bidder is the successful Bidder, upon our receipt of copies of the Contract signed by the Bidder and the Performance Security issued to you upon the instruction of the Bidder; or (b) if the Bidder is not the successful Bidder, upon the earlier of (i) our receipt of a copy of your notification to the Bidder of the name of the successful Bidder; or (ii) twenty-eight (28) days after the expiration of the Bidder's Bid.

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

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

[Signature(s)]

B. Bidder Qualification Forms

Bidder Information Sheet

Each Bidder must fill in this form.

Bidder's legal name	
In case of joint venture or other consortium, legal name of each member	
Bidder's country of constitution	
Bidder's year of constitution	
Bidder's legal address in country of constitution	
Bidder's authorized representative (name, address, telephone numbers, fax numbers, e-mail address)	
<p style="text-align: center;">Attached are copies of the following original documents.</p> <p><input type="checkbox"/> 1. In case of single entity, articles of incorporation or similar documents of constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2.</p> <p><input type="checkbox"/> 2. Authorization to represent the Bidder named in above, in accordance with ITB 20.2.</p> <p><input type="checkbox"/> 3. In the case of joint venture or other consortium, (a) the joint venture or similar documents of constitution and documents of registration of the joint venture or other consortium, or (b) the letter of intent to form the joint venture or other consortium and demonstrating the joint and several liability of all members, in accordance with ITB 4.1.</p> <p><input type="checkbox"/> 4. In the case of a government-owned entity, any additional documents not covered under 1 above required to comply with ITB 4.4.</p>	

Joint Venture Information Sheet

Each member of a joint venture or other consortium making up the Bidder and each Subcontractor must fill in this form.

Joint Venture / Specialist Subcontractor Information	
Bidder's legal name	
Joint Venture Member's or Subcontractor's legal name	
Joint Venture Member's or Subcontractor's country of constitution	
Joint Venture Member's or Subcontractor's year of constitution	
Joint Venture Member's or Subcontractor's legal address in country of constitution	
Joint Venture Member's or Subcontractor's authorized representative information (name, address, telephone numbers, fax numbers, e-mail address)	
<p style="text-align: center;">Attached are copies of the following original documents.</p> <p><input type="checkbox"/> 1. Articles of incorporation or similar documents of constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2.</p> <p><input type="checkbox"/> 2. Authorization to represent the firm named above, in accordance with ITB 20.2.</p> <p><input type="checkbox"/> 3. In the case of a government-owned entity, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB Sub-Clause 4.4.</p>	

Contract Performance

Each Bidder or member of a joint venture or other consortium making up a Bidder must fill in this form.

Non-Performing Contracts
<input type="checkbox"/> No non-performance of a contract in accordance with Sub-Factor 2.1 of Section III (Evaluation and Qualification Criteria)
<u>OR</u>
<input type="checkbox"/> Non-performance of a contract in accordance with Sub-Factor 2.1 of Section III (Evaluation and Qualification Criteria)
In the event of a non-performing contract, clarify/explain your situation according to Sub-Factor 2.1 of Section III, Evaluation and Qualification Criteria.
Failure to Sign a Contract
<input type="checkbox"/> No failure to sign a contract in accordance with Sub-Factor 2.2 of Section III (Evaluation and Qualification Criteria)
OR
<input type="checkbox"/> Failure to sign a contract in accordance with Sub-Factor 2.2 of Section III (Evaluation and Qualification Criteria)
In the event of failure to sign a contract, clarify/explain your situation according to Sub-Factor 2.2 of Section III, Evaluation and Qualification Criteria.

Pending Litigation

Each Bidder or member of a joint venture or other consortium making up a Bidder must fill in this form.

Pending Litigation			
<input type="checkbox"/> No pending litigation <u>OR</u> <input type="checkbox"/> Pending litigation			
Year	Employer Data, Contract Identification and Matter in Dispute	Value of Pending Claim in US\$ Equivalent	Value of Pending Claim as a Percentage of Net Worth

Financial Situation

Each Bidder or member of a joint venture or other consortium making up a Bidder must fill in this form.

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

Information from Balance Sheet

Total Assets					
Total Liabilities					
Net Worth					
Current Assets					
Current Liabilities					

Information from Income Statement

Total Revenues					
Profits Before Taxes					
Profits After Taxes					

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

Average Annual Construction Turnover

Each Bidder or member of a joint venture or other consortium making up a Bidder must fill in this form.

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

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

Financial Resources

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

No.	Source of Financing	Amount (USD equivalent)
1		
2		
3		

Current Contract Commitments / Works in Progress

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

Name of Contract	Employer, contact address/tel/fax	Value of outstanding work (current USD equivalent)	Estimated completion date	Average monthly invoicing over last six months (USD/month)
1.				
2.				
3.				
4.				
5.				
etc.				

General Design Experience

Each Bidder or the designated designer of a Bidder which is a joint venture or other consortium must fill in this form.

General Design Experience				
Starting Month Year	Ending Month Year	Years	Contract Identification and Name Name and Address of Employer Brief Description of the Designs Developed by the Bidder	Role of Bidder

Similar Design Experience

Fill in one (1) form per contract.

Contract of Similar Size and Nature		
Contract No of	Contract Identification	
Award Date	Completion Date	
Role in Contract	<input type="checkbox"/> Contractor	<input type="checkbox"/> Designer
	<input type="checkbox"/> Subcontractor	
Total Contract Amount	US\$	
If a member of a joint venture or other consortium making up the Bidder or a subcontractor, specify participation of total contract amount	Percent of Total	Amount
Employer's Name Address Telephone/Fax Number E-mail		
Description of the similarity in accordance with Sub-Factor 4.2 of Section III		

Specific Design Experience in Key Activities

Fill in one (1) form per contract.

Contract with Specific Key Activities			
Contract No of	Contract Identification		
Award Date	Completion Date		
Role in Contract	<input type="checkbox"/> Contractor <input type="checkbox"/> Designer <input type="checkbox"/> Subcontractor		
Total Contract Amount	US\$		
If a member of a joint venture or other consortium making up the Bidder or a subcontractor, specify participation of total contract amount	<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none; text-align: center;">Percent of Total</td> <td style="width: 50%; border: none; text-align: center;">Amount</td> </tr> </table>	Percent of Total	Amount
Percent of Total	Amount		
Employer's Name Address Telephone Number Fax Number E-mail			
Description of the key activities in accordance with Sub-Factor 4.3 of Section III			

General Construction Experience

Each Bidder or member of a joint venture or other consortium making up a Bidder must fill in this form.

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

Similar Construction Experience

Fill in one (1) form per contract.

Contract of Similar Size and Nature		
Contract No of	Contract Identification	
Award Date	Completion Date	
Role in Contract	<input type="checkbox"/> Contractor <input type="checkbox"/> Management Contractor <input type="checkbox"/> Subcontractor	
Total Contract Amount	US\$	
If a member of a joint venture or other consortium making up the Bidder or a subcontractor, specify participation of total contract amount	Percent of Total	Amount
Employer's Name Address Telephone/Fax Number E-mail		
Description of the similarity in accordance with Sub-Factor 4.5 of Section III		

Specific Construction Experience in Key Activities

Fill in one (1) form per contract.

Contract with Specific Key Activities			
Contract No of	Contract Identification		
Award Date	Completion Date		
Role in Contract	<input type="checkbox"/> Contractor <input type="checkbox"/> Management Contractor <input type="checkbox"/> Subcontractor		
Total Contract Amount	US\$		
If a member of a joint venture or other consortium making up the Bidder or a subcontractor, specify participation of total contract amount	<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; text-align: center; border: none;">Percent of Total</td> <td style="width: 50%; text-align: center; border: none;">Amount</td> </tr> </table>	Percent of Total	Amount
Percent of Total	Amount		
Employer's Name Address Telephone Number Fax Number E-mail			
Description of the key activities in accordance with Sub-Factor 4.6 of Section III			

C. Technical Offer Forms

Design Proposal

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

- (a) Preliminary Design of all elements of the Works. The Preliminary Design shall comprise drawings and technical specifications. Drawings scales shall range from 1:100 to 1:500, or as otherwise specified in the Employer's Requirements.
- (b) Commentary on the Employer's Requirements, including status of the information available and relevant design issues for the Works, detailing how the critical requirements will be achieved.
- (c) Discussion of how the Bidder proposes to develop the design at key stages, including a commentary on any necessary mapping and/or survey work and the proposed design methodology for key elements of the Works.
- (d) Discussion of how the Bidder proposes to incorporate environmental and social considerations, including the prevention of negative impacts, minimization of resettlement, and inclusion of mitigation measures and health and safety concerns into the design, including proposed methods for coordinating design work with concurrent environmental management plan and resettlement planning documents; e.g. resettlement policy framework or resettlement action plan (if required) development.³⁴
- (e) Name, qualifications, and particulars of the design company and designers in charge of the design of the Works.
- (f) Proposed names of suppliers and details for all essential equipment items, including but not limited to such items as *[insert list as may be appropriate]*. Specifications shall be accompanied by manufacturers' brochures and details of the main items and equipment, especially those listed above, and indication of availability when needed in the general project timeframe, respectively.
- (g) Comments on any errors or defects noted in the Employer's Requirements, along with details of any exceptions taken to the Employer's Requirements.
- (h) *[Insert anything else, as may be appropriate.]*

³⁴ For the avoidance of doubt, resettlement of any persons pursuant to the resettlement action plan shall be the responsibility of the Employer.

Method Statement

Each Bidder shall set out details of the Method Statement for the Works to demonstrate how it will meet the Employer's objective and requirements. At a minimum, the Method Statement shall address the following:

- (a) Details of the arrangements and methods which the Bidder proposes to adopt for the design and construction of the Works, in sufficient detail to demonstrate their adequacy to achieve the requirements of the Contract including completion within the Time for Completion stated in the Appendix to Bid.
 - (b) Outline of the arrangements which the Bidder proposes to adopt to manage coordination of Site access.
 - (c) Commentary on the geotechnical and subsurface aspects of the Works including materials, material sources and any constraints.
 - (d) [Commentary on any offshore or waterfront aspects of the Works.]
 - (e) Commentary on logistics and traffic management *[as may be appropriate]*.
 - (f) Outline of the arrangements which the Bidder proposes to adopt to ensure compliance with the Employer's Requirements.
 - (g) Outline of the arrangements which the Bidder proposes for testing upon completion as called for in the Employer's Requirements.
 - (h) Outline of arrangements which the Bidder proposes for conducting training as specified in the Employer's Requirements.
 - (i) Outline of arrangements for handover, including completion of as-built drawings, preparation of operation and maintenance manuals, and any additional matters.
 - (j) *[Insert anything else, as may be appropriate.]*
-

Program and Schedule

Each Bidder shall set out a detailed Program and Schedule for design and construction of the Works to be undertaken, including estimated start and finish dates for individual components and identification of major milestones and critical path. The proposed Program and Schedule shall be developed according to Employer's Requirements and shall address the following:

- (a) Details of the proposed schedule for design of the Works, including the submission of design documents, review and approval of the design by the Engineer.
 - (b) Details of the proposed schedule for permitting processes that may be necessary in order to commence the Works, including the preparation of required studies, supporting information, and applications.
 - (c) Details of the proposed timeline for carrying out the Works within the Time for Completion, in the form of a bar chart showing notably the critical path.
 - (d) Details of the proposed timeline for the testing, commissioning and handing over of the completed Works.
 - (e) *[Other proposed measures as may be appropriate].*
-

Cash Flow Projection

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

- (a) The periodic payments by milestones for the design and construction of the Works.
- (b) [The periodic payments based on measurement for the construction of the Works, as applicable.]³⁵
- (c) [*If there are multiple lots or sections, add as may be appropriate.*]

³⁵ Include (b) in the event that, in addition to the Schedule of Prices, there is one or more Bill(s) of Quantities and measurement of some or all of the quantities of the Works.

Construction Equipment

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

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

Omit the following information for equipment owned by the Bidder.

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

Project Management Organization

The Bidder shall set out details of the Project Management Organization, together with identification and Curriculum Vitae (“CV”) for each key member for each component of the Project.

CVs are provided for the key personnel for the following positions, using the forms provided for that purpose:

No.	Position	Total Related Work Similar Experience (years)	Experience in Similar Designs and/or Works (years)
1			
2			
3			
4			
5			
6			
7			
8			

In particular, the Bidder must provide the names and particulars of the individuals from the proposed design company to prepare the design of the Works.

In addition, the Bidder shall provide the following information:

- (a) organizational chart showing lines of communications as well as communications plan for managing communications with key stakeholders;
- (b) plans for subcontracting any parts of the Works and the services to be carried out or the Plant and Equipment to be provided by subcontractors;
- (c) quality management system, describing the basis and operation of the proposed quality management system, including management reviews, procedural audits, checking, procedures for monitoring, reporting and dealing with nonconformities, corrective actions, and feedback and
- (d) Data management plan in accordance with the Employer’s Requirements, describing the proposed system for storing, indexing, and accessing data such as correspondence, meeting minutes, reports, drawings, etc.

CVs of Key Personnel

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

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

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

[All CVs of Key Personnel must be signed and dated by them during the Bid preparation period.]

Environmental & Social Impact Documents

The Bidder shall provide the documents below to show that it has in place sufficient environmental and social documents and awareness to be able to perform responsibilities in accordance with the MCC Environmental Guidelines and the Employer's country's environmental laws.

The successful Bidder will be required to design and carry out the Works in accordance with MCC Environmental Guidelines, including social and resettlement guidance, MCC Gender Policy, and environmental requirements of the Employer's Government as well as the Site-specific Environmental Management Plan ("EMP"), to be prepared by it following Contract award, and approved by the Engineer, on the basis of the Employer's EMP provided in Section IX. The Bidder shall demonstrate in a narrative section of its Technical Offer that it possesses a high level of Environmental and Social ("E&S") management expertise and can successfully manage the E&S risks associated with the implementation of the proposed Works, as follows:

- (a) Provide examples of Site-specific E&S management plans developed by the Bidder for similar work over the last five (5) years;
 - (b) Provide examples of project-specific environmental management specifications developed by the bidder for similar work over the last five (5) years;
 - (c) Demonstrate a successful record implementing effective E&S mitigation measures on similar projects over the last five (5) years;
 - (d) Describe proposed E&S staffing, roles and responsibilities, and management structure;
 - (e) Describe the proposed approach to managing E&S impacts during implementation of this project, including a description of the mitigation measures that will be used and international E&S standards that may be applicable; provide enough detail to demonstrate an understanding of the critical E&S issues related to the project; and
 - (f) Provide two (2) references regarding the Bidder's development of Site-specific EMPs and successful implementation of E&S mitigation measures.
-

Health & Safety Documents

The Bidder shall provide the documents below to show that it has in place sufficient safety policy documents and safety awareness to be able to perform their responsibilities in a safe and workmanlike manner.

The successful Bidder will be required to design and carry out the Works in accordance with the Site-specific Health and Safety Plan to be developed by it following Contract award, and approved by the Engineer, on the basis of the Employer's Requirements provided in Section IX.

The Bidder shall demonstrate in a narrative section of its Technical Offer that it possesses a high level of Health and Safety ("H&S") management expertise and can successfully manage the H&S risks related to the implementation of the Works. To demonstrate, the Bidder shall provide the following:

- (a) Provide examples of H&S management plans developed by the Bidder for similar work over the last five (5) years;
 - (b) Demonstrate a successful record implementing effective H&S mitigation measures on similar projects over the last five (5) years;
 - (c) Describe proposed H&S staffing, roles and responsibilities, and management structure;
 - (d) Describe the proposed approach to managing H&S impacts during implementation of the Works, including a summary of mitigation measures that will be used and international H&S standards that may be applicable; provide enough detail to demonstrate an understanding of the critical H&S issues related to the project; and
 - (e) Provide two (2) references regarding the Bidder's development of H&S plans and successful implementation of H&S mitigation measures.
-

Part II

SECTION V

GENERAL CONDITIONS OF CONTRACT

General Conditions of Contract³⁶

[MCA ENTITY]

[TITLE OF DESIGN-BUILD PROJECT]

CONDITIONS OF CONTRACT

GENERAL CONDITIONS

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

³⁶ The General Conditions of Contract that shall be used with these Standard Bidding Documents – Design-Build are the FIDIC Conditions of Contract for Plant and Design-Build, First Edition 1999 prepared and copyrighted by the International Federation of Consulting Engineers (*Fédération Internationale des Ingénieurs-Conseils*, or “FIDIC”). This publication is exclusive for the use of MCC and MCA Entities as provided under the License Agreement LICCONSMMCJan07 dated January 05, 2007, between the Millennium Challenge Corporation (“MCC”) and FIDIC, and, consequently, no part of this publication may be reproduced, translated, adapted, stored in a retrieval system or communicated, in any form or by any means, whether mechanical, electronic, magnetic, photocopying, recording or otherwise, without prior permission in writing from FIDIC, except by MCC and the Employer and only for the exclusive purpose of preparing Bidding Documents based on these Standard Bidding Documents. Copies of these FIDIC Conditions of Contract for Plant and Design-Build can be obtained from the Employer.

SECTION VI

CONDITIONS OF PARTICULAR APPLICATION

Conditions of Particular Application

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

1. General Provisions

Sub-Clause 1.1.1 The Contract

Amend Subpara. 1.1.1.1 (“Contract”) by adding the following at the end:

“The words ‘Agreement’ and ‘Contract’ are used interchangeably.”

Amend Subpara. 1.1.1.8 (“Tender”) by adding the following at the end:

“The word ‘tender’ is synonymous with ‘Bid,’ and the words ‘Letter of Tender’ with ‘Letter of Bid’, and the words ‘Appendix to Tender’ with ‘Appendix to Bid,’ and the words ‘tender documents’ with ‘Bidding Documents.’”

Sub-Clause 1.1.2 Parties and Persons

Add as Subpara. 1.1.2.11 a defined term to read as follows:

“ ‘MCC’ means the Millennium Challenge Corporation, the United States Government Corporation with the same name, responsible for providing funds under the terms of the Compact to the Government.”

Add as Subpara. 1.1.2.12 a defined term to read as follows:

“ ‘**[Insert abbreviated name of the MCA Entity]**’ means **[Insert full legal name of the MCA Entity]**, the entity created by the Government to receive and administer MCC Funding.”

Add as Subpara. 1.1.2.13 a defined term to read as follows:

“ ‘Compact’ means the Millennium Challenge Compact between the Government and the United States of America, acting through MCC, executed on **[insert date of Compact signing]** that sets forth the general terms and conditions on which MCC will provide funding of up to US\$ **[insert dollar amount of Compact]** to the Government for a Millennium Challenge Account program to advance economic growth and reduce poverty in **[insert name of MCA country]**.”

Add as Subpara 1.1.2.14 a defined term to read as follows:

“ ‘MCC Funding’ means the funding provided by MCC in

accordance with the terms of the Compact.”

Add as Subpara 1.1.2.15 a defined term to read as follows:

“ ‘Government’ means the Government of **[insert formal name of the country]**.”

Sub-Clause 1.1.3
Dates, Tests, Periods and
Completion

Amend Sub-Para. 1.1.3.7 by inserting the following after the reference to Sub-Clause 11.1:

“which extends over twelve months except if otherwise stated in the Appendix to Bid”.

Sub-Clause 1.2
Interpretation

Amend Sub-Clause 1.2 by adding the following at the end:

“In these Conditions, provisions including the expression "Cost plus profit" require this profit to be one-twentieth (5%) of this Cost unless otherwise indicated in the Appendix to Bid.”

Sub-Clause 1.5
Priority of Documents

Amend Sub-Clause 1.5 by adding the following at the end of item (d) the Particular Conditions:

“including the provisions set out in Annex A (Additional Provisions) attached to the Conditions of Particular Application of the Contract (which provisions shall apply to Subcontractors as well as to the Contractor) and any other attachments to the Particular Conditions.”

Sub-Clause 1.12
Confidential Details

Replace the text of Sub-Clause 1.12 with the following:

“The Contractor’s and the Employer’s Personnel shall disclose all such confidential and other information as may be reasonably required in order to verify the Contractor’s compliance with the Contract and allow its proper implementation; provided that the requirements of this Sub-Clause 1.12 shall not apply to authorized representatives of MCC, the Inspector General, the U.S. Government Accounting Office, or any auditor identified in the Compact.

“Each of the Parties shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any particulars of the design and of the Works prepared by the other Party without the previous agreement of the other Party. However, the Contractor shall be permitted to disclose any publicly available information, or, with the prior consent of the Employer, information otherwise reasonably required to establish its qualifications to compete for other projects. If any dispute arises as to the necessity of any publication or disclosure of the details of

the Contract, the same shall be referred to the Employer whose determination shall be final. The Contractor shall ensure that the requirements imposed on the Contractor by this Sub-Clause apply equally to each Subcontractor.”

Sub-Clause 1.13
Compliance with Laws

Amend Sub-Clause 1.13(b) by adding the following at the end:

“unless the Contractor is impeded to accomplish these actions and shows evidence of its diligence.”

2. The Employer

Sub-Clause 2.4
Employer’s Financial
Arrangements

Amend Sub-Clause 2.4 by adding the following at the end:

“In addition, if MCC has notified the Employer that it has suspended disbursements under the Compact which finances the execution of the Works, the Employer shall give notice of such suspension to the Contractor with detailed particulars, including the date of such notification, with a copy to the Engineer, within 7 days of having received the suspension notification from MCC. If alternative funds will be available in appropriate currencies to the Employer to continue making payments to the Contractor beyond a date 60 days after the date of MCC notification of the suspension, the Employer shall provide reasonable evidence in such notice of the extent to which such funds will be available.

“For the avoidance of doubt, in no event shall any MCC Funding be subject to any type of co-financing, joint financing or similar arrangement that would violate the terms of the Compact.”

3. The Engineer

Sub-Clause 3.1
Engineer’s Duties
and Authority

Amend Sub-Clause 3.1 by replacing the word “may” in the first sentence of the third paragraph with the word “shall”.

Amend Subpara. (b) of Sub-Clause 3.1 by deleting the word “and” at the end.

Amend Subpara. (c) of Sub-Clause 3.1 by replacing the period at the end with “; and”.

Amend Sub-Clause 3.1 by adding the following at the end:

“(d) any act by the Engineer in response to a Contractor’s request except otherwise expressly specified shall be notified in writing to the Contractor within 28 days of receipt.

“The following provisions also shall apply:

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

- (i) Sub-Clause 4.12 [*Unforeseeable Physical Conditions*]: Agreeing to or determining an extension of time and/or additional cost.
- (ii) Sub-Clause 13.1 [*Right to Vary*]: Instructing a Variation, except if such a Variation would increase the Accepted Contract Amount by less than the percentage specified in the Appendix to Bid.
- (iii) Sub-Clause 13.3 [*Variation Procedure*]: Approving a proposal for Variation submitted by the Contractor in accordance with Sub-Clause 13.1 [*Right to Vary*] or 13.2 [*Value Engineering*], except if such a Variation would increase the Accepted Contract Amount by less than the percentage specified in the Appendix to Bid.
- (iv) Sub-Clause 13.4 [*Payment in Applicable Currencies*]: Specifying the amount payable in each of the applicable currencies.

“Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties and responsibility under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of the Employer, with any such instruction of the Engineer. Within 7 days of having issued such emergency instructions, the Engineer shall submit written documentation of such instructions to the Employer. The Engineer shall determine an addition to the Contract Price, in respect of such instruction, in accordance with Clause 13 [*Variations and Adjustments*] and shall notify the Contractor accordingly, with a copy to the Employer.”

4. The Contractor

Sub-Clause 4.1
Contractor’s General
Obligations

Amend Sub-Clause 4.1 by adding the following at the end:

“The Contractor and its Subcontractors, including their respective personnel and affiliates, shall at all times during the term of this Contract have the nationality of a country or territory eligible, in accordance with the Compact, the MCC Program Procurement

Guidelines and Annex A attached to the Conditions of Particular Application of the Contract (“Eligible Countries”). The Contractor or a Subcontractor and their respective personnel and affiliates shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.

“All Equipment, Materials, Plant and any services to be incorporate in or required for the Works shall have their origin in Eligible Countries.

“For the purpose of this Sub-Clause 4.1, “origin” means the place where the Equipment, Materials or Plant have been mined, grown, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics, purposes or utility from its underlying components. With respect to any services, the term “origin” means the place from which the services are supplied.”

Sub-Clause 4.2
Performance Security

Amend Sub-Clause 4.2 by adding the following at the end:

“Without limitation to the other provisions of this Sub-Clause 4.2, whenever the Engineer determines an addition to the Contract Price as a result of a change in cost and/or legislation or as a result of a Variation amounting to more than 25 percent of the portion of the Contract Price payable in a specific currency, the Contractor, at the Engineer’s written request, shall promptly increase the value of the Performance Security in the applicable currency by an equal percentage.

“The Performance Security of a joint venture or other consortium shall be issued so as to commit fully all members of the joint venture or other consortium. If the joint venture or other consortium has not been legally constituted at the time the Performance Security is provided, the Performance Security shall be in the name of all future members of the proposed joint venture or other consortium.”

Sub-Clause 4.3
Contractor’s
Representative

Amend Sub-Clause 4.3 by adding the following at the end:

“If the Engineer determines that the Contractor’s Representative or any of these persons are not fluent in the said language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Engineer.”

Sub-Clause 4.4
Subcontractors

Amend Subpara. (b) of Sub-Clause 4.4 by deleting the word “and” at the end.

Amend Subpara. (c) of Sub-Clause 4.4 by replacing the period at

the end with “; and”.

Amend Sub Clause 4.4 by adding the following at the end:

“(d) each subcontract shall include the provisions set forth in Annex A (Additional Provisions) attached to the Conditions of Particular Application of the Contract.

“The consent of the Engineer shall not be required if the subcontract is less than one percent (1%) of the Contract Price with a maximum limit of US\$100,000. If the cumulative value of all subcontracts issued to un-approved subcontractors attains US\$250,000, each subsequent use of a non-approved subcontractor shall require the prior consent of the Engineer.”

Sub-Clause 4.8
Safety Procedures

Amend Sub-Clause 4.8 by adding the following at the end:

“The Contractor shall notify the Engineer and Employer within 48 hours or as soon as reasonably possible after the occurrence of any accident which has resulted in damage or loss of property, disability or loss of human life, or which has or which could reasonably be foreseen to have a material impact on the environment and shall submit to the Engineer and Employer no later than 28 days after the occurrence of such an event, a summary report thereof.”

Sub-Clause 4.18
Protection of the
Environment

Amend Sub-Clause 4.18 by adding the following at the end:

“The Contractor shall ensure that its activities under this Contract comply with MCC’s Environmental Guidelines and Gender Policy (as each such term is defined in the Compact or related agreement), which are available at <http://www.mcc.gov>, and are not ‘likely to cause a significant environmental, health, or safety hazard’ as defined in such Environmental Guidelines, understanding that the Contractor is not responsible for the environmental and social impacts of the Works, to the extent that such impacts result directly from completion of any of the Works that may be designed by the Employer.

“The Contractor shall apply the recommendations of the Environmental Management Plan (‘EMP’) as well as any others contained in the Employer’s Requirements, in respect of safety, security and protection of the environment.

“The Contractor shall request written confirmation from the Employer that actions requiring completion by the approved Resettlement Action Plan (‘RAP’) have been completed before construction is initiated on the Works or each Section (as the case may be). The Contractor shall also immediately notify the Engineer of any land acquisition or resettlement needs resulting

from the design or Works that have not been addressed by the RAP. No work shall commence in any such newly identified area without the approval of the Engineer.

“The Contractor shall implement health and safety requirements of the approved EMPs and directives issued as a result of periodic inspections to be undertaken as part of the supervisory role required of the Engineer, to ensure compliance with the requirements of the EMPs.

“The Contractor shall be responsible for ensuring that all Subcontractor’s and Contractor’s Personnel understand and operate in accordance with the principles and requirements of the environmental and social impacts provisions of this Sub-Clause and that the same standards apply to the Subcontractor’s environmental and social impacts management systems and environmental and social impacts performance.

“The Contractor’s program shall demonstrate clearly the procedures and methods of working that the Contractor and its Subcontractors will adopt to comply with the environmental and social impacts requirements of this Sub-Clause.

“The Contractor shall ensure the adequate disposal of construction and excavation wastes.

“The Contractor shall restore the Site to original conditions or to a state as set out in the Employer’s Requirements after the completion of the Works.”

Sub-Clause 4.21
Progress Reports

Amend Sub-Clause 4.21 by adding the following at the end:

“Within 7 days of the submission by the Contractor of each monthly progress report, the Engineer and the Employer shall meet with the Contractor to discuss the progress of the Works.”

5. Design

Sub-Clause 5.4
Technical Standards and
Regulations

Amend Sub-Clause 5.4 by inserting the following at the end of the first paragraph:

“ and MCC’s Environmental Guidelines (as such term is defined in the Compact).”

6. Staff and Labor

Sub-Clause 6.7
Health and Safety

Amend Sub-Clause 6.7 by adding the following at the end:

“The Contractor shall conduct an HIV-AIDS awareness program in the project areas as required by the approved EMP via an approved service provider, and shall undertake such other measures as are specified in the Contract to reduce the risk of the transfer of the HIV virus between and among the Contractor’s Personnel and the local community, to promote early diagnosis and to assist affected individuals.”

Sub-Clause 6.8
Contractor’s
Superintendence

Amend Sub-Clause 6.8 by adding the following at the end:

“If the Engineer determines that the Contractor’s Personnel providing superintendence have inadequate knowledge of such language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Engineer.”

Sub-Clause 6.12
Foreign Personnel

Add the following Sub-Clause 6.12:

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

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

Sub-Clause 6.13
Prohibition of Harmful
Child Labor

Add the following Sub-Clause 6.13:

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

Sub-Clause 6.14
Employment Records of
Workers

Add the following Sub-Clause 6.14:

“The Contractor shall keep complete and accurate records of the employment of labor at the Site. The records shall include the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarized on a monthly basis and submitted to the Engineer, and these records shall be available for

inspection by auditors during normal working hours. These records shall be included in the details to be submitted by the Contractor under Sub-Clause 6.10 [*Records of Contractor's Personnel and Equipment*].”

7. Plant, Materials and Workmanship

Sub-Clause 7.7
Ownership of Plant and Materials

Amend Sub-Clause 7.7 by replacing Subparas. (a) and (b) with the following:

“(a) when it is incorporated in the Works;

(b) when the Contractor is paid the corresponding value of the Plant and Materials under Sub-Clause 8.10 [*Payment for Plant and Materials in Event of Suspension*].”

8. Commencement, Delays and Suspension

Sub-Clause 8.6
Rate of Progress

Amend Sub-Clause 8.6 by inserting the following at the end:

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

Sub-Clause 8.12
Resumption of Work

Amend Sub-Clause 8.12 by inserting the following at the end:

“after receiving from the Engineer an instruction to this effect under Clause 13 [*Variations and Adjustments*].”

11. Defects Liability

Sub-Clause 11.3
Extension of Defects Notification Period

Amend Sub-Clause 11.3 by inserting the following at the end of the first sentence of the first paragraph:

“attributable to the Contractor.”

13. Variations and Adjustments

Sub-Clause 13.1
Right to Vary

Amend Sub-Clause 13.1 by deleting the word “or” at the end of clause (ii) in the second paragraph and by inserting the following at the end of the first sentence of the second paragraph:

“or (iv) such Variation triggers a substantial change in the sequence or progress of the Works.”

Sub-Clause 13.7

Adjustments for Changes
in Legislation

Amend Sub-Clause 13.7 by adding the following to the end of the first paragraph:

“, provided, that no such adjustment will be made on account of any change in the Laws of the Country related to taxes as such term is defined and used in Sub-Clause 21.”

Amend Sub-Clause 13.7 by adding the following at the end:

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

Sub-Clause 13.8

Adjustments for Changes
in Cost

Amend Sub-Clause 13.8 by inserting the following after the first sentence of the second paragraph:

“Adjustment shall be made for the first time during the term of the Contract at the end of month [**insert number of months into the Contract**], and [**insert frequency**] thereafter.”

14. Contract Price and Adjustment

Sub-Clause 14.1

The Contract Price

Amend Subpara. (b) of Sub-Clause 14.1 by deleting the phrase “except as stated in Sub-Clause 13.7 [*Adjustments for Changes in Legislation*]”.

[If payment for any part of the Works is to be made on the basis of measurement, that part of the Works must be defined in the Contract and the following wording added.]

Amend Sub-Clause 14.1 by adding the following at the end:

“The Engineer shall agree or determine the value of those parts of the Works which are to be measured, in accordance with Sub-Clause 3.5 [*Determinations*]. Measurement shall be made of the net actual quantities of those parts.

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

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

(b) supply any particulars requested by the Engineer.

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

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

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

Sub-Clause 14.2
Advance Payment

Amend Sub-Clause 14.2 by deleting the phrase “, as an interest-free loan” from the first sentence of the first paragraph.

Amend Sub-Clause 14.2 by replacing the fifth paragraph with the following:

“Unless stated otherwise in the Appendix to Bid, the advance payment shall be repaid through percentage deductions from the interim payments certified by the Engineer in accordance with Sub-Clause 14.6 [*Issue of Interim Payment Certificates*], as follows:

- (a) deductions shall commence in the next Interim Payment Certificate following that in which the total of all interim payments (excluding the advance payment and deductions and repayments of retention) certified to the Contractor has reached the percentage of the Accepted Contract Amount stipulated in the Appendix to Bid less Provisional Sums; and
 - (b) deductions shall be made at the amortization rate stated in the Appendix to Bid of the amount of each Interim Payment Certificate (excluding the advance payment and deductions for its repayments as well as deductions for retention money) in the currencies and proportions of the advance payment until such time as the advance payment has been repaid; always provided that the advance payment shall be completely repaid prior to the time when the percentage of the Accepted Contract Amount less Provisional Sums stipulated in the Appendix to Bid has been certified for payment.”
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Amend Sub-Clause 14.2 by inserting the following after “become due” in the final sentence:

“and in the case of termination under Clause 15 [*Termination by Employer*] or Sub-Clause 19.6 [*Optional Termination, Payment and Release*],”

Sub-Clause 14.7
Payment

Amend Sub-Clause 14.7 by replacing the first line with the following:

“The Employer shall pay or cause to be paid to the Contractor:”

Sub-Clause 14.8
Delayed Payment

Amend Sub-Clause 14.8 by replacing the second paragraph with the following:

“These financing charges shall be calculated at the annual rates of interest and shall be paid in the currencies indicated in the Appendix to Bid.”

Sub-Clause 14.9
Payment of Retention
Money

Amend Sub-Clause 14.9 by adding the following at the end:

“When the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified by the Engineer for payment, the Contractor shall be entitled to substitute a guarantee, in the form annexed to the Particular Conditions or in another form approved by the Employer and provided by an entity approved by the Employer, for the second half of the Retention Money. The Contractor shall ensure that the guarantee is in the amounts and currencies of the second half of the Retention Money and is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects, as specified for the Performance Security in Sub-Clause 4.2 [*Performance Security*]. On receipt by the Employer of such guarantee, the Engineer shall certify and the Employer shall pay, or cause to be paid, the second half of the Retention Money. The release of the second half of the Retention Money against such guarantee shall then be in lieu of the release under the second paragraph of this Sub-Clause. The Employer shall return the guarantee to the Contractor within 21 days after receiving a copy of the Performance Certificate.

“If the Performance Security required under Sub-Clause 4.2 [*Performance Security*] is in the form of a demand guarantee, and the amount guaranteed under it when the Taking-Over Certificate is issued is more than half of the Retention Money, then the Retention Money guarantee will not be required. If the amount guaranteed under the Performance Security when the Taking-Over Certificate is issued is less than half of the Retention Money, the Retention Money guarantee will only be required for the difference

between half of the Retention Money and the amount guaranteed under the Performance Security.”

Sub-Clause 14.11
Application for Final
Payment Certificate

Amend Sub-Clause 14.11 by inserting the following in the first sentence of the second paragraph after “may reasonably require”:

“within 28 days from receipt of the said draft”

15. Termination by Employer

Sub-Clause 15.2
Termination by
Employer

Amend Subpara. (e) of Sub-Clause 15.2 by deleting the word “or” at the end.

Amend Subpara. (f) of Sub-Clause 15.2 by replacing the period at the end with a comma.

Amend Sub-Clause 15.2 by adding the following immediately after the text of Subpara. (f):

“(g) if the Contractor, in the judgment of the Employer or MCC, fails to perform its obligations relating to the use of funds set out in Annex A (Additional Provisions) attached to the Conditions of Particular Application of the Contract, or

“(h) if the Compact expires, is suspended or terminates in whole or in part in accordance with the terms of the Compact.”

Amend Sub-Clause 15.2 by replacing the text of the second sentence of the second paragraph with the following:

“However, in the case of Sub-paragraph (e), (f), (g) or (h), the Employer may, by notice, terminate the Contract immediately. In the event of Employer termination of the Contract pursuant to Sub-paragraph (g), the Contractor shall be liable to repay any and all funds so misused. In the event of Employer termination of the Contract pursuant to Sub-paragraph (h), the Contractor shall be paid in accordance with Sub-Clause 19.6 [*Optional Termination, Payment and Release*] in accordance with the terms of the Compact and any related agreements.”

Sub-Clause 15.6
Corrupt or Fraudulent
Practices

Add the following Sub-Clause 15.6:

“MCC requires that the Employer and any other beneficiaries of MCC funding, including bidders, suppliers, contractors, and subcontractors under any MCC-funded contracts, observe the highest standards of ethics during the procurement and execution of such contracts. In pursuance of this policy:

(a) For purposes of the Contract, the terms set forth below are

defined as follows:

- (i) “coercive practice” means impairing or harming or threatening to impair or harm, directly or indirectly, persons or their property, to influence their participation in a procurement process, or affect the execution of a contract;
 - (ii) “collusive practice” means a scheme or arrangement between two or more parties, with or without the knowledge of the Employer, designed to establish prices at artificial, noncompetitive levels or to otherwise deprive the Employer of the benefits of free and open competition;
 - (iii) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of a public official (including Employer and MCC staff and employees of other organizations taking or reviewing selection decisions) in the selection process or in contract execution, or the making of any payment to any third party, in connection with or in furtherance of a contract, in violation of (A) the United States Foreign Corrupt Practices Act of 1977, as amended (15 USC 78a et seq.) (“FCPA”) or any other actions taken that otherwise would be in violation of the FCPA if the FCPA were applicable, or (B) any applicable Laws;
 - (iv) “fraudulent practice” means any act or omission, including any misrepresentation, in order to influence (or attempt to influence) a selection process or the execution of a contract to obtain a financial or other benefit, or to avoid (or attempt to avoid) an obligation;
 - (v) “obstructive practice” means
 - (aa) destroying, falsifying, altering or concealing evidence material to the investigation or making false statements to investigators in order to impede an investigation into allegations of a coercive, collusive, corrupt, fraudulent, or prohibited practice; and threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, and
 - (bb) acts intended to impede the exercise of MCC’s inspection and audit rights provided for in the Contract and in the Compact and related
-

agreements.

- (vi) “prohibited practice” means any action that violates Section E (Compliance with Anti-Corruption, Anti-Money Laundering and Terrorist Financing Statutes and Other Restrictions) of Annex A attached to the Conditions of Particular Application of the Contract.
- (b) MCC may cancel the portion of the MCC Funding allocated to this Contract if it determines at any time that representatives of the Employer, the Contractor or any other beneficiary of the MCC Funding were engaged in coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices during the selection process or the execution of this Contract, without the Employer, the Contractor or such other beneficiary having taken timely and appropriate action satisfactory to MCC to remedy the situation.
- (c) MCC and the Employer may pursue sanction of the Contractor, including declaring the Contractor ineligible, either indefinitely or for a stated period of time, to be awarded an MCC-funded contract if at any time it determines that the Contractor has, directly or through an agent, engaged in coercive, collusive, corrupt, fraudulent, obstructive, or prohibited in competing for, or in executing, this Contract or another MCC-funded contract.
- (d) If the Employer or MCC determines that the Contractor, any Subcontractor, any of the Contractor’s Personnel, or any agent or affiliate of any of them has, directly or indirectly, engaged in coercive, collusive, corrupt, fraudulent, obstructive, or prohibited practices, in competing for or in executing this Contract, then the Employer or MCC may, by notice, immediately terminate the Contractor’s employment under this Contract and expel him from the Site, and the provisions of Clause 15 [*Termination by Employer*] shall apply as if such expulsion had been made under Sub-Clause 15.2(f) [*Termination by Employer*].
- (e) Should any of the Contractor’s Personnel be determined to have engaged in coercive, collusive, corrupt, fraudulent, obstructive, or prohibited or practices during the competition for or execution of this Contract, but the Employer or MCC determines not to terminate the Contractor’s employment and the Contract in accordance with the immediately preceding sub-paragraph, then the relevant Contractor’s Personnel shall be removed in accordance with Sub-Clause 6.9 [*Contractor’s Personnel*].”
-

16. Suspension and Termination by Contractor

Sub-Clause 16.2 Termination by Contractor

Amend Subpara. (d) of Sub-Clause 16.2 by adding the following at the end:

“in such manner as to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract,”

Amend Subpara. (f) of Sub-Clause 16.2 by deleting the word “or” at the end.

Amend Subpara. (g) of Sub-Clause 16.2 by replacing the period at the end with “; or”.

Amend Sub-Clause 16.2 by adding the following at the end of the first paragraph:

”(h) the Contractor does not receive the Engineer’s instruction recording the agreement of both Parties on the fulfillment of the conditions for the commencement of Works under Sub-Clause 8.1 [*Commencement of Works*].”

17. Risk and Responsibility

Sub-Clause 17.3 Employer’s Risks

Amend Sub-Clause 17.3 by replacing the first line with the following:

“The Employer’s risks, insofar as they directly affect the design and execution of the Works in the Country where the Permanent Works are to be executed, are:”

Sub-Clause 17.6 Limitation of Liability

Amend Sub-Clause 17.6 by replacing the first paragraph with the following:

“Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than as specifically provided in Sub-Clause 8.7 [*Delay Damages*]; Sub-Clause 11.2 [*Cost of Remedying Defects*]; Sub-Clause 15.4 [*Payment after Termination*]; Sub-Clause 16.4 [*Payment on Termination*]; Sub-Clause 17.1 [*Indemnities*]; Sub-Clause 17.4 (b) [*Consequences of Employer’s Risks*] and Sub-Clause 17.5 [*Intellectual and Industrial Property Rights*].”

18. Insurance

Sub-Clause 18.1

General Requirements
for Insurance

Amend Sub-Clause 18.1 by adding the following at the end:

“The insuring Party shall be entitled to place all insurance relating to the Contract (including, but not limited to the insurance referred to in Clause 18 [*Insurance*]) with insurers from any eligible source country.”

Sub-Clause 18.5

Insurance for Design

Add the following Sub-Clause 18.5:

“The Contractor shall effect professional indemnity insurance which shall cover the risk of professional negligence in the design of the Works. This insurance shall be for a limit of not less than the amount stated in the Appendix to Bid, with no limit on the number of occurrences. The Contractor shall maintain the professional indemnity insurance in full force and effect until 5 years after the Time for Completion. The Contractor undertakes to notify the Employer promptly of any difficulty in extending, renewing or reinstating this insurance.”

19. Force Majeure

Sub-Clause 19.4

Consequences of Force
Majeure

Amend Sub-Clause 19.4 by inserting the following at the end of Subpara. (b):

“, including the costs of rectifying or replacing the Works and/or Goods damaged or destroyed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in Sub-Clause 18.2 [*Insurance for Works and Contractor’s Equipment*].”

20. Claims, Disputes and Arbitration³⁷

Sub-Clause 20.1

Contractor’s Claims

Amend Sub-Clause 20.1 by inserting the following as a new paragraph between subparagraphs 6 and 7:

“Within the above defined period of 42 days, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [*Extension of Time for Completion*], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.”

³⁷ In each country in which this form is used, it may be prudent to review how arbitration works in that particular country (e.g., its enforceability) and determine whether country specific provisions should be added.

Amend Sub-Clause 20.1 by deleting paragraph 8 (in the order of paragraphs prior to the amendment made above) and replacing it with the following new paragraph:

“If the Engineer does not respond within the timeframe defined in this Sub-Clause, either Party may consider that the claim is rejected by the Engineer and either Party may refer such claim to the DAB in accordance with Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board’s Decision*].”

Sub-Clause 20.2
Appointment of the
Dispute Adjudication
Board

Amend Sub-Clause 20.2 by inserting the following at the end of the first sentence of the second paragraph:

“, each of whom shall be fluent in the language for communication defined in the Contract and shall be a professional experienced in the type of construction involved in the Works and with the interpretation of contractual documents.”

Sub-Clause 20.6
Arbitration

Amend Sub-Clause 20.6 by replacing the first paragraph with the following:

“Any dispute not settled amicably and in respect of which the DAB’s decision (if any) has not become final and binding shall be finally settled by arbitration. Unless otherwise agreed by both Parties:

- (a) For contracts with foreign contractors,
 - (i) international arbitration shall be conducted with proceedings administered by the international arbitration institution appointed in the Appendix to Tender, in accordance with the rules of arbitration of the appointed institution, if any, or in accordance with UNCITRAL arbitration rules, at the choice of the appointed institution;
 - (ii) the place of arbitration shall be the city where the headquarters of the appointed arbitration institution is located or such other place selected in accordance with the applicable arbitration rules; and
 - (iii) the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [*Law and Language*], and
- (b) For contracts with domestic contractors, arbitration shall be conducted with proceedings in accordance with the Laws of the Employer’s Country.”

Amend Sub-Clause 20.6 by adding the following at the end:

“MCC has the right to be an observer to any arbitration proceeding hereunder, at its sole discretion, but does not have the obligation to

participate in any arbitration proceeding, in any capacity. Whether or not MCC is an observer to any arbitration hereunder, the Parties shall provide MCC with written English transcripts of any arbitration proceedings or hearings and a copy of the reasoned written award within ten (10) days after (a) each such proceeding or hearing or (b) the date on which any such award is issued. MCC may enforce its rights under the Contract in an arbitration conducted in accordance with this provision or by bringing an action in any court that has jurisdiction. The acceptance by MCC of the right to be an observer to the arbitration shall not constitute consent to the jurisdiction of the courts or any other body of any jurisdiction or to the jurisdiction of any arbitral panel.”

Add the following Clauses and Sub-Clauses

21. Taxes³⁸

Sub-Clause 21.1

Certain Forms of Local Taxation

“As provided for under the terms of the Compact, most services performed under and activities undertaken in furtherance of the Contract, including in connection with the design and execution of the Works, are exempt from taxes, duties, levies, contributions or other charges imposed under Laws currently or hereafter in effect in the Employer’s Country (separately “tax” and collectively “taxes”) during the effective term of the Compact, including, without limitation:

- a. income taxes and other profit or business taxes imposed on organizations or enterprises (other than nationals or permanent residents of the Employer’s Country); and
- b. customs duties, tariffs, import and export taxes or other taxes imposed on import, usage and re-export of goods, (including Contractor’s Equipment and spare parts thereof, Plant, Materials and supplies imported into the Employer’s Country for purposes of the Contract), services or personal items (including personal automobiles) to be used in connection with the design and execution of the Works or for usage by the Contractor’s Personnel (or their family members) who are not nationals or permanent residents of the Employer’s Country and are in the Employer’s Country for the purpose of the design and execution of the Works.”
- c. **[Describe, generally, the mechanism for the treatment of VAT.]**

³⁸ Note that the language in the various sections with respect to taxes is subject to revision. Please check with the relevant attorney in the MCC Office of General Counsel prior to the use of this form in any specific procurement.

“In the case of imports of goods for personal usage, the written information shall indicate that the goods shall be used for personal usage by Contractor’s Personnel (or their family members) who are neither nationals nor permanent residents of the Employer’s Country and who are in the Employer’s Country for the purpose of executing the Works.”

[Any country specific provisions/arrangements with respect to these types of taxes, if any, should be described in detail here.]

Sub-Clause 21.2
Income Taxes on Local Staff

“As provided for under the terms of the Compact, the Contractor’s local staff and labor (nationals or permanent residents of the Employer’s Country) will be liable to pay personal income taxes in the Employer’s Country in respect of such of their salaries and wages as are chargeable under the Laws for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.”

Sub-Clause 21.3
Obligation to Pay Taxes

“The Contractor, each Subcontractor and their respective personnel shall pay all taxes levied under applicable Laws. In no event shall the Employer be responsible for the payment of any taxes.”

22. General Provisions of Compact

Sub-Clause 22.1
Provisions a Part of the Contract

“The provisions set forth in Annex A (Additional Provisions) attached to the Conditions of Particular Application of the Contract form an integral part of the Contract. For the avoidance of doubt, the Parties agree and understand that the provisions set forth in Annex A reflect certain requirements of the Government and the Employer under the terms of the Compact that are required to be transferred onto any contractor, subcontractor or associate who partakes in procurement or subsequent contracts in which MCC funding is involved and that, as with the other clauses under the Contract, the provisions of Annex A are binding obligations under the Contract.”

Sub-Clause 22.2
Flow Through Provisions

“In any subcontract or subaward entered into by the Contractor, as permitted by the terms of the Contract, the Contractor shall ensure the inclusion of all the provisions contained in Annex A (Additional Provisions) attached to the Conditions of Particular Application of the Contract in any agreement related to such subcontract or subaward.”

Annex A: Additional Provisions

General Provisions

Capitalized terms that are used but not defined in this Annex shall have the meaning given to them in the GCC or in the Compact or related agreements.

The Employer is responsible for the oversight and management of the implementation of the Compact on behalf of the Government and intends to apply a portion of the proceeds of the Compact to eligible payments under this Contract, provided that (a) such payments will only be made at the request of and on behalf of the Employer and as authorized by the Fiscal Agent, (b) MCC shall have no obligations to the Contractor under the Compact or this Contract, (c) such payments will be subject, in all respects, to the terms and conditions of the Compact, and (d) no party other than the Government and the Employer shall derive any rights from the Compact or have any claim to MCC Funding.

A. MCC Status; Reserved Rights; Third-Party Beneficiary

1. MCC Status. MCC is a United States Government corporation acting on behalf of the United States Government in the implementation of the Compact. As such, MCC has no liability under this Contract, and is immune from any action or proceeding arising under or relating to this Contract. In matters arising under or relating to this Contract, MCC is not subject to the jurisdiction of the courts or any other juridical or other body of any jurisdiction.

2. MCC Reserved Rights.

(a) Certain rights are expressly reserved to MCC under this Contract, the Compact and other related Compact documents, including the right to approve the terms and conditions of this Contract, as well as any amendments or modifications hereto, and the right to suspend or terminate this Contract.

(b) MCC, in reserving such rights under this Contract, the Compact or other related Compact documents, has acted solely as a funding entity to assure the proper use of United States Government funds, and any decision by MCC to exercise or refrain from exercising these rights shall be made as a funding entity in the course of funding the activity and shall not be construed as making MCC a party to this Contract.

(c) MCC may, from time to time, exercise its rights, or discuss matters related to this Contract with the Parties or the Government, as appropriate, jointly or separately, without thereby incurring any responsibility or liability to any party.

(d) Any approval (or failure to approve) or exercise of (or failure to exercise) any rights by MCC shall not bar the Government, the Employer, MCC or any other person or entity from asserting any right against the Contractor, or relieve the Contractor of any liability which the Contractor might otherwise have to the Government, the Employer, MCC, or any other person or entity. For the purposes of this clause (d), MCC shall be deemed to include any MCC officer, director, employee, affiliate, contractor, agent or representative.

3. Third-Party Beneficiary. MCC shall be deemed to be a third-party beneficiary under this Contract.

B. Limitations on the Use or Treatment of MCC Funding

The use and treatment of MCC Funding in connection with this Contract does not, and shall not, violate any limitations or requirements specified in the Compact or any other relevant agreement or Implementation Letter or applicable Laws or United States Government policy. A summary of the applicable provisions referenced in this paragraph may be found on the MCC website at www.mcc.gov/guidance/compact/funding_limitations.pdf.³⁹

C. Procurement

The Contractor shall ensure that all procurements of goods, services or works under, related to or in furtherance of this Contract shall be consistent with the general principles set forth in the Compact and in the MCC Program Procurement Guidelines from time to time in effect as posted on the MCC website at www.mcc.gov. The Contractor shall comply with the eligibility requirements related to prohibited source or restricted party provisions in accordance with U.S. Laws, regulations and policy, applicable World Bank policies or guidelines and in accordance with other eligibility requirements as may be specified by MCC or the Employer. A summary of the applicable provisions referenced in this paragraph may be found on the MCC website at www.mcc.gov/guidance/compact/procurement_awards_provisions.pdf.⁴⁰

D. Reports and Information; Access; Audits; Reviews

1. Reports and Information. The Contractor shall maintain such books and records and provide such reports, documents, data or other information to the Employer in the manner and to the extent required by the Compact or related documents, and as may be reasonably requested by the Employer from time to time in order to comply with its reporting requirements arising under the Compact or related documents. MCC may freely use any information it receives in any report or document provided to it in any way that MCC sees fit. The provisions of the Compact **[and insert references to related documents]**⁴¹ that are applicable to the Government in this regard shall apply, *mutatis mutandis*, to the Contractor as if the Contractor were the Government under the Compact. A summary of the applicable provisions referenced in this paragraph may be found on the MCC website at www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf.⁴²

2. Access; Audits and Reviews. Upon MCC's request, the Contractor shall permit such access, audits, reviews and evaluations as provided in the Compact or related documents. The provisions of the Compact **[and insert references to related documents]**⁴³ that are applicable to the Government with respect to access and audits shall apply, *mutatis mutandis*, to

³⁹ Prior to finalizing this as part of a specific contract, confirm that this remains the proper link.

⁴⁰ Prior to finalizing this as part of a specific contract, confirm that this remains the proper link.

⁴¹ Language citing the specific sections of the relevant compact and other agreements related to the particular country in connection with which this form of contract is used in a procurement should be inserted here.

⁴² Prior to finalizing this as part of a specific contract, confirm that this remains the proper link.

⁴³ Language citing the specific sections of the relevant compact and other agreements related to the particular country in connection with which this form of contract is used in a procurement should be inserted here.

the Contractor as if the Contractor were the Government under the Compact. A summary of the applicable provisions referenced in this paragraph may be found on the MCC website at

www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf.⁴⁴

3. **Application to Providers.** The Contractor shall ensure the inclusion of the applicable audit, access and reporting requirements in its contracts or agreements with other providers in connection with this Contract. A summary of the applicable requirements may be found on the MCC website at www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf.⁴⁵

E. Compliance with Anti-Corruption, Anti-Money Laundering and Terrorist Financing Statutes and Other Restrictions

1. The Contractor shall ensure that no payments have been or will be made by the Contractor to any official of the Government, the Employer, or any third party (including any other government official) in connection with this Contract in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. 78a et seq.) (the “FCPA”) or that would otherwise be in violation of the FCPA if the party making such payment were deemed to be a United States person or entity subject to the FCPA, or similar statute applicable to this Contract, including any local Laws. The Contractor affirms that no payments have been or will be received by any official, employee, agent or representative of the Contractor in connection with this Contract in violation of the FCPA or that would otherwise be in violation of the FCPA if the party making such payment were deemed to be a United States person or entity subject to the FCPA, or similar statute applicable to this Contract, including any local Laws.

2. The Contractor shall not provide material support or resources directly or indirectly to, or knowingly permit MCC Funding to be transferred to, any individual, corporation or other entity that the Contractor knows, or has reason to know, commits, attempts to commit, advocates, facilitates, or participates in any terrorist activity, or has committed, attempted to commit, advocated, facilitated or participated in any terrorist activity, including, but not limited to, the individuals and entities (i) on the master list of Specially Designated Nationals and Blocked Persons maintained by the U.S. Department of Treasury’s Office of Foreign Assets Control, which list is available at www.treas.gov/offices/enforcement/ofac, (ii) on the consolidated list of individuals and entities maintained by the “1267 Committee” of the United Nations Security Council, (iii) on the list maintained on www.epls.gov or (iv) on such other list as the Employer may request from time to time. For purposes of this provision, “material support and resources” includes currency, monetary instruments or other financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

3. The Contractor shall ensure that its activities under this Contract comply with all applicable U.S. Laws, regulations and executive orders regarding money laundering, terrorist financing, U.S. sanctions Laws, restrictive trade practices, boycotts, and all other economic sanctions promulgated from time to time by means of statute, executive order, regulation or as administered by the Office of Foreign Assets Control of the United States Treasury Department or any successor governmental authority, including, 18 U.S.C. § 1956, 18 U.S.C. §1957, 18

⁴⁴ Prior to finalizing this as part of a specific contract, confirm that this remains the proper link.

⁴⁵ Prior to finalizing this as part of a specific contract, confirm that this remains the proper link.

U.S.C. § 2339A, 18 U.S.C. § 2339B, 18 U.S.C. § 2339C, 18 U.S.C. § 981, 18 U.S.C. § 982, Executive Order 13224, 15 C.F.R. Part 760, and those economic sanctions programs enumerated at 31 C.F.R. Parts 500 through 598 and shall ensure that its activities under this Contract comply with any policies and procedures for monitoring operations to ensure compliance, as may be established from time to time by MCC, the Employer, the Fiscal Agent, or the Bank, as may be applicable. The Contractor shall verify, or cause to be verified, appropriately any individual, corporation or other entity with access to or recipient of funds, which verification shall be conducted in accordance with the procedures set out in the MCC Program Procurement Guidance paper entitled “Excluded Parties Verification Procedures in Purchaser Program Procurements” that can be found on MCC’s website at www.mcc.gov. The Contractor shall (A) conduct the monitoring referred to in this paragraph on at least a quarterly basis, or such other reasonable period as the Employer or MCC may request from time to time and (B) deliver a report of such periodic monitoring to the Employer with a copy to MCC.

4. Other restrictions on the Contractor shall apply as set forth in the Compact or related documents with respect to any activities in violation of other applicable U.S. Laws, any misconduct injurious to MCC or the Employer, any activity contrary to the national security interests of the United States or any other activity that materially and adversely affects the ability of the Government or any other party to effectively implement, or ensure the effective implementation of, the Program or any Project or to otherwise carry out its responsibilities or obligations under or in furtherance of the Compact or any related document or that materially and adversely affects the Program assets or any Permitted Account.

F. Publicity, Information and Marking

1. The Contractor shall cooperate with the Employer and the Government to provide the appropriate publicity to the goods, works and services provided under this Contract, including identifying Program activity sites and marking Program assets as goods, services, and works funded by the United States, acting through MCC all in accordance with the MCC Standards for Corporate Marking and Branding available on the MCC website at [<http://www.mcc.gov/documents/mcc-marking-corporate-v2.pdf>];⁴⁶ provided, however that any press release or announcement regarding MCC or the fact that MCC is funding the Program or any other publicity materials referencing MCC, shall be subject to MCC’s prior written approval and must be consistent with any instructions provided by MCC from time to time in relevant Implementation Letters.

2. Upon the termination or expiration of the Compact, the Contractor shall, upon MCC’s request, cause the removal of any such markings and any references to MCC in any publicity materials.

G. Insurance

The Contractor shall obtain insurance, performance bonds, guarantees or other protections appropriate to cover against risks or liabilities associated with performance of this Contract. The Contractor shall be named as payee on any such insurance and the beneficiary of any such performance bonds and guarantees. The Employer and, at MCC’s request MCC, shall be named as additional insureds on any such insurance or other guarantee, to the extent

⁴⁶ Prior to finalizing this as part of a specific contract, confirm that this remains the proper link.

permissible under applicable Laws. The Contractor shall ensure that any proceeds from claims paid under such insurance or any other form of guarantee shall be used to replace or repair any loss or to pursue the procurement of the covered goods, works and services; provided, however, that at MCC's election, such proceeds shall be deposited in an account as designated by the Employer and acceptable to MCC or as otherwise directed by MCC.

H. Conflict of Interest

1. The Contractor shall ensure that no officer, director, employee, affiliate, contractor, subcontractor, agent, advisor or representative of the Contractor participates in the selection, award, administration or oversight of a contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding in connection with this Contract, in which (i) the entity, the person, members of the person's immediate family or household or his or her business partners, or organizations controlled by or substantially involving such person or entity, has or have a financial or other interest or (ii) the person or entity is negotiating or has any arrangement concerning prospective employment, unless such person or entity has first disclosed in writing to the parties under this Contract and MCC the conflict of interest and, following such disclosure, the parties to this Contract agree in writing to proceed notwithstanding such conflict. The Contractor shall ensure that none of its officers, directors, employees, affiliates, contractors, subcontractors, agents, advisors or representatives involved in the selection, award, administration, oversight or implementation of any contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding in connection with this Contract shall solicit or accept from or offer to a third party or seek or be promised (directly or indirectly) for itself or for another person or entity any gift, gratuity, favor or benefit, other than items of *de minimis* value and otherwise consistent with such guidance as MCC may provide from time to time. The Contractor shall ensure that none of its officers, directors, employees, affiliates, contractors, subcontractors, agents, advisors or representatives engage in any activity which is, or gives the appearance of being, a conflict of interest in connection with this Contract. Without limiting the foregoing, the Contractor shall comply, and ensure compliance, with the applicable conflicts of interest and ethics policies of the Employer as provided by the Employer to the Contractor.

I. Inconsistencies

In the event of any conflict between this Contract and the Compact /or the **[Disbursement Agreement or the Procurement Agreement/Program Implementation Agreement]**, the term(s) of the Compact and/or the **[Disbursement Agreement or the Procurement Agreement/Program Implementation Agreement]**⁴⁷ shall prevail.

J. Other Provisions

The Contractor shall abide by such other terms or conditions as may be specified by the Employer or MCC in connection with this Contract.

⁴⁷ The appropriate agreement in connection with the particular country for which this form is being used is to be referenced here.

K. Flow-Through Provisions

In any subcontract or subaward entered into by the Contractor, as permitted by this Contract, the Contractor shall ensure the inclusion of all the provisions contained in paragraphs (A) through (J) above.

Annex B: Appendix to Bid⁴⁸

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

⁴⁸ The completed Appendix to Bid of the successful Bidder (the form of which is provided in Section IV, Bidding Forms) shall be appended to the Conditions of Particular Application of the Contract as Annex B.

SECTION VII

**FORMS OF AGREEMENT, PERFORMANCE SECURITY, AND
ADVANCE PAYMENT GUARANTEE**

Letter of Acceptance⁴⁹
[letterhead paper of the Employer]

[date]

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

This is to notify you that your Bid dated **[date]** for execution of the **[name of the Contract and identification number, as given in the Bidding Documents]** for the Accepted Contract Amount of the equivalent of of⁵⁰ **[amount in words and numbers] [name of currency]**, as corrected and modified in accordance with the Instructions to Bidders, is hereby accepted by us in our capacity as Employer under the Contract.

Within 28 days of your receipt of this Letter of Acceptance you are hereby instructed to (a) sign and return the attached Contract Agreement in accordance with Sub-Clause 1.6 of the General Conditions of Contract and (b) forward the Performance Security in accordance with Sub-Clause 4.2 of the General Conditions of Contract, using for that purpose the Form of Performance Bank Guarantee included in Section VII, Forms of Agreement and Security, of the Bidding Documents, or another form acceptable to us.

Authorized Signature: _____

Name and Title of Signatory: _____

[insert full legal name of the Employer] _____

Attachment: Contract Agreement

⁴⁹ The Letter of Acceptance is the basis for formation of the Contract as described in ITB Clauses 39-41. This Form of Letter of Acceptance is to be filled in and sent to the successful Bidder only after evaluation of Bids has been completed, subject to any review by MCC as required.

⁵⁰ Delete "the equivalent of" if the Accepted Contract Amount is expressed wholly in one currency.

Form of Agreement

AGREEMENT

THIS AGREEMENT made the _____ day of _____ 20 _____
between _____ of _____
(hereinafter called “the Employer”) of the one part and _____
of _____ (hereinafter called “the Contractor”) of the other part.

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

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

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

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

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

NOW THIS AGREEMENT WITNESSETH as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them elsewhere in the Contract.
 2. The documents identified in Sub-Clause 1.5 of the General Conditions of Contract and the Conditions of Particular Application shall be deemed to form and be read and construed together as part of the Contract and the priority of such documents shall be as provided in such Sub-Clause 1.5.
 3. In consideration of the payments to be made by the Employer to the Contractor as provided in the Contract, the Contractor hereby covenants with the Employer to design and execute and
-

complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.

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

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

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

Signed, sealed, and delivered by the said _____
In the presence of: _____

Binding Signature of Employer _____

Binding Signature of Contractor _____

Forms of Performance Security and Advance Payment Guarantee

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

Form of Performance Bank Guarantee

_____ [Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: _____ [Name and Address of Employer]

Date: _____

PERFORMANCE GUARANTEE No.: _____

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

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

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

This guarantee shall expire no later than twenty-eight (28) days from the date of issuance of the Taking-Over Certificate, calculated based on a copy of such Certificate which shall be provided to us, or on the ___ day of _____, 2___, whichever occurs first. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

[signature(s)]

Form of Bank Guarantee for Advance Payment

_____ [Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: _____ [Name and Address of Employer]

Date: _____

ADVANCE PAYMENT GUARANTEE No.: _____

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

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

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

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

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the Interim Payment Certificate indicating that []⁵¹ percent of the Contract Price has been certified for payment, or on the ___ day of ____, 2___, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

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

[signature(s)]

⁵¹ The percentage shown in the form of the advance payment guarantee shall match the percentage inserted in Sub-Clause 14.2 of the Appendix to Bid.