



**KINGDOM OF CAMBODIA**  
**Nation Religion King**

**Royal Government of Cambodia**

**STANDARD OPERATING PROCEDURES  
ON  
PROCUREMENT**

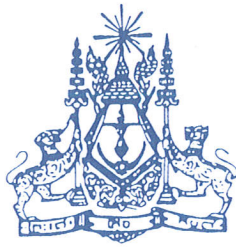
**FOR  
ALL EXTERNALLY FINANCED  
PROJECTS/PROGRAMS IN CAMBODIA**

**Volume II**



**Updated Version: December 2019**

**Prepared by the Ministry of Economy and Finance**



**ព្រះរាជាណាចក្រកម្ពុជា**  
**ជាតិ សាសនា ព្រះមហាក្សត្រ**

**រាជរដ្ឋាភិបាលកម្ពុជា**

**លេខ: ១៨១ អនក្រ.បក**

**អនុក្រឹត្យ**

**ស្តីពី**

**ការដាក់ឱ្យប្រើប្រាស់នីតិវិធីរួមសម្រាប់គ្រប់គ្រងការរៀបចំ និង  
តាមដានការអនុវត្តគម្រោងហិរញ្ញប្បទានពីដៃគូអភិវឌ្ឍន៍**

**រាជរដ្ឋាភិបាល**

- បានឃើញរដ្ឋធម្មនុញ្ញនៃព្រះរាជាណាចក្រកម្ពុជា
- បានឃើញព្រះរាជក្រឹត្យលេខ នស/រកត/០៩១៨/៩២៥ ចុះថ្ងៃទី០៦ ខែកញ្ញា ឆ្នាំ២០១៨ ស្តីពីការតែងតាំងរាជរដ្ឋាភិបាលនៃព្រះរាជាណាចក្រកម្ពុជា
- បានឃើញព្រះរាជក្រមលេខ នស/រកម/០៦១៨/០១២ ចុះថ្ងៃទី២៨ ខែមិថុនា ឆ្នាំ២០១៨ ដែលប្រកាសឱ្យប្រើច្បាប់ស្តីពីការរៀបចំ និងការប្រព្រឹត្តទៅនៃគណៈរដ្ឋមន្ត្រី
- បានឃើញព្រះរាជក្រមលេខ នស/រកម/០១៩៦/១៨ ចុះថ្ងៃទី២៤ ខែមករា ឆ្នាំ១៩៩៦ ដែលប្រកាសឱ្យប្រើច្បាប់ស្តីពីការបង្កើតក្រសួងសេដ្ឋកិច្ច និងហិរញ្ញវត្ថុ
- បានឃើញព្រះរាជក្រមលេខ នស/រកម/០៥០៨/០១៦ ចុះថ្ងៃទី១៣ ខែឧសភា ឆ្នាំ២០០៨ ដែលប្រកាសឱ្យប្រើច្បាប់ស្តីពីប្រព័ន្ធហិរញ្ញវត្ថុសាធារណៈ
- បានឃើញព្រះរាជក្រមលេខ នស/រកម/០១១២/០០៤ ចុះថ្ងៃទី១៤ ខែមករា ឆ្នាំ២០១២ ដែលប្រកាសឱ្យប្រើច្បាប់ស្តីពីលទ្ធកម្មសាធារណៈ
- បានឃើញអនុក្រឹត្យលេខ ៤៨៨ អនក្រ.បក ចុះថ្ងៃទី១៦ ខែតុលា ឆ្នាំ២០១៣ ស្តីពីការរៀបចំ និងការប្រព្រឹត្តទៅនៃក្រសួងសេដ្ឋកិច្ច និងហិរញ្ញវត្ថុ
- បានឃើញអនុក្រឹត្យលេខ ៧៥ អនក្រ.បក ចុះថ្ងៃទី២៥ ខែឧសភា ឆ្នាំ២០១៧ ស្តីពីការកែសម្រួលអនុក្រឹត្យលេខ ៤៨៨ ចុះថ្ងៃទី១៦ ខែតុលា ឆ្នាំ២០១៣ ស្តីពីការរៀបចំ និងការប្រព្រឹត្តទៅនៃក្រសួងសេដ្ឋកិច្ច និង ហិរញ្ញវត្ថុ
- យោងតាមសំណើរបស់រដ្ឋមន្ត្រី ក្រសួងសេដ្ឋកិច្ច និង ហិរញ្ញវត្ថុ

**សម្រេច**

**មាត្រា ១.-**

ដាក់ឱ្យប្រើប្រាស់នីតិវិធីរួម សម្រាប់គ្រប់គ្រងការរៀបចំ និងតាមដានការអនុវត្តគម្រោងហិរញ្ញប្បទានពីដៃគូអភិវឌ្ឍន៍នានា ដូចមានខ្លឹមសារភ្ជាប់មកជាមួយអនុក្រឹត្យនេះ ជំនួសនីតិវិធីរួមបច្ចុប្បន្នកម្មសម្រាប់ការអនុវត្តគម្រោង

ហិរញ្ញប្បទានពីដៃគូអភិវឌ្ឍន៍ ដែលបានដាក់ឱ្យអនុវត្តដោយអនុក្រឹត្យលេខ ៧៤ អនក្រ.បក ចុះថ្ងៃទី២២ ខែឧសភា ឆ្នាំ២០១២។

**មាត្រា ២.-**

នីតិវិធីរួម ដែលត្រូវបានដាក់ឱ្យប្រើប្រាស់ក្រោមអនុក្រឹត្យនេះ រួមមាន៖

- ១ - នីតិវិធីរួមសម្រាប់ការគ្រប់គ្រងគម្រោង
- ២ - នីតិវិធីរួមសម្រាប់ការគ្រប់គ្រងហិរញ្ញវត្ថុគម្រោង
- ៣ - នីតិវិធីរួមសម្រាប់ការគ្រប់គ្រងលទ្ធកម្មគម្រោង

ក្រោមក្របខ័ណ្ឌហិរញ្ញប្បទានពីដៃគូអភិវឌ្ឍន៍នានានៅកម្ពុជា។

**មាត្រា ៣.-**

រដ្ឋមន្ត្រីទទួលបន្ទុកទីស្តីការគណៈរដ្ឋមន្ត្រី រដ្ឋមន្ត្រីក្រសួងសេដ្ឋកិច្ច និង ហិរញ្ញវត្ថុ រដ្ឋមន្ត្រី និងរដ្ឋលេខាធិការ គ្រប់ក្រសួងស្ថាប័នពាក់ព័ន្ធ ត្រូវអនុវត្តអនុក្រឹត្យនេះឱ្យមានប្រសិទ្ធភាពខ្ពស់ ចាប់ពីថ្ងៃចុះហត្ថលេខានេះ តទៅ។

ថ្ងៃ ៤ ខែ ៦ កើត ខែ ចសិ ឆ្នាំ កុរ ឯកស័ក ព.ស. ២៥៦៣  
រាជធានីភ្នំពេញ, ថ្ងៃទី ២៤ ខែ ៥ ឆ្នាំ ២០១៩



**សម្តេចអគ្គមហាសេនាបតីតេជោ ហ៊ុន សែន**

បានយកសេចក្តីគោរពជម្រាបជូន

សម្តេចអគ្គមហាសេនាបតីតេជោនាយករដ្ឋមន្ត្រី

សូមហត្ថលេខា



**អគ្គបណ្ឌិតសភាចារ្យ**

**អូន ព័ន្ធមុនីរ័ត្ន**

**កន្លែងទទួល៖**

- ក្រសួងព្រះបរមរាជវាំង
- អគ្គលេខាធិការដ្ឋានក្រុមប្រឹក្សាធម្មនុញ្ញ
- អគ្គលេខាធិការដ្ឋានព្រឹទ្ធសភា
- អគ្គលេខាធិការដ្ឋានរដ្ឋសភា
- ខុទ្ទកាល័យសម្តេចអគ្គមហាសេនាបតីតេជោនាយករដ្ឋមន្ត្រី
- ខុទ្ទកាល័យសម្តេច ឯកឧត្តម លោកជំទាវ ឧបនាយករដ្ឋមន្ត្រី
- ដូចមាត្រា ៣
- រាជកិច្ច
- ឯកសារ-កាលប្បវត្តិ

**[Unofficial Translation]**

**KINGDOM OF CAMBODIA**  
**NATION RELIGION KING**

**Royal Government of Cambodia**

**No. 181 ANK.BK**

**SUB-DECREE**

**On**

**Promulgating the Standard Operating Procedures  
for Implementing All Externally Financed Projects/Programs**

The Royal Government of Cambodia

- Having seen the Constitution of the Kingdom of Cambodia.
- Having seen the Royal Decree No. NS/RKT/0918/925, dated September 6, 2018 on the Formation of the Royal Government of Cambodia.
- Having seen the Royal Kram No. NS/RKM/0618/012, dated June 28, 2018 on promulgating the law on the Organization and Functioning of the Council of Ministers.
- Having seen the Royal Kram No. NS/RKM/0196/18, dated January 24, 1996 on Promulgating the Law on the Establishment of the Ministry of Economy and Finance.
- Having seen the Royal Kram No. NS/RKM/0508/016, dated May 13, 2008 on Promulgating the Law on the Public Finance System.
- Having seen the Royal Kram No. NS/RKM/0112/004, dated January 14, 2012 on Promulgating the Law on the Public Procurement.
- Having seen the Sub-Decree No. 488/ANK/BK, dated October 16, 2013 on the Organization and Functioning of the Ministry of Economy and Finance.
- Having seen the Sub-Decree No. 75/ANK/BK, dated May 25, 2017 on Amendment of Sub-Decree No. 488, dated October 16, 2013 on the Organization and Functioning of the Ministry of Economy and Finance.
- Pursuant to the request of the Minister of Economy and Finance.

**Hereby Decides**

**Article 1:**

Promulgate the Standard Operating Procedures for Implementing All Externally Financed Projects/Programs as attached to this Sub-Decree to replace the Updated Standard Operating Procedures for Implementing All Externally Financed Projects/ Programs, which was promulgated by Sub-Decree No.74 ANK.BK, dated May 22, 2012.

**Article 2:**

The Standard Procedures for Implementing All Externally Financed Projects/ Programs promulgated under this Sub-Decree comprise of:

- 1- Standard Operating Procedures on Project Management for All Externally Financed Projects/Programs in Cambodia.
- 2- Standard Operating Procedures on Financial Management for All Externally Financed Projects/Programs in Cambodia.
- 3- Standard Operating Procedures on Procurement for All Externally Financed Projects/ Programs in Cambodia.

**Article 3:**

Minister in charge of the Cabinet of the Council of Ministers, Minister of Economy and Finance, Ministers and Secretaries of State of all concerned Ministries and Institutions shall implement this Sub-Decree effectively from the date of signature herein.

Signed and sealed in Phnom Penh on 2<sup>nd</sup> December 2019

Prime Minister

**Samdach Akka Moha Sena Padei Techo HUN SEN**

Have submitted to Samdach Akka Moha Sena Padei Techo HUN SEN for signature

Signed and Sealed

**AUN Pornmoniroth**  
**Deputy Prime Minister**  
**Minister of Economy and Finance**

**Recipients:**

- Ministry of the Royal Palace
- Secretariat General of Constitutional Council of Cambodia
- Secretariat General of Senate
- Secretariat General of National Assembly
- Cabinet of Samdach Akka Moha Sena Padei Techo HUN SEN, Prime Minister
- Cabinet of Deputy Prime Ministers
- As Article 3
- Archives-Chronicles

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## **ANNEX VI-a**

# **Standard National Competitive Bidding Document for Procurement of Goods**

## Preface

The use of this document is mandated for all goods procurement under the National Competitive Bidding (NCB) method of procurement with an estimated value within the threshold for National Competitive Bidding stated in **Annex IV-a** of the Standard Operating Procedures on Procurement or when the Project Procurement Plan has specified its use. The Standard NCB documents cannot be changed except where the RGC, represented by MEF, and respective DP have agreed to amend any part of the document.

The Standard NCB document is approved for use in all DP financed projects. Since there is a lack of harmonization of bidding documents among the DPs and there are some variances in their requirements, the Standard NCB document is made consistent with the policies and procedures of the DPs through the modification of the **Bid Data Sheet**. Hence, any changes or amendments will be accommodated through the **Bid Data Sheet and as agreed between the MEF and the DP**.

This Standard NCB Bidding Document has been prepared for the procurement of goods with an estimated value of less than or equal to US\$1,000,000. It can also be used for higher value goods contract if specified in the Project Procurement Plan as agreed by the MEF and the DP.

Goods with estimated value of more than \$1,000,000 are generally procured through open international competitive bidding method unless a higher value is specified in the Project Procurement Plan. For this selection method of procurement, the DPs either require the mandatory use of their own standard procurement documents or other equivalent international bidding documents.

However, the EAs and Users must be guided by the selection method stipulated in the Project Procurement Plan as this Standard NCB Documents can be used for procurement of goods exceeding the threshold of \$1,000,000 if the DP and MEF have agreed to this and is specified in the approved Project Procurement Plan.

To obtain further information on procurement under the World Bank and the Asian Development Bank assisted projects and their standard procurement documents for open international competitive bidding, contact:

For the World Bank  
Exchange Square, 10th floor, Bldg. no. 19&20 Street 106,  
Sangkat Wat Phnom, Khan Daun Penh, Phnom Penh, Cambodia  
cambodia@worldbank.org, [www.worldbank.org/procurement](http://www.worldbank.org/procurement)

For the Asian Development Bank  
Cambodia Resident Mission  
29 Suramarit Boulevard (Street 268)  
Sangkat Chaktomuk Khan Daun Penh, Phnom Penh, Cambodia  
Fax: +855 23-215807, <http://www.adb.org/carm>

Ministry of Economy and Finance  
General Department of International Cooperation and Debt Management  
Street 92, Phnom Penh, Cambodia  
gdicdm@mef.gov.kh, Fax (855-23) 725 341  
<http://www.mef.gov.kh/>

*[This Preface is for guidance only and does NOT part of the Bidding Documents issued to the Bidders]*



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# Instructions

In order to simplify the preparation of bidding documents for each procurement, the Standard NCB Document groups the provisions that are intended to be used unchanged in **Section I**, Instructions to Bidders (ITB), and in **Section III**, General Conditions of Contract (GCC). These **cannot be changed**.

Any change in the ITB is introduced through the Bid Data Sheet and in the GCC, through the Special Conditions of Contract.

The Data and provisions specific to each procurement and contract will need to be included in **Section II**, Bid Data Sheet; **Section IV**, Special Conditions of Contract; **Section VI**, Schedule of Requirements; and **Section V**, Specifications & Statement of Compliance.

The forms to be used are provided in **Section VII**, Bidding Forms, and **Section VIII**, Contract Forms.

Care should be taken to check the relevance of the provisions of the Standard NCB Document against the requirements of the specific goods to be procured. The following general directions should be observed when using the documents. In addition, each section is prepared with notes intended only as information for the Purchaser or the person drafting the bidding documents. They shall not be included in the final documents, except for the notes introducing **Section VIII**, Forms, where the information is useful for the Bidder.

- (a) Specific details, such as the “name of the Purchaser” and “address for bid submission,” should be furnished in the Invitation for Bids, in the Bid Data Sheet, and in the Special Conditions of Contract. The final documents should contain neither blank spaces nor options.
- (b) Amendments, if any, to the Instructions to Bidders and to the General Conditions of Contract should be made through the Bid Data Sheet and the Special Conditions of Contract, respectively.
- (c) Footnotes or notes in italics included in the Invitation for Bids, Bid Data Sheet, Special Conditions of Contract, and in the Schedule of Requirements are not part of the text of the document, although they contain instructions that the Purchaser should strictly follow. The final document should contain no footnotes.
- (d) The criteria for bid evaluation and the various methods of evaluation in the Instructions to Bidders and Bid Data Sheet should be carefully reviewed. Only those that are selected to be used for the procurement in question should be retained and expanded, as required, in the Bid Data Sheet or in the Technical Specifications, as appropriate. The criteria that are not applicable should be deleted from the Bid Data Sheet.
- (e) Clauses included in the Special Conditions of Contract are illustrative of the provisions that should be drafted specifically by the Purchaser for each procurement package.
- (f) The forms provided in **Section VII**, Bidding Forms should be completed by the Bidder or the Supplier; the footnotes in these forms should remain, since they contain instructions which the Bidder or the Supplier should follow.

*[This is guidance for the EA for the preparation of the Bidding Documents and is NOT included in the Bidding Documents issued to the Bidders]*

# Invitation for Bids

*[Name of Project]*

*[Loan/Credit/Grant Number]*

*[Contract No. and Description]*

1. The Kingdom of Cambodia *[insert “has received” or “has applied for”]* a *[insert “loan/credit” or “grant”]* from the *[insert “Development Partner”]* toward the cost of *[insert name of Project]*, and it intends to apply part of the proceeds of this *[insert “loan/credit” or “grant”]* to payments under the Contract for *[insert name/no. of Contract]*.

<p><i>If the government is using its own funds delete the above paragraph renumbering the subsequent ones.</i></p>
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2. The *[insert complete name of the Purchaser]* now invites sealed bids from eligible and qualified bidders for *[insert brief description of the Goods to be procured]*.<sup>1</sup>
3. Procurement will be conducted through National Competitive Bidding Procedures specified in the RGC’s Standard Operating Procedures on Procurement for All Externally Financed Projects/Program, under the laws and regulations governing public procurement within the Kingdom of Cambodia, and in accordance with the Financing Agreement and Procurement Regulations of *[Name of the DP]*.
4. This invitation is open to all bidders *[Use if the Funding is from WB or RGC. In case of ADB or any other Development Partner, delete this sentence and replace it with “This invitation is open to all eligible bidders from eligible source countries as described in the Bidding Document”]*.
5. Interested eligible bidders may obtain further information from *[insert complete name of Purchaser; name and e-mail of officer in charge]* and inspect the Bidding Documents at the address given below from *[insert office hours]*.
6. Qualification requirements include: *[insert the key technical, financial, legal and other qualification requirements specified in ITB Sub-Clause 14.2 of the bidding documents]*
  - *[The bidder has satisfactorily completed at least two contracts for supply of similar goods in the preceding three years of not less than (Insert the value as specified in the **BDS**)].*
  - *[The bidder has completed contracts in the total cumulative amount equal to at least (insert the value as specified in the **BDS**)].*
  - *[The Manufacturer of the offered goods, if a different entity from the Bidder, has experience of at least 3 years in the manufacturing of similar goods].*
  - *[The bidder has availability of liquid assets through either: (i) access to a line of credit or cash in bank account of an amount at least [Insert the value as specified in the **BDS**]; or (ii)*

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<sup>1</sup> A brief description of the type(s) of Goods or Goods should be provided, including quantities, location of Project, and other information necessary to enable potential bidders to decide whether or not to respond to the Invitation.

*credit terms with vendors specifically for the goods to be supplied under the contract, and valid for at least 6 months after the deadline date for submission of bids specified in ITB Clause 21].*

7. A complete set of Bidding Documents in *[insert Khmer or English]* may be purchased by interested bidders on the submission of a written application to the address given below and upon payment of a non-refundable fee *[insert amount in US Dollars]* or its equivalent in Cambodian Riel being *[insert KH Riel equivalent]*. The method of payment will be *[insert method of payment, for example, certified check, direct deposit to specified account number]*. The Bidding Documents will be sent by *[insert delivery procedure]* or may be collected in person at the discretion of the bidder. Other than payment of the non-refundable fee specified above, there shall be no other conditions for purchase of the bidding documents.
8. In case of any difficulty in purchase of the bidding documents, interested parties may contact in writing *[insert designation, address, telephone and fax number and email address of government officer who should be in higher position in the Executing Agency than the official specified in paragraph 5 above]* and also send a copy of the communication to:
  - (a) Director General  
General Department of International Cooperation and Debt Management  
Ministry of Economy and Finance  
Building A, 2<sup>nd</sup> Floor, Street 92, Sangkat Wat Phnom  
Khan Daun Penh, Cambodia  
Phone:  
Fax:  
Email: [gdicdm@mef.gov.kh](mailto:gdicdm@mef.gov.kh)
  - (b) Project Team Leader (Development Partner)  
*[Contact address and email address]*
9. Bids must be delivered to the address given below at or before *[insert time and date]*. Late bids will be rejected. Bids will be opened in the presence of the Bidders' representatives and the project's beneficiaries from the concerned local community who choose to attend in person at the address given below at *[insert the same time and date as the deadline for bid submission]*.
10. All bids shall be accompanied by a Bid Securing Declaration as described in the Instructions to Bidders.

*Guidance note:*

*If a DP has a mandatory requirement for submission of a bid security in another form, replace the above paragraph with the following text*

*"10. All bids shall be accompanied by a Bid Security in the amount of US\$ [insert amount]"*

11. The Government and/or the Development Partner will respectively declare a bidder ineligible either indefinitely or for a stated period of time, to be awarded a contract financed by them, if it at any time they determine that the bidder has engaged in corrupt or fraudulent, coercive, collusive or obstructive practices in competing for or in executing a contract.

12. The address(es) referred to above is (are):

*[insert detailed address(es) including complete legal name of the Purchaser, Office designation (room number), name of Officer, Street address, City (code), Country; Insert different addresses if addresses for purchase of bidding documents, bid submission and bid opening are different; Change address and Project Director and also two locations for selling bidding documents.]*

# Section I

## Instructions to Bidders

### Notes on the Instructions to Bidders

This section of the bidding documents provides the information necessary for bidders to prepare responsive bids, in accordance with the requirements of the Purchaser. It also provides information on bid submission, opening, and evaluation, and on the award of contract.

**Section I, Instructions to Bidders contains provisions that are to be used unchanged. Section II, Bid Data Sheet** consists of provisions that supplement, amend, or specify in detail information or requirements included in **Section I**, Instructions to Bidders to suit the specific procurement package.

Matters governing the performance of the Supplier, payments under the contract, or matters affecting the risks, rights, and obligations of the Parties under the contract are included in **Section III**, General Conditions of Contract, and **Section IV**, Special Conditions of Contract

*[This is for guidance of the EA for the preparation of the Bidding Documents and is NOT included in the Bidding Documents issued to Bidders]*

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## A. GENERAL

### 1. Scope of Bid

- 1.1. The Purchaser, through the Royal Government of Cambodia (RGC), as indicated in **Bid Data Sheet (BDS)** issues this Bidding Document for supply of Goods and Related services specified in **Section VI**, Schedule of Requirements. The name, identification, and number of lots of this procurement are specified in the **BDS**.
- 1.2. Throughout this Bidding Document,
  - (a) the term “in writing” means communicated in a written form and delivered against receipt;
  - (b) except where the context requires otherwise, words indicating the singular also include plural and words indicating plural also include singular; and
  - (c) “day” means calendar day.

### 2. Source of Funds

- 2.1. The Borrower, represented by the RGC; has receive financing from the Development Partner (DP) named in **BDS** towards the cost of the Project described in the **BDS**. The Purchaser intends to apply a portion of the proceeds of the funding to eligible payments under the contract(s) for which these Bidding Documents are issued.
- 2.2. Payments by the DP will only be made at the request of the Purchaser and upon approval by the DP in accordance with the terms and conditions of the Financing Agreement entered into between the Kingdom of Cambodia and the DP. No payment shall be made to persons or entities for any import of goods, if such payment or import is prohibited by a decision of the United Nation’s Security Council, taken under chapter VII of the Charter of the United Nations.

### 3. Fraud and Corruption

- 3.1. The DP requires that Borrowers or Recipients (including beneficiaries of the funds), as well as bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standards of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Government:
  - (a) defines, for the purposes of this provision, the terms set forth below as follows:
    - (i) “Corrupt Practice” is the offering, giving, receiving, or soliciting directly or indirectly of anything of value to influence improperly the actions of another party<sup>1</sup>;

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<sup>1</sup> For the purpose of this sub-paragraph, “another party” refers to a public official acting in relation to the selection process or contract execution. In this context “public official” includes Government and DP staff, and employees of other organizations taking or reviewing selection decisions.

- (ii) “Fraudulent Practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit, or to avoid an obligation<sup>2</sup>;
  - (iii) “Coercive Practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party, or the property of the party to influence improperly the actions of a party<sup>3</sup>;
  - (iv) “Collusive Practice” is an arrangement between two or more parties, designed to achieve an improper purpose, including to influence improperly the actions of another party<sup>4</sup>;
  - (v) “Abuse” means theft, waste, or improper use of assets related to the DP-financed project activity, either committed intentionally or through reckless disregard;
  - (vi) “Conflict of Interest” means any situation in which a party has interests that could improperly influence that party’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations;
  - (vii) “Obstructive Practice” is (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation, or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice by the competent Government and DP authority; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or (b) acts intended to materially impede the exercise of the Government or DP inspection and audit rights;
  - (viii) “Integrity Violation” is any act, as defined under the DP Integrity Principles accepted by the Government, which violates the Anti-Corruption Policies, where applicable, including points (i) to (vii), stated above and the following: violations of the Government and DP sanctions, retaliation against whistle-blowers or witnesses, and other violations of the Anti-Corruption Policies, including failure to adhere to the highest ethical standards;
- (b) will reject a recommendation for award of the contract if it is determined that the firm or individual recommended for the award or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees have directly or indirectly

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<sup>2</sup> For the purpose of this sub-paragraph, “party” refers to a public official; the terms “benefit” and “obligation” relate to the selection process or contract execution; and the “act or omission” is intended to influence the selection process or contract execution.

<sup>3</sup> For the purpose of this sub-paragraph, “party” refers to a participant in the selection process or contract execution.

<sup>4</sup> For the purpose of this sub-paragraph, “parties” refers to participants in the procurement or selection process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations in competing for the contract in question;

- (c) will cancel the portion of the financing allocated to a contract if it is determined at any time that representatives of the Government or of a beneficiary of the DP financing have engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations during the procurement or the execution of that contract, without the Government having taken timely and appropriate action satisfactory to the DP to remedy the situation;
- (d) will sanction a firm or individual, at any time, in accordance with prevailing Government and/or DP sanctions procedures<sup>5</sup>, including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded or otherwise benefit from a Government or a DP-financed contract, financially or in any other manner; (ii) to be a nominated<sup>6</sup> sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Government or a DP-financed contract; and (iii) to receive the proceeds of any loan made by the DP or otherwise to participate further in the preparation or implementation of any DP-financed project; if it is determined at any time that the firm or individual has engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations in competing for, or in executing, a DP-financed contract.

3.2. All bidders are required to complete the Statement on Ethical Conduct and Fraud and Corruption which can be found in **Section VII**, Bidding Forms and submit it with their bid.

#### 4. Eligible Bidders

4.1. A Bidder, and all parties constituting the Bidder, may have the nationality of any country unless otherwise indicated in **GCC Sub-Clause 6.1**. A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including Related Services. Any limitation of eligibility stated in **GCC Sub-Clause 6.1** shall also apply to the origin of goods and related services to be used in the performance of the Contract. For purposes of this clause, "origin" means the place where the goods are mined, grown, or produced, or the place from which the related services are supplied.

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<sup>5</sup> A firm or an individual may be declared ineligible to be awarded a contract upon (i) completion of the sanctions proceedings as per its sanctions procedures, including inter alia: cross-debarment as agreed by DP and other International Financial Institutions; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanction's proceedings in accordance with the Government and DP guidelines.

<sup>6</sup> A nominated sub-contractor, consultant, manufacturer or supplier, or service provider is one which has been either (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Government.

- 4.2. Firms shall be excluded if 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, Cambodia prohibits any import of goods or contracting works or services from that country or any payments to any person or entity in that country.
- 4.3. A Bidder shall not have a conflict of interest. All Bidders found to be in conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process if any of, including but not limited to, the following:
- (a) they have controlling shareholders in common; or
  - (b) they receive or have received any direct or indirect subsidy from any of them; or
  - (c) they have the same legal representative for purposes of this Bid; or
  - (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to material information about or improperly influence the Bid of another Bidder, or influence the decisions of the Purchaser regarding this bidding process; or
  - (e) the Bidder, associates, parent company or any affiliated entity, participated as a consultant in the preparation of the design or technical specifications of the goods and services that are subject of the Bid; or
  - (f) the Bidder would be providing goods resulting from or directly related to consulting services for the preparation and implementation of the project specified in **BDS ITB 2.1**. that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm.
- 4.4. Bidders and their sub-contractors shall not be under a declaration of ineligibility for corrupt and fraudulent practices as described in ITB Sub-Clause 3.1. issued by the either the Development Partner or the RGC.
- 4.5. Government-owned enterprises in the Cambodia may only participate if they are legally and financially autonomous, operate under commercial law, and are not under supervision of the Purchaser.
- 4.6. All bidders are required to complete and submit with their bids the appropriate forms listed in **Section VII**, Bidding Forms attached hereto.

## 5. One Bid per Bidder

- 5.1. Each Bidder shall submit only one Bid. A Bidder who submits or participates in more than one Bid will cause all the Bids with the Bidder's participation to be disqualified. However, this does not limit the participation of subcontractors in more than one bid, provided that the cost of sub-contracted goods or related services (including labor) do not exceed the percentage of the bid price stated in the **BDS**.

## **6. Cost of Bidding**

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

## **B. BIDDING DOCUMENTS**

### **7. Content of the Bidding Document**

- 7.1. The goods required, bidding procedures, and contract terms are prescribed in the bidding documents. In addition to the Invitation for Bids, the bidding documents include:

Section I - Instructions to Bidders

Section II - Bid Data Sheet

Section III - General Conditions of Contract

Section IV - Special Conditions of Contract

Section V - Specifications & Statement of Compliance

Section VI - Schedule of Requirements

Section VII - Bidding Forms

Section VIII - Contract Forms.

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

### **8. Clarification of the Bidding Document**

- 8.1. A prospective Bidder requiring any clarification of the Bidding Document shall contact the Purchaser in writing at the Purchaser's address indicated in the **BDS**. The Purchaser will respond in writing to any request for clarification, provided that such request is received no later than fourteen (14) calendar days prior to the deadline for submission of Bids.
- 8.2. The Purchaser shall forward copies of its response to all Bidders who have acquired the Bidding Document directly from it, including a description of the inquiry but without identifying its source. Should the Purchaser deem it necessary to amend the Bidding Document as a result of a clarification, it shall do so following the procedure under ITB Clause 9: Amendment of the Bidding Document.

### **9. Amendment of the Bidding Document**

- 9.1. At any time prior to the deadline for submission of the Bids, the Purchaser may amend the Bidding Document by issuing addenda.

- 9.2. Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document directly from the Purchaser.
- 9.3. To give prospective Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Purchaser may, at its discretion, extend the deadline for the submission of the Bids, pursuant to ITB Sub-Clause 21.1.

## 10. Language of Bid

- 10.1. All documents relating to the Bid shall be in English unless otherwise stated in the **BDS**.

## 11. Documents Comprising the Bid

- 11.1. The bid prepared by the Bidder shall comprise the following components:
  - (a) Bid Submission Form and Price Schedule completed in accordance with ITB Clauses 12 and 13;
  - (b) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB Sub-Clause 11.1(a);
  - (c) documentary evidence established in accordance with ITB Clause 14 that the Bidder is eligible to bid and is qualified to perform the contract if its bid is accepted;
  - (d) documentary evidence established in accordance with ITB Clause 15 that the goods and ancillary services to be supplied by the Bidder are eligible goods and services and conform to the bidding documents; and
  - (e) Bid Securing Declaration or Bid Security furnished in accordance with ITB Clause 19.

## 12. Bid Submission Form and Price Schedules

- 12.1. The Bidder shall submit the Bid Submission Form using the form furnished in **Section VII**, Bidding Forms. This form must be completed without any alterations to its format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.
- 12.2. The Bidder shall submit the Price Schedule for Goods and for Related Services, whenever Related Services are specified in the Schedule of Requirements, using the forms furnished in Section VII, Bidding Forms.
- 12.3. Any discount offered must be unconditional. If offered, the discounts and the methodology for their application shall be quoted in the Bid Submission Form, or in a separate letter of discount which must be referenced and attached to the Bid Submission Form, bear the bidder's official letterhead and stamp, dated and signed by the bidder's authorized representative and enclosed in the sealed envelope containing the bid.
- 12.4. Unless otherwise indicated in the **BDS**, alternative Bids shall not be considered.

### 13. Bid Prices, Currency and Discounts

- 13.1. All lots and items must be listed and priced separately in the Price Schedules.
- 13.2. The prices to be quoted in the Price Schedule shall be net and inclusive of all unconditional discounts offered.
- 13.3. Prices shall be quoted as specified in the Price Schedules included in Section VII, Bidding Forms. Prices shall be entered in the following manner:
  - (a) For Goods:
    - (i) The price of the Goods delivered at the final destination (Project Site) specified in GCC Sub-Clause 1.1(k), including all customs duties and sales and other taxes already paid or payable, transportation, insurance and any other local services required to convey the Goods to their final destination.
  - (b) For Related Services, other than transportation, insurance and other local services required to convey the Goods to their final destination, whenever such Related Services are specified in the Schedule of Requirements:
    - (i) The price of each item comprising the Related Services (inclusive of any applicable taxes).
- 13.4. The Bidder's separation of price components in accordance with ITB Sub-Clause 13.3 above will be solely for the purpose of facilitating the comparison of bids by the Purchaser and will not in any way limit the Purchaser's right to contract on any of the terms offered.
- 13.5. All prices shall be quoted by Bidders in the Currency as Specified in the **BDS**. Payment to the Supplier under the contract shall be made in the Currency as Specified in the **BDS**.
- 13.6. Prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and not subject to adjustment on any account, unless otherwise specified in SCC Clause 12.1. A Bid submitted with an adjustable price quotation, when a fixed price quotation is required, shall be treated as non-responsive and shall be rejected. However, if in accordance with SCC Clause 12.1, prices quoted by the Bidder shall be subject to adjustment during the performance of the Contract, a bid submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.

### 14. Documents Establishing the Eligibility and Qualifications of the Bidder

- 14.1. To establish their eligibility in accordance with ITB Clause 4 Eligible Bidders, Bidders shall complete the country of origin declarations in the Price Schedule Forms included in Section VII.
- 14.2. The documentary evidence of the Bidder's qualifications to perform the contract if its bid is accepted shall establish to the Purchaser's satisfaction:
  - (a) Copies of original documents defining the constitution or legal status, place of registration, and principal place of business evidencing legal status in an eligible source country as defined in GCC Sub-Clause 6.1.

- (b) If indicated in the **BDS** that, in the case of a Bidder offering to supply goods under the contract which the Bidder did not manufacture or otherwise produce, the Bidder has been duly authorized by the goods' Manufacturer or producer to supply the goods in Cambodia.
- (c) The Bidder shall furnish documentary evidence that it meets the following experience and financial requirements:
  - (i) that the Bidder has satisfactorily completed at least two contracts for supply of similar goods in the preceding three years of not less than the amount specified in the **BDS**;
  - (ii) that the Bidder has completed contracts in the total cumulative amount equal to at least the amount specified in the **BDS** in the preceding two years;
  - (iii) that the Manufacturer of the offered goods, if a different entity from the Bidder, has experience of at least 3 years in the manufacturing of similar goods;
  - (iv) that the Bidder has availability of liquid assets through either:
    - (a). access to a line of credit or cash in bank account of an amount at least the amount specified in the **BDS**, net of other contractual commitments;
    - or
    - (b). credit terms with vendors specifically for the goods to be supplied under the contract, and valid for at least 6 months after the deadline date for submission of bids specified in ITB Clause 21.
  - (v) Sub-contractors' qualifications shall not be taken into account in establishing the Bidder's qualifications to perform the contract;
  - (vi) that, in the case of a Bidder not doing business within Cambodia, the Bidder is or will be (if awarded the contract) represented by an Agent in Cambodia equipped and able to carry out the Supplier's maintenance, repair, and spare parts stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications;
  - (vii) that the Bidder gives to the Purchaser the authority to seek references from the Bidder's bankers; and
  - (viii) that the Bidder meets any additional qualification criteria listed in **BDS**.

## 15. Documents Establishing the Conformity of the Goods and Related Services

- 15.1. The documentary evidence of conformity of the Goods and services to the Bidding Documents may be in the form of literature, drawings, and data, and shall consist of:
- (a) a detailed item by item description of the essential technical and performance characteristics of the Goods and Related Services demonstrating substantial responsiveness of the Goods and Related Services to those requirements, and if applicable a statement of deviations



and exceptions to the provisions in the Technical Specifications, Section V;  
and

- (b) a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Goods for a period to be specified in the **BDS**, following commencement of the use of the Goods by the Purchaser.

- 15.2. Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Purchaser in the Schedule of Supply, are intended to be descriptive only and not restrictive. The Bidder may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to the Purchaser's satisfaction, that the substitutions ensure substantial equivalence or are superior to those designated in the Technical Specifications, Section V.

## 16. Delivery Terms

- 16.1. The Supplier shall be entirely responsible for the supply, including delivery, of the Goods and Related Services, if any, to the final destination (Project Site).

## 17. Format and Signing of Bids

- 17.1. The Bidder shall prepare one original and three copies of the bid, clearly marking each "ORIGINAL BID" and "COPY OF BID," as appropriate. In the event of any discrepancy between them, the original shall govern.
- 17.2. The original and the copy or copies of the bid shall be typed or written in indelible ink and shall be signed by the Bidder or a person or persons duly authorized to bind the Bidder to the contract. All pages of the bid, except for un-amended printed literature, shall be initialled by the person or persons signing the bid.
- 17.3. The Bidder shall furnish information as described in the Form of Bid on commissions or gratuities, if any, paid or to be paid to agents relating to this Bid, and to contract execution if the Bidder is awarded the contract.
- 17.4. The Bid shall contain no alterations or additions, except those to comply with instructions issued by the Purchaser, or as necessary to correct errors made by the Bidder, in which case such corrections shall be initialled by the person or persons signing the Bid.

## 18. Bid Validity

- 18.1. Bids shall remain valid for the period specified in the **BDS** after the date of bid submission prescribed by the Purchaser, pursuant to ITB Clause 21. A bid valid for a shorter period shall be rejected by the Purchaser as nonresponsive.
- 18.2. In exceptional circumstances, prior to the expiration of the bid validity period, the Purchaser may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB Clause 19, it shall also be extended for a corresponding 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.

## 19. Bid Securing Declaration and Bid Security

- 19.1. At the option of the Purchaser, the Bidder shall furnish as part of its Bid, either:
- (a) a Bid-Securing Declaration in original form as specified in the **BDS**.
  - or
  - (b) a Bid Security in the amount described in the **BDS**.
- The **BDS** indicates which of the above options (a) or (b) is applicable and required by the Purchaser.
- 19.2. The Bid Securing Declaration when required should be in accordance with the form of Bid Securing Declaration included in Section VII, Bidding Forms shall be valid for 30 calendar days beyond the validity of the Bid.
- 19.3. The Bid Security when required shall, at the Bidder's option, be in the form of a certified cheque or guarantee, from a reputable bank located in Cambodia. Cash is not an acceptable form of Security. If in the form of a bank guarantee the format of the Bid Security should be in accordance with the form of Bid Security (Bank Guarantee) included in Section VII, Bidding Forms. The Bid Security shall be valid for 30 calendar days beyond the validity of the Bid as specified in the **BDS**.
- 19.4. Any Bid not accompanied by an acceptable Bid Security/Bid Securing Declaration will be rejected by the Purchaser as non-responsive.
- 19.5. The Bid Security/Bid Securing Declaration of unsuccessful Bidders shall be returned as promptly as possible and within seven calendar days of the successful Bidder's furnishing of the performance security.
- 19.6. The Bid Security/Bid Securing Declaration of the successful Bidder shall be returned once the Bidder has signed the Contract and furnished the required Performance Security.
- 19.7. The Bid Security may be forfeited/the Bid Securing Declaration executed:
- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Bid Form, except as provided in or
  - (b) if the Bidder does not accept the correction of its Bid Price pursuant to ITB Clause 27.
  - (c) if the successful Bidder fails within the specified time to:
    - sign the Contract; or
    - furnish the required performance security within the period specified in ITB 38.
- 19.8. If Bid Securing Declaration is required as per **BDS** or ITB 19.1, the execution of a bid securing declaration will result in the bidders (including all members of a joint venture) being held ineligible for all contracts let by the RGC irrespective of the funding source for a period of up to three years from the expiry of the Bid

Validity, unless, at the bidder's option, the bidder pays an administrative penalty of 2 (two) percent of the total bid amount to the Purchaser.

## **C. SUBMISSION OF BIDS**

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

- 20.1. The Bidder shall seal the original and all copies of the Bid in two inner envelopes and one outer envelope, duly marking the inner envelopes as "ORIGINAL" and "COPIES". These envelopes containing the original and the copies shall then be enclosed in one single envelope.
- 20.2. The inner and outer envelopes shall:
  - (a) bear the name and address of the Bidder;
  - (b) be addressed to the Purchaser at the address provided in the **BDS**;
  - (c) bear the name and identification number of the Contract as defined in the SCC; and
  - (d) provide a warning "DO NOT OPEN BEFORE " the specified time and date for Bid opening as defined in the ITB Sub-Clause 21.1.
- 20.3. If any envelope is not sealed and marked as required, the Purchaser shall assume no responsibility for the misplacement or premature opening of the bid

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

- 21.1. Bids shall be delivered to the Purchaser at the address specified in ITB Sub-Clause 20.2(b), and no later than the date and time, indicated in the **BDS**.
- 21.2. The Purchaser may, at its discretion, extend the deadline for the submission of Bids by issuing an addendum in accordance with ITB Clause 9, in which case all rights and obligations of the Purchaser and Bidders previously subject to the deadline shall then be subject to the new deadline.
- 21.3. Any Bid received by the Purchaser after the deadline prescribed in ITB Sub-Clause 21.1 or Clause 21.2, as applicable, will be rejected and returned unopened to the Bidder.

### **22. Modification and Withdrawal of Bids**

- 22.1. Bidders may modify or withdraw their bids by giving notice in writing before the deadline prescribed in ITB Sub-Clause 21.1.
- 22.2. The withdrawal of a Bid between the deadline for submission of bids and within the Bid's validity (and extended validity when a bidder agrees to such) may result in the forfeiture of the Bid Security or execution of the Bid Securing Declaration pursuant to ITB Clause 19. No Bid may be modified after the deadline for submission of Bids.
- 22.3. Each Bidder's modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with ITB Clause 20, with the outer and

inner envelopes additionally marked "MODIFICATION" or "WITHDRAWAL," as appropriate.

## **23. Bid Opening**

- 23.1. The Purchaser will open the bids, including modifications made pursuant to ITB Clause 22 in the presence of the Bidders' designated representatives and anyone who choose to attend at the time and in the place specified in the **BDS**.
- 23.2. Envelopes marked "WITHDRAWAL" shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to ITB Clause 22 shall not be opened but returned to the Bidder.
- 23.3. All other envelopes shall be opened one at a time, reading out the name of the bidders and if there is any modification; the Bid Prices (per Lot if applicable), including any unconditional discounts quoted in the Bid Submission Form or in a separate letter of discount referenced and attached to the Bid Submission Form; any alternate offers, if allowed; the presence of the Bid Securing Declaration or Bid Security, if required; and any other details the Purchaser may consider appropriate. Only unconditional discounts and alternative offers, if allowed, read out and recorded at the bid opening shall be considered for evaluation. All pages of the Bid Submission Sheet and Price Schedules shall be initialed by at least three representatives of the Purchaser attending the bid opening. No bids shall be rejected at bid opening except for late bids in accordance with ITB 21.3.
- 23.4. Bids (and modifications) that are not opened and read out at bid opening shall not be considered further for evaluation, irrespective of the circumstances.
- 23.5. The Purchaser will prepare Minutes of the Bid Opening, including the information disclosed to those present in accordance with ITB Sub-Clause 23.3 announced by the Purchaser at the opening. The minutes shall be signed in original by all those present at the bid opening. The omission of a Bidder's signature shall not invalidate the contents and effect of the minutes. A copy of the minutes shall be distributed to all Bidders who submitted Bids on as soon as possible. In addition, a copy of the minutes shall promptly be posted at a prominent and freely accessible location outside the office of the Purchaser

## **D. EVALUATION AND COMPARISON OF BIDS**

### **24. Process to be Confidential**

- 24.1. Information relating to the examination, clarification, evaluation, and comparison of bids and recommendations for the award of a contract shall not be disclosed to Bidders or any other persons not officially concerned with such process until the award to the successful Bidder has been announced.
- 24.2. Any attempt by a Bidder to influence the Purchaser in the examination, evaluation, comparison, and post-qualification of the Bids or Contract Award decision may result in the rejection of its Bid.

- 24.3. Notwithstanding ITB 24.2, from the time of bid opening to the time of Contract Award, if any bidder wishes to contact the Purchaser on any matter related to the bid, it should do so in writing.

## **25. Clarification of Bids**

- 25.1. To assist in the examination, evaluation, and comparison of bids, and post-qualification of the bids, the Purchaser may, at the Purchaser's discretion, ask any Bidder for clarification of the Bidder's Bid, including breakdowns of unit rates. Any clarification submitted by a Bidder with regards to its Bid and that is not in response to a request by the Purchaser shall not be considered. The request for clarification and the response shall be in writing or by cable, telex, or facsimile, but no change in the price or substance of the Bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Purchaser in the evaluation of the bids in accordance with ITB Clause 27.
- 25.2. If a Bidder does not provide clarifications on its Bid by the time and date specified in the Purchaser's request for clarification, its Bid may be rejected.

## **26. Preliminary Examination of Bids**

- 26.1. The Purchaser will examine the bids to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the bids are generally in order.
- 26.2. If any of the following documents or information is missing from the submitted Bid, the Bid shall be rejected:
- (a) A Signed (in original) Bid Form, in the format indicated in Section VII, Bidding Forms;
  - (b) Bid Security or Bid Securing Declaration, in accordance with ITB Clause 19;
  - (c) The Price Schedule in accordance with ITB Clause 13;
  - (d) Written confirmation authorizing the signatory of the Bid to commit the Bidder in accordance with ITB 17;
  - (e) Documentary evidence establishing the Bidder's eligibility to bid in accordance with ITB 14 and that Goods and Related Services are to be supplied by the Bidder are of eligible origin; and
  - (f) Manufacturer's Authorization if required, in accordance with ITB Sub-Clause 14.2(b).
- 26.3. If a Bid is not substantially responsive, it will be rejected by the Purchaser, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.
- 26.4. A substantially responsive Bid is one which conforms to all the terms, conditions, and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one

- (a) which affects in any substantial way the scope, quality, or performance of the Goods and Related Services specified in Section V;
  - (b) which limits in any substantial way, inconsistent with the bidding documents, the Purchaser's rights or the Bidder's obligations under the proposed Contract; or
  - (c) if rectified, would affect unfairly the competitive position of other Bidders presenting substantially responsive bids.
- 26.5 Provided that the Bid is substantially responsive, the Purchaser may waive nonconformities in the Bid that does do not constitute a material deviation, reservation or omission.
- 26.6 Provided that the Bid is substantially responsive, the Purchaser may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions 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.
- 26.7 Provide the Bid is substantially responsive, the Purchaser shall rectify quantifiable nonmaterial nonconformities or omissions related to the Bid Price. To this effect, the Bid Price shall be adjusted, for **comparison purposes only**, to reflect the price of the missing or nonconforming item or component.

## 27. Errors and Omissions

- 27.1. Provided that a Bid is substantially responsive, the Purchased will correct arithmetical errors on the following basis.
- (a) If there is a discrepancy between the unit price and the total price as quoted that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price as quoted shall be corrected, unless in the opinion of the Purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price corrected.
  - (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected.
  - (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.
- 27.2. Omissions will be corrected as follows:
- (a) If the item is included in the price schedule with no unit and no total price, the item will be assumed to be included in the cost of other items. The Bid Price as quoted will not be allowed to change in case of omission of any item.
  - (b) However, for the purposes of comparison only and to determine the lowest evaluated price, if an item is not included in a Bidder's Price Schedule but

was included in the bidding document's Schedule of Requirements and the omission is regarded as a non-material deviation in accordance with ITB Sub-Clause 26.4, the total Bid Price as quoted will be adjusted by using the highest unit rate quoted for the same item from among the other bidders.

- 27.3. If the Bidder that submitted the lowest evaluated Bid does not accept the correction of the errors, its Bid will be rejected, and its bid security may be forfeited or bid securing declaration executed.

## 28. Evaluation and Comparison of Responsive Bids

- 28.1. The Purchaser will evaluate and compare the bids which have been determined to be substantially responsive, pursuant to ITB Sub-Clause 26.4.
- 28.2. To evaluate a Bid, the Purchaser shall only use the factors, methodologies and criteria defined in ITB Clause 28. No other criteria or methodology shall be permitted.
- 28.3. Evaluation shall be done on the basis of Items or Lots, as specified in the **BDS**; and the Bid Price as quoted in accordance with ITB Clause 13, subject to correction of arithmetic errors in accordance with ITB Clause 27.1 and adjustment for omissions in accordance with ITB Clause 27.2.
- 28.4. If so allowed and indicated in the **BDS** the Purchaser's evaluation of a bid will take into account, in addition to the bid price quoted in accordance with ITB Clause 13 one or more of the following factors, and quantified in the **BDS**
- (a) delivery schedule offered in the bid;
  - (b) the cost of components, mandatory spare parts, and service, and
  - (c) other specific criteria indicated in the **BDS** and/or in the Technical Specifications
- 28.5. The Purchaser reserves the right to accept or reject any non-material variation or deviation. Variations and deviations and other factors which are in excess of the requirements of the bidding documents or otherwise result in unsolicited benefits for the Purchaser will not be taken into account in Bid evaluation.
- 28.6. If the Bidding Document the Bidder to quote separate prices for different lots (contracts), and award to a single Bidder of multiple lots (contracts), the methodology to determine the lowest evaluated price of the lot (contract) combination, including discounts offered in the Bid Submission Sheet, is specified in the **BDS**.
- 28.7. The Purchase shall compare all substantially responsive Bids to determine the lowest evaluated in accordance with ITB 28.

## 29. Abnormally Low Bids

- 29.1. An Abnormally Low Bid is one where the Bid price, in combination with other elements of the Bid, appears to be so low that it raises material concerns as to the capability of the Bidder to perform the Contract for the offered Bid Price.

- 29.2. When the offered Bid Price appears to be abnormally low, the Purchaser shall undertake a three-step review process as follows:
- (a) Identify abnormally low costs and unit rates by comparing them with the estimates, other substantially responsive bids, or recently awarded similar contracts;
  - (b) Clarify and analyse the Bidder's resources inputs and pricing, including over heads contingencies and profit margins; and
  - (c) Decide whether to accept or reject the Bid.
- 29.3. With regard to ITB 29.2 (b) above, the Purchaser will seek a written explanation from the Bidder of the reasons for the offered bid price, including a detailed analysis of costs and unit prices, by reference to the scope, proposed methodology, schedule and allocation of risks and responsibilities. This may also include information regarding the economy of the manufacturing process; the services to be provided; and any exceptional favourable conditions available to the Bidder for the Goods and Related Services.
- 29.4. After examining the explanation given and the detailed price analyses presented by the Bidder, the Purchase may:
- (a) Accept the Bid, if the evidence provided satisfactory accounts for the low Bid Price and costs, in which case the Bid is not considered abnormally low;
  - (b) Accept the Bid, but require that the amount of performance security be increased at the expense of the Bidder to a level sufficient to protect the Purchaser against financial loss. The amount of the performance security shall generally be no more than 20% of the Contract Price; or
  - (c) Reject the bid if the evidence provided does not satisfactorily account for the low Bid Price, and make a similar determination for the next ranked bid, if required.

## **E. POST-QUALIFICATION AND AWARD**

### **30. Post-Qualification**

- 30.1. The Purchaser will determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid is qualified to perform the contract satisfactorily.
- 30.2. The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB Sub-Clause 14.2, to clarifications in accordance with ITB Clause 25.1, as well as such other information as the Purchaser deems necessary and appropriate.
- 30.3. An affirmative determination will be a prerequisite for award of the Contract to the Bidder. The Purchaser reserve the right to reject the bid of any Bidder found to be in circumstances described in GCC 32.1. A negative determination will result in rejection of the Bidder's bid, in which event the Purchaser will proceed to the next lowest evaluated and substantially responsive bid to make a similar determination of that Bidder's capabilities to perform the Contract satisfactorily.



### **31. Purchaser's Right to Accept or Reject any Bid**

- 31.1. The Purchaser 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 the Bidders. In the case of annulment, all the Bids, submitted and specifically, bid securities/bid securing declaration, shall be promptly returned to the Bidders.

### **32. Notification of Intention to Award**

- 32.1. If Standstill provisions apply as specified in the **BDS**, the Contract shall not be awarded earlier than the expiry of the Standstill Period. The Standstill Period shall be ten (10) Business Days unless extended in accordance with ITB 36, within which any unsuccessful bidder can challenge the intention to award. The Standstill Period commences the day after the date the Purchaser has transmitted to each Bidder, the Notification of Intention to Award the Contract. Where only one Bid is submitted, or if this Contract is in response to an emergency situation, the Standstill Period shall not apply.

### **33. Award Criteria**

- 33.1. Subject to ITB 31, the Purchaser shall award the Contract to the Bidder whose offer has been determined in line with ITB 27 to ITB 29 above to be the lowest evaluated bid and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

### **34. Purchaser's Right to Vary Quantities**

- 34.1. The Purchaser reserves the right at the time of Contract Award to increase or decrease the quantity of Goods and Related Services originally specified in the Schedule of Requirements, provided that this does not exceed the percentage indicated in the **BDS**, and without any change in unit prices or other terms and conditions of the Bid and the Bidding Documents.

### **35. Notification of Award**

- 35.1. Prior to the expiration of the period of bid validity and upon expiry of the standstill period specified in ITB 32, or upon satisfactory resolution of a complaint filed within standstill period, if applicable, the Purchaser shall transmit the Notification of Award using the form included in Section VIII (Contract Forms) to the successful Bidder, in writing, that its Bid has been accepted. At the same time, the Purchaser shall also notify all other Bidders of the results of the bidding.
- 35.2. Unless standstill period applies, upon Notification of Award, unsuccessful Bidders may request in writing to the Purchaser for a debriefing seeking explanations on the grounds on which their Bids were not selected. The Purchaser shall promptly respond in writing and/or in a debriefing meeting to any unsuccessful Bidder who, after publication of Contract Award, requests a debriefing.

- 35.3. Until a formal Contract is prepared and executed, the Notification of Award shall constitute a binding Contract.
- 35.4. Within 2 weeks of the award of contract or expiry of the standstill period, where such period applies, or, if a complaint has been filed within the standstill period, upon satisfactory resolution of the complaint, the Purchaser shall publish on project's website with free access of the results identifying the Bid and lot or package numbers as applicable and the following information:
- (a) name of each Bidder who submitted a Bid;
  - (b) bid prices as read out at bid opening;
  - (c) name and evaluated prices of each Bid that was evaluated;
  - (d) name of Bidders whose Bids were rejected and the reasons for their rejection; and
  - (e) name of the winning Bidder, and the price it offered, as well as the duration and summary scope of the contract awarded.

## **36. Debriefing**

- 36.1. On receipt of the Purchaser's Notification of Intention to Award referred to in ITB 32, an unsuccessful Bidder has three (3) Business Days to make a written request to the Purchaser for a debriefing. The debriefing will not be provided for bid related complaints which is handled in accordance with ITB 40.1. The Purchaser shall provide a debriefing to all unsuccessful Bidders whose request is received within this deadline.
- 36.2. Where a request for debriefing is received within the deadline, the Purchaser shall provide a debriefing within five (5) Business Days, unless the Purchaser decides, for justifiable reasons, to provide the debriefing outside this timeframe. In that case, the standstill period shall automatically be extended until five (5) Business Days after such debriefing is provided. If more than one debriefing is so delayed, the standstill period shall not end earlier than five (5) Business Days after the last debriefing takes place. The Purchaser shall promptly inform, by the quickest means available, all Bidders of the extended standstill period.
- 36.3. Where a request for debriefing is received by the Purchaser later than the three (3) Business Day deadline, the Purchaser should provide the debriefing as soon as practicable, and normally no later than fifteen (15) Business Days from the date of publication of Public Notice of Award of Contract. Requests for debriefing received outside the three (3) day deadline shall not lead to extension of the standstill period.
- 36.4. Debriefings of unsuccessful Bidders may be done in writing or verbally. The Bidders shall bear their own costs of attending such a debriefing meeting.

## **37. Signing of the Contract**

- 37.1. Promptly after notification, the Purchaser shall send to the successful Bidder the Contract Agreement. Within 14 days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Purchaser.

### 38. Performance Security

- 38.1. Within fourteen (14) calendar days of the receipt of notification of award from the Purchaser, the successful Bidder shall furnish the Performance Security in accordance with the GCC 17 using for that purpose the Performance Security Form included in Section VIII, Contract Forms.
- 38.2. The Performance Security in the form of a Bank Guarantee shall be issued by a reputable bank located in Cambodia and acceptable to the Purchaser.
- 38.3. Failure of the successful Bidder to submit the above mentioned Performance Security or sign the Contract Agreement comply shall constitute sufficient grounds for annulment of the award and forfeiture of the Bid Security or execution of the Bid Securing Declaration. In that event the Purchaser may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Purchaser to be qualified to perform the Contract satisfactorily.
- 38.4. Upon receipt of the Performance Security, the Purchaser will promptly notify each unsuccessful bidder of the results of the bidding and return their Bid Securities or Bid Securing Declarations pursuant to ITB Sub-Clause 19.5.

### 39. Contract Effectiveness

- 39.1. The contract will become effective and all delivery periods, liabilities and obligations will be calculated from the following date:
  - (a) For contracts where an advance payment is requested, from the date of the Supplier's receipt of the advance payment, or
  - (b) For contracts funded by an irrevocable letter of credit, from the date of advisement of the letter of credit to the Supplier
  - (c) For contracts where no advance payment and no letter of credit is issued from the date of the signature by both parties of the contract.
- 39.2. When a contract allows for both an advance payment and payment by letter of credit, the effective date shall be calculated from the Supplier's receipt of the advance payment.

### 40. Complaints

- 40.1. The procedures for dealing with Bidding-Related Complaints arising out of this bidding process are specified in the **BDS**.
- 40.2. In the event that the response from the Project Manager does not satisfy the unsuccessful bidder or there is no response, the complainant can refer the complaint to the General Department of Public Procurement, Ministry of Economy and Finance, 92, Sangkat Wat Phnom, Khan Daun Penh, Phnom Penh, Kingdom of Cambodia with a copy sent to the representatives of the Development Partner indicated in the **BDS**. The General Department of Public Procurement shall respond to the complaint within 14 calendar days. This is without prejudice to any other recourse that a bidder may choose.

# Section II

## Bid Data Sheet

<b>A. General</b>	
<b>ITB 1.1.</b>	The name and identification number of the procurement are: <i>[insert name and identification number]</i>
<b>ITB 1.1.</b>	The Purchaser is: <i>[insert name of the EA/IA]</i>
<b>ITB 2.1.</b>	The name of the Development Partner is: <i>[insert name]</i> The name of the Project is: <i>[insert name of project]</i> The Cost of the Project is: <i>[insert the cost of the project]</i>
<b>ITB 5.1.</b>	The limit for sub-contractors is <i>[insert percentage, usually no more than 30%]</i>
<b>B. Bidding Documents</b>	
<b>ITB 8.1.</b>	For <b>Clarification of bid purposes</b> only, the Purchaser's address is: Attention: <i>[insert name and room number of Project Officer]</i>  Address: <i>[insert street name and number]</i> <i>[insert floor and room number, if applicable]</i>  City: <i>[insert name of city or town]</i> , Cambodia  Telephone: <i>[insert telephone number including country and city codes]</i> Facsimile number: <i>[insert fax number including country and city codes]</i>
<b>ITB 10.1.</b>	State "English" if the bidding document is issued in English; otherwise "The documents are in Khmer"
<b>ITB 11.1.(e)</b>	State "Bid Securing Declaration shall be submitted with the bid." If the Bid Securing Declaration is used instead of Bid Security.
<b>ITB 12.3.</b>	The discount offered must be stated in a separate Letter of Discount, duly signed by the Bidder and attached to the Bid Submission Form. The Letter must clearly specify the methodology of application of the discount offered.
<b>ITB 12.4.</b>	Alternative Bids are not allowed.

<b>ITB 13.3.(a)</b>	<i>[State if the unit prices and total contract price shall be exclusive of import duties and value added tax (VAT), otherwise delete this row]</i>
<b>ITB 13.5.</b>	<p><i>[Choose either] “All prices shall be quoted by Bidders in United States Dollars (USD)” or “All prices shall be quoted by Bidders in Cambodian Riel”.</i></p> <p><i>[Choose either] “Payment to the Supplier under the contract shall be made in the USD” Or “Payment to the Supplier under the contract shall be made in the Cambodian Riel”</i></p>
<b>ITB 14.2.(a)</b>	<i>[For national firms, state the patent and tax registration requirements]</i>
<b>ITB 14.2.(b)</b>	<p><i>[Select one of the following depending on the type of goods. Equipment and Plant normally required MAL.]</i></p> <p>Not Required</p> <p><i>or</i></p> <p>Manufacturers Authorization Letter (MAL) is required. In case of a bidder who is not the manufacturer; it can submit either a MAL from the Manufacturer or a General Certificate issued by the Manufacturer’s authorized Distributor certifying that the bidder is an authorized Dealer//Retailer for the manufactured goods.</p>
<b>ITB 14.2.(c)</b>	<p>The Bidder shall furnish documentary evidence that it meets the following experience and financial requirements:</p> <ul style="list-style-type: none"> <li>(i) The Bidder has satisfactorily completed at least two contracts for supply of similar goods in the preceding three years of not less than <i>[Insert value equal to at least 50% of the estimated value of the subject contract]</i>.</li> <li>(ii) The Bidder has completed contracts in the total cumulative amount equal to at least <i>[Insert value equal to at least two times the estimated value of the subject contract]</i> in the preceding two years.</li> <li>(iii) The Manufacturer of the offered goods, if a different entity from the Bidder, has experience of at least 3 years in the manufacturing of similar goods.</li> <li>(iv) The Bidder has availability of liquid assets through either: <ul style="list-style-type: none"> <li>(a). access to a line of credit or cash in bank account of an amount at least <i>[Insert value equal to at least 50% of the estimated value of subject contract]</i>, net of other contractual commitments; or</li> <li>(b). credit terms with vendors specifically for the goods to be supplied under the contract, and valid for at least 6 months after the deadline date for submission of bids specified in ITB Clause 21.</li> </ul> </li> </ul>
<b>ITB 14.2.(f)</b>	<i>[Insert any other qualification criteria.]</i>

<b>ITB 15.1.(b)</b>	Period of time the Goods are expected to be functioning (for the purpose of spare parts): <i>[insert duration or state "Not Applicable"]</i>
<b>ITB 18.1.</b>	The bid validity period shall be <i>60 calendar</i> days from the <b>deadline</b> of the submission of Bid specified in <b>BDS ITB 21.1</b> . The 60 calendar days is counted from the next day after the deadline day. If the bid submission is on a date prior to the deadline for submission, the 60 calendar days will still need to be calculated based on the deadline date.
<b>ITB 19.1.</b>	<p><i>[Select one of the following two options].</i></p> <p>Bid shall include a Bid-Securing Declaration using the form included in Section VII, Bidding Forms;</p> <p><i>[Or]</i></p> <p>Bid shall include a Bid Security issued by a reputable bank in Cambodia using the form for bid security included in Section VII, Bidding Forms. The Bid Security shall be <i>[insert amount in US. It should be the same as provided in the Invitation to Bid]</i>.</p> <p><i>[Normally Bid Security Declaration is to be used. In exceptional cases, bid security may be needed].</i></p>
<b>ITB 19.2.</b>	<p><i>[Select one of the following two options]</i></p> <p>The validity of the Bid Securing Declaration or Bid Security is 30 calendar days beyond the validity period of the Bid specified in <b>BDS ITB 18.1</b>. In case of minor deviation in the number of days, the bid will not be rejected but the bidder will be required to remedy the deviation within 5 working days of the notification of the same by the Purchaser. If the Bidder fails to remedy the deviation in this period, the Bid will be rejected as non-responsive.</p> <p><i>[Or]</i></p> <p>Not Applicable.</p>
<b>C. Submission of Bids</b>	
<b>ITB 20.1.</b>	In addition to the original Bid, the number of copies is <i>[Insert Number. Normally 3 copies]</i> .
<b>ITB 20.4.</b>	<p>For bid submission purposes, the Purchaser's address is:</p> <p>Attention: <i>[insert full name of person, if applicable, or insert name of the Project Officer]</i></p> <p>Address: <i>[insert street name and number]</i></p> <p>Floor-Room number: <i>[insert floor and room number, if applicable]</i> <i>[important to avoid delays or misplacement of bids]</i></p> <p>City: <i>[insert name of city or town]</i>, Cambodia.</p>
<b>ITB 21.1.</b>	The deadline for the submission of bids is:

	<p>Date: <i>[insert day, month, and year, for example. 15 June, 2011].</i></p> <p>Time: <i>[insert time, and identify if a.m. or p.m., for example. 10:30 a.m.].</i></p>
<b>ITB 23.1.</b>	<p>The bid opening shall take place at:</p> <p>Street Address: <i>[insert street address and number]</i></p> <p>Floor/Room number: <i>[insert floor and room number, if applicable].</i></p> <p>City: <i>[insert name of city or town],</i> Cambodia.</p> <p>Date: <i>[insert day, month, and year, i.e. 15 June, 2011]</i></p> <p>Time: <i>[insert time, and identify if a.m. or p.m. i.e. 10:30 a.m.</i></p> <p><i>The date and time of bid opening should be identical to the date and time stated as the deadline for submission of bids.</i></p>
<h2 style="color: blue;">D. Evaluation and Comparison of Bids</h2>	
<b>ITB 27.2.</b>	<p>All omissions are corrected for evaluation and comparison purposes to determine the lowest evaluated and substantially responsive bids. The quoted Bid Price cannot be changed on account of any omissions and if the bid has errors and is determined to be the lowest evaluated and substantially responsive bid, the Contract Value will be the same as the quoted Bid Price.</p>
<b>ITB 28.3.</b>	<p>Bids will be evaluated on an <i>item-wise</i> or <i>lot-wise</i> basis <i>[select which is applicable].</i></p>
<b>ITB 28.4.(i)</b>	<p><i>State either:</i></p> <p>“Not applicable - Time is of the essence, the Purchaser requires that the goods under the Invitation for Bids shall be delivered to site at the time specified in the Schedule of Requirements. Bids that offer delivery beyond the time specified will be rejected as non-responsive.”</p> <p><i>Or, select the following factor for evaluation:</i></p> <p>“The deviation in the delivery period offered in a bid will be evaluated as follows:</p> <p>The goods covered under this invitation are required to be delivered to site within an acceptable range <i>[minimum (earliest) and maximum (latest) period]</i> of weeks specified in the Schedule of Requirements.</p> <p>No credit will be given to earlier deliveries, and bids offering delivery beyond the maximum period will be treated as non-responsive. Within this acceptable range i.e. later than the minimum period but before the maximum period, an adjustment of 1/10 of one percent per day will be added for evaluation to the bid price of bids offering deliveries later than the earliest delivery period specified in the Schedule of Requirements.”</p>

<b>ITB 28.4.(ii)</b>	<p>State either “Not applicable” or select the following factor for evaluation</p> <p>“The cost of mandatory spare parts will be evaluated as follows:</p> <p>The list of items and quantities of major assemblies, components, and selected spare parts, likely to be required during <i>[insert period of operation]</i>, is annexed to the Technical Specifications. The total cost of these items, at the unit prices quoted in each bid, will be added to the bid price.”</p>
<b>ITB 28.4.(iii)</b>	<p>State either “Not Applicable” or, list here any additional evaluation.</p>
<b>ITB 28.6.</b>	<p>Bidders <i>[insert “shall “or “shall not”]</i> be allowed to quote separate prices for one or more lots.</p> <p>If bidders are allowed to quote for separate lots retain the following wording:</p> <p>“The Purchaser shall award contract(s) for multiple lots to the Bidder that offers the lowest evaluated combination(s) of bids and meets the post-qualification criteria.</p> <p>The Purchaser’s evaluation shall take into account:</p> <ul style="list-style-type: none"> <li>(i) the lowest-evaluated bid for each lot, and</li> <li>(ii) any price reduction per lot and the methodology for its application as offered by the Bidder in its bid”. </li></ul>

## E. Post-Qualification and Award

<b>ITB 32.1.</b>	<p><i>[Choose one of the following options as appropriate.]</i></p> <p>Standstill provisions shall not apply.</p> <p><i>[or]</i></p> <p>The Purchaser shall, at the start of the standstill period, notify in writing each bidder that submitted a bid, of its intention to award a contract to the successful bidder at the end of standstill period. The notification (using the form included in Section VIII (Contract Forms)) shall include the following information:</p> <ul style="list-style-type: none"> <li>(a) the name of each Bidder who submitted a Bid;</li> <li>(b) the bid prices as read out at bid opening;</li> <li>(c) the name and evaluated prices of each Bid that was evaluated;</li> <li>(d) the name of bidders whose bids were rejected and the reasons for their rejection;</li> <li>(e) the name of the winning Bidder, and the price it offered, as well as the duration and summary scope of the contract awarded;</li> <li>(f) a statement of the reason(s) the bid of the unsuccessful bidder to whom the notification is addressed was</li> </ul>
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	<p>unsuccessful, unless the price information under (e) of this paragraph already reveals the reason; and</p> <p>(g) the expiry date of the Standstill Period.</p>
<b>ITB 34.</b>	The quantities should not increase or decrease by 20% of the original quantities.
<b>ITB 40.1.</b>	<p>The procedures for Bidding-Related Complaints are as follows:</p> <p>(i) Complaints Challenging the Initial Selection Documents/ Request for Bids.</p> <p><i>“Complaints shall be submitted at least ten (10) Business Days prior to the deadline for submission of Applications/Bids/Proposals. The Project Manager shall respond not later than seven (7) Business Days from the date of receipt of complaint.”</i></p> <p>(ii) Notifying Bidder for exclusion from consideration from a contract; rejection of Bid submitted; or intention to award</p> <p><i>“Complaints shall be submitted within ten (10) Business Days following Purchaser’s transmission to the concerned Bidder of the notice of such exclusion. The Project Manager will acknowledge in Writing the receipt of the Complaint within three (3) Business Days, and will review the Complaint and respond to the complaint not later than seven (7) Business Days from the date of receipt of Complaint.”</i></p> <p>(iii) For Complaints following transmission of the Notification of Intention to Award the contract.</p> <p><i>“Complaints shall be submitted within the Standstill Period. The Project Manager will respond not later than 15 Business Days from the date of receipt of Complaint.”</i></p> <p>The Bidder should submit its complaint following these procedures, in writing, to:</p> <p>For the attention: The Project Manager</p> <p>E-mail: _____</p> <p>Fax No: _____</p> <p>The complaint should be copied to the following:</p> <p>The Director General,  General Department of International Cooperation and Debt Management  Ministry of Economy and Finance,  Building A, 2<sup>nd</sup> Floor Street 92, Sangkat Wat Phnom,  Khan Daun Penh, Cambodia</p> <p>Email: _____</p> <p>Fax No: _____</p>

**ITB 40.2.**

The Project Officer/Task Team Leader is *[Insert name and address including telephone, fax and email]*.

*In case if the Development Partner has a Cambodia Office:*

The Country Director is *[Insert name and address including telephone, fax and email]*.

# Section III

## General Conditions of Contract

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## 1. Definitions

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

- (a) **“The Contract”** means the Agreement entered into between the Purchaser and the Supplier, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein as named and referenced in the SCC.
- (b) **“The Contract Price”** means the price payable to the Supplier under the Contract for the full and proper performance of its contractual obligations.
- (c) **“Day”** means calendar day.
- (d) **“Delivery”** means the transfer of the Goods from the Supplier to the Purchaser in accordance with the terms and conditions set forth in the Contract.
- (e) **“DP”** means the Development Partner that provides the financing for the Contract and named in the SCC.
- (f) **“Eligible Countries”** means countries and territories specified by the DP.
- (g) **“GCC”** means the General Conditions of Contract.
- (h) **“The Goods”** means all of the equipment, machinery, and/or other materials which the Supplier is required to supply to the Purchaser under the Contract.
- (i) **“The Purchaser’s Country”** is Cambodia.
- (j) **“The Purchaser”** means the organization purchasing the Goods, as named in SCC.
- (k) **“Related Services”** means those services ancillary to the supply of the Goods, such as transportation and insurance, and any other incidental services, such as installation, commissioning, provision of technical assistance, training, and other such obligations of the Supplier covered under the Contract.
- (l) **“SCC”** means the Special Conditions of Contract.
- (m) **“The Supplier”** means the individual or firm supplying the Goods and Services under this Contract and named in SCC.
- (n) **“The Site,”** where applicable, means the place or places named in SCC.

## 2. Application

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

## 3. Fraud and Corruption for All Procurement Methods

3.1. The Development Partner requires that Borrowers or Recipients (including beneficiaries of the funds), as well as bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standards

of ethics during the procurement and execution of contracts. In pursuance of this policy, the Government:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
- (i) “Corrupt Practice” is the offering, giving, receiving, or soliciting directly or indirectly of anything of value to influence improperly the actions of another party<sup>1</sup>;
  - (ii) “Fraudulent Practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit, or to avoid an obligation<sup>2</sup>;
  - (iii) “Coercive Practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party, or the property of the party to influence improperly the actions of a party<sup>3</sup>;
  - (iv) “Collusive Practice” is an arrangement between two or more parties, designed to achieve an improper purpose, including to influence improperly the actions of another party<sup>4</sup>;
  - (v) “Abuse” means theft, waste, or improper use of assets related to the DP-financed project activity, either committed intentionally or through reckless disregard;
  - (vi) “Conflict of Interest” means any situation in which a party has interests that could improperly influence that party’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations;
  - (vii) “Obstructive Practice” is (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation, or making false statements to investigators, in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice by the competent Government and DP authority; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or (b) acts intended to materially impede the exercise of the Government or DP inspection and audit rights;

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<sup>1</sup> For the purpose of this sub-paragraph, “another party” refers to a public official acting in relation to the selection process or contract execution. In this context “public official” includes Government and DP staff, and employees of other organizations taking or reviewing selection decisions.

<sup>2</sup> For the purpose of this sub-paragraph, “party” refers to a public official; the terms “benefit” and “obligation” relate to the selection process or contract execution; and the “act or omission” is intended to influence the selection process or contract execution.

<sup>3</sup> For the purpose of this sub-paragraph, “party” refers to a participant in the selection process or contract execution.

<sup>4</sup> For the purpose of this sub-paragraph, “parties” refers to participants in the procurement or selection process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

- (viii) "Integrity Violation" is any act, as defined under the DP Integrity Principles accepted by the Government, which violates the Anti-Corruption Policies, where applicable, including points (i) to (vii) stated above, and the following: violations of the Government and DP sanction, retaliation against whistle-blowers or witnesses, and other violations of the Anti-Corruption Policies, including failure to adhere to the highest ethical standards;
- (b) will reject a recommendation for award of the contract if it is determined that the firm or individual recommended for the award, or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees have directly or indirectly engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations in competing for the contract in question;
- (c) will cancel the portion of the financing allocated to a contract if it is determined at any time that representatives of the Government or of a beneficiary of the DP financing have engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations during the procurement or the execution of that contract, without the Government having taken timely and appropriate action satisfactory to the DP to remedy the situation;
- (d) will sanction a firm or individual, at any time, in accordance with the prevailing Government and/or DP sanctions procedures<sup>5</sup>, including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded or otherwise benefit from a Government or a DP-financed contract, financially or in any other manner, (ii) to be a nominated<sup>6</sup> sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Government or a DP-financed contract; and (iii) to receive the proceeds of any loan made by the DP or otherwise to participate further in the preparation or implementation of any DP-financed project, if it is determined at any time that the firm or individual has engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations in competing for, or in executing, a DP-financed contract.

3.2. Where required by a DP Policy, all bidders, consultants, contractors, suppliers and other third parties engaged or involved in DP-financed/related activities have a duty to cooperate fully in any screening or investigation when requested by DP to do so. Such cooperation includes, but is not limited to, the following:

- (a) being available to be interviewed and replying fully and truthfully to all questions asked;

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<sup>5</sup> A firm or an individual may be declared ineligible to be awarded a contract upon (i) completion of the sanctions proceedings as per its sanctions procedures, including inter alia: cross-debarment as agreed by DP and other International Financial Institutions; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanction's proceedings in accordance with the Government and DP guidelines.

<sup>6</sup> A nominated sub-contractor, consultant, manufacturer or supplier, or service provider is one which has been either (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Government.

- (b) providing DP with any items requested that are within the party's control including, but not limited to, documents and other physical objects;
  - (c) upon written request by the DP, authorizing other related entities to release directly to the DP such information that is specifically and materially related, directly or indirectly, to the said entities or issues which are the subject of the investigation;
  - (d) cooperating with all reasonable requests to search or physically inspect their person and/or work areas, including files, electronic databases, and personal property used on DP financed activities, or that utilizes DP's Information and Communications Technology (ICT) resources or systems (including mobile phones, personal electronic devices, and electronic storage devices such as external disk drives);
  - (e) cooperating in any testing requested by the DP, including but not limited to, fingerprint identification, handwriting analysis, and physical examination and analysis; and
  - (f) preserving and protecting confidentiality of all information discussed with, and as required by, the DP.
- 3.3. All Bidders, consultants, contractors and suppliers shall ensure that, in its contract with its sub-consultants, subcontractors and other third parties engaged or involved in DP financed/related activities, such sub-consultants, subcontractors and other third parties similarly undertake the foregoing duty to cooperate fully in any screening or investigation when requested by the ADB to do so.
- 3.4. The Supplier shall permit DP to inspect the Supplier's accounts and records relating to the performance of the Supplier and to have them audited by auditors appointed by the DP, if so required by the DP.

#### **4. Language**

- 4.1. The language of the Contract is English unless otherwise stated in the SCC.

#### **5. Joint Ventures**

- 5.1. If the Supplier is a Joint Venture, consortium, or association, all of the parties shall be jointly and severally liable to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the Joint Venture, consortium, or association. The composition or the constitution of the Joint Venture, consortium, or association shall not be altered without the prior consent of the Purchaser.

#### **6. Eligibility**

- 6.1. Eligible suppliers, subcontractors, materials, equipment and services are those defined in the SCC.



## **7. Notices**

- 7.1. Any Notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the SCC. The term “in writing” means communicated in written form with proof of receipt.
- 7.2. A Notice shall be effective when delivered or on the Notice’s effective date, whichever is later.

## **8. Applicable Law**

- 8.1. The Contract shall be governed by and interpreted in accordance with the Laws of the Kingdom of Cambodia.

## **9. Resolution of Disputes**

- 9.1. If any dispute or difference of any kind whatsoever shall arise between the Purchaser and the Supplier in connection with or arising out of the Contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 9.2. If the parties fail to resolve such a dispute or difference by mutual consultation, either of the parties may require the Arbitration Council of Cambodia (ACC) to provide the CV’s of three available adjudicators, none of whom will be nationals of the Supplier’s country should that country be other than Cambodia. Each party shall then strike off the name of one of the proposed adjudicators and the remaining one shall be appointed. If both strike out the same then another round shall be entered into until there is only one remaining adjudicator.
- 9.3. The adjudicator shall be paid by the hour at the rate proposed by the ACC, together with reasonable expenses to cover accommodation, travel and communications as necessary. The cost shall be divided equally between the Purchaser and Supplier, irrespective of the decision reached by the adjudicator. Either party may refer a decision of the adjudicator to an arbitrator within 28 calendar days of the adjudicator’s written decision. If neither party refers the dispute to arbitration within the above 28 calendar days, the adjudicator’s decision will be final and binding.
- 9.4. All disputes arising in connection with the present Contract that cannot be resolved to the satisfaction of either one of the parties through adjudication, may be referred to and settled by the ACC by one or more arbitrators appointed in accordance with its Rules. The decision of the arbitrator shall be binding on both parties.

## **10. Scope of Supply**

- 10.1. The Goods and Related Services to be supplied shall be as specified in Section VI, Schedule of Requirements.

## **11. Delivery and Documents**

- 11.1. The Supplier shall be entirely responsible for the supply, including delivery, of the Goods and Related Services, if any, at the final destination (Site) as specified in GCC Clause 1.1 (n).
- 11.2. Delivery of the goods shall be made by the Supplier in accordance with the terms specified in the Schedule of Requirements. The details of shipping and/or other documents to be furnished by the Supplier pursuant are specified in the SCC.

## **12. Contract Price**

- 12.1. Prices charged by the Supplier for Goods delivered and Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its bid, with the exception of the Purchaser exercising its right to vary quantities at the time of award in accordance with ITB Clause 34 as the case may be.

## **13. Payment**

- 13.1. The Contract Price shall be paid as specified in the SCC.
- 13.2. The Supplier's request(s) for payment shall be made to the Purchaser in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and Related Services performed, and by documents submitted pursuant to GCC Clause 11.2, and upon fulfillment of other obligations stipulated in the Contract.
- 13.3. The currency in which payments shall be made to the Supplier under this Contract shall be specified in the SCC.

## **14. Taxes and Duties**

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

## **15. Risk and Title**

- 15.1. Risk and title of for the goods shall pass upon delivery to the Site as described in the GCC Clause 1.1. (n).

## **16. Permits, Approvals and Licenses**

- 16.1. Whenever the supply of Goods and Related Services requires that the Supplier obtain permits, approvals, and import and other licenses from local public authorities, the Purchaser shall, if so required by the Supplier, make its best effort to assist the Supplier in complying with such requirements in a timely and expeditious manner.

## **17. Performance Security**

- 17.1. The Performance Security, unless otherwise specified in the SCC, shall be provided to the Purchaser no later than 14 calendar days after the Supplier's receipt of the Letter of Notification of Award and shall be issued in an amount of

10% of the Contract Value in the currency of the Contract through an unconditional bank guarantee issued by a Cambodian Bank in the form described in Section VIII, Contract Forms or a cashier/managers check from a Cambodian Bank at the Supplier's option. The Performance Security shall be valid until a date 30 calendar days beyond the date of the expiry of the warranty period described in GCC Clause 24.

17.2. The Performance Security will be reduced to an amount representing 5% of the Contract Value after the delivery and acceptance of the Goods and the Performance Security amended accordingly.

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

## **18. Confidentiality**

18.1. Subject to GCC Clause 3 the Supplier shall not, without the Purchaser's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Purchaser in connection therewith, to any person other than a person employed by the Supplier in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

18.2. The provisions of this Clause shall survive completion or termination, for whatever reason, of the Contract.

## **19. Subcontracting**

19.1. The Supplier shall notify the Purchaser in writing of all subcontracts awarded under this Contract if not already specified in the Bid. Such notification, in the original bid or later, shall not relieve the Supplier from its obligations, duties, responsibilities, or liability under the Contract.

19.2. Subcontracts shall comply with the provisions of **GCC Clauses 3 and 6**.

## **20. Standards**

20.1. The Goods supplied under this Contract shall conform to the standards specified in the Technical Specifications, and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the country of origin of the Good.

## **21. Packing and Documents**

21.1. The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the

Goods' final destination and the absence of heavy handling facilities at all points in transit.

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

## **22. Inspection and Tests**

- 22.1. The Supplier shall, at its own expense and at no costs to the Purchaser, carry out all such tests and/or inspections of the Goods and Related Services as are specified in the Section VI.
- 22.2. The Purchaser or its representative shall have the right to attend such tests/inspections at no extra cost to the Purchaser. SCC and the Technical Specifications shall specify what inspections and tests the Purchaser requires, if any and where they are to be conducted. The Purchaser shall notify the Supplier in writing, in a timely manner, of the identity of any representatives retained for these purposes. If conducted in the premises of the Supplier or its Sub-Contractors, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no change to the Purchaser.
- 22.3. The Purchaser shall bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
- 22.4. The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications, codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- 22.5. Should any inspected or tested Goods fail to conform to the Specifications, the Purchaser may reject the Goods, and the Supplier shall either replace the rejected Goods or make alterations necessary to meet specification requirements free of cost to the Purchaser. The costs of any repeated tests and inspections necessitated by a failure of the goods to pass inspection will be to the Supplier's account and deducted from the sums due to the Supplier and the contract value reduced accordingly.
- 22.6. Any inspections and tests undertaken in no way relieve the Supplier of any of its obligations under the Contract.

## 23. Liquidated Damages

- 23.1. With the exception of Force Majeure events as described in **GCC Clause 27**, if the Supplier fails to deliver any or all of the Goods or to perform the Related Services within the period(s) specified in the Contract, the Purchaser shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to one tenth of one percent per day subject to a maximum of ten percent of the Contract Price. Once the maximum is reached, the Purchaser may consider termination of the Contract pursuant to **GCC Clause 31**.

## 24. Warranty

- 24.1. The Supplier warrants that the Goods supplied under the Contract are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the Contract.
- 24.2. The Supplier further warrants that all Goods supplied under this Contract shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the Cambodia.
- 24.3. This warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof, as the case may be, have been delivered to and accepted at the final destination indicated in the SCC or any other time period indicated in the SCC.
- 24.4. The Purchaser shall promptly notify the Supplier in writing of any claims arising under this warranty.
- 24.5. Within 21 calendar days of receipt of such Notice, the Supplier shall expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.
- 24.6. If the Supplier, having been notified, fails to remedy the defect(s) within 21 calendar days, the Purchaser may proceed to take such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.
- 24.7. Delays in remedial action beyond 21 calendar days shall be subject to liquidated damages at the rate described in **GCC Clause 23** without prejudice to any other rights or remedies, which the Purchaser may have against the Supplier under the Contract.

## 25. Patent Indemnity

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

## 26. Limitation of Liability

- 26.1. Except in cases of gross negligence or willful misconduct, and in the case of infringement pursuant to **GCC Clause 25**:
- (a) the Supplier shall not be liable to the Purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser, and
  - (b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Supplier to indemnify the Purchaser with respect to patent infringement.

## 27. Force Majeure

- 27.1. The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 27.2. For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 27.3. If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

## 28. Change Orders

- 28.1. The Purchaser may at any time, by a written order given to the Supplier pursuant to **GCC Clause 7**, make changes within the general scope of the Contract in any one or more of the following:
- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
  - (b) the method of shipment or packing;
  - (c) the place of delivery; and/or
  - (d) the Related Services to be provided by the Supplier.
- 28.2. If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or delivery and

completion schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within thirty (30) calendar days from the date of the Supplier's receipt of the Purchaser's change order.

- 28.3. Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

## 29. Extension of Time

- 29.1. If at any time during performance of the Contract, the Supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the Goods or completion of Related Services, the Supplier shall promptly notify the Purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, with or without liquidated damages, in which case the extension shall be ratified by the parties by amendment of Contract.
- 29.2. Except, in case of Force Majeure, as provided under GCC Clause 27, a delay by the Supplier in the performance of its delivery and completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 23, unless an extension of time is agreed upon, pursuant to GCC Clause 29.1.

## 30. Spare Parts

- 30.1. As specified in SCC, the Supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the Supplier:
- (a) such spare parts as the Purchaser may elect to purchase from the Supplier, provided that this election shall not relieve the Supplier of any warranty obligations under the Contract; and
  - (b) in the event of termination of production of the spare parts:
    - (1) advance notification to the Purchaser of the pending termination, in sufficient time to permit the Purchaser to procure needed requirements; and
    - (2) following such termination, furnishing at no cost to the Purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

## 31. Termination for Default

- 31.1. The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate this Contract in whole or in part:
- (a) if the Supplier fails to deliver any or all of the Goods within the period(s) specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to **GCC Clause 29**; or
  - (b) if the Supplier fails to perform any other obligation(s) under the Contract.

- (c) if the Supplier, in the judgment of the Purchaser, has engaged in integrity violations, as defined in GCC Clause 3, in competing for or in executing the Contract.

## **32. Termination for Insolvency**

- 32.1. The Purchaser may at any time terminate the Contract by giving written notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Purchaser.

## **33. Termination for Convenience**

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

## **34. Assignment**

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

## **35. Transportation**

- 35.1. The Supplier is required under the Contract to transport the Goods to the final destination (Site) specified in the SCC. Transport to such final destination including insurance and storage, as specified in the Contract, shall be arranged by the Supplier, and related costs are deemed to be included in the Contract Price.

## **36. Insurance**

- 36.1. The Goods supplied under the Contract shall be fully insured in US Dollars against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery at the final destination (Site). The insurance shall be obtained by the Supplier in an amount equal to 110% of the value of the Goods from "warehouse to warehouse" (final destination) on "All Risk" basis including War Risks and Strikes.



### **37. Respectful Work Environment**

- 37.1. The Supplier shall ensure that its employees and Subcontractors observe the highest ethical standards and refrain from any form of bullying, discrimination, misconduct and harassment, including sexual harassment and shall, at all times, behave in a manner that creates an environment free of unethical behavior, bullying, misconduct and harassment, including sexual harassment. The Supplier shall take appropriate action against any employees or Subcontractors, including suspension or termination of employment or subcontract, if any form of unethical or inappropriate behavior is identified.
- 37.2. The Supplier shall conduct programs, where appropriate, for its employees and Subcontractors to raise awareness on and prevent any form of bullying, discrimination, misconduct, and harassment including sexual harassment, and to promote a respectful work environment.

# Section IV

## Special Conditions of Contract

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

*[The Purchaser shall select/insert the appropriate wording using the samples below or other acceptable wording, and delete the text in italics].*

<b>GCC 1.1(a)</b>	<p><i>Insert the name and reference of the contract.</i></p> <p>And comprises of the following documents:</p> <ul style="list-style-type: none"> <li>(a) The Contract Agreement;</li> <li>(b) Special Conditions of Contract;</li> <li>(c) General Conditions of Contract;</li> <li>(d) Technical Requirements (including Schedule of Requirements and Technical Specifications);</li> <li>(e) The Supplier's Bid and original Price Schedules;</li> <li>(f) The Purchaser's Letter of Notification of Award;</li> <li>(g) The Instructions to Bidders;</li> <li>(h) <i>Insert here any other documents that will form part of the Contract, if required.</i></li> </ul>
<b>GCC 1.1 (e)</b>	The DP is: <i>[insert name of DP]</i> .
<b>GCC 1.1(j)</b>	The Purchaser is: <i>[insert complete legal name of the Purchaser]</i> .
<b>GCC 1.1 (m)</b>	The Supplier is: <i>[insert complete legal name of the Supplier]</i> .
<b>GCC 1.1(n)</b>	The Site(s)/Final Destination(s) is/are: <i>[insert name(s) and detailed information on the location(s) of the site(s)]</i> .
<b>GCC 4.1</b>	<i>[State "English" if the bidding document is issued in English]</i> .
<b>GCC 6.1</b>	<p>1. The Supplier, and all parties constituting the Supplier, shall have the nationality of an eligible country. The Supplier shall be deemed to have the nationality of a country if the Supplier is a citizen or is constituted, or incorporated, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related services.</p> <p>The materials, equipment and services to be supplied under the Contract shall have their origin in eligible source countries, in accordance with the countries listed below and all expenditures under the Contract will be</p>

	<p>limited to such materials, equipment, and services. At the Purchaser's request, Suppliers may be required to provide evidence of the origin of materials, equipment and services.</p> <p>For purposes of this Clause, "origin" means the place where the materials and equipment are mined, grown, produced or manufactured, and from which the related services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that differs substantially in its basic characteristics or in purpose or utility from its components."</p> <p>The list of eligible countries can be obtained from the <i>[insert name of DP]</i> website <i>[insert web site address]</i>.</p> <p>However, Firms of a country or goods manufactured in a country may be excluded if:</p> <ul style="list-style-type: none"> <li>(a) as a matter of law or official regulation, the Cambodia prohibits commercial relations with that Country, provided that the <i>[insert name of DP]</i> is satisfied that such exclusion does not preclude effective competition for the supply of the Goods or Works required, or</li> <li>(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, Cambodia prohibits any import of goods from that Country or any payments to persons or entities in that Country.</li> </ul>
<p><b>GCC 7.1</b></p>	<p>The Purchasers address for notices is:</p> <p>Attention: <i>[insert full name and title of person]</i>.</p> <p>Street Address: <i>[insert street address and number]</i>.</p> <p>Floor/ Room number: <i>[insert floor and room number, if applicable]</i>.</p> <p>City: <i>[insert name of city or town]</i>, Cambodia.</p> <p>Telephone: <i>[include telephone number, including country and city codes]</i>.</p> <p>Facsimile number (if available): <i>[insert facsimile number, including country and city codes]</i>.</p> <p>Electronic mail address: <i>[insert e-mail address]</i>.</p> <p>The Supplier's address for notices is:</p> <p>Attention: <i>[insert full name and title of person]</i>.</p> <p>Street Address: <i>[insert street address and number]</i>.</p> <p>Floor/ Room number: <i>[insert floor and room number, if applicable]</i>.</p> <p>City: <i>[insert name of city or town]</i>.</p> <p>Country <i>[insert country]</i>.</p> <p>Telephone: <i>[include telephone number, including country and city codes]</i>.</p>

	<p>Facsimile number (if available): <i>[insert facsimile number, including country and city codes]</i>.</p> <p>Electronic mail address: <i>[insert e-mail address]</i>.</p>
<b>GCC 11.2</b>	<p>The following documents are to be furnished by the Supplier:</p> <ol style="list-style-type: none"> <li>(1) Original Supplier's invoice showing Goods' description, quantity, unit price, and total amount;</li> <li>(2) Original receipt of confirmation issued for the delivery of the Goods to the Site by the Purchaser's representative <i>[insert name and titles with contact details of the department or individual authorized to receive the goods at the Project Site]</i>;</li> <li>(3) Manufacturer's or Supplier's warranty certificate where required; and</li> <li>(4) Evidence of origin of the Goods.</li> </ol>
<b>GCC 12.1</b>	No adjustments will be made.
<b>GCC 13.1</b>	<p>The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:</p> <ol style="list-style-type: none"> <li>(1) <b>Advance Payment:</b> Ten (10) percent of the Contract Price shall be paid within fourteen (14) calendar days of signing of the Contract, and upon submission of claim and a bank guarantee for equivalent amount valid until the date of the delivery of Goods specified in the Contract and in the form provided in the bidding documents or another form acceptable to the Purchaser.</li> <li>(2) <b>Delivery to Project Site:</b> Eighty (80) percent of the Contract Price of the Goods delivered shall be paid, upon submission of documents specified in <b>GCC Clause 11.2</b>.</li> <li>(3) <b>On Acceptance:</b> Ten (10) percent of the Contract Price of Goods received shall be paid within thirty (30) calendar days of receipt of the Goods upon submission of claim supported by the acceptance certificate issued by the Purchaser.</li> </ol> <p>The Supplier may forgo the advance payment at its own option in which instance the payment upon delivery will be increased to ninety (90) percent of the contract price of the goods delivered.</p>
<b>GCC 13.3</b>	Payment shall be made in <i>[insert US Dollars or Cambodian Riel]</i> .
<b>GCC 17.1</b>	<p><i>[Insert when warranty period require is less 6 months]</i>.</p> <p>No performance security in the form of a bank guarantee is required. The Supplier instead shall provide a Performance Security Declaration in the substance and form acceptable to the Purchaser.</p>

<b>GCC 21.2</b>	The packing and marking and documentation within and outside the packages shall be: <i>[insert the requirements like sealed and airtight wooden boxes/cardboard package; mark with name]</i> .
<b>GCC 22.1</b>	N/A or The inspections and tests shall be: <i>[insert nature, frequency, procedures for carrying out the inspections and tests]</i> . <i>[Select one of the above]</i> .
<b>GCC 24.3</b>	The warranty period shall be: <i>[insert one of the following]</i> . Nil <i>[in case of items like stationary, furniture, and similar good where market normally does not offer warranty]</i> . or Three months. or Six months. <i>[choose what is applicable based on type of Goods. 12 months is only used for Goods that need to meet operating performance targets like water treatment plant]</i> .
<b>GCC 30.1</b>	N/A or <i>[Use only when spare parts]</i> The Supplier shall carry sufficient inventories to assure ex-stock supply of consumable spares for the Goods.

# Section V

## Specifications & Statement of Compliance

### Notes for Preparing the Technical Specifications

A set of precise and clear specifications is a prerequisite for bidders to respond realistically and competitively to the requirements of the Entity without qualifying their bids. The specifications must accurately communicate the technical characteristics of both the goods and any related services that are required. In the context of Competitive Bidding, the specifications must be drafted to permit the widest possible competition and, at the same time, present a clear statement of the required standards of workmanship, materials, and performance of the goods and services to be procured. Only if this is done will the objectives of economy, efficiency, and fairness in procurement be realized, responsiveness of bids be ensured, and the subsequent task of bid evaluation facilitated. The specifications should require that all goods and materials to be incorporated in the goods be new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided for otherwise in the contract.

Samples of specifications from previous similar procurements are useful in this respect. The use of metric units is encouraged. Depending on the complexity of the goods and the repetitiveness of the type of procurement, it may be advantageous to standardize the General Technical Specifications and incorporate them in a separate subsection. The General Technical Specifications should cover all classes of workmanship, materials, and equipment commonly involved in manufacturing similar goods. Deletions or addenda should then adapt the General Technical Specifications to the particular procurement.

Care must be taken in drafting specifications to ensure that they are not restrictive. In the specification of standards for equipment, materials, and workmanship, recognized international standards should be used as much as possible. Where other particular standards are used, whether national standards or other standards, the specifications should state that equipment, materials, and workmanship that meet other authoritative standards, and which ensure at least a substantially equal quality than the standards mentioned, will also be acceptable. The following clause may be inserted in the Special Conditions of Contract or the Technical Specifications.

*[The above is only for guidance to the PMU/EA in preparing the Technical Specifications and deleted from the Bidding Documents]*

### Equivalency of Standards and Codes

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

Reference to brand name and catalogue number should be avoided as far as possible; where unavoidable they should always be followed by the words “or at least equivalent”.

Where appropriate, drawings, including site plans as required, may be furnished by the Purchaser with the bidding documents. Similarly, the Supplier may be requested to provide drawings or samples either with its bid or for prior review by the Purchaser during contract execution.

Bidders are required to also as part of the technical specifications complete their statement of compliance demonstrating how the items comply with the specification.

**Technical Specifications**

Item	Specification	<p><b>Statement of Compliance</b> Bidders must state here either “Comply” or “Not Comply” against each of the individual parameters of each Specification stating the corresponding performance parameter of the equipment offered. Statements of “Comply” or “Not Comply” of must be supported by evidence in a bidder’s bid and cross-referenced to that evidence. Evidence shall be in the form of manufacturer’s un-amended sales literature, unconditional statements of specification and compliance issued by the manufacturer, samples, independent test data etc. as appropriate. A statement that is not supported by evidence or is subsequently found to be contradicted by the evidence presented will render the bid under evaluation liable for rejection. A statement either in the bidders statement of compliance or the supporting evidence that is found to be false either during evaluation or the execution of the contract may be regarded as fraudulent and render the bidder or supplier liable for prosecution subject to the provisions of ITB Clause 3 Fraud and Corruption and GCC Clause 31.</p>
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# Section VI

## Schedule of Requirements

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

The objective of the Schedule of Requirements is to provide sufficient information to enable bidders to prepare their bids efficiently and accurately, in particular, the Price Schedule, for which a form is provided in Section IV. In addition, the Schedule of Requirements, together with the Price Schedule, should serve as a basis in the event of quantity variation at the time of award of contract pursuant to ITB Clause 34, Purchaser's Right to Vary Quantities.

The date or period for delivery should be carefully specified, noting that delivery periods will only commence from the date of contract effectiveness as described in ITB Clause 39, Contract Effectiveness.

Any services required should also be included in both the Schedule of Requirements and the Technical Specifications.



## 1.1 Schedule of Requirements

*[The Purchaser shall fill in this table, with the exception of the column "Bidder's offered Delivery date" to be filled by the Bidder]*

Line Item No.	Description of Goods	Quantity	Unit	Delivery Destination as Specified in GCC 1.1 (n)	Delivered to Site by		
					Earliest Delivery Date	Latest Delivery Date	Bidder's Offered Delivery Date [to be provided by the Bidder]
<i>[insert item No]</i>	<i>[insert description of Goods]</i>	<i>[insert] quantity of item to be supplied]</i>	<i>[insert] Unit</i>	<i>[insert place of Delivery]</i>	<i>[insert the number of calendar days following the date of effectiveness the Contract]</i>	<i>[insert the number of calendar days following the date of effectiveness the Contract]</i>	<i>[insert the number of calendar days following the date of effectiveness the Contract]</i>

## 1.2 List of Related Services and Completion Schedule

[This table shall be filled in by the Purchaser, if applicable. The Required Completion Dates should be realistic and consistent with the required Goods Delivery Dates]

<b>Service</b>	<b>Description of Service</b>	<b>Quantity</b>	<b>Physical Unit</b>	<b>Place Where Services Shall be Performed</b>	<b>Final Completion Date(s) of Services</b>
<i>[insert Service No]</i>	<i>[insert description of Related Services]</i>	<i>[insert quantity of items to be supplied]</i>	<i>[insert physical unit for the items]</i>	<i>[insert name of the Place]</i>	<i>[insert the number of calendar days following the date of effectiveness the Contract]</i>

# Section VII

## Bidding Forms

### Contents

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# Bidder Information Form

*[The Bidder shall fill in this Form in accordance with the instructions indicated below. In case of Joint Venture, Consortium, Association, the required information should be provided for each party including subcontractors. No alterations to its format shall be permitted and no substitutions shall be accepted.]*

**Date:** *[insert date (as day, month and year) of Bid Submission].*

**NCB No.:** *[insert number of bidding process].*

1. Bidder's Legal Name: <i>[insert Bidder's legal name].</i>
2. In case of JV: <i>[insert legal name of each party in JV].</i>
3. Bidder's Country of Registration: <i>[insert Country of Registration].</i>
4. Bidder's Year of Registration: <i>[insert Bidder's year of registration].</i>
5. Bidder's Legal Address in Country of Registration: <i>[insert Bidder's legal address in country of registration].</i>
6. Bidder's Authorized Representative Information Name: <i>[insert Authorized Representative's name].</i> Address: <i>[insert Authorized Representative's Address].</i> Telephone/Fax numbers: <i>[insert Authorized Representative's telephone/fax numbers].</i> Email Address: <i>[insert Authorized Representative's email address].</i>
7. Attached are copies of original documents of: <i>[check the box(es) of the attached original documents].</i>  <input type="checkbox"/> Articles of Incorporation or Registration of Firm named in 1, above. In case of JV, letter of intent to form JV or JV agreement.  <input type="checkbox"/> Document of Authorization of the Bidder's Authorized Representative, if applicable <i>[Not required for single owner entity].</i>

# Bid Submission Form

*[The Bidder shall fill in this Form in accordance with the instructions indicated. No alterations to its format shall be permitted and no substitutions shall be accepted.]*

**Date:** *[insert date (as day, month and year) of Bid Submission].*

**NCB No.:** *[insert number of bidding process].*

Invitation for Bid No.: *[insert No. of IFB].*

To: *[insert complete name of Purchaser].*

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda No.: *[insert the number and issuing date of each Addenda, if any or otherwise delete "including Addenda No."].*
- (b) We offer to supply in conformity with the Bidding Documents and in accordance with the Delivery Schedules specified in the Schedule of Requirements in Section VI, the following Goods and Related Services *[insert a brief description of the Goods and Related Services].*
- (c) The total price of our Bid, excluding any discounts offered in item (d) below, is: *[insert the total bid price in words and figures].*
- (d) The discounts offered and the methodology for their application are: *[Bidder - Select one only whichever is applicable: "Nil" or "shown on the Letter of Discount attached to this Bid Submission Form"].*
- (e) Our bid shall be valid for the period of sixty (60) calendar days, as specified in Bid Data Sheet ITB 18.1, from the date fixed for the bid submission deadline specified in Bid Data Sheet ITB Sub-Clause 21.1, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
- (f) If our bid is accepted, we commit to obtain a performance security in accordance with ITB Clause 38 and GCC Clause 17 for the due performance of the Contract *[the PMU/EA - When Performance Securing Declaration is required, delete this paragraph from the Bid Submission Form before issuance of the Bidding documents].*
- (g) We, including any Subcontractors or Suppliers for any part of the Contract, have nationality from eligible countries *[insert the nationality of the Bidder, including that of all parties that comprise the Bidder, if the Bidder is a JV, and the nationality each subcontractor and supplier]*
- (h) Our firm, associates, parent company, its affiliates or subsidiaries, including any Subcontractors or Suppliers for any part of the contract, has not been debarred, declared ineligible or black listed by the Government or the Development Partner in accordance with ITB Sub-Clause 4.4.
- (i) The following commissions, gratuities, or fees have been paid or are to be paid with respect to the bidding process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity].*

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

*(if none paid, indicate 'none')*

- (j) We understand that this bid, together with your written acceptance thereof included in your letter of notification of award, shall constitute a binding Contract between us, until a formal Contract is prepared and executed.
- (k) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.
- (l) We understand that any misrepresentation that knowingly or recklessly misleads, or attempts to mislead may lead to the automatic rejection of the Bid or cancelation of the Contract, if awarded, and may result in remedial actions, in accordance with the Government's and Development Partners Anti-Corruption Policy and Integrity Principles and Guidelines.

Name: *[insert complete name of person signing the bid]*.

In the capacity of *[insert legal capacity of person signing]*.

Signed: *[insert signature of person whose name and capacity are shown above]*.

Duly authorized to sign the Bid for and on behalf of *[insert complete name of the Bidder and affix official seal of the Bidder]*.

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*.

*[The **Bidder** shall fill in and submit this Bid Submission Form with the Bid].*

## Statement on Ethical Conduct and Fraud and Corruption

We the undersigned confirm in the preparation of our bid that:

- (i) Neither we, nor any of our employees, associates, agents, shareholders, partners, consultants or their relatives or associates have any relationship that could be regarded as a conflict of interest as set out in the bidding document.
- (ii) Should we become aware of the potential for such a conflict, we will report it immediately to the Purchaser.
- (iii) Neither we, nor any of our employees, associates, agents, shareholders, partners consultants or their relatives or associates have entered into corrupt, fraudulent, coercive or collusive practices in respect of our bid.
- (iv) We understand our obligation to allow the Government or the funding agency to inspect all records relating to the preparation of our bid and any contract that may result from such, irrespective of being awarded a contract or not.
- (v) No payments in connection with this procurement exercise have been made by us, our associates, agents, shareholders, partners or their relatives or associates to any of the staff, associates, consultants, employees or relatives of such who are involved with the procurement process on behalf of the Purchaser.
- (vi) We understand that if we are found to be in breach of this declaration, we will be ineligible to be considered for any contracts with the Government of the Kingdom of Cambodia funded by the funding agency and/or other sources for a period to be determined by them.

Name: *[insert complete name of person signing the bid]*.

In the capacity of *[insert legal capacity of person signing]*.

Signed: *[insert signature of person whose name and capacity are shown above]*.

Duly authorized to sign the Bid for and on behalf of *[insert complete name of the Bidder and affix official seal of the Bidder]*.

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*.

*[The Bidder shall fill in and submit the Declaration with the Bid].*

## Price and Completion Schedule - Goods

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

NCB No: \_\_\_\_\_

Page No: \_\_\_\_\_ of \_\_\_\_\_

1	2	3	4	5	6	7
Item No	Description of Goods	Delivery Date	Country of Origin	Quantity and Physical Unit	Unit price per item delivered at Final Destination (Site) <sup>1</sup>	Total price per item (Cols. 5 x 6) delivered at Final Destination (Site)
<i>[insert number of the item]</i>	<i>[insert name of Goods]</i>	<i>[insert quoted Delivery Date]</i>	<i>Insert the country of origin of the Goods</i>	<i>[insert number of units to be supplied and name of the physical unit]</i>	<i>[insert unit price per item in [state currency]]</i>	<i>[insert total price per item in [state currency]]</i>
Name of Bidder <i>[insert complete name of Bidder and affix seal of Bidder]</i> Signature of Bidder <i>[signature of person signing]</i>						<i>[Insert Total price of Goods]</i>

<sup>1</sup> Currency to be used is US Dollars or Cambodian Riel. The price shall include all customs duties and sales and other taxes already paid or payable, transportation, insurances, and any other local costs for delivery of the goods up to final destination.

*Note:* In case of discrepancy between unit price and total, the unit price shall prevail.



## Price and Completion Schedule - Related Services

Date: _____						
NCB No: _____						
Page No _____ of _____						
1	2	3	4	5	6	7
Item No.	Description of Services	Country of Origin	Delivery Date at Final destination (Site)	Quantity and Unit of Measurement	Unit Price (USD or Cambodian Riel)	Total Price per Service (Col. 5*6)
	<i>[insert name of Services]</i>	<i>[insert country of origin of the Services]</i>	<i>[insert delivery date at place of final destination per Service-If applicable]</i>	<i>[insert number of units to be supplied and name of the physical unit]</i>	<i>[insert unit price per item]</i>	<i>[insert total price per item]</i>
Total Price Related Services						<i>[insert total price of Related Services]</i>
Name of Bidder <i>[insert complete name of Bidder and affix seal of Bidder].</i> Signature of Bidder <i>[signature of person signing the Bid Submission Form].</i> Date <i>[insert date].</i>				Total Bid Price (Goods and Related Services)		<i>[insert total Bid Price of Goods and Related Services]</i>

## **Manufacturer's Authorization**

*[If indicated in ITB Sub-Clause 14.2(b) and required in the BDS, the Bidder shall require the Manufacturer to fill in this Form in accordance with the instructions indicated. This letter of authorization should be on the letterhead of the Manufacturer and should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer. The Bidder shall include it in its bid, **if indicated in the BDS**. In case the bidder is authorized Dealer/Retailer of a Distributor representing the Manufacturer, a general certificate issued by the authorized Distributor must be submitted.]*

**Date:** *[insert date (as day, month and year) of Bid Submission]*

**NCB No.:** *[insert number of bidding process]*

**To:** *[insert complete name and address of Purchaser]*

### WHEREAS

We *[insert complete name of Manufacturer]*, who are official manufacturers of *[insert type of goods manufactured]*, having manufacturing facilities at *[insert full address of Manufacturer's facilities]*, do hereby authorize *[insert complete name of Bidder]* to submit a bid the purpose of which is to provide the following Goods, manufactured by us *[insert name and or brief description of the Goods]*, and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 24 of the General Conditions of Contract, with respect to the Goods offered by the above firm.

Signed: *[insert signature(s) of Authorized Representative(s) of the Manufacturer]*.

Name: *[insert complete name(s) of Authorized Representative(s) of the Manufacturer]*.

Title: *[insert title]*.

Duly authorized to sign this Authorization on behalf of: *[insert complete name of Bidder]*.

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*.

## **Bid Security (Bank Guarantee)**

*[If the BDS ITB19.1. indicates that Bid-Securing Declaration is required, this Bid Security Form will not be required. Thus, this Bid Security Form shall be deleted from the bidding documents].*

*[The Bank shall fill in this Bank Guarantee Form in accordance with the instructions indicated.]*

*[Name of Bank and Address of Issuing Branch or Office].*

**Beneficiary:** *[insert name and address of Purchaser].*

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

**BID GUARANTEE No.:** *[insert bid Guarantee number]*

We have been informed that *[insert name of the Bidder]* (hereinafter called "the Bidder") will be submitting to you its bid dated *[insert date]* (hereinafter called "the Bid") for the execution of *[insert name of Contract]* under Invitation for Bid No. *[insert IFB number]*.

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

At the request of the Bidder, we *[insert name of Bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in words expressed in the United States Dollars/Cambodian Riel]*, *[insert amount inn figure]* 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 Bid Submission Form or any extension thereto provided by the bidder; or
- b) does not accept the correction of errors in accordance with the Instructions to Bidders (hereinafter "the ITB"); or
- c) having been notified of the acceptance of its Bid by the Purchaser during the period of bid validity as stated in the Bid Submission Form or any extension thereto provided by the bidder, (i) fail or refuse to execute the Contract Agreement; or (ii) fails or refuse to furnish the Performance Security, in accordance with the ITB.

This Guarantee will expire: (a) if the Bidder is the successful Bidder, upon our receipt of copies of the Contract signed by the Bidder and the Performance Security issued to you upon the instruction of the Bidder; or (b) if the Bidder is not the successful Bidder upon earlier of (i) our receipt of a copy of your notification to the Bidder of the name of the successful bidder, or (ii) 30 calendar 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.

*[Authorized Signature(s) and official Seal of the bank].*

*[The Bid Security of a JV must be in the name of the JV that submits the bid. If the JV has not been legally constituted at the time of bidding, the Bid Security shall be in the names of all future partners as named in the letter of intent mentioned in Section VII "Bidding Forms," Bidder Information Form Item 2.]*

## **Bid-Securing Declaration**

*[If the BDS ITB19.1. indicates that Bid-Securing Declaration is required or Bid Security is not required, this Bid-Securing Declaration form shall be used. Otherwise, delete this form from the bidding documents.]*

*[The Bidder shall fill in this Form in accordance with the instructions indicated.]*

**Date:** *[insert date (as day, month and year) of Bid Submission]*

**NCB No.:** *[insert number of bidding process]*

**To:** *[insert complete name of Purchaser]*

We, the undersigned, declare that:

1. We understand that, according to your conditions, bids must be supported by a Bid-Securing Declaration.
2. We accept that we will automatically be suspended from being eligible for bidding in any contract with the Government for the period of time of 3 years starting on the date that we receive notification from the Purchaser that our Bid-Securing Declaration is executed or will pay to the Purchaser two percent (2%) of the total bid amount as a penalty within fourteen calendar days for the date of issue of such notification, when we are in breach of our obligations under the bid conditions if we are in breach of our obligation(s) under the bid conditions, as specified below:
  - (a) We have withdrawn our Bid during the period of bid validity specified by us in the Bid Submission Form or any extension thereto provided by us; or
  - (b) Do not accept the correction of errors in accordance with the Instruction to Bidders; or
  - (c) Having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, or any extension thereto provided by us, (i) fail or refuse to execute the Contract Agreement, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the instructions to Bidders.
3. We understand this Bid Securing Declaration shall expire if we are not the successful Bidder, upon earlier (i) our receipt of your notification to us of the name of the successful Bidder; or (ii) 30 calendar days after the expiry of the validity of our Bid.
4. We understand that if we are a Joint Venture, the Bid Securing Declaration must be in the name of the Joint Venture that submits the bid. If the Joint Venture has not been legally constituted at the time of bidding, the Bid Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed: *[insert signature of person authorized by the Bidder to sign the bid submission form, whose name and title are shown below].*

Name: *[insert full name].*

Title: *[insert official title].*

Duly authorized to sign the bid for and on behalf of: *[insert complete name of Bidder and affix Seal of the Bidder].*

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing].*

# Section VIII

## Contract Forms

### Contents

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## Notice of Intention for Award of Contract

Date: ... ..

To: [Name of the bidder].

Address: [Address].

Fax/Telephone numbers:

E-mail Address:

Attention: [Name of the Bidder's Authorized Representative].

This is to notify you of our intention to award the contract [name of the contract and identification number, as given in the Bid Data Sheet]. You have ten (10) Business Days, from the date of this notification to (i) request for a debriefing in relation to the evaluation of your Bid, and/or (ii) submit a bidding-related complaint in relation to the intention for award of contract, in accordance with the procedures specified in ITB 32.1.

The summary of the evaluation are as follows:

### 1. List of Bidders

Name of Bidder	Bid Price as read out at opening	Evaluated Bid Price

### 2. Reason/s why your Bid was unsuccessful

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

### 3. The successful Bidder:

Name of Bidder:	
Address:	
Contract Price:	
Duration of Contract:	
Scope of the Contract Awarded:	
Amount Performance Security Required:	

Authorized Signature:

Name and Title of Signatory: [Project Director or Project Manager].

Title of Project:

Name of Project Management Office:

Name of the EA/IA:

## Letter of Notification of Award

### Letter of Acceptance

*[The Letter of Notification of Award shall be the basis for formation of the Contract as described in ITB 35. This Standard Form of Letter of Notification of Award shall be filled in and sent to the successful Bidder after the recommendation to award has been approved by the Procurement Review Committee and subject to any prior no objection review by DP, where required.]*

[Insert Date]

Project Name:

Contract Name:

Contract Number:

Name of Successful Bidder:

Address:

Fax No/Telephone/Email:

Attention: *[Name of Authorized Signatory of the Successful Bidder]*.

**Subject: NOTIFICATION OF AWARD the Contract No. ... .. [and Description of Contract].**

This is to notify that your Bid dated *[insert]* for the execution of the *[insert name of contract and identification number, as given in the Bid Data Sheet]* for the Accepted Contract Amount of *[state amount in words and figures and name of currency- If award is for more than one Lot, state for each Lot]*, which is/are inclusive of all taxes, and as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by *[name of the EA]*.

You are hereby instructed to (a) sign and return the attached Contract Documents, and (b) forward the performance security pursuant to ITB Clause 38 and GCC 17 within 14 days after receipt of this Letter of Notification of Award.

Yours Sincerely,

Authorised Signatory:

Name and Title of Signatory: *[Project Director or Project Manager]*.

Name of Project Management Office:

Name of the EA/IA:

I hereby confirm that I have received this Notification of Award and the attached Contract Documents and confirm that I will sign and submit the Contract Documents and comply with the requirement for submission of performance security in accordance with the Instructions to Bidder and the Conditions of Contract.

Signature of Authorised Representative of Supplier:

Name of Authorized Representative:

Date and Stamp of Seal.

# Contract Agreement

THIS CONTRACT AGREEMENT is made on *[insert date]* day of *[insert month]*, *[insert year]* between:

- (1) *[insert complete name of Purchaser]*, *[insert address of Purchaser]* (hereinafter called “the Purchaser”) and
- (2) *[insert name of Supplier]*, a corporation incorporated under the laws of *[insert country]* and having its principal place of business at *[insert address of Supplier]* (hereinafter called “the Supplier”).

**WHEREAS** the Purchaser invited bids for certain Goods and Related Services, viz., *[insert brief description of Goods and Related Services]* and has accepted a Bid by the Supplier for the supply of those Goods and Related Services in the sum of *[insert amount of contract price in words and figures, expressed in United States Dollars or Cambodian Riel(as applicable)]* (hereinafter called “the Contract Price”).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall be deemed to form and read and construed as part of the this Agreement:
  - (a) The Letter of Acceptance;
  - (b) Bid Submission Sheet and the Price Schedule submitted by the Supplier;
  - (c) Special Conditions of Contract;
  - (d) General Conditions of Contract;
  - (e) Specifications and Schedule of Requirements;
  - (f) *[Add here any other document(s)]*
3. This Contract shall prevail over all other Contract documents. In the event of any discrepancy or inconsistency within the Contract documents, then the documents shall prevail in the order listed above.
4. In consideration of the payments to be made by the Purchaser to the Supplier as indicated in this Agreement, the Supplier hereby covenants with the Purchaser to provide the Goods and Related Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
5. The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the Goods and Related Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

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



For and on behalf of the Purchaser/EA

Signed:

Name and Title:

Seal of the EA

Witness: *[Signature]*

Name and Title:

For and on behalf of the Supplier

Signed:

Name and Title:

Seal of the Supplier:

Witness: *[Signature]*

Name and Title:

# Performance Security

*[The bank, as requested by the successful Bidder, shall fill in this form in accordance with the instructions indicated.]*

**Date:** *[insert date (as day, month, and year) of Bid Submission]*

**NCB No. and title:** *[insert no. and title of bidding process].*

**Bank's Branch or Office:** *[insert complete name of Guarantor].*

**Beneficiary:** *[insert complete name of the Purchaser].*

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

We have been informed that *[insert complete name of the Supplier]* (hereinafter called "the Supplier") has entered into Contract No. *[insert number]* dated *[insert day and month], [insert year]* with you, for the supply of *[description of Goods and related Services]* (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 Supplier, we hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert currency, amount in figures and words]* upon receipt by us of your first demand in writing stating that the Supplier is in breach of its obligations under the Contract, without cavil or argument, or your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This Guarantee shall expire no later than the *[insert number]* day of *[insert month] [insert year]*<sup>1</sup> and any demand for payment under it 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 of Authorized Representatives of the bank and the Supplier and affix their official Seals.]*

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<sup>1</sup> Date established in accordance with Clause 17 of the General Conditions of Contract ("GCC") which is 30 calendar days from the date of expiry of the warranty period. When calculating the expiry date of the Guarantee, please ensure that the 30 calendar days is counted from the day after the date of expiry of warranty period. The Purchaser should note that in the event of an extension of the time to perform the Contract, the Purchaser would need to request an extension of this Guarantee from the Bank. Such request must be in writing and must be made prior to the expiration date established in the Guarantee.

# Bank Guarantee for Advance Payment

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

[The bank, as requested by the successful Bidder, shall fill in this form in accordance with the instructions indicated.]

**Contract No. and Title:**

**Beneficiary:** [insert Name and Address of the Purchaser].

**ADVANCE PAYMENT GUARANTEE No.:** [insert Advance Payment Guarantee no.].

We, [insert legal name and address of bank], have been informed that [insert complete name and address of the Supplier] (hereinafter called "the Supplier") has entered into Contract No. [insert number] dated [insert date of Agreement] with you, for the supply of [insert types of Goods to be delivered] (hereinafter called "the Contract").

Furthermore, we understand that, according to the Conditions of the Contract, an advance is to be made against an advance payment guarantee.

At the request of the Supplier, we hereby unconditionally and irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [insert currency, amount in figures and words] upon receipt by us of your first demand in writing without whatsoever right of objection on our part or without its first claim to the Supplier.

This Guarantee shall remain valid and in full effect from the date of the advance payment being received by the Supplier under the Contract until [insert date, day, month and year]

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

Signed: [signature of authorized person].

[Name and Title of Signatory.]

Duly authorized to sign the Guarantee for and on behalf of [insert complete name of bank and affix Seal].

Date:

**ANNEX VI-b**

**Standard Request for Quotations  
(Shopping) Document for  
Procurement of Goods**

## Preface

*[The preface is only for guidance and not included in the Quotations Documents.]*

The use of this document is recommended for all goods procurement under request for quotations procedures with an estimated value below the threshold for National Competitive Bidding stated in **Annex IV-a** of the Standard Operating Procedures on Procurement.

All Goods procurement under request for quotations procedures with an estimated value above the threshold for advertising stated in **Annex IV-a** of the Standard Operating Procedures on Procurement must be advertised in the Khmer language in a provincial or national newspaper of wide circulation that has been continuously published for a period of not less than two years. Any interested party may obtain the quotations documents and submit a quotation, including foreign firms, free of charge. It is also advisable to advertise in the English Language national newspaper.

For Goods procurement under Request for Quotations procedures with an estimated value below the threshold for advertising stated in **Annex IV-a** of the Standard Operating Procedures on Procurement there is no need to advertise and the document may be sent directly and free of charge to as many as reasonably possible reputable and qualified firms known to be in the business of supplying the goods for which the quotations are being invited.

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# Request for Quotations

*[Insert Name of the Purchaser]*

## Wishes to Purchase:

*[Insert brief description of the Goods]*

1. The Kingdom of Cambodia has received a *[insert "Loan/Credit" or "Grant"]* from the *[insert name of DP]* toward the cost of *[insert name of Project]*, and it intends to apply part of the proceeds of this *[insert "Loan/Credit" or "Grant"]* to payments under the Contract for *[insert name/no. of Contract]*.
2. The goods are required by *[insert date of expected delivery, in terms of number of calendar days/weeks from the date of contract]*.
3. Interested qualified eligible suppliers are invited to obtain a copy of the bidding documents free-of-charge from the address given below by submitting a written application. Except for the submission of a written application, there shall be no other conditions for obtaining the bidding documents.
4. To be considered eligible and qualified a bidder must:
  - (i) Meet the eligibility criteria *[insert name of DP]*.
  - (ii) Have completed at least two contracts for supply of similar goods in the preceding 3 years of a value not less than *[insert value = 50% of estimate contract price]*.
  - (iii) Have completed contracts with a total cumulative value equal to at least *[insert value = two times estimated contract price]* in the preceding 2 years.
  - (iv) Not be under any notice of suspension or disbarment issued by the Government or *[state name of the DP]*.
5. Quotations must be delivered to the address given below on or before *[insert time and date and year]*. Late Quotations will be rejected. Quotations will be opened in public immediately thereafter at the address given below in the presence of the Bidders' representatives who choose to attend.
6. The Purchaser shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated quotation and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.
7. All quotations must be accompanied by performance securing declaration as described in the bidding documents. Any quotation not accompanied by one will be rejected as non-compliant
8. The address where the Bidding Document may be inspected and obtained is:

*[Insert Project Management Office, full address, telephone/fax nos.]*. You may contact *[name of contact person and designation]* on *[Phone no]* or *[Email address]* to obtain the Bidding Documents at no cost.
9. In case of any difficulty in obtaining the Bidding Documents, interested parties may contact in writing *[insert name, position, complete address, telephone and fax numbers of*

*government officer who should be in higher position in the Executing Agency than the official specified above]* and also send a copy of the communication to:

(a) Director General

General Department of International Cooperation and Debt Management,  
Ministry of Economy and Finance,  
Street 92, Sangkat Wat Phnom,  
Khan Daun Penh, Phnom Penh, Cambodia  
Fax No. (855-23) 725 341; and

(b) Task Team Leader (Development Partner) *[Insert Contact / Address]*.

10. The quotation must be submitted on or before *[insert time and date]* at the following address:  
  
*[Insert name of Executing Agency, Office designation (room number), name of officer, street address, City]*
11. The Government and/or the Development Partner will declare a firm ineligible either indefinitely or for a stated period of time, to be awarded a contract financed by the Government and/or the Development Partner respectively, if it at any time determines that the firm has engaged in fraud and corruption during the procurement and execution of this contract as described in ITB Clause 4.
12. A complaint may be made by any party at any stage of the procurement process. The procedure is described in Instructions to Bidders, Clause 21 of the Bidding Documents



# Section 1

## Instructions to Bidders

### 1. Goods:

The \_\_\_\_\_ [*Name of the Purchaser*], as the Purchaser, invites quotations for the supply of \_\_\_\_\_ as described in the Conditions of Contract (CC). The successful bidder will be expected to deliver the Goods within the time allowed under the Conditions of Contract.

2. RGC has received funding from \_\_\_\_\_ [*name of the Development Partner*] towards the cost of the \_\_\_\_\_ [*insert name of Project*]. The Purchaser intends to apply a portion of the proceeds of the funding to eligible payments under the contract(s) for which these Bidding Documents are issued. No payment shall be made to persons or entities for any import of goods, if such payment or import is prohibited by a decision of the United Nation's Security Council, taken under chapter VII of the Charter of the United Nations.

### 3. Eligibility Qualifications of the Bidder:

Only bidders meeting the following criteria will be eligible for an award of contract:

- a) Be from a [*name of DP*] member country
- b) Have completed at least two contracts for supply of similar goods in the preceding 3 years of not less than 50% of the quoted price in each contract.
- c) Have completed contracts with a total cumulative value equal to at least two times the value of the quoted price in the preceding 2 years.
- d) Not be under any notice of disbarment issued by the Royal Government of Cambodia or the Development Partner.

### 4. Fraud and Corruption:

The DP requires that Borrowers or Recipients (including beneficiaries of the funds), as well as bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standards of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Government:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
  - (i) "Corrupt Practice" is the offering, giving, receiving, or soliciting directly or indirectly of anything of value to influence improperly the actions of another party<sup>1</sup>;
  - (ii) "Fraudulent Practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit, or to avoid an obligation<sup>2</sup>;

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<sup>1</sup> For the purpose of this sub-paragraph, "another party" refers to a public official acting in relation to the selection process or contract execution. In this context "public official" includes Government and DP staff, and employees of other organizations taking or reviewing selection decisions.

- (iii) “Coercive Practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party, or the property of the party to influence improperly the actions of a party<sup>3</sup>;
  - (iv) “Collusive Practice” is an arrangement between two or more parties, designed to achieve an improper purpose, including to influence improperly the actions of another party<sup>4</sup>;
  - (v) “Abuse” means theft, waste, or improper use of assets related to the DP-financed project activity, either committed intentionally or through reckless disregard;
  - (vi) “Conflict of Interest” means any situation in which a party has interests that could improperly influence that party’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations;
  - (vii) “Obstructive Practice” is (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation, or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice by the competent Government and DP authority; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or (b) acts intended to materially impede the exercise of the Government or DP inspection and audit rights;
  - (viii) “Integrity Violation” is any act, as defined under the DP Integrity Principles accepted by the Government, which violates the Anti-Corruption Policies, where applicable, including points (i) to (vii), stated above and the following: violations of the Government and DP sanctions, retaliation against whistleblowers or witnesses, and other violations of the Anti-Corruption Policies, including failure to adhere to the highest ethical standards.
- (b) will reject a recommendation for award of the contract if it is determined that the firm or individual recommended for the award or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees have directly or indirectly engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations in competing for the contract in question;
  - (c) will cancel the portion of the financing allocated to a contract if it is determined at any time that representatives of the Government or of a beneficiary of the DP financing have engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations during the procurement or the execution of

---

<sup>2</sup> For the purpose of this sub-paragraph, “party” refers to a public official; the terms “benefit” and “obligation” relate to the selection process or contract execution; and the “act or omission” is intended to influence the selection process or contract execution.

<sup>3</sup> For the purpose of this sub-paragraph, “party” refers to a participant in the selection process or contract execution.

<sup>4</sup> For the purpose of this sub-paragraph, “parties” refers to participants in the procurement or selection process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

the contract, without the Government having taken timely and appropriate action satisfactory to the DP to remedy the situation;

- (d) will sanction a firm or individual, at any time, in accordance with prevailing Government and/or DP sanctions procedures<sup>5</sup>, including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded or otherwise benefit from a Government or a DP-financed contract, financially or in any other manner; (ii) to be a nominated<sup>6</sup> sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Government or a DP-financed contract; and (iii) to receive the proceeds of any loan made by the DP or otherwise to participate further in the preparation or implementation of any DP-financed project, if it is determined at any time that the firm or individual has engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations in competing for, or in executing, a DP-financed contract.

All bidders are required to complete the Statement on Ethical Conduct and Fraud and Corruption, which can be found in Section 5, Bidding Forms, and submit it with their quotation. If this Statement is not signed and submitted with the Quotation by the Bidder, its Quotation will be rejected.

**5. Contents of Quotation Documents:**

The set of Quotation documents comprises the documents listed below:

Request for Quotations,

Section 1 - Instructions to Bidders,

Section 2 - Conditions of Contract for the Supply of Goods,

Section 3 - Price and Delivery Schedule,

Section 4 - Technical Specifications,

Section 5 - Form of Quotation and Statement of Ethical Conduct and Fraud and Corruption,

Section 6 - Form of Contract Agreement,

Section 7 - Quotation and Performance Securing Declaration.

**6. Documents Comprising the QUOTATION:**

The Quotation submitted by the Bidder shall comprise the following documents:

- (a) Form of Quotation
- (b) Price and Delivery Schedule

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<sup>5</sup> A firm or an individual may be declared ineligible to be awarded a contract upon (i) completion of the sanctions proceedings as per its sanctions procedures, including inter alia: cross-debarment as agreed by DP and other International Financial Institutions; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanction's proceedings in accordance with the Government and DP guidelines.

<sup>6</sup> A nominated sub-contractor, consultant, manufacturer or supplier, or service provider is one which has been either (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Government.

(c) Quotation and Performance Securing Declaration.

**7. Quotation and Evaluation Criteria:**

The Bidder's quotation shall be for all required items on a lot basis and evaluation of quotations shall also be lot wise. The Purchaser has the right to reject quotations that are incorrectly completed. The contract will be awarded to the Bidder offering the lowest substantially responsive quotation, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

**8. Bidder Prices:**

Prices should be quoted in US Dollars or Cambodian Riel (*Choose one of the two*) for the Goods delivered at the final destination (Project Site) specified in the Price and Delivery Schedule, inclusive of all costs such as customs duties, sales and other taxes paid or payable if the contract is awarded, transportation, insurance, and other local charges required for conveying the goods to the final destination. Prices shall remain fixed and is not subject to price adjustment during the period of performance of the contract.

**9. Validity of Quotation:**

The quotation shall remain valid for the period of sixty (60) calendar days counted from the deadline for submission of quotations specified in Clause 12 of these Instructions. The Purchaser may request Bidders to extend the period of validity for a specified additional period. The Purchaser's request and the Bidder's responses shall be made in writing or by fax or by cable. A Bidder may refuse the request for extension of quotation validity in which case it may withdraw its Quotation without any penalty. A Bidder agreeing to the request will not be required or permitted to otherwise modify its Quotation.

**10. Language of the Quotation:**

All documents relating to the Quotation and contract shall be in the [choose English or Khmer] language.

**11. Preparation and Sealing of Quotation:**

The Bidder shall prepare one original of the documents comprising the Quotation as described in Clause 5 of these Instructions and clearly marked "Original". In addition, the Bidder shall also submit one copy which shall be clearly marked as "COPY". In the event of discrepancy between them the original shall prevail. The original and the copy of the Quotation shall be signed by a person or persons duly authorized to sign on behalf of the Bidder. All the pages of the Quotation where entries or amendments or corrections have been made shall be initialed by the person or persons signing the Quotation. The Bidder shall seal the original and the copy of the Quotation in two inner envelopes and one outer envelope, duly marking the inner envelopes as "ORIGINAL" and "COPY". The inner and the outer envelopes shall be addressed to the Purchaser at the address provided in the Invitation to Quotation shall provide a warning not to open before the specified time and date for Quotation opening as defined in Clause 15 of these Instructions. The inner envelopes shall indicate the name and full address of the Bidder. If the outer envelope is not sealed and marked as above, the Purchaser will assume no responsibility for the misplacement or premature opening of the Quotation.

**12. Place and Deadline for Submission of Quotations:**

The Quotations shall be delivered to the Purchaser NO LATER than \_\_\_\_\_ [time, date] at the address given in Clause 10 of the Request for Quotations. Any Quotation

received by the Purchaser after the deadline prescribed in this clause will be rejected and returned unopened to the Bidder.

**13. Quotation and Performance Securing Declaration:**

The Quotation and Performance Securing Declaration should be in accordance with the form included in SECTION 7 - QUOTATION AND PERFORMANCE SECURING DECLARATION and shall be valid for the warranty period described in Clause 7 of the Conditions of Contract. Any Quotation not accompanied by a Quotation and Performance Securing Declaration will be rejected by the Purchaser as non-responsive. The execution of a Quotation and performance securing declaration will result in the Bidder being held ineligible for bidding in any contracts procured by the RGC for a period of two years from the expiry of the Quotation Validity unless, at a Bidder's option, the Bidder chooses to pay an administrative penalty of two percent (2%) of the total Quotation amount to the Purchaser. The Quotation and Performance Securing Declaration will be executed:

- (a) if a Bidder withdraws its Quotation during the period of Quotation validity specified by the Bidder on the Quotation Form; or
- (b) if the Bidder does not accept the correction of its Quotation Price pursuant to Clause 17 of these Instructions;
- (c) if the successful Bidder fails within the specified time to sign the Contract;
- (d) if the successful bidder, once contracted commits a fundamental breach of contract.

**14. Modification and Withdrawal of Quotations:**

No Quotations shall be modified after the deadline for submission of Quotations specified above in Clause 12 of these Instructions. Withdrawal of a Quotation between the deadline for submission of Quotations and the expiration of the validity of the Quotations as specified in Clause 9 of these Instructions above may result in the execution of the Quotation and Performance Securing Declaration.

**15. Opening of Quotations:**

The Purchaser will open the Quotations in the presence of the bidders' representatives who choose to attend, at the time, date, and in the place specified in Clause 10 of the Request for Quotations. The bidders' names and the total amount, including any discounts offered, of each Quotation will be announced and recorded by the Purchaser at the Quotation opening. The Purchaser shall provide all attendees with written minutes of the quotation opening.

**16. Process to be Confidential:**

All information relating to the examination, clarification, evaluation and comparison of quotations for the contract award shall not be disclosed until the award to the successful Bidder has been announced.

**17. Evaluation and Comparison of Quotations:**

The Purchaser will award the Contract to the Bidder whose Quotation has been determined to be substantially responsive and compliant to the technical specification and standards therein and who has offered the lowest evaluated quotation. In evaluating the Quotations, the Purchaser will determine for each Quotation, the evaluated Quoted Price by adjusting the Quotation by making any correction for any arithmetic errors as follows:

- (a) where there is a discrepancy between amounts in figures and in words, the amount in words will govern;
- (b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will govern;

If a Bidder refuses to accept the correction, his Quotation will be rejected and Quotation and Performance Securing Declaration executed.

**18. Purchaser’s Right to Accept Any Quotations and to Reject any or all Quotations:**

The Purchaser reserves the right to accept or reject any Quotation, and to cancel the process of competition and reject all Quotations, at any time prior to the award of the Contract, without thereby incurring any liability to the affected Bidder(s) or any obligation to inform the affected Bidder(s) of the grounds for the Purchaser’ decision.

**19. Notification of Award and Signing of Contract:**

The Bidder, whose quotation has been accepted will be notified of the award by the Purchaser prior to the expiration of the validity period of the quotation, by facsimile, registered or hand delivered letter. The written notification of award will constitute the formation of the Contract. In the event that no notification of award is issued the signature of the Contract by the Purchaser and Bidder shall constitute the formation of Contract.

**20. Debriefing:**

After the award of contract has been announced an unsuccessful Bidder has the right to request a debriefing to ascertain why its quotation was unsuccessful and the Purchaser has the obligation to provide it. No commercial confidences will be breached and no detailed information concerning other quotations will be disclosed other than the information already read out at quotation opening and the reasons for any and all quotations rejection.

**21. Complaints:**

A complaint may be made by any party at any stage of the procurement process. No complaint will be responded to during the evaluation period. Complaints received during the evaluation period will be reviewed by the Purchaser and a response issued only after the evaluation is completed. Complaints shall be addressed to the Project Manager ..... *[Name, address, tel. and fax Nos. of the Project Manager]*. The Project Manager will investigate the grounds for the complaint and, with the exception of those complaints received during the evaluation period as described above, respond to in writing within 14 calendar days of receiving the complaint. In the event that the response from the Project Manager does not satisfy the bidder or there is no response to the complaint it should be referred to the General Department of Public Procurement, Ministry of Economy and Finance, 92, Sangkat Wat Phnom, Khan Daun Penh, Phnom Penh, Kingdom of Cambodia. In such case, a copy of the complaint should also be sent to the General Department of International Cooperation and Debt Management, Ministry of Economy and Finance..... *[Name, address, tel. and fax Nos. of the designated official of the General Department]* and to the representative of the Development Partner..... *[Name, address, tel. and fax Nos. of the designated Task Team Leader for the Project]*. The General Department of Public Procurement shall respond to the complaint within 14 calendar days. This is without prejudice to any other recourse that a bidder may choose.

22. **Publication of Award:**

The Purchaser shall:

- (a) notify in writing all participating bidders of the results of the quotation evaluation promptly after the contract has been awarded, and
- (b) publish in a national newspaper, promptly at the end of each quarter, a notice informing the general public of the availability of contract awards summary and contract registers in the office of the Purchaser.

# Section 2

## Conditions of Contract for the Supply of Goods

### Article 1. General Provisions

1. The Supplier confirms that he has examined, read and understood fully all the Contract Documents, being:
  - The Quotation Submission Form submitted by the Supplier,
  - The Price and Delivery Schedule,
  - the Form of Contract,
  - the Conditions of Contract,
  - the Technical Specifications,which together form the Contract.
2. The Contract shall be amended only by written agreement between the Purchaser and the Supplier.
3. The laws of the Kingdom of Cambodia will be applicable to the Contract. Every effort shall be made to resolve disputes amicably and without recourse or referral to third parties. Any dispute that cannot be resolved amicably shall be referred by either Party to the (Arbitration Council of Cambodia) Cambodian Chamber of Commerce for adjudication in accordance with the under the Rules of Conciliation and Arbitration of the International Chamber of Commerce.

### Article 2. Purchaser's and Supplier's Obligations

4. The Purchaser and the Supplier now agree as follows:
  - The Purchaser pledges to pay the Supplier, the Contract Price, \_\_\_\_\_ [*Insert amount in words and figures*]. This amount is for the full delivery of the goods listed in the Price and Delivery Schedule.
  - The Supplier shall supply.  
.....  
[*insert description of the goods*] on or before the delivery date and at the final destination [*Project Site*], as stipulated in the Price and Delivery Schedule, and conforming to the standards as stipulated in the Technical Specifications. The Supplier shall be responsible for fully insuring the Goods against loss or damage from "warehouse to warehouse" [*final destination*] on "All Risk basis".
5. The Purchaser has the right to reduce the payment to the Supplier by 0.1% of the total price of the Contract for each day of delay beyond the delivery date shown in the Price and Delivery Schedule. The reduction is up to a maximum of 10%, after which the Purchaser may terminate the contract.



6. If Force Majeure makes completion of the contract impossible, the Supplier may ask the Purchaser to release him from the Contract.
7. The Supplier guarantees that all goods supplied will be new and unused and carry a warranty of \_\_\_\_\_ months *[insert warranty period required of between 6 months to 12 months depending on the goods being purchased]* starting from the actual delivery date of the goods. Throughout this period the Supplier agrees to make good, at its own expense, any defect that appears during that time due to quality of materials or workmanship. The Supplier will submit a warranty certificate issued by the Manufacturer of the goods supplied valid for the period specified in this Clause.
8. The Goods supplied under the Contract shall be fully insured in US Dollars against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery at the final destination (Project Site). The insurance shall be obtained by the Supplier in an amount equal to 110% of the value of the goods from “warehouse to warehouse (final destination) on “All Risks” basis including War Risks and Strikes.

### Article 3. Payment Provisions

9. Payments will only be made on or after the due date shown in the schedule below, and after fulfillment of the “payment conditions” (whichever is the later).

*[Note: The following is a sample payment schedule, which the Purchaser may retain or reasonably modify, if necessary, to suit the specific requirements of the contract. This note should be deleted from the final contract].*

<i>Payment Schedule</i>			
<b>Steps of Payment</b>	<b>Amount</b>	<b>Scheduled Date</b>	<b>Payment Conditions</b>
Payment No 1	90% of the value of delivered Goods		Upon receipt of the Goods and Warranty Certificate issued by the Manufacturer
Payment No 2	Balance 10% of the value of delivered goods		Upon inspection and acceptance of the goods

10. Time allowed for processing of payments will be as follows:
  - 90% of the value of the goods delivered. The Purchaser will issue a receipt for the goods upon delivery and receipt of the necessary warranty certificates issued by the manufacturer. The Supplier shall submit its commercial invoice with the original receipt attached and three copies of both, signed by the supplier as true and correct copies. The Purchaser will effect payment within 30 calendar days of submission;
  - Balance 10% of the value of the goods delivered. Within 30 calendar days of receiving the goods, the Purchaser will undertake any inspections and tests that it deems necessary. Provided that the goods pass any such inspection or tests the Purchaser will issue an acceptance certificate to the Supplier. The Supplier shall submit its commercial invoice with the original acceptance certificate attached and

three copies of both, signed by the supplier as true and correct copies. The Purchaser will effect payment within 30 calendar days of submission;

- In the event that after the expiry of 30 calendar days after the delivery of the goods, the Purchaser does not provide the Supplier with an acceptance certificate (or issue instructions to repair or replace any defective goods), the Supplier shall submit its invoice in three copies signed as true and correct, for the remaining 10% of the value of the goods delivered and the Purchaser will effect payment within 30 calendar days of submission.
11. If any payment is delayed for more than 1 calendar month after the Due Date for Payment, the Purchaser will pay interest to the Supplier at the rate of 1% of the amount of the payment for the first month and for each subsequent full calendar month during which payments are delayed.

#### **Article 4. Fraud and Corruption**

12. The DP requires that Borrowers or Recipients (including beneficiaries of the funds), as well as bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standards of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Government:
- (a) defines, for the purposes of this provision, the terms set forth below as follows:
    - (i) “Corrupt Practice” is the offering, giving, receiving, or soliciting directly or indirectly of anything of value to influence improperly the actions of another party<sup>1</sup>;
    - (ii) “Fraudulent Practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit, or to avoid an obligation<sup>2</sup>;
    - (iii) “Coercive Practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party, or the property of the party to influence improperly the actions of a party<sup>3</sup>;
    - (iv) “Collusive Practice” is an arrangement between two or more parties, designed to achieve an improper purpose, including to influence improperly the actions of another party<sup>4</sup>;

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<sup>1</sup> For the purpose of this sub-paragraph, “another party” refers to a public official acting in relation to the selection process or contract execution. In this context “public official” includes Government and DP staff, and employees of other organizations taking or reviewing selection decisions.

<sup>2</sup> For the purpose of this sub-paragraph, “party” refers to a public official; the terms “benefit” and “obligation” relate to the selection process or contract execution; and the “act or omission” is intended to influence the selection process or contract execution.

<sup>3</sup> For the purpose of this sub-paragraph, “party” refers to a participant in the selection process or contract execution.

<sup>4</sup> For the purpose of this sub-paragraph, “parties” refers to participants in the procurement or selection process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

- (v) “Abuse” means theft, waste, or improper use of assets related to the DP-financed project activity, either committed intentionally or through reckless disregard;
  - (vi) “Conflict of Interest” means any situation in which a party has interests that could improperly influence that party’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations;
  - (vii) “Obstructive Practice” is (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation, or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice by the competent Government and DP authority; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or (b) acts intended to materially impede the exercise of the Government or DP inspection and audit rights;
  - (viii) “Integrity Violation” is any act, as defined under the DP Integrity Principles accepted by the Government, which violates the Anti-Corruption Policies, where applicable, including points (i) to (vii), stated above and the following: violations of the Government and DP sanctions, retaliation against whistleblowers or witnesses, and other violations of the Anti-Corruption Policies, including failure to adhere to the highest ethical standards;
- (b) will reject a recommendation for award of the contract if it is determined that the firm or individual recommended for award, or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees have directly or indirectly engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations in competing for the contract in question;
  - (c) will cancel the portion of the financing allocated to a contract if it is determined at any time that representatives of the Government or of a beneficiary of the DP financing have engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations during the procurement or the execution of that contract, without the Government having taken timely and appropriate action satisfactory to the DP to remedy the situation;
  - (d) will sanction a firm or individual, at any time, in accordance with prevailing Government and/or DP sanctions procedures<sup>5</sup>, including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded or otherwise benefit from a Government or a DP-financed contract, financially or in any other manner; and (ii) to be a nominated<sup>6</sup> sub-contractor,

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<sup>5</sup> A firm or an individual may be declared ineligible to be awarded a contract upon (i) completion of the sanctions proceedings as per its sanctions procedures, including inter alia: cross-debarment as agreed by DP and other International Financial Institutions; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanction’s proceedings in accordance with the Government and DP guidelines.

<sup>6</sup> A nominated sub-contractor, consultant, manufacturer or supplier, or service provider is one which has been either (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Government.

consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Government or a DP-financed contract; and (iii) to receive the proceeds of any loan made by the DP or otherwise to participate further in the preparation or implementation of any DP-financed project, if it is determined at any time that the firm or individual has engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations in competing for, or in executing, a DP-financed contract.

**Article 5. Termination**

- 13. The Purchaser may at any time terminate the Contract by giving written notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In this event, the termination will be without compensation to the Supplier.
- 14. The Purchaser, by written notice sent to the Supplier, may terminate the Contract in whole or in part, at any time for its convenience. The Goods that are complete and ready for transportation to the final destination within fourteen calendar days after the Supplier’s receipt of this notice of termination shall be accepted by the Purchaser at the Contract terms and prices.

**Article 6. Special Conditions**

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In witness of what has been agreed above, the signatures of the authorized representatives of the two Parties are affixed below on the date shown.

<p>▪ <b>Purchaser</b></p> <p>_____</p> <p><i>Affix Official Seal</i></p> <p>Name of the          Authorised          Representative : _____</p> <p>Position : _____</p> <p>Date : _____</p>	<p>▪ <b>Supplier</b></p> <p>_____</p> <p><i>Affix Official Seal</i></p> <p>Name of the          Authorised          Representative : _____</p> <p>Position : _____</p> <p>Date : _____</p>
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## Section 3

# Price and Delivery Schedule

Line Item N°	Description of Goods	Quantity	Physical unit	Delivery Final Destination	Delivery Period	Unit Price, inclusive of any taxes and duties payable	Total price inclusive of any taxes and duties payable
<i>[insert item No]</i>	<i>[insert description of Goods]</i>	<i>[insert quantity of item to be supplied]</i>	<i>[insert physical unit for the quantity]</i>	<i>[insert place of Delivery]</i>	<i>[insert the number of days following the date of effectiveness the Contract]</i>	<i>To be completed by the bidder</i>	<i>To be completed by the bidder</i>

Total Contract Price

In Words \_\_\_\_\_

Authorized Signature of Bidder (and affix Seal).....

- Currency to be used is US Dollars. The price shall include all customs duties and sales and other taxes already paid or payable, transportation, insurances, and any other local charges for delivery of the goods up to final destination.

*Note:* In case of discrepancy between unit price and total, the unit price shall prevail.

# Section 4

## Technical Specifications

*A set of precise and clear Specifications is a prerequisite for bidders to respond realistically and competitively to the requirements of the Purchaser without qualifying or conditioning their quotations. These should be included here. The Specifications must be drafted to permit the widest possible competition and, at the same time, present a clear statement of the required standards of workmanship, materials, and performance of the goods and services to be procured. The Specifications should require that all goods and materials be new, unused, of the most recent or current models, and incorporate all recent improvements in design and materials unless provided otherwise in the Contract.*

<b>Item</b>	<b>Specification</b>	<b>Statement of Compliance</b> Bidders must state here either “Comply” or “Not Comply” against each of the individual parameters of each Specification stating the corresponding performance parameter of the equipment offered. Statements of “Comply” or “Not Comply” must be supported by evidence in a bidder’s quotations and cross-referenced to that evidence. A statement that is not supported by evidence or is subsequently found to be contradicted by the evidence presented will render the quotation under evaluation liable for rejection. A statement either in the bidders statement of compliance or the supporting evidence that is found to be false either during evaluation or the execution of the contract may be regarded as fraudulent and render the bidder or supplier liable for prosecution.

# Section 5.1

## Form of Quotation

\_\_\_\_\_ [Date]

To: \_\_\_\_\_ [Purchaser's Name]

\_\_\_\_\_ [Purchaser's Address]

\_\_\_\_\_

We offer to supply in conformity with the Bidding Documents and in accordance with the Delivery Schedules specified therein, the following Goods *[insert a brief description of the Goods]*. The total price of our Quotation, including any discounts offered, is *[insert the US Dollars or KH Riel (as applicable) amount in words and figures]*.

This Quotation and your written acceptance will constitute a binding Contract between us. We understand that you are not bound to accept the lowest or any Quotation you receive.

We hereby confirm that this Quotation will remain valid for 60 calendar days after the Deadline for Submission of Quotations.

We note and accept without reservation the Government's and the Development Partner's (when other than the Government) right to audit and inspect any and all records relating both to the preparation of our Quotation, and if our Quotation is successful, the execution of the resulting contract.

Name: *[insert complete name of person signing the quotation]*.

In the capacity of *[insert legal capacity of person signing]*.

Signed: *[insert signature of person whose name and capacity are shown above]*.

Duly authorized to sign the Quotation for and on behalf of *[insert complete name of the Bidder and affix official seal of the Bidder]*.

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*.

*[The **Bidder** shall fill in and submit this form with the Quotation.]*

## Section 5.2

# Statement on Ethical Conduct and Fraud and Corruption

We the undersigned confirm in the preparation of our quotation that:

- (i) Neither we, nor any of our employees, associates, agents, shareholders, partners, consultants or their relatives or associates have any relationship that could be regarded as a conflict of interest as set out in the bidding document.
- (ii) Should we become aware of the potential for such a conflict, we will report it immediately to the Purchaser.
- (iii) Neither we, nor any of our employees, associates, agents, shareholders, partners, consultants or their relatives or associates have entered into corrupt, fraudulent, coercive or collusive practices in respect of our quotation.
- (iv) We understand our obligation to allow the Government or the funding agency to inspect all records relating to the preparation of our quotation and any contract that may result from such, irrespective of being awarded a contract or not.
- (v) No payments in connection with this procurement exercise have been made by us, our associates, agents, shareholders, partners or their relatives or associates to any of the staff, associates, consultants, employees or relatives of such who are involved with the procurement process on behalf of the Purchaser.
- (vi) We understand that if we are found to be in breach of this declaration, we will be ineligible to be considered for any contracts with the Government of the Kingdom of Cambodia funded by the funding agency and/or other sources for a period to be determined by them.

Name: *[insert complete name of person signing the bid]*.

In the capacity of *[insert legal capacity of person signing]*.

Signed: *[insert signature of person whose name and capacity are shown above]*.

Duly authorized to sign the Bid for and on behalf of *[insert complete name of the Bidder and affix official seal of the Bidder]*.

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*.

*[The **Bidder** shall fill in and submit the Declaration with the Bid.]*



# Section 6

## Form of Contract Agreement

### Agreement

This Agreement is made the \_\_\_\_\_ [insert date] day of [insert month] \_\_\_\_\_ [insert year] by and between

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[insert name and address of Purchaser] (hereinafter called "the Purchaser") and

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[insert name and address of Supplier] ( hereinafter called "the Supplier") of the other part.

**Whereas** the Purchaser requested for quotations for certain Goods viz., [insert brief description of Goods] and has accepted a Quotation by the Supplier for the supply of those Goods in the sum of [insert amount of contract price in words and figures, expressed in United States Dollars or KH Riel, as applicable] (hereinafter called "the Contract Price").

#### Now this Agreement witnesses as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereafter referred to, and they shall be deemed to form and be read and construed as part of this Agreement.
2. The following documents shall be deem to form and read and construe as part of the Contract:
  - (a) The Form of Contract,
  - (b) The Conditions of Contract,
  - (c) The Specifications and Schedule of Requirements,
  - (d) The Quotation Submission Form,
  - (e) [Add here any other document(s)]
3. This Contract shall prevail over all other Contract documents. In the event of any discrepancy or inconsistency within the Contract documents, then the documents shall prevail in the order listed above.
4. In consideration of the payments to be made by the Purchaser to the Supplier as indicated in this Agreement, the Supplier hereby covenants with the Purchaser to execute and complete the Contract in conformity in all respects with the provisions of the Contract.
5. The Purchaser hereby covenants to pay the Supplier in consideration of the execution and completion of the Contract 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 thereto have caused this Agreement to be executed in accordance with the laws of the Kingdom of Cambodia on the day and year indicated above.

For and on behalf of the Purchaser

Signed:

Name and Title:

*Seal of the EA*

Witness: *[Signature]*

Name and Title:

For and on behalf of the Supplier

Signed:

Name and Title:

*Seal of the Supplier*

Witness: *[Signature]*

Name and Title:

*[Letterhead of the Purchaser/EA]*

## **Letter of Notification of Award**

### **Letter of Acceptance**

*[The Letter of Notification of Award shall be the basis for formation of the Contract as described in ITB 35. This Standard Form of Letter of Notification of Award shall be filled in and sent to the successful Bidder after the recommendation to award has been approved by the Procurement Review Committee and subject to any prior no objection, review by DP, where required.]*

*[Insert Date]*

*Project Name:*

*Contract Name:*

*Contract Number:*

*Name of Successful Bidder:*

*Address:*

*Fax No/Telephone/Email:*

**Attention:** *[Name of the Authorized Signatory of the Successful Bidder]*

**Subject:** NOTIFICATION OF AWARD *[the Contract No. ... .. and Description of Contract.]*

This is to notify that your Quotation dated *[insert]* submitted for the execution of the *[insert name of the contract and identification number, as given in the Request for Quotation]* for the Accepted Contract Amount of *[state amount in words and figures and name of currency. If award is for more than one Lot, state for each Lot]* which is/are inclusive of all taxes and as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by *[name of the EA]*.

You are hereby instructed to sign and return the attached Contract Documents within 14 days after receipt of this Letter of Notification of Award.

Yours Sincerely,

*Authorised Signatory*

*Name and Title of the Signatory [Project Director or/Project Manager.]*

*Name of the Project Management Office*

*Name of the EA/IA*

I hereby confirm that I have received this Notification of Award and the attached Contract Documents and confirm that I will sign and submit the Contract Documents and comply with the requirement for submission of performance security in accordance with the Instructions to Bidder and the Conditions of Contract.

*Signature of the Authorised Representative of the Supplier*

*Name of the Authorized Representative*

*Date and Stamp of Seal*

# Section 7

## Quotation and Performance Securing Declaration

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

Date: *[insert date]*

Name of Contract: *[insert name]*.

Contract Identification No: *[insert number]*.

Request for Quotation No.: *[insert number]*.

To: *[insert complete name of Purchaser]*.

We, the undersigned, declare that:

1. We understand that, according to your conditions, quotations must be supported by a quotation and performance securing declaration.
2. We accept that we shall be suspended from being eligible for bidding in any contract with the Government of Cambodia for the period of time of two years starting on the date we receive notification from the Purchaser that our Bid-Securing Declaration is executed within fourteen calendar days of the date of issue of such notification, when we are in breach of our obligation(s) under the quotation conditions and contract conditions, because we:
  - (a) have withdrawn our quotation during the period of quotation validity specified by us in the quotation Submission Sheet; or
  - (b) do not accept the correction of errors in accordance with the Instructions to Bidders, or
  - (c) having been notified of the acceptance of our quotation by the Purchaser during the period of quotation validity, fail or refuse to execute the Contract Agreement, if required, or
  - (d) committed a fundamental breach of contract leading to the Purchaser's termination of the contract for reasons of our default.
3. We understand this performance securing declaration shall expire if we are not the successful bidder, upon earlier (i) our receipt of your notification to us of the name of the successful Bidder or (ii) 30 calendar days after the expiry of the validity of our Quotation.
4. We understand that if we are a JV, the Quotation and Performance Securing Declaration must be in the name of the JV that submits the quotation. If the JV has not been legally constituted at the time of bidding, the Quotation and Performance Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed *[insert signature(s) of the Authorized Representative]*.

Name *[insert printed or typed name]*.

In the Capacity of *[insert title]*.

Duly authorized to sign the quotation for and on behalf of *[insert authorizing entity]*.

Dated on *[insert day]* day of *[insert month]*, *[insert year]*.

**ANNEX VI-c**

**Standard National Competitive  
Bidding Document for  
Procurement of Works**

## Preface

*[The preface is only used for guidance and is not included in the Bidding Documents]*

The use of this document is mandatory for all works procurement under the National Competitive Bidding method of procurement with an estimated value not exceeding \$3,000,000, the threshold stated in **Annex IV-a** of the Standard Operating Procedures on Procurement or as specified in the Project Procurement Plan.

This Standard Bidding Document for NCB is used for all DP financed works contract. The Bid Data Sheet and the Special Conditions of Contract are used to introduce modifications where DPs requirements differ to make the Standard Bidding Documents consistent with the DP's requirements.

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# Instructions

*[The instructions are only for guidance and are not included in the Bidding Documents]*

These **Standard Bidding Documents** are intended as a model for admeasurements (unit prices or unit rates in a bill of quantities) and lump sum types of contract, which are the most common in civil works contracting. Lump sum contracts are used in particular for building construction and other forms of construction where the works are well defined and are unlikely to change in quantity or specification, and where encountering difficult or unforeseen site conditions (for example, hidden foundation problems) is unlikely. The main text refers to admeasurement contracts. Alternative clauses or texts in boxes or footnotes for use in case of lump sum contracts; these notes must be deleted from the final document before issue to bidders. Care must be exercised by the EA/IA/PMU/PIU in selecting the alternative clauses.

The document is issued in the English language. However, the documents can also be issued in the Khmer language in which case most development partners require the translation of this document into English and submission of both for their review. The English language document shall always be provided to bidders along with the Khmer document. In the case of a discrepancy between the two, the English language version shall prevail.

The documents also contain guidance notes in text boxes for users on certain aspects of using the document. These should be deleted from the final document.

With the exception of the changes for admeasurement/lump sum contracting options highlighted in the footnotes and the deletion of guidance text, no changes are to be introduced whatsoever to either the Instructions to Bidders or the General Conditions of Contract. Changes to the document may only be introduced through either the **Bid Data Sheet** or the **Special Conditions of Contract**.

The Instructions to Bidders contain references to the Bid Data Sheet (**BDS**) and when these references refer to information that has a contractual nature, the Bid Data Sheet directs the user and bidder to the relevant contractual term.

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

- All the documents listed in the Table of Contents are normally required for the procurement of works. However, they should be adapted as necessary to the circumstances of the particular project.
- Specific details, such as the name of the Employer, address for bid submission, etc., should be furnished in the spaces indicated by italicized notes inside brackets.
- The boxed and italicized notes are not part of the text, but rather contain instructions for the user. They should not be incorporated in the Bidding Documents.
- Where alternative clauses or text are shown, select those that best suit the particular works and discard the unused alternative text.
- These standard documents for NCB are based on the assumption of post qualification as pre-qualification is not appropriate for lower value contracts undertaken in a national environment.



## **Lump Sum Contracts**

Lump sum contracts may be used for works that can be defined in their full physical and qualitative characteristics before bids are called or where the risks of substantial design variations are minimal - usually construction of buildings, power transmission towers, and series of small structures, such as bus shelters. It is important to note that the price of a lump-sum contract cannot be revised after signature unless there is a significant revision to the scope of the works to be executed.

In lump sum contracts, the concept of priced "activity schedules" has been introduced, to enable payments to be made as "activities" are completed. Payments can also be made on the basis of percentage completion of each activity. Examples of activities are:

- in highway repaving contracts: each kilometre completed;
- in a project for constructing many individual housing or classroom units: each of those units;
- in the construction of a multi-story building: excavation; foundation structures; structural concrete works per floor; cladding per floor; and services (electrical, water, sewers, drains), each payable as a percentage completed in relation to the service for the whole building.

# Invitation for Bids

*[Name of Project]*

*[Loan / Credit / Grant Number]*

*[Contract Number and Description]*

1. The Kingdom of Cambodia *[insert "has received/has applied for/intends to apply for"]* a *[insert "loan" or "credit"]* from the *[insert name of Development Partner]* toward the cost of *[insert name of Project]*, and it intends to apply part of the proceeds of this *[insert "loan" or "credit" or "grant"]* to payments under the Contract for *[insert name/no. of Contract]*.
2. The *[insert complete name of Employer i.e. the EA]* now invites sealed bids from eligible and qualified bidders for *[insert brief description of the Works to be procured]*. The construction period is *[insert number of calendar days/months/years or dates]*.
3. Procurement will be conducted through National Competitive Bidding Procedures outlined in the Government's Standard Operating Procedures on Procurement for Externally Financed Projects/Programs.
4. This invitation is open to all qualified bidders from eligible source countries of as described in the Bidding Document.
5. Bidders attention is drawn to Sub-Clause 6.3 of the Instructions to Bidders (ITB) on the Qualification requirements. Qualification requirements include: *[insert the key technical, financial and other qualification requirements specified in ITB Sub-Clause 6.3 of the Bidding Documents]*
  - Average Annual Construction Turnover: *[Must be exactly the same as stated in the ITB and **BDS 6.3.**, as an example: The average annual volume of construction work over the last 3 years (20., 20.. and 20..) shall be at least [Insert the value as specified in the **BDS]**.*
  - Specific Similar Experience: *[Must be exactly the same as stated in the ITB and **BDS 6.3.**, as an example: Experience as prime contractor in the construction of at least .... Contract(s) for works of nature and complexity equivalent to the Works with the value of at least (insert the amount specified in the **BDS)** within the last 5 years with].*
  - Liquid Assets: *[Must be exactly the same as stated in the ITB and **BDS 6.3.**, as an example: The minimum amount of liquid assets or working capital or credit facilities of the Bidder shall be (insert the amount specified in the **BDS)]**.*
6. To obtain further information from and inspect the Bidding Documents, Bidders should contact the following during office hours *[insert office hours]*:

Name of Contact Officer:

Office Name and Full Address:

Telephone/Fax No.:

Email Address:
7. A complete set of Bidding Documents may be purchased by interested bidders on the submission of a written application to the address above and upon payment of a non-

refundable fee *[insert amount in US Dollars]* or its equivalent in Cambodian Riel being *[insert KH Riel equivalent]*. The method of payment will be *[insert method of payment]*. The Bidding Documents will be sent by *[insert delivery procedure]* or may be collected in person at the discretion of the bidder. Other than payment of non-refundable fee, there are no other conditions for the purchase of the Bidding Documents.

8. In case of any difficulty in purchase of the Bidding Documents, interested parties may contact in writing *[insert designation, address, telephone and fax number and email address of government officer who should be in higher position in the Executing Agency than the official specified in paragraph 5 above]* and also send a copy of the communication to:

(a) Director General  
General Department of International Cooperation and Debt Management  
Ministry of Economy and Finance  
Building A, 2<sup>nd</sup> Floor, Street 92, Sangkat Wat Phnom,  
Khan Daun Penh, Phnom Penh, Cambodia

Phone:

Fax:

Email: [gdicdm@mef.gov.kh](mailto:gdicdm@mef.gov.kh)

(b) Project Team Leader (Development Partner)

*[Contact address and email address]*

9. Bids must be delivered to the address below on or before *[insert time and date and year]*. Late bids will be rejected. Bids will be immediately open after the deadline for submission of bid in the presence of the bidders' representatives who choose to attend in person at the address below at *[insert the venue of bid opening]*

10. All bids shall be accompanied by a Bid Securing Declaration as described in the ITB.

*Guidance Note.*

*If a Bid security is instead required replace the above paragraph with the following text:*

*"10. All bids shall be accompanied by a Bid Security in the amount of US\$ *[insert amount]*"*

11. The Government and the *[name of Development Partner]* will respectively declare a firm ineligible either indefinitely or for a stated period of time, to be awarded a contract funded by them, if they at any time determine that the firm has engaged in fraud and corruption as described in ITB 3.

# Section I

## Instructions to Bidders

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## A. GENERAL

### 1. Scope of Bid

- 1.1. The Employer as defined in the Bid Data Sheet (**BDS**) invites sealed bids for the construction of Works, as described in the **BDS**. The name and identification number of the Contract is provided in the **BDS**.
- 1.2. The successful Bidder will be expected to complete the Works within the period set out in the **BDS**.

### 2. Source of Funds

- 2.1. The Kingdom of Cambodia, represented by the Royal Government of Cambodia hereinafter referred to as the "Government", has secured funds from the Development Partner named in the **BDS** toward the cost of the project named in the **BDS**.
- 2.2. Payments by the DP will be made only at the request of the Government and upon the approval of the DP in accordance with the terms and conditions of the Financing Agreement between the Kingdom of Cambodia and the DP and will be subject in all respects to the terms and conditions of the Financing Agreement. No party other than the Kingdom of Cambodia shall derive any rights from the Financing Agreement or have any claim to the funds.
- 2.3. No payment shall be made to persons or entities, or for any import of goods, if such payment or import prohibited by a decision of the United Nations Security Council, taken under Chapter VII of the Charter of the United Nations.

### 3. Fraud and Corruption

- 3.1. The DP requires that Borrowers or Recipients (including beneficiaries of the funds), as well as bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standards of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Government:
  - (a) defines, for the purposes of this provision, the terms set forth below as follows:
    - (i) "Corrupt Practice" is the offering, giving, receiving, or soliciting directly or indirectly of anything of value to influence improperly the actions of another party<sup>1</sup>;
    - (ii) "Fraudulent Practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts

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<sup>1</sup> For the purpose of this sub-paragraph, "another party" refers to a public official acting in relation to the selection process or contract execution. In this context "public official" includes Government and DP staff, and employees of other organizations taking or reviewing selection decisions.

to mislead, a party to obtain financial or other benefit, or to avoid an obligation<sup>2</sup>;

- (iii) “Coercive Practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party, or the property of the party to influence improperly the actions of a party<sup>3</sup>;
  - (iv) “Collusive Practice” is an arrangement between two or more parties, designed to achieve an improper purpose, including to influence improperly the actions of another party<sup>4</sup>;
  - (v) “Abuse” means theft, waste, or improper use of assets related to the DP-financed project activity, either committed intentionally or through reckless disregard;
  - (vi) “Conflict of Interest” means any situation in which a party has interests that could improperly influence that party’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations;
  - (vii) “Obstructive Practice” is (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation, or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice by the competent Government and DP authority; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or (b) acts intended to materially impede the exercise of the Government or DP inspection and audit rights;
  - (viii) “Integrity Violation” is any act, as defined under the DP Integrity Principles accepted by the Government, which violates the Anti-Corruption Policies, where applicable, including points (i) to (vii), stated above and the following: violations of the Government and DP sanctions, retaliation against whistle-blowers or witnesses, and other violations of the Anti-Corruption Policies, including failure to adhere to the highest ethical standards;
- (b) will reject a recommendation for award of the contract if it is determined that the firm or individual recommended for the award or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees have directly or indirectly engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations in competing for the contract in question;

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<sup>2</sup> For the purpose of this sub-paragraph, “party” refers to a public official; the terms “benefit” and “obligation” relate to the selection process or contract execution; and the “act or omission” is intended to influence the selection process or contract execution.

<sup>3</sup> For the purpose of this sub-paragraph, “party” refers to a participant in the selection process or contract execution.

<sup>4</sup> For the purpose of this sub-paragraph, “parties” refers to participants in the procurement or selection process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

- (c) will cancel the portion of the financing allocated to a contract if it is determined at any time that representatives of the Government or of a beneficiary of the DP financing have engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations during the procurement or the execution of that contract, without the Government having taken timely and appropriate action satisfactory to the DP to remedy the situation;
- (d) will sanction a firm or individual, at any time, in accordance with prevailing Government and/or DP sanctions procedures<sup>5</sup>, including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded or otherwise benefit from a Government or a DP-financed, contract, financially or in any other manner; (ii) to be a nominated<sup>6</sup> sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Government or a DP-financed contract; and (iii) to receive the proceeds of any loan made by the DP or otherwise to participate further in the preparation or implementation of any DP-financed project, if it is determined at any time that the firm or individual has engaged in corrupt, fraudulent, coercive, collusive or obstructive practises, or other integrity violations in competing for, or in executing, a DP-financed contract.

3.2. All bidders are required to complete the Statement on Ethical Conduct and Fraud and Corruption which can be found in Section VII, Bidding Forms and submit it with their bid.

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

- 4.1. A Bidder, and all parties constituting the Bidder, may have the nationality of an eligible source country as defined by the DP. Bidders are advised to refer to the website of the DP to determine if it is from an eligible source country. A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including Related Services.
- 4.2. The Materials, equipment, and services supplied under the Contract shall have their origin in eligible source countries as described in ITB 4.1 and all expenditures under the Contract will be limited to such materials, equipment, and services. At the Employer's request, Bidders may be required to provide evidence of the origin of materials, equipment, and services. For purposes of this

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<sup>5</sup> A firm or an individual may be declared ineligible to be awarded a contract upon (i) completion of the sanctions proceedings as per its sanctions procedures, including inter alia: cross-debarment as agreed by DP and other International Financial Institutions; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanction's proceedings in accordance with the Government and DP guidelines.

<sup>6</sup> A nominated sub-contractor, consultant, manufacturer or supplier, or service provider is one which has been either (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Government.



clause, "origin" means the place where the goods are mined, grown, or produced, or manufactured, and from which the related services are supplied.

- 4.3. A Bidder shall not have a conflict of interest. All Bidders found to be in conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if they:
- (a) have controlling shareholders in common; or
  - (b) receive or have received any direct or indirect subsidy from any of them; or
  - (c) have the same legal representative for purposes of this Bid; or
  - (d) have a relationship with each other, directly or through common third parties, that puts them in a position to have access to material information about or improperly influence on the Bid of another Bidder; or influence the decisions of the Employer regarding this bidding process; or
  - (e) their Joint venture partner, associates, parent company, or any affiliated entity, participated as a Consultant in the preparation of the design or technical specifications of the works that are subject of the Bid; or
  - (f) were affiliated to a firm or entity that has been hired (or is proposed to be hired) by the Employer or the Government as Project Manager/Engineer for the Contract; or
  - (g) would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in **BDS ITB 2.1**, that it provided or was provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm.
- 4.4. A Bidder, and all parties constituting the Bidder, under a temporary suspension or debarment by the DP pursuant to ITB 3.1 shall not be eligible to participate in the Bid. A bid from a temporary suspended or debarred firm will be rejected.
- 4.5. Government-owned enterprises in the Cambodia may only participate if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not a dependent agency of the Employer.
- 4.6. A Bidder shall not be under suspension from bidding by the Employer as the result of the execution of a Bid-Securing Declaration.
- 4.7. Bidder shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.

## 5. One Bid per Bidder

- 5.1. A Bidder can participate in only one Bid, either individually or as a partner in a joint venture, except for alternative offer permitted under ITB 12.2 of the Bidding Document. A Bidder who submits or participates in more than one Bid will cause all the Bids with the Bidder's participation to be disqualified. Sub-contractors may participate in one or more bids provided that the cost of the sub-contracted goods, works or services (including labor) do not exceed the percentage of the bid price stated in the **BDS**.

## 6. Qualification of Bidders

- 6.1. All bidders shall include the following information and documents as required under Section VIII of the Bidding Documents with their bids unless otherwise stated in the **BDS**:
- (a) a preliminary description of the proposed work method and schedule, including drawings and charts as necessary;
  - (b) copies of original documents defining the constitution or legal status, place of registration, and principal place of business;
  - (c) written power of attorney or similar written authority of the signatory of the Bid to commit the Bidder;
  - (d) total monetary value of construction work performed for each of the last three years;
  - (e) experience in works of a similar nature and size for each of the last five years, and details of work under way or contractually committed; and clients who may be contacted for further information on those contracts;
  - (f) major items of construction equipment proposed to carry out the Contract;
  - (g) qualifications and experience of key site management and technical personnel proposed for the Contract;
  - (h) reports on the financial standing of the Bidder, such as profit and loss statements, certified financial statements from licensed certified accountant or auditor's report, as applicable, for the past three years;
  - (i) evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
  - (j) authority to seek references from the Bidder's bankers;
  - (k) information regarding any litigation, current or during the last five years, in which the Bidder is involved, the parties concerned, and disputed amount; and
  - (l) proposals for subcontracting components of the Works amounting to more than 30 percent of the Contract Price.
- 6.2. Bids submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated in the **BDS**:
- (a) the Bid shall include all the information listed in ITB Sub Clause 6.1 for each joint venture partner;
  - (b) all partners shall be required to meet the eligibility requirement described in ITB Clause 4;
  - (c) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
  - (d) the Bid shall be signed by the authorized partner so as to be legally binding on all partners;
  - (e) one of the partners will be nominated as the partner in charge, authorized to sign the bid, incur liabilities, and receive instructions for and on behalf

- of any and all partners of the joint venture; and a power of attorney signed by all partners to this effect must be submitted with the Bid;
- (f) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge; and
  - (g) a copy of the Joint Venture Agreement entered into by the partners shall be submitted with the bid; or a Letter of Intent to execute a joint venture agreement in which case the Bid shall be signed by all partners together with a copy of the proposed Agreement.
- 6.3. To qualify for award of the Contract, bidders shall meet the following minimum qualifying criteria:
- (a) average annual construction turnover of the value at least that indicated in the **BDS**;
  - (b) experience as prime contractor in the construction of at least two contracts for works of nature and complexity equivalent to the Works with each contract value of at least as specified in the **BDS** within the last 5 years (to comply with this requirement, the contract cited should be at least 70 percent complete, billed and paid);
  - (c) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than the amount stated in the **BDS**;
  - (d) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed in the **BDS**;
  - (e) a Project/Construction Manager with five years' experience in works of an equivalent nature and volume, including no less than two years as Manager; and
  - (f) any other additional requirement stated in the **BDS**.
- 6.4. A consistent history of litigation or arbitration awards against the Applicant or any partner of a Joint Venture may result in disqualification of the Bidder.
- 6.5. In case of a joint venture, the figures for each of the partners of a joint venture shall be added together to determine the Bidder's compliance with the minimum qualifying criteria of ITB 6.3 (a) and (c); however, for a joint venture to qualify, each of its partners must meet at least 25 percent of minimum criteria of ITB 6.3 (a) and (c) , and the partner in charge at least 40 percent of those minimum criteria. In case of qualifying criteria ITB 6.3 (b), one partner must meet the requirement of two contracts or any two partners must each demonstrate one successfully completed contract of value specified in ITB 6.3 (b). Failure to comply with these requirements will result in rejection of the joint venture's Bid. Proposed Subcontractors' experience and resources will not be taken into account in determining the Bidder's compliance with the qualifying criteria unless otherwise specified in the **BDS**.

## 7. Site Visit

- 7.1. The Bidder, at the Bidder's own responsibility and risk, is encouraged to visit and examine the Site of Works and its surroundings and obtain all information that may be necessary for preparing the Bid and entering into a contract for

construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense. The Employer will, if indicated in the **BDS**, hold a pre-bid meeting at the date, time and venue indicated in the **BDS**.

## **8. Cost of Bidding**

- 8.1. The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall in no case be responsible or liable for those costs regardless of the conduct or outcome of the bidding process.

# **B. BIDDING DOCUMENTS**

## **9. Content of the Bidding Documents**

- 9.1. The Bidding Documents comprises the documents listed below and any Addenda issued in accordance with ITB Clause 11.

Section I - Instructions to Bidders,

Section II - Bid Data Sheet,

Section III - General Conditions of Contract,

Section IV - Special Conditions of Contract,

Section V - Specifications & Performance Requirements,

Section VI - Drawings,

Section VII - Bill of Quantities,

Section VIII - Forms of Bid, Qualification Information, Letter of Acceptance, and Agreement,

Section IX - Security Forms.

- 9.2. The Invitation for Bids issued by the Employer is not part of the Bidding Documents.

## **10. Clarification of the Bidding Document**

- 10.1. A prospective Bidder requiring any clarification of the Bidding Documents may notify the Employer in writing (includes facsimile but excludes email) at the Employer's address indicated in the **BDS ITB 1.1**. The Employer will respond in writing to any request for clarification received earlier than 14 calendar days prior to the deadline for submission of bids. Copies of the Employer's response will be forwarded to all who have purchased the Bidding Documents, including a description of the inquiry, but without identifying its source. Other than in writing, there shall be no communications between prospective bidders and the Employer.

## **11. Amendment of the Bidding Document**

- 11.1. At any time prior to the deadline for submission of the Bids, the Employer may amend the Bidding Document by issuing addenda.

- 11.2. Any addendum issued shall be considered part of the Bidding Document and shall be communicated in writing to all who have purchased the Bidding Document directly from the Employer.
- 11.3. 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 the Bids, pursuant to ITB Clause 10.1.

## C. PREPARATION OF BIDS

### 12. Language of Bids

- 12.1. All documents relating to the Bid shall be in English unless otherwise stated in the **BDS**.
- 12.2. No alternative Bids shall be considered unless otherwise indicated in the **BDS**.

### 13. Documents Comprising the Bid

- 13.1. The Bid submitted by the Bidder shall comprise the following:
  - (a) The signed Bid Form in accordance Section VIII;
  - (b) Bid Securing Declaration or Bid Security if this is required in accordance with ITB Clause 16;
  - (c) Completed Schedules, including Priced Bill of Quantities, or Activity Schedule in case of lump sum priced contracts, as specified in Sections VII and VIII;
  - (d) Qualification Information Form specified in Section VIII and supporting documents establishing the Bidder's qualifications to perform the contract if the Bid is accepted;
  - (e) Written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 17.2; and
  - (f) Any other document required in the **BDS**.
- 13.2. The Bill of Quantities, Bid Form and the Schedules shall be prepared using the relevant forms furnished in Sections VII and VIII. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested and as required in the **BDS**.

### 14. Bid Prices and Discounts

- 14.1. The Contract shall be for the whole Works, in accordance with ITB Clause 1.1, based on the priced Bill of Quantities submitted by the Bidder. The prices and discounts, if any, quoted by the Bidder in the Bid Form and the Bill of Quantities shall conform to the requirements specified below.
- 14.2. The Bidder shall fill in rates for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the other items and prices in the Bill of Quantities.

- 14.3. All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 calendar days prior to the deadline for submission of bids, shall be included in the rates and prices quoted in the Bill of Quantities and total Bid Price submitted by the Bidder.
- 14.4. Any discount offered must be unconditional. If offered, the discounts and the methodology for their application shall be quoted in the Bid Form, or in a separate letter of discount which must be referenced and attached to the Bid Form, bear the bidder's official letterhead and stamp, dated and signed by the bidder's authorized representative and enclosed in the sealed envelope containing the bid
- 14.5. Prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and not subject to adjustment on any account, unless otherwise specified in the **BDS**, **GCC** and **SCC**. A Bid submitted with an adjustable price quotation, when a fixed price quotation is required, shall be treated as non-responsive and shall be rejected, pursuant to ITB Clause 24.3. However, if in accordance with the **BDS**, **GCC** and **SCC**, prices quoted by the Bidder shall be subject to adjustment during the performance of the Contract, a bid submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.
- 14.6. The unit rates and prices shall be quoted in United States Dollars. However, payment to the Contractor under the contract shall be made in the currency of the bid price of the winning Bidder in the proportions specified in **GCC**.

## 15. Bid Validity

- 15.1. Bids shall remain valid for the period specified in the **BDS** after the bid submission deadline date prescribed by the Employer. A Bid valid for a shorter period shall be rejected by the Employer as non-responsive.
- 15.2. 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 bidders' responses shall be made in writing. A Bidder may refuse the request without having its Bid Securing Declaration executed, or without forfeiting its Bid Security if Bid Security required in accordance with ITB Clause 16. A Bidder agreeing to the request shall not be required or permitted to modify its Bid and the validity of Bid Securing Declaration will be automatically extended according to the extended bid validity. In case, Bid Security is required in lieu of Bid Securing Declaration according to ITB Clause 16, bidders will be required to extend the validity of their Bid Security for one calendar month beyond the bid validity period, and in compliance with ITB Clause 16.4 in all respects.

## 16. Bid Security and Bid Securing Declaration

- 16.1. At the option of the Employer the Bidder shall furnish as part of its Bid, either:
  - (a) a Bid Security in the amount described in the **BDS**; or
  - (b) a Bid-Securing Declaration in original form as specified in the **BDS**.

The **BDS** indicates which of (a) or (b) is to be provided.

- 16.2. The Bid Securing Declaration when required should be in accordance with the form of Bid Securing Declaration included in Section IX, Security Forms shall be valid for 30 calendar days beyond the validity of the Bid.
- 16.3. If the Bid Security is required in accordance with the **BDS**, the Bid Security shall, at the Bidder's option, be in the form of a certified check, bank draft, standby letter of credit, or guarantee, from a bank in Cambodia that has been determined by the Bidder to be acceptable to the Employer. Cash is not an acceptable form of Security. The format of the Bid Security should be in accordance with the form of Bid Security included in Section IX, Security Forms. The Bid Security shall be valid for 30 calendar days beyond the validity of the Bid as specified in the **BDS**.
- 16.4. Unless otherwise specified in the **BDS**, any Bid not accompanied by a substantially compliant Bid Securing Declaration or Bid Security, whichever is applicable according to the **BDS**, will be rejected by the Employer as non-responsive.
- 16.5. The Bid Securing Declaration or Bid Security, whichever is applicable according to the **BDS**, of a JV must be in the name of the JV that submits the bid. If the JV has not been legally constituted at the time of bidding, the Bid-Securing Declaration or Bid Security, whichever is applicable according to the **BDS**, shall be in the names of all future partners as named in the letter of intent.
- 16.6. The Bid Securing Declaration or Bid Security, whichever is applicable according to the **BDS**, of unsuccessful Bidders shall be returned within seven calendar days of the successful Bidder's furnishing of the performance security.
- 16.7. The Bid Securing Declaration or Bid Security, whichever is applicable according to the **BDS**, of the successful Bidder shall be returned once the Bidder has signed the Contract and furnished the required Performance Security.
- 16.8. The Bid Securing Declaration executed or Bid Security cashed:
- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Bid Submission Sheet, except as provided in ITB Sub Clause 15.2 or
  - (b) if the Bidder does not accept the correction of its Bid Price pursuant to ITB Clause 25;
  - (c) if the successful Bidder fails within the specified time to:
    - (i) sign the Contract; or
    - (ii) furnish the required performance security.
- 16.9. The execution of a bid securing declaration will result in the bidders (including all members of a joint venture) being held ineligible for all contracts bided out by the Government irrespective of the funding source for a period of three years from the expiry of the Bid Validity, unless, at the bidder's option, the bidder pays to the Employer an administrative penalty of two (2) percent of the its total Bid Price.

## 17. Format and Signing of Bids

- 17.1. The Bidder shall prepare one original set of the documents comprising the Bid as described in ITB Clause 13 and clearly marked "ORIGINAL." In addition, the Bidder shall submit three copies of the Bid clearly marked as "COPY." In the event of discrepancy between the originals and copy, the original shall prevail.
- 17.2. The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Bidder. The authorization shall consist of a written confirmation as specified in the **BDS** and shall be attached to the Bid. If the Bidder submits a deficient authorization, the Bid shall not be rejected in the first instance. The Employer shall request the Bidder in writing to submit an acceptable authorization within five (5) working days from the date of request from the Employer. Failure to provide an acceptable authorization within this stipulated time shall cause the rejection of the Bid.
- 17.3. Any amendments such as interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.
- 17.4. The Bidder shall furnish information as described in the Bid Form on commissions or gratuities, if any, paid or to be paid to agents relating to this Bid, and to contract execution if the Bidder is awarded the contract. Any failure or omission in this respect may result in the rejection of the Bidder's Bid.

## D. SUBMISSION OF BIDS

### 18. Sealing and Marking of Bids

- 18.1. The Bidder shall enclose the original and all copies of the Bid in separate sealed envelopes, duly marking the envelopes as "ORIGINAL" and "COPY". These envelopes containing the original and copies shall then be enclosed in one single envelope.
- 18.2. The inner and outer envelopes shall
  - (a) be bear the name and address of the Bidder;
  - (b) be addressed to the Employer at the address provided in the **BDS**;
  - (c) bear the name and identification number of the Contract as defined in the **BDS 1.1**; and
  - (d) provide a warning "DO NOT OPEN BEFORE " the specified time and date for Bid opening as defined in the ITB Sub Clause 21.1.
- 18.3. 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.

### 19. Deadline for Submission of Bids

- 19.1. Bids shall be delivered to the Employer at the specified address, and no later than the date and time, indicated in the **BDS**.



- 19.2. The Employer may, at its discretion, extend the deadline for the submission of Bids by issuing an addendum to the Bidding Documents in accordance with ITB Clause 11, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.
- 19.3. Any Bid received by the Employer after the deadline prescribed in ITB Sub Clause 19.1 or 19.2, as applicable, will be rejected and returned unopened to the Bidder.

## **20. Modification and Withdrawal of Bids**

- 20.1. A Bidder may withdraw, substitute or modify its Bid by giving notice in writing, duly signed by the authorized representative, as stipulated in ITB 17.2. The corresponding substitution or modification of the Bid must accompany the respective written notice.
- 20.2. The Bidder's withdrawal, substitution or modification notice, which does not require any copies, shall be prepared and submitted in accordance with ITB Clauses 17, and 18, and in addition , the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION" or "MODIFICATION" as appropriate.
- 20.3. The Bidder's withdrawal, substitution, or modification notice must be delivered to the Employer no later than the deadline prescribed for the submission of the Bids, in accordance with ITB 19.1 or 19.2, as applicable.
- 20.4. Bids requested to be withdrawn in accordance with ITB 20.1 shall be returned unopened to the Bidders.
- 20.5. No Bid shall 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 Employer in the Bid Form or any extension thereof.

## **21. Bid Opening**

- 21.1. The Employer shall open the bids, including substitutions or modifications made pursuant ITB Clause 20 in public at the address, on the date and time specified in the **BDS** in the presence of the bidders' representatives and anyone who choose to attend.
- 21.2. Envelopes marked "WITHDRAWAL" shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to ITB Clause 20 shall not be opened but returned to the Bidder.
- 21.3. Next, the envelopes marked "Substitution" shall be opened and read out and exchanged with the corresponding Bid being substituted. 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.
- 21.4. Next, 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.

- 21.5. All other envelopes shall be opened one at a time, reading out the name of the Bidders and if there is any modification; the Bid Prices, including any unconditional discounts quoted in the Bid Form or in a separate letter of discount referenced and attached to the Bid Form; any alternate offers, if allowed; the presence of the Bid Securing Declaration or Bid Security, whichever is applicable according to the **BDS**; and any other details the Employer may consider appropriate. Only unconditional discounts and alternative offers, if allowed, read out at the bid opening shall be considered for evaluation. All pages of the Bid Form and the Bill of Quantities are to be initialed by at least three representatives of the Employer involved in the bid opening. No bids shall be rejected at bid opening except for late bids in accordance with ITB Sub Clause 19.3.
- 21.6. The Employer will prepare a record of the bid opening, that shall include, as a minimum, the name of the Bidder and whether there is a withdrawal, substitution or modification; the Bid Price, per lot, if applicable, including any discounts; and the presence or absence of bid securing declaration or Bid Security, whichever is applicable according to the **BDS**. The Bidders representatives who are present shall be requested to sign the record. The omission of a Bidder's representative 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 who submitted Bids.

## **E. EVALUATION AND COMPARISON OF BIDS**

### **22. Confidentiality**

- 22.1. Information relating to the examination, clarification, evaluation, comparison and post qualification of Bids and recommendations for the award of a contract shall not be disclosed to Bidders or other persons not officially concerned with such process until publication of Contract award.
- 22.2. Any attempt by a Bidder to influence the Employer in the evaluation or the Bids or Contract award decisions may result in the rejection of its Bid.
- 22.3. 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 should do so in writing

### **23. Clarification of Bids**

- 23.1. To assist in the examination, evaluation, and comparison of bids and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for clarification of its Bid, including breakdowns of unit rates. Any clarification submitted by a Bidder that is not in a 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 price or substance of the Bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic

errors discovered by the Employer in the evaluation of the bids in accordance with ITB Clause 25.

- 23.2. 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.

## **24. Preliminary Examination of Bids**

- 24.1. If any of the following documents or information is missing from the submitted Bid, the Bid shall be rejected:

- (a) Signed (in original) Form of Bid, in the format indicated in Section II;
- (b) Signed Bid Securing Declaration or Bid Security, whichever is applicable, in accordance with ITB Clause 16; and
- (c) Signed and Priced Bill of Quantities<sup>7</sup>, in accordance with ITB Clause 14.

- 24.2. Prior to the detailed evaluation of bids, the Employer will also determine whether each Bid:

- (a) meets the eligibility criteria defined in ITB Clause 4;
- (b) has been properly signed by an authorized representative of the Bidder; and
- (c) is substantially responsive to the requirements of the Bidding Documents.

- 24.3. A substantially responsive Bid is one which conforms to all the terms, conditions, and specifications of the Bidding Documents, without material deviation, reservation or omission. A material deviation, reservation or omission is one that, if accepted would:

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

- 24.4. If a Bid does not meet the eligibility criteria defined in ITB Clause 4, has not been properly signed; or is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

## **25. Correction of Arithmetical Errors**

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

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<sup>7</sup> For lump sum contracts deleted "Bill of Quantities" and replace it with "Activity Schedule".

- 25.2. Provided that a Bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable 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.
- 25.3. 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 evaluated cost of quantifiable nonconformities including omissions is determined as follows:
- (a) The cost of minor omissions or missing items shall be added to the bid price for bid comparison. The adjustment is based on the highest price quoted for the same item by other responsive Bids.
  - (b) No adjustments are made for missing unit prices for items in the Bill of Quantities as these are included in the bid price in accordance with ITB 14.2.
  - (c) For other quantifiable nonmaterial nonconformities, the Employer will make its own assessment of the cost.
- 25.4. Provided that the Bids is substantially responsive, the Employer shall correct arithmetic errors on the following basis:
- (a) If there is a discrepancy between the unit rate and the total price that is obtained from multiplying the unit rate by the quantity, the unit rate shall prevail and the total price shall be corrected, unless in the opinion of the Employer there is an obviously misplacement of the decimal point in the unit rate, in which case the total price quoted will govern, and the unit rate will be corrected.
  - (b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total corrected.
  - (c) If there is a discrepancy between the bid price in the Summary of Bill of Quantities and the Contract Price in the Bid Form, the bid price in the Summary of Bill of Quantities will prevail and the Contract Price in the Bid Form will be corrected.
  - (d) If there is a discrepancy between words and figures, the amount in words will 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), (b) and (c) above.
- 25.5. If the Bidder that submitted the lowest evaluated Bid does not accept the correction of errors, its Bid shall be disqualified and its Bid Securing Declaration executed or its Bid Security forfeited, whichever is applicable according to the **BDS**.

## **26. Evaluation of Responsive Bids**

- 26.1. The Employer will evaluate and compare only the bids determined to be substantially responsive in accordance with ITB 24.3 and 24.4.

- 26.2. In evaluating the bids, the Employer will determine for each Bid, the evaluated Bid price by adjusting the Bid Price as follows:
- (a) price adjustment for correction for arithmetic errors pursuant to ITB Clause 25.4;
  - (b) excluding provisional sums and the provision, if any, for contingencies in the Bill of Quantities but including Day-work, where priced competitively;
  - (c) price adjustment for nonmaterial nonconformities in accordance with ITB 25.3;
  - (d) price adjustment due discounts offered in accordance with ITB 14.4; and
  - (e) assessment whether the bid is abnormally low in accordance with ITB 27.
- 26.3. If price adjustment is applicable in accordance with ITB 14.5, the estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.
- 26.4. If the Bidding Documents allow for a Bidder to quote separate prices for different lots (contracts), and the award to a single Bidder of multiple contracts, the methodology to determine the lowest evaluated price of the lot(contract) combinations, including any discounts offered in the Bid Form, is specified in **BDS**.
- 26.5. The Employer reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors which are in excess of the requirements of the Bidding Documents or otherwise result in unsolicited benefits for the Employer will not be taken into account in Bid evaluation.
- 26.6. The Employer shall compare all substantially responsive Bids to determine the lowest evaluated Bid price, in accordance with ITB 26.2.

## **27. Abnormally Low Bids**

- 27.1. An abnormally low Bid is one where the bid price, in combination with other elements of the Bid, appears to be so low that it raises concerns as to the capability of the Bidder to perform the Contract for the offered Bid price.
- 27.2. When the offered bid prices appears to abnormally low, the Employer will undertake a three step review process as follows:
- (a) identify abnormally low costs and unit rates by comparing them with the Engineer's estimates, other substantially responsive bids, or recently awarded similar contracts;
  - (b) clarify and analyze the Bidder's resource inputs and pricing, including overheads, contingencies, and profit margins; and
  - (c) decide whether to accept or reject the bid.
- 27.3. With regard to ITB 27.2 (b) above, the Employer will seek a written explanation from the Bidder of the reasons for the offered bid price, including a detailed analysis of costs and unit prices, by reference to the scope, proposed

methodology, schedule, and allocation of risks and responsibilities. This may also include information regarding the economy of the manufacturing process; the services to be provided, or the construction method to be used; the technical solutions to be adopted; and any exceptionally favorable conditions available to the Bidder for the works, equipment or services proposed.

- 27.4. After examining the explanation given and the detailed price analyses presented by the Bidder, the Employer may:
- (a) accept the bid, if the evidence provided satisfactorily accounts for the low bid price and costs, in which case the bid is not considered abnormally low;
  - (b) accept the bid, but 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. The amount of the performance security shall generally be not more than 20% of the contract price; or
  - (c) reject the bid if the evidence provided does not satisfactorily account for the low bid price, and make a similar determination for the next ranked bid, if required.

## **28. Unbalanced or Front-Loaded Bids**

- 28.1. If the Bid for an admeasurement contract, which results in the lowest evaluated Bid Price, is seriously unbalanced or, front loaded in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with construction methods and schedule proposed, as well as the pricing and source of materials, equipment and labor.
- 28.2. After the evaluation of the information and detailed price analyses presented by the Bidder, the Employer may as appropriate:
- (a) accept the Bid; or
  - (b) accept the Bid but 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 by the successful Bidder under the Contract but not exceeding 20% of the Contract Price; or
  - (c) reject the Bid.

## **F. POST-QUALIFICATION AND AWARD**

### **29. Post-Qualification**

- 29.1. After completing the evaluation of responsive bids, the Employer shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive Bid is qualified to perform the Contract satisfactorily.
- 29.2. The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder pursuant to ITB 6.1, 6.2, and 6.3 and his clarifications in accordance with ITB 23.1. The determination shall not take into consideration the qualification of other firms

such as the Bidder's subsidiaries, parent entities, affiliates, Sub-Contractors (other than Specialist Sub Contractors if permitted under **BDS**); or any other firms different from the Bidder.

- 29.3. 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, in which event the Employer shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.

### **30. Employers Right Accept or Reject Any Bid**

- 30.1. 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 the Bidders, or any obligation to inform the affected Bidders of the grounds for the Employer's action.

### **31. Notice of Intention for Award of Contract**

- 31.1. If Standstill provisions apply as specified in the **BDS**, the Standstill Period shall be defined in the BDS to specify the duration subsequent to notification of intention for award of contract (before making actual contract award) within which period any unsuccessful Bidder can challenge the proposed award.

### **32. Award Criteria**

- 32.1. The Employer shall award the Contract to the Bidder whose offer has been determined in line with ITB 26 to 27 above, to be the lowest evaluated Bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

### **33. Notification of Award**

- 33.1. Prior to the expiration of the period of bid validity and upon expiry of the Standstill Period specified in ITB 31.1, or upon satisfactory resolution of a complaint filed within the standstill period, if applicable, the Employer shall transmit the Letter of Acceptance in Section VIII to the successful Bidder, in writing, that its Bid has been accepted. At the same time, the Employer will also notify all other Bidders of the results of the bidding.
- 33.2. Within ten (10) Business Days after the date of transmission of the Letter of Acceptance, the Employer shall publish the Contract Award Notice which shall contain, at a minimum, the following information:
- (a) name and address of the Employer;
  - (b) name and reference number of the contract being awarded, and the selection method used;
  - (c) names of all Bidders that submitted Bids, and their Bid prices as read out at Bid opening, and as evaluated;
  - (d) names of all Bidders whose Bids were rejected either as nonresponsive or as not meeting qualification criteria, or were not evaluated, with the reasons therefore; and;

- (e) the name of the successful Bidder, the final total contract price, the contract duration and a summary of its scope.
- 33.3. The Contract Award Notice shall be published on the Employer's website with free access if available, or in at least one newspaper of national circulation in the Employer's Country, or in the official gazette.
- 33.4. Until a formal contract is prepared and executed, the Letter of Acceptance shall constitute a binding Contract.

#### **34. Debriefing by the Employer**

- 34.1. Unless, a standstill period applies, upon notification of award, unsuccessful Bidders may request in writing to the Employer for a debriefing seeking explanations on the grounds on which their Bids were not selected. The Employer shall promptly respond in writing and /or in a debriefing meeting to any unsuccessful Bidder who after the publication of f contract award, requests a debriefing. If standstill applies, the process for debriefing is described in BDS.
- 34.2. Within 2 weeks of the award of the contract or expiry of the standstill period, where such period applies; or, if a complaint has been filed within the standstill period, upon receipt of DP's confirmation of satisfactory resolution of the complaint, the Employer will publish in an English language newspaper and/or on the Employer's website, the results identifying the bid and lot or package numbers, as applicable, and the following information:
- (a) name of each Bidder who submitted a Bid;
  - (b) bid prices as read out at bid opening;
  - (c) name and evaluated prices of each Bid that was evaluated;
  - (d) name of Bidders whose bids were rejected and the reasons for their rejection; and
  - (e) name of the winning Bidder, and the price it offered, as well as the duration and summary scope of the contract awarded.

#### **35. Signing of the Contract**

- 35.1. The Employer shall send to the successful Bidder, the Letter of Acceptance including the Contract Agreement.
- 35.2. Within 14 days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Employer.

#### **36. Performance Security**

- 36.1. Within fourteen (14) calendar days of the receipt of the Letter of Acceptance from the Employer, the successful Bidder shall furnish the Performance Security in the form of a Bank Guarantee in an amount specified in the SCC, denominated in the currency of the Contract, and in accordance with the Conditions of Contract.
- 36.2. The Performance Security in the form of a Bank Guarantee shall be issued by a bank located in Cambodia.



- 36.3. Failure of the successful Bidder to submit the above mentioned Performance Security or to sign the Contract Agreement shall constitute sufficient grounds for annulment of the award and execution of the Bid Securing Declaration or forfeiture of the Bid Security, whichever is applicable.

### **37. Complaints**

- 37.1. The procedures for dealing with a Bidding-related Complaint arising out of this bidding process are specified in the **BDS**.

# Section II

## Bid Data Sheet

<b>A. General</b>	
<b>ITB 1.1.</b>	The Employer is <i>[insert name of Employer]</i> . The Address of the Project Office of the Employer is <i>[insert address of PMU/PIU]</i> .
<b>ITB 1.1.</b>	The Works are: <i>[insert brief description of the works]</i> . <i>[If more than one Lot/Contract Package, give brief description for each Lot/Contract Package]</i> .
<b>ITB 1.1.</b>	The Contract Description and Identification are: <i>[insert name and identification number of the Contract or Lots]</i> .
<b>ITB 1.2.</b>	The Intended Completion Date is: <i>[insert contract implementation period for Contract/each Lot]</i> calendar days after the award of the contract.
<b>ITB 2.1.</b>	The Development Partner is: <i>[insert name of DP]</i> .
<b>ITB 2.1.</b>	The Project is <i>[insert name and summary description of the Project]</i> . The Loan/Credit/Grant number is <i>[insert number if available]</i> .
<b>ITB 4.1.</b>	Eligible Bidders, Refer to GCC 1.2. For the purpose of this ITB, Bidder means Contractor and vice-versa.
<b>ITB 5.1.</b>	The limit for sub-contractors is <i>[insert percentage, usually no more than 30%]</i> .
<b>ITB 6.1.</b>	The qualification data requirements from bidders are modified as follows: <i>[list any additions or deletions to list, otherwise list "no additional or modified requirements"]</i> .
<b>ITB 6.1.(b)</b>	State requirements like tax registration and other such legal requirements.
<b>ITB 6.3.(a)</b>	The average annual volume of construction work of the successful Bidder over the last 3 years (20., 20. and 20.) shall be at least: <i>[insert amount which should be no less than 1.5 times the estimated value of the contract- calculate and put a figure]</i> .
<b>ITB 6.3.(b)</b>	The contract value shall be of at least <i>[insert the amount which should be no less than 0.75% of the cost estimate]</i> .

<b>ITB 6.3.(c)</b>	The minimum amount of liquid assets and/or credit facilities net of other contractual commitments of the successful Bidder shall be: <i>[insert amount which should be no less than 3 months of estimated cash flow of the contract calculated as Estimated Value of Contract/Duration of Contract in months X 3].</i>
<b>ITB 6.3.(d)</b>	List here the essential equipment required: <i>[list the minimum key equipment that the contractor is required to make available for the contract].</i>
<b>ITB 6.3.(f)</b>	List here any additional qualification requirements: <i>[or state “no additional requirements”].</i>
<b>ITB 6.5.</b>	<i>[Normally Specialist Sub Contractors are not required. In the case the works require Specialist Sub Contractors, then insert the following.]</i> The works require the following Specialist Sub Contractors: 1. 2.
<b>ITB 7.1.</b>	<i>[Select one deleting the other.]</i> The Employer will not hold a pre-bid conference <b>Or</b> <i>[use below only in exceptional and very high value contracts]</i> The Employer will hold a pre-bid conference <i>[insert date, time, venue and address].</i>
<b>B. Bidding Documents</b>	
<b>ITB 9.1.</b>	<i>[Add list of Bidding Documents including any additional documents, such as soils investigation reports, technical reports and safeguards documents. If there are no additional documents other than the list stated in the ITB 9.1, state “No additional documents”.]</i>
<b>ITB 10.1.</b>	For clarification purpose only, the Employer’s address is: <i>[ name and address of Project Manager ].</i>
<b>C. Preparation of Bids</b>	
<b>ITB 12.1.</b>	The language of the Bid shall be in English.
<b>ITB 12.2.</b>	No alternative Bid is permitted.
<b>ITB 13.1.(f)</b>	<i>[If any additional documents are required, list here and if not required, state “None”.]</i>
<b>ITB 14.5.</b>	The Price quoted by the Bidder is fixed and shall not be subject to price adjustment.

	<i>[if price adjustment is applicable, state “The price quoted by the Bidder is adjustable and the formula for adjusting the prices is specified in GCC Clause 43.1”.]</i>
<b>ITB 15.1.</b>	The Bid shall be valid for 120 calendar days from the date fixed for the bid submission deadline specified in <b>BDS ITB 19.1.</b>
<b>ITB 16.1.</b>	<i>[Select one of the following options and delete the other. The Employer should select Option (a) Bid-Securing Declaration as a default for all cases.]</i> <p>(a) Bid shall include a Bid-Securing Declaration using the form included in Section IX, Security Forms.</p> <p><i>[or]</i></p> <p>(b) Bid shall be accompanied with a Bid Security using the form for bid security (bank guarantee) included in Section IX, Security Forms in the amount of: <i>[insert amount in US\$ which should be the same as provided in the Invitation to Bid]</i>.</p>
<b>ITB16.2.</b>	The validity of the bid securing declaration is <i>[insert a date which is 30 calendar days from the date of expiry of validity of bid]</i> .
<b>ITB 16.3.</b>	<i>[Select one of the following two options and delete the other.]</i> <p>(a) Not Applicable.</p> <p><i>[or]</i></p> <p>(b) The validity of the Bid Security is <i>[insert a date which is 30 calendar days from the date of expiry of validity of bid]</i>.</p>
<b>ITB 16.4.</b>	In case of minor deviation when the validity is shorter by no more than 3 calendar days, the Bid will not be rejected but the Bidder will be required to remedy the deviation within 5 working days of the notification of the same by the Employer. If Bidder fails to remedy within this period, the Bid will be rejected as non-responsive.
<b>ITB 17.2.</b>	The written confirmation shall be an <i>[organizational document, board resolution or its equivalent, or power of attorney]</i> specifying the representative’s authority to sign the Bid on behalf of, and legally bind, the Bidder.  If the Bidder is an intended or an existing Joint Venture, the power of attorney should be signed by all partners and specify the authority of the named representative of the Joint Venture to sign on behalf and legally binding, the intended or existing Joint Venture.
<b>D. Submission of Bids</b>	
<b>ITB 18.2.(a)</b>	The Employer’s address for the purpose of Bid submission is <i>[insert the receiving address provided in the Invitation for Bids]</i> .
<b>ITB 18.2.(b)</b>	Name and Identification Number of the contract is as given in ITB 1.1 above in this BDS.

<b>ITB 19.1.</b>	The deadline for submission of bids shall be <i>[insert time and date]</i> .
<b>ITB 21.1.</b>	<p>The bid opening shall take place at: <i>[insert complete address including room # which should be the same as provided in the Invitation for Bids.]</i></p> <p>Date and Time of bid opening: <i>[insert date and time which should be the same as provided in the Invitation for Bids.]</i></p>
<b>E. Evaluation and Comparison of Bids</b>	
<b>ITB 26.4.</b>	<p><i>[In case of award of multiple lots is permitted, state (i) the methodology for determining the lowest evaluated price for lot combination. Normally, the award of a combination of lots is on the basis of <b>least cost to the Employer</b> and (ii) The qualification requirements for award of combination of lots must be specified. (i) and (ii) can also be provided in a separate Section "Evaluation and Qualification Criteria" instead of here in the BDS. If this option is used, ensure that this Section is included in the Table of Contents].</i></p> <p><i>[or]</i></p> <p><i>[If award of a combination of lots is not permitted then, state "Not Applicable"].</i></p>
<b>F. Post-Qualification and Award</b>	
<b>ITB 31.1.</b>	<p><i>[Choose one of the following options as appropriate.]</i></p> <p>Standstill provisions shall not apply.</p> <p><i>[or]</i></p> <p>Standstill provisions will apply. The Employer shall, at the start of the standstill period, notify in writing each bidder that submitted a bid, of its intention to award a contract to the successful bidder at the end of standstill period. The notification (using the form included in Section VIII shall include the following information:</p> <ul style="list-style-type: none"> <li>(a) the name of each Bidder who submitted a Bid;</li> <li>(b) the bid prices as read out at bid opening;</li> <li>(c) the name and evaluated prices of each Bid that was evaluated;</li> <li>(d) the name of bidders whose bids were rejected and the reasons for their rejection;</li> <li>(e) the name of the winning Bidder, and the price it offered, as well as the duration and summary scope of the contract awarded;</li> <li>(f) a statement of the reason(s) the bid of the unsuccessful bidder to whom the notification is addressed was unsuccessful, unless the price information under (e) of this paragraph already reveals the reason.</li> </ul>

<p><b>ITB 34.1.</b></p>	<p><i>[Insert when standstill period applies.]</i></p> <p>An unsuccessful Bidder has 3 Business Days from the date of receipt of the Notification of Intention to Award to make a written request for a debriefing. The debriefing will not be provided for bid related complaints which is handled in accordance with ITB 37.1.</p> <p>When request is received within the deadline, the Employer shall provide a debriefing within five (5) Business Days, unless the Employer decides, for justifiable reasons, to provide the debriefing outside this timeframe. In that case, the standstill period shall automatically be extended until five (5) Business Days after such debriefing is provided.</p> <p>If more than one debriefing is so delayed, the standstill period shall not end earlier than five (5) Business Days after the last debriefing takes place.</p> <p>When a request for debriefing is received later than the 3 Business Day deadline, the Employer will provide the debriefing as soon as practicable, and normally no later than 15 Business Days from the date of public publication of Notice of Award of Contract. Requests for debriefing received outside the three (3) day deadline shall not lead to extension of the standstill period.</p> <p>Debriefings may be done in writing or verbally. The Bidders shall bear their own costs of attending such a debriefing meeting.</p>
<p><b>ITB 37.1.</b></p>	<p>The procedures for Bidding-Related Complaints are as follows:</p> <ul style="list-style-type: none"> <li>i. Complaints Challenging the Request for Bids (Bidding Documents).  Complaints shall be submitted at least ten (10) Business Days prior to the deadline for submission of Bids. The Employer shall respond not later than seven (7) Business Days from the date of receipt of complaint.</li> <li>ii. When a Bidder is notified of its exclusion from consideration from a contract or rejection of Bid submitted prior to the Notification of Intention to Award the contract.  Complaints shall be submitted within ten (10) Business Days following the Employer's transmission to the interested party of notice of such exclusion. The Employer will acknowledge in writing the receipt of the Complaint within three (3) Business Days, and will review the Complaint and respond to the complaint not later than seven (7) Business Days from the date of receipt of Complaint.</li> <li>iii. For Complaints following transmission of the Notification of Intention to Award the contract.  Complaints shall be submitted within the Standstill Period. The Employer will respond not later than 15 Business Days from the</li> </ul>

	<p>date of receipt of Complaint.</p> <p>The Bidder should submit its complaint following these procedures, in writing (if transmitting by email, a scan copy of the letter signed by the same authorized representative as the one signing the Bid), to:</p> <p>For the attention: <i>[Name and Title - normally Project Manager]</i>.</p> <p>Address:</p> <p>Email Address:</p> <p>Telephone:</p> <p>Fax No.: <i>(if available)</i></p>
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# Section III

## General Conditions of Contract

*[For guidance purpose only and should not be included as part of the Bidding Documents]*

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

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

The form can be used directly for smaller admeasurements contracts and, with the modifications noted in the footnotes, it can be adapted for lump sum contracts.

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



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## A. GENERAL

### 1. Definitions

1.1. Boldface type is used to identify defined terms:

- (a) “The **Adjudicator**” is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in GCC Clause 36.2 hereunder.
- (b) “**Bill of Quantities**” means the priced and completed Bill of Quantities forming part of the Bid.
- (c) “**Compensation Events**” are those defined in GCC Clause 46.1 hereunder.
- (d) “The **Completion Date**” is the date of completion of the Works as certified by the Project Manager, in accordance with GCC Clause 34.1, as stated in the SCC.
- (e) “The **Contract**” is the Contract between the Employer and the Contractor as referenced in the SCC.
- (f) “The **Contractor**” is a person or corporate body, defined in the SCC who’s Bid to carry out the Works has been accepted by the Employer.
- (g) “The **Contractor’s Bid**” is the completed Bidding Document submitted by the Contractor to the Employer.
- (h) “**The Contract Price**” is the accepted Initial Contract Price amount stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.
- (i) “The **Contractor’s Representative**” is the person named in the SCC authorized to receive instructions on behalf of the Contractor. The Contractor’s Representative may be changed at the discretion of the Contractor by notifying the Project Manager in writing.
- (j) “**Days**” are calendar days; months are calendar months.
- (k) “**Day-works** are varied work inputs subject to payment on a time basis for the Contractor’s employees and Equipment, in addition to payments for associated Materials and Plant.
- (l) “A **Defect**” is any part of the Works not completed in accordance with the Contract.
- (m) “The **Defects Liability Certificate**” is the certificate issued by Project Manager upon correction of defects by the Contractor.
- (n) “The **Defects Liability Period**” is the period named in the SCC and calculated from the Completion Date.
- (o) “The **Development Partner**” is the agency that has lent or credited (or will do so) the Government the funds covering this contract and is not a party to this contract as named in the SCC.
- (p) “**Drawings**” include calculations and other information provided or approved by the Project Manager for the execution of the Contract.
- (q) “The **Employer**” is the party defined in the SCC who employs the Contractor to carry out the Works.

- (r) “**Equipment**” is the Contractor’s machinery and vehicles brought temporarily to the Site to construct the Works.
- (s) “**Eligible**” contractors, subcontractors, materials, equipment and services are those defined in the **SCC**
- (t) “**Force Majeure**” means an exceptional event or circumstance: which is beyond a Party's control; which such Party could not reasonably have provided against before entering into the Contract; which, having arisen, such Party could not reasonably have avoided or overcome; and, which is not substantially attributable to the other Party.
- (u) “**GCC**” means the General Conditions of Contract.
- (v) “**In Writing or Written**” means hand written, type-written, printed, electronically made, and resulting in a permanent record.
- (w) “**The Initial Contract Price**” means the Contract Price listed in the Employer’s Letter of Acceptance and as stated in **SCC** for the execution and completion of the Works and remedying of any defects.
- (x) “**The Intended Completion Date**” is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the **SCC**. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.
- (y) “**Letter of Acceptance**” means the formal acceptance by the Employer of the Bid and denotes the formation of the Contract.
- (z) “**Materials**” are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- (aa) “**Party**” means the Employer or the Contractor, as the context requires.
- (bb) “**SCC**” means the Special Conditions of Contract
- (cc) “**Plant**” is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
- (dd) “**The Project Manager**” is the person named in the **SCC** (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract
- (ee) “**Retention Money**” means the aggregate of all monies retained by the Employer pursuant to GCC Clause 47.
- (ff) “**Schedules**” means the document(s) entitled schedules, completed by the Contractor and submitted with the Letter of Bid, as included in the Contract. Such document may include the Bill of Quantities, data, lists, and schedules of rates and/or prices.
- (gg) “**The Site**” is the area defined as such in the **SCC**
- (hh) “**Site Investigation Reports**” are those that were included in the Bidding Documents and are factual and interpretative reports about the surface and subsurface conditions at the Site. The Contractor, in preparing the Bid, shall be understood to have relied on any Site Investigation Reports, supplemented by any information available at the time of bidding.

- (ii) “**Specification**” means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.
- (jj) “The **Start Date**” is given in the SCC. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.
- (kk) “A **Subcontractor**” is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.
- (ll) “**Temporary Works**” are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
- (mm) “A **Variation**” is an instruction given by the Project Manager which varies the Works.
- (nn) “The **Works**” are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as defined in the SCC.

## 2. Interpretation

- 2.1. In interpreting these GCC, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager will provide instructions clarifying queries about these Conditions of Contract.
- 2.2. If sectional completion is specified in the SCC, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
- 2.3. The documents forming the Contract shall be interpreted in the following order of priority:
  - (a) Contract Agreement,
  - (b) Letter of Acceptance,
  - (c) Bid Form,
  - (d) Special Conditions of Contract,
  - (e) Eligible Countries as defined in the ITB,
  - (f) General Conditions of Contract,
  - (g) Specifications,
  - (h) Drawings,
  - (i) Bill of Quantities, and
  - (j) Any other document listed in the SCC as forming part of the Contract.

### **3. Language and Law**

- 3.1. The language of the Contract is English, and the laws governing the Contract are those in force in the Kingdom of Cambodia.

### **4. Communications**

- 4.1. Communications between parties that are referred to in the GCC shall be effective only when in writing. A notice shall be effective only when it is delivered to either the Project Manager or the Contractors Representative indicated in GCC Clauses 1.1(i) and 1.1(dd).

## **B. THE CONTRACTORS RIGHTS, OBLIGATIONS AND RESPONSIBILITIES**

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

- 5.1. The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.

### **6. Works to be Completed by the Intended Completion Date**

- 6.1. The Contractor shall commence the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.

### **7. Liquidated Damages**

- 7.1. The Contractor shall pay liquidated damages to the Employer at the rate of 1/10 of one percent of the contract amount for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed ten percent of the Contract Price. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.
- 7.2. If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate.

### **8. Temporary Works**

- 8.1. The Contractor shall be responsible for design of Temporary Works.
- 8.2. The Contractor shall obtain approval of the Project Manager and third parties to the design of the Temporary Works, where required.
- 8.3. The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.

- 8.4. All drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before their use.

## **9. Safety, Security and Environment**

- 9.1. The Contractor shall:
- (a) provide all warning signs and provide, erect, maintain and when no longer required remove all barricades, fencing, temporary roadways and footpaths, signs and lighting necessary for the effective protection of property, for traffic and for the safety of others;
  - (b) at all times carry out the Works so as to prevent any damage to or pollution of the environment at the Site and any immediate adjoining areas. In the event that damage to or pollution of the environment is a consequence of the Contractor's negligence in carrying out the Works, the Contractor shall at his expense make good the damage or pollution caused.
- 9.2. The Contractor shall use every reasonable means to prevent damage by the Contractor's equipment to any roads and bridges adjacent to or on route to the Site.
- 9.3. Where the Works are being carried out to a public highway, if instructed by the Project Manager, the Contractor shall provide periodic access for the public to the project road. Any additional work required to provide such access shall be valued as a Variation under GCC Clause 33.
- 9.4. The Contractor shall take all reasonable steps to keep the Site and the Works in an orderly state, free from all rubbish and debris, and in such a condition as to avoid danger to persons and property.
- 9.5. The Contractor shall be responsible for the safety of all activities on the Site.

## **10. Access to Site**

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

## **11. Discovery**

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

## **12. Instructions, Inspections and Audit**

- 12.1. The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.
- 12.2. The Contractor shall keep, and shall make all reasonable efforts to cause its sub-contractors and sub-consultants to keep accurate and systematic accounts and

records in respect of the Works in such form and details as will clearly identify relevant costs in accordance with the requirement of the relevant laws of the Kingdom of Cambodia.

- 12.3. The Contractor shall permit the Employer or the Development Partner to inspect the Contractor's accounts and records relating to the performance of the Contract and to have them audited by auditors appointed by either the Government or the Development Partner. The Contractor shall maintain all records related to the Contract for a period of 3 years after the completion of the Works.

### **13. Personnel and Equipment**

- 13.1. The Contractor shall employ the key personnel and the use of equipment identified in the Bid to carry out the functions stated in the Schedule or other personnel approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.
- 13.2. If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating reasons, the Contractor shall ensure that the person leaves the Site within seven calendar days and has no further connection with the work in the Contract.
- 13.3. The Contractor shall not employ forced labor, which consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty. This covers any kind of involuntary or compulsory labor, such as indentured labor, bonded labor, or similar labor-contracting arrangements.
- 13.4. The Contractor shall not employ children in a manner that is economically exploitative, or is likely to be hazardous, 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 in compliance with the laws of the Kingdom of Cambodia.
- 13.5. The Contractor shall comply with the laws of the Kingdom of Cambodia in respect of worker's right to form and join worker's organizations of their choosing without interference and to bargain collectively.
- 13.6. The Contractor shall base the employment relationship on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline in compliance with the laws of the Kingdom of Cambodia.

### **14. Subcontracting**

- 14.1. The Contractor may subcontract the parties indicated in the Bid to the specified limit and as named in SCC without the prior approval of the Project Manager. Subcontracting to other parties shall require the Project Manager's prior written approval. The Contract may not be assigned to any other party. The Contractor



shall be liable for the work of any and all Subcontractors employed by the Contractor.

## **15. Other Contractors**

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

## **16. Contractor's Risks**

16.1. From the Starting Date until the Defects Correction Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer's risks are Contractor's risks.

## **17. Insurance**

17.1. The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles stated in the SCC for the following events which are due to the Contractor's risks:

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

17.2. Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

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

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

17.5. If the Contractor does not provide any of the policies and certificates required, the Employer may affect the insurance, which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.

## **18. Drawings and Manuals**

18.1. If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them prior to the issue of the Certificate of

Completion. If the Contractor does not supply the Drawings and/or manuals by the dates stated, or they do not receive the Project Manager's approval, the Project Manager shall be entitled to withhold the return of the fifty percent (50%) of the retention monies described in GCC Clause 47.2.

## **19. Performance Security**

19.1. The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount specified in the SCC by a local bank acceptable to the Employer. The Performance Security shall be valid until a date 30 calendar days from the date of issue of the Certificate of Completion.

# **C. THE EMPLOYERS RIGHTS, OBLIGATIONS AND RESPONSIBILITIES**

## **20. Possession of Site**

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

## **21. The Project Manager's Decisions**

21.1. Except where otherwise provided in Clause 36 the Project Manager will decide contractual matters between the Employer and the Contractor in the role representing the Employer.

## **22. Delegation**

22.1. The Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.

## **23. Queries About the Contract**

23.1. The Project Manager will clarify any queries on the Contract as reasonably requested in writing.

## **24. Licenses and Permits**

24.1. The Employer shall, if requested by the Contractor, assist him in applying for permits, licenses or approvals, which are required for the Works. However, obtaining the necessary permits, licenses and approvals shall be the sole responsibility of the Contractor unless the issue of such is at the discretion of the Employer. No delay in obtaining any permit, license or approval that was in force on the date of the invitation for bids will be considered as a force majeure event.

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

25.1. All drawings, specifications and designs for works whether temporary or permanent prepared by the Contractor shall be subject to the prior approval of the Project Manager, who is to approve them if they comply with the Specifications and Drawings. Such approval if granted will in no way remove the Contractor's responsibility and liabilities for the design of such works.

## **26. Employer's Risks**

26.1. From the Start Date until the Defects Correction Certificate has been issued, the following are Employer's risks:

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

26.2. From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer's risk except loss or damage due to:

- a Defect which existed on the Completion Date,
- loss or damage due to lack of quality of construction,
- an event occurring before the Completion Date, which was not itself an Employer's risk, or
- the activities of the Contractor on the Site after the Completion Date.

## **D. TIME CONTROL**

### **27. Program**

27.1. Within the time stated in the SCC, after the date of Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works. In case of lump sum contract, the activities in the Program shall be consistent with those in the Activity Schedule.

27.2. An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.

27.3. The Contractor shall submit to the Project Manager for approval, an updated Program at intervals no longer than the period stated in the SCC. If the

Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount stated in the SCC from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted.

- 27.4. The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.

## **28. Extension of Time**

- 28.1. The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.
- 28.2. The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 30 calendar days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

## **29. Acceleration**

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

## **30. Suspension of Works**

- 30.1. The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.

## **31. Management Meeting**

- 31.1. Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 31.2. The Contractor shall record the business of management meetings and provide copies of the draft record to the Project Manager. The Project Manager will finalize the record of the meeting and submit it officially to the Contractor. The responsibility of the parties for actions to be taken shall be decided by the Project

Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

### **32. Early Warning**

- 32.1. A Party shall notify the other as soon as he is aware of any circumstance which may delay or disrupt the Works, or which may give rise to a claim for additional payment. The Contractor shall take all reasonable steps to minimize these effects.
- 32.2. The Contractor will promptly provide the Project Manager an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date.
- 32.3. The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning when the Contractor was in a position to provide such warning.

### **33. Variations**

- 33.1. All Variations shall be included in updated Programs produced by the Contractor.
- 33.2. The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within 14 calendar days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.
- 33.3. If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecasts of the effects of the Variation on the Contract Price.
- 33.4. If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.
- 33.5. If the work in the Variation corresponds with an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work is below the limit stated in GCC Clause 41.3 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes above the limit stated in GCC Clause 41.3, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor for new rates for the relevant items of work<sup>1</sup> shall be considered subject to review and approval by the Employer.

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<sup>1</sup> In lump sum contracts, delete this paragraph.

## **34. Completion**

- 34.1. The Contractor shall request the Project Manager to issue a certificate of Completion of the Works and the Project Manager shall do so upon deciding that the work is completed.
- 34.2. Within 14 calendar days of the Contractor requesting a Certificate of Completion, the Project Manager will conduct a detailed inspection jointly with the Contractor of the works to determine if they have been completed. If any unacceptable defects are identified, the Project Manager will instruct the Contractor to correct the defects before the Certificate of Completion can be issued. The Project Manager. If all the works have been completed except for minor works and there are no acceptable defects, the Project Manager shall issue the Certificate of Completion and give a specified period of time to complete the remaining minor works. The Defects Liability Period (DLP) will start from the date of issuance of the Certificate of Completion.
- 34.3. The Employer shall take over the Site and the Works within 14 calendar days of the Project Manager's issuing a Certificate of Completion.

## **35. Day-Works**

- 35.1. If applicable, the Day-works rates in the Contractor's Bid shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.
- 35.2. All work to be paid for as Day-works shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two calendar days of the work being done.

## **36. Resolution of Disputes**

- 36.1. Unless settled amicably, any dispute or difference which arises between the Contractor and the Employer out of or in connection with the Contract, including any valuation or other decision of the Employer, shall be referred by either Party to an Adjudicator.
- 36.2. The Adjudicator shall be appointed jointly by the Employer and the Contractor at the time of the signing of the Contract Agreement or any other time specified in the SCC. The Adjudicator will be nominated by the Employer and agreed by the Contractor. If the Employer and the Contractor fail to agree on the nomination of the Adjudicator, the Arbitration Council of Cambodia will be requested to nominate a suitable candidate for the position.
- 36.3. If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator for resolution within 14 days of the notification of the Project Manager's decision.
- 36.4. The Adjudicator shall give a decision with 30 days of receipt of a notification of dispute.

- 36.5. All disputes arising in connection with the Contract that cannot be resolved to the satisfaction of either one of the parties through adjudication may be referred to and settled under the Rules of Conciliation and Arbitration of the Arbitration Council of Cambodia by one or more arbitrators appointed in accordance with its Rules. The ruling of the Arbitrator shall be binding on both parties. In the case of arbitration, the costs incurred by the Arbitration Council of Cambodia will be paid to it by the losing party.
- 36.6. The Adjudicator shall be paid by the hour at the rate proposed by Arbitration Council of Cambodia, together with reasonable expenses to cover incidental costs like transport and per diems, as necessary. The cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator.
- 36.7. All disputes arising in connection with the Contract that cannot be resolved to the satisfaction of either one of the parties through adjudication may be referred to and settled under the Rules of Conciliation and Arbitration of the Arbitration Council of Cambodia by one or more arbitrators appointed in accordance with its Rules. The ruling of the Arbitrator shall be binding on both parties. In the case of arbitration, the costs incurred by the Arbitration Council of Cambodia will be paid to it by the losing party.

## **E. QUALITY CONTROL**

### **37 Identifying Defects**

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

### **38 Tests**

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

### **39 Correction of Defects**

- 39.1. The Project Manager shall give notice to the Contractor of any Defects before the end of the DLP, which begins at Completion, and is defined in the SCC. The Defects Liability Period shall be extended for as long as the Defects remain to be corrected.
- 39.2. Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified in the notice issued by the Project Manager. Any defect noticed by the Contractor shall be corrected by the Contractor before the expiry of the DLP.
- 39.3. The Project Manager shall approve all corrected defects.

- 39.4. If the Contractor has not corrected a defect within the time specified in the Project Manager's notice, the Project Manager will assess the cost of having the defect corrected by the Employer or a third party and the amount will be deducted from the Retention Money. If the Retention Money has been substituted by a bank guarantee in accordance with GCC 47.3, the Project Manager will cash the bank guarantee and deduct the amount for the cost of correcting the defect and return the balance to the Contractor after the issuance of the *Defects Liability Certificate*. If the amount in the bank guarantee is insufficient to pay the cost of correcting the defect, the Project Manager will issue a demand notice to the Contractor to pay the balance amount within 7 days. If the Contractor has failed to make the payment within the 7-day period, the Project Manager will cash the bank guarantee for the Performance Security and deduct the balance amount for the payment of correcting the defect.

## **40 Cost of Repairs**

- 40.1. Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the DLP shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

## **F. COST CONTROL**

### **41 Bill of Quantities**

- 41.1. The Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.
- 41.2. In case of a lump sum contract, the Activity Schedule shall contain the priced activities for the Works to be performed by the Contractor. The Activity Schedule is used to monitor and control the performance of the activities but the Contractor will be paid on the basis on completion of the activity.
- 41.3. If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent and one percent of the contract value, the parties shall agree upon an adjustment of the rate to allow for the change in accordance with the provisions for Variations.
- 41.4. If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.
- 41.5. The Project Manager shall not adjust rates for changes in quantities except with the prior approval of the Employer.

### **42 Taxes and Duties**

- 42.1. The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 calendar days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax, duties and other levies



payable by the Contractor, provided such changes are not already reflected in the Contract Price.

## **G. PAYMENTS TO THE CONTRACTOR**

### **43 Payment and Currency**

- 43.1. If specified in the SCC, the amounts certified in each payment certificate will be adjusted, before deducting for Advance Payment, by applying the respective price adjustment factor to the payment amounts due in each currency.
- 43.2. Payment shall be in the currency stated in the Bid Form.

### **44 Advance Payment**

- 44.1. Should the Contractor request it, the Employer shall make advance payment to the Contractor of the amounts stated in the SCC within 30 calendar days after the provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Employer in amounts equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment.
- 44.2. The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.
- 44.3. The advance payment shall be repaid as specified in the SCC. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

### **45 Payment Certificates**

- 45.1. The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- 45.2. The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.
- 45.3. The value of the work executed shall be determined by the Project Manager.
- 45.4. The value of work executed shall comprise,
  - (a) in the case of an admeasurement contract, the value of the quantities of work in the Bill of Quantities that have been completed, or
  - (b) in the case of a lump sum contract, the value of work executed shall comprise the value of completed activities in the Activity Schedule.

- 45.5. The value of work executed shall include the valuation of Variations and Compensation Events.
- 45.6. Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 45 calendar days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the rate of three percent per annum.

## **46 Compensation Events**

- 46.1. The following shall be Compensation Events:
- (a) The Employer does not give access to a part of the Site by the Site Possession Date stated in the GCC 20.1.
  - (b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
  - (c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
  - (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
  - (e) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to Bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
  - (f) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
  - (g) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
  - (h) The advance payment is delayed.
  - (i) The effects on the Contractor of any of the Employer's Risks.
  - (j) The Project Manager unreasonably delays issuing a Certificate of Completion.
- 46.2. If a Compensation Event cause a materially adverse impact resulting in additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.
- 46.3. As soon as information demonstrating the materially adverse effect of each Compensation Event upon the Contractor's forecast cost has been provided by

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

- 46.4. The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor's having not given early warning when it could have done so or not having cooperated with a reasonable instruction from the Project Manager.

## **47 Retention**

- 47.1. The Employer shall retain ten percent from each payment due to the Contractor until Completion of the whole of the Works.
- 47.2. On completion of the whole of the Works and issuance of the Certificate of Completion, half the total amount retained shall be repaid to the Contractor and balance half when the Defects Liability Period has expired and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of the period have been corrected.
- 47.3. On completion of the whole Works, the Contractor may substitute retention money with an "on demand" Bank guarantee in a form acceptable to the Employer and valid for one calendar month beyond the expiry of the Defects Liability Period.

## **48 Final Payment**

- 48.1. Within 14 calendar days after either the expiry of the Defects Liability Period, or the remedying of notified defects or the completion of outstanding work whichever is the later, the Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract together with any documentation reasonably required to enable the Employer to ascertain the final contract value.
- 48.2. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 60 calendar days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 30 calendar days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.
- 48.3. If "as built" Drawings and /or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the SCC.
- 48.4. If the Contractor does not supply the Drawings and/or manuals by the dates stated in the SCC or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount stated in the SCC from the payments due to the Contractor.

## H. TERMINATION

### 49 Frustration (Force Majeure)

- 49.1. In this Clause, Force Majeure means an exceptional event or circumstances,
- (a) Which is beyond a Party's control;
  - (b) Which such Party could not reasonably have provided against before entering into the Contract;
  - (c) Which, having arisen, such Party could not reasonably have avoided or overcome; and
  - (d) Which is not substantially attributable to the other Party.
- 49.2. Force Majeure may include, but is not limited to, exceptional events circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:
- (a) riot, commotion, disorder, strike, or lockout by persons other than the Contractor's Personnel;
  - (b) munitions of war, explosive materials, ionizing radiation or contamination by radioactivity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation, or radioactivity; and
  - (c) natural catastrophes such as earthquake, hurricane, typhoon, or volcanic activity.
- 49.3. If the Contractor is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the Project Manager of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Contractor became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.
- 49.4. The Contractor shall, having given notice, be excused from performance of its obligations for so long as such Force Majeure prevents it from performing them.
- 49.5. The Contractor shall at all times use all reasonable efforts to minimize any delay in the performance of the Contract as a result of Force Majeure.
- 49.6. The Contractor shall give notice to the Project Manager when it ceases to be affected by the Force Majeure.
- 49.7. If the Contractor is prevented from performing its substantial obligations under the Contract due to Force Majeure situation, beyond the reasonable control of the Contractor, of which notice has been given under GCC Sub-Clause 49.3, and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor may be entitled to:
- (a) an extension of time for any such delay, if completion is or will be delayed, under GCC Sub-Clause 28.1; and
  - (b) If the event or circumstance is of the kind described in sub-paragraphs (a) to (c) of GCC Sub-Clause 49.1 and, in the case of subparagraphs (a) and (b),

payment of any such Cost, including the costs of rectifying or replacing the Works damaged or destroyed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in GCC Sub-Clause 17.

- 49.8. After receiving this notice, the Project Manager shall proceed in accordance with GCC Sub-Clause 21 to agree or determine these matters.
- 49.9. If the Contract is frustrated by an event of force majeure and the event continues for a period of 90 calendar days, on the first working day after the 84th day, the Project Manager shall issue a notice that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this notice and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

## **50 Default by the Contractor**

- 50.1. If the Contractor is in a fundamental breach of the Contract described in GCC Sub-Clause 52.2 or abandons the Works, the Employer may give notice to terminate the Contract.
- 50.2. If the Contractor has not taken all practicable steps to remedy the default within 30 calendar days after the Contractor's receipt of the Employer's notice, the Employer may, by a second notice given within a further 21 calendar days, terminate the Contract. The Contractor shall then demobilize from the Site leaving behind Materials and Plant and any Contractor's Equipment, which, as the Employer instructs in the second notice, is to be used until the completion of the Works.
- 50.3. All Materials on the Site, Plant, Equipment, purchased as part of the contract including equipment for operation and maintenance (excluding contractor's own equipment), Temporary Works, and Works shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor's default

## **51 Default by the Employer**

- 51.1. If the Employer is in a fundamental breach of the Contract described in GCC Sub-Clause 52.2, the Contractor may give notice to terminate the Contract. If the default is not remedied within 30 calendar days after the Employer's receipt of this notice, the Contractor may suspend the execution of all or parts of the Works.
- 51.2. If the default is not remedied by the Employer within a further 14 calendar days from the date of suspension of the execution of the works by the Contractor, the Contractor may, by a second notice given within a further 21 calendar days, terminate the Contract. The Contractor shall then demobilize from the Site.

## **52 Parties Right to Terminate**

- 52.1. The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

- 52.2. Fundamental breaches of Contract shall include, but shall not be limited to, the following:
- (a) the Contractor stops work for 30 calendar days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;
  - (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 30 calendar days;
  - (c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
  - (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 84 calendar days of the date of the Project Manager's certificate;
  - (e) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
  - (f) the Project Manager gives two consecutive Notices to update the Program and accelerate the works to ensure compliance with GCC Sub-Clause 6.1 [*Works to be completed by the Intended Completion Date*] and the Contractor fails to update the Program and demonstrate acceleration of the works within a reasonable time determined by the Project Manager;
  - (g) the Contractor does not maintain the Performance Security, which is required; and
  - (h) the Contractor has delayed the completion of the Works by 100 calendar days being the maximum amount of liquidated damages.
  - (i) if the Contractor, in the judgment of the Employer has engaged in integrity violations in competing for or in executing the Contract pursuant to GCC 54.1 below.
- 52.3. When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under GCC Clause 52.2 above, the Project Manager shall decide whether the breach is fundamental or not.
- 52.4. Notwithstanding the above, the Employer may terminate the Contract for convenience.
- 52.5. If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.
- 52.6. If a Party is declared insolvent under any applicable law, the other Party may by notice terminate the Contract immediately. The Contractor shall then demobilize from the Site leaving behind, in the case of the Contractor's insolvency; any Contractor's Equipment which the Project Manager instructs in the notice is to be used until the completion of the Works.

## 53 Payment on Termination

- 53.1. If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in GCC Clause 7.1. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.
- 53.2. If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.
- 53.3. After termination, the Contractor shall be entitled to payment of the unpaid balance of the value of the Works executed and of the Materials and Plant reasonably delivered to the Site, adjusted by the following:
- (a) any sums to which the Contractor is entitled under GCC 45.1;
  - (b) the Cost of his suspension and demobilization;
  - (c) any sums to which the Employer is entitled.

The net balance due shall be paid or repaid within 28 days of the notice of termination.

## 54 Fraud and Corruption

- 54.1. The Development Partner requires that Government or Recipients (including beneficiaries of the funds), as well as bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standards of ethics during the procurement and execution of contracts. In pursuance of this policy, the Government:
- (a) defines, for the purposes of this provision, the terms set forth below as follows:
    - (i) "Corrupt Practice" is the offering, giving, receiving, or soliciting directly or indirectly of anything of value to influence improperly the actions of another party<sup>2</sup>;
    - (ii) "Fraudulent Practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts

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<sup>2</sup> For the purpose of this sub-paragraph, "another party" refers to a public official acting in relation to the selection process or contract execution. In this context "public official" includes Government and DP staff, and employees of other organizations taking or reviewing selection decisions.

to mislead, a party to obtain financial or other benefit, or to avoid an obligation<sup>3</sup>;

- (iii) “Coercive Practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party, or the property of the party to influence improperly the actions of a party<sup>4</sup>;
  - (iv) “Collusive Practice” is an arrangement between two or more parties, designed to achieve an improper purpose, including to influence improperly the actions of another party<sup>5</sup>;
  - (v) “Abuse” means theft, waste, or improper use of assets related to the DP-finance project activity, either committed intentionally or through reckless disregard;
  - (vi) “Conflict of Interest” means any situation in which a party has interests that could improperly influence that party’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations;
  - (vii) “Obstructive Practice” is (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation, or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice by the competent Government and DP authority; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or (b) acts intended to materially impede the exercise of the Government or DP inspection and audit rights;
  - (viii) “Integrity Violation” is any act, as defined under the DP Integrity Principles accepted by the Government, which violates the Anti-Corruption Policies, where applicable, including points (i) to (vii), stated above and the following: violations of the Government and DP sanctions, retaliation against whistle-blowers or witnesses, and other violations of the Anti-Corruption Policies, including failure to adhere to the highest ethical standards;
- (b) will reject a recommendation for award of the contract if it is determined that the firm or individual recommended for the award or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees have directly or indirectly engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations in competing for the contract in question;

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<sup>3</sup> For the purpose of this sub-paragraph, “party” refers to a public official; the terms “benefit” and “obligation” relate to the selection process or contract execution; and the “act or omission” is intended to influence the selection process or contract execution.

<sup>4</sup> For the purpose of this sub-paragraph, “party” refers to a participant in the selection process or contract execution.

<sup>5</sup> For the purpose of this sub-paragraph, “parties” refers to participants in the procurement or selection process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.



- (c) will cancel the portion of the financing allocated to a contract if it is determined at any time that representatives of the Government or of a beneficiary of the DP financing have engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations during the procurement or the execution of that contract, without the Government having taken timely and appropriate action satisfactory to the DP to remedy the situation;
- (d) will sanction a firm or individual, at any time, in accordance with prevailing Government and/or DP sanctions procedures<sup>6</sup>, including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded or otherwise benefit from a Government or a DP-financed contract, financially or in any other manner; (ii) to be a nominated<sup>7</sup> sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Government or a DP-financed contract; and (iii) to receive the proceeds of any loan made by the DP or otherwise to participate further in the preparation or implementation of any DP-financed project, if it is determined at any time that the firm or individual has engaged in corrupt, fraudulent, coercive, collusive or obstructive practises, or other integrity violations in competing for, or in executing, a DP-financed contract.

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<sup>6</sup> A firm or an individual may be declared ineligible to be awarded a contract upon (i) completion of the sanctions proceedings as per its sanctions procedures, including inter alia: cross-debarment as agreed by DP and other International Financial Institutions; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanction's proceedings in accordance with the Government and DP guidelines.

<sup>7</sup> A nominated sub-contractor, consultant, manufacturer or supplier, or service provider is one which has been either (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Government.

# Section IV

## Special Conditions of Contract

<b>A. General</b>	
<b>GCC 1.6.</b>	<i>[Insert the Contract Name and Reference.]</i>
<b>GCC 1.7.</b>	The Contractor is <i>[Insert Name and Full registered address and Contact Details]</i> .
<b>GCC 1.10.</b>	The Contractor's Representative is <i>[Insert name and title and email address]</i> .
<b>GCC 1.16.</b>	The Development Partner is <i>[insert name of DP]</i> .
<b>GCC 1.18.</b>	The Employer is <i>[Insert Name and Full address and Contact Details of the Employer]</i> .
<b>GCC 1.20.</b>	<p>Eligible countries mean those countries that can participate in DP financed contract as defined by the DP's Procurement Framework/Guidelines which can be found on the DP's website. Cambodia is an eligible country.</p> <p>The Contractor, and all parties constituting the Contractor, shall have the nationality of an eligible country. The Contractor shall be deemed to have the nationality of a country if the Contractor is a citizen or is constituted, or incorporated, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract.</p> <p>The materials, equipment and services to be supplied under the Contract shall have their origin in eligible source countries and all expenditures under the Contract will be limited to such materials, equipment, and services. At the Employer's request, Contractors may be required to provide evidence of the origin of materials, equipment and services.</p> <p>For purposes of this Clause, "origin" means the place where the materials and equipment are mined, grown, produced or manufactured, and from which the related services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that differs substantially in its basic characteristics or in purpose or utility from its components.</p> <p>In addition, the Contractor, its associates, parent company, its</p>

	affiliates or subsidiaries, including any subcontractor or Suppliers for any part of the Contract, should not be subject to, or controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the DP and the Government.
<b>GCC 1.24.</b>	The Initial Contract Price is <i>[insert currency and amount]</i> .
<b>GCC 1.25.</b>	The Intended Completion Date for the whole of the Works shall be <i>[insert date or period of time from the Start Date]</i> . <i>[If different dates are specified for completion of the Works by section ("sectional completion" or "milestones"), these dates should be listed here].</i>
<b>GCC 1.31.</b>	The Project Manager is <i>[Insert name. A consulting firm, that was selected to supervise the works, may be appointed as the project manager for the contract by the employer. In this case, insert the name of the consulting firm and its representative]</i> .
<b>GCC 1.34.</b>	The Site is located at <i>[insert address of Site]</i> and is defined in drawings No. <i>[insert numbers]</i> .
<b>GCC 1.37.</b>	The Start Date shall be <i>[insert date]</i> .
<b>GCC 1.41.</b>	The Works consist of <i>[insert brief summary]</i> .
<b>GCC 2.2.</b>	<i>[Select one]</i> N/A <i>[Or]</i> Sectional Completions are: <i>[insert different sections]</i> .
<b>GCC 2.3.(k)</b>	<i>[Select one]</i> N/A <i>[Or]</i> The following documents also form part of the Contract <i>[use in case there are other documents]</i> .
<b>B. The Contractor's Rights, Obligations and Responsibilities</b>	
<b>GCC 8.1.</b>	The Contractor shall be responsible for design of Temporary Works. The Contractor shall provide and maintain at his own cost all guardrails, temporary accesses such as temporary roads and bridges to households and public facilities after excavation, fencing, warning signs and watching, when and where necessary or required by Specifications or by any duly constituted authority, for the protection of the Works and Services or for the safety and convenience of his workers and road users, the public or others.
<b>GCC 13.7.</b>	The Contractor shall ensure that its employees and subcontractors

	observe the highest ethical standards and refrain from any form of bullying, discrimination, misconduct and harassment, including sexual harassment and shall, at all times, behave in a manner that creates an environment free of these unethical behaviours. The Contractor shall take appropriate action against any employees or Subcontractors, including suspension or termination of employment or sub-contract, if any form of unethical or inappropriate behaviour is identified.
<b>GCC 14.1.</b>	The list of approved subcontractors and the specified limits are: <i>[List name of subcontractors and the % limit of works as specified in the Bid];</i> <i>[If none, state: "None"]</i>
<b>GCC 15.1.</b>	The Schedule of other Contractors: <i>[insert Schedule of Other Contractors, if appropriate].</i>
<b>GCC 17.1.</b>	The minimum insurance amounts and deductibles shall be: (a) for the Works, Plant and Materials: <i>[insert amounts];</i> (b) for loss or damage to Equipment: <i>[insert amounts];</i> (c) for loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract <i>[insert amounts];</i> (d) for personal injury or death: (i) of the Contractor's employees: <i>[insert amount];</i> (ii) of other people: <i>[insert amount].</i>  The deductible shall be: (a) for the works, Plant and Materials: <i>[insert amount];</i> (b) for loss or damage to Equipment: <i>[insert amount];</i> (c) for loss or damage to property (except the Works, Plant, Materials and Equipment) in connection with contract: <i>[insert amount].</i>
<b>GCC 19.1.</b>	The Performance Security amount is <i>[insert currency and amount, being ten percent of the Initial Contract Price]</i> in the form of an unconditional (on demand) Bank Guarantee in the form and wording shown Section IX, Security Forms.
<b>C. Employer's Rights, Obligations and Responsibilities</b>	
<b>GCC 20.1.</b>	The Site Possession Date(s) shall be: <i>[insert location and date(s)].</i> <i>[Note that if the site is handed over sections wise, then list each section and the corresponding date.]</i>

GCC 22.1.	The Project Manager may delegate any of his duties and responsibilities.
<b>D. Time Control</b>	
GCC 27.1.	The Contractor shall submit for approval a Program for the Works within <b>45 calendar days</b> from the date of the Letter of Acceptance.
GCC 27.3.	The period between Program updates is <b>30 calendar days</b> . The amount to be withheld for late submission of an updated Program is <b>10% of the amount certified</b> .
GCC 32.1.	The Management Meeting shall be held as and when required but at least one every month.
GCC 33.5.	The approval by the Employer means the Procurement Review Committee for the Project established in accordance with the Government's Standard Operating Procedures on Procurement for Externally Financed Projects/Programs.
GCC 36.2.	The Adjudicator will be appointed no later than 2 months after the Commencement of Works.
<b>E. Quality Control</b>	
GCC 39.1.	The Defects Liability Period is <i>[insert number-normally 12 months]</i> months from the Completion Date.
<b>F. Cost Control</b>	
GCC 42.1.	Only the taxes, duties, and other levies changed through Government legislation or regulations will be considered. The Contractor shall be required to submit supporting documents to justify and substantiate the claim.
<b>G. Payments to the Contractor</b>	
GCC 43.1.	<p><i>[If the contract is equal to or less than 24 months in duration state: "No adjustments will be made"].</i></p> <p><i>[If the Contract is of over 24 months duration state:</i></p> <p><i>"The Contract is subject to price adjustment. The payment shall be adjusted by increasing the payment amount by one half of one percent for each entire month starting from the twenty first month after the date of contract signing." ]</i></p>

GCC 43.2.	<p>Payment shall be made in US Dollars.</p> <p><i>[In case currency specified in the Bid Form is in Cambodian Riel, state: "Payments shall be made in Cambodian Riel"].</i></p>
GCC 44.1.	<p>The Advance Payments shall be: <i>[insert currency and amount equal to 10% percentage of the Initial Contract Price].</i></p>
GCC 44.3.	<p>Repayment of the Advance Payment shall be 15% of each payment certificate until the total amount is repaid.</p> <p><i>[in case the completion period is less than 12 months, the % should be increased to 20%].</i></p>
GCC 47.3.	<p><i>[Select one of the two options below:]</i></p> <ul style="list-style-type: none"> <li>• Not Applicable <i>[Select this option if the intended Defects Liability Period of the contract falls before the project completion date, otherwise delete this option and keep the following option].</i></li> <li>• On completion of the whole Works, if the Employer decides, the Contractor may substitute retention money with an "on demand" Bank guarantee in a form acceptable to the Employer and valid for one calendar month beyond the expiry of the Defects Liability Period (DLP). In this case, the following processes shall be applied: <ul style="list-style-type: none"> <li>(i) Three months before the DLP expiry, the EA/IA will undertake an inspection to check if there are any defects and if present, the EA/IA will produce a list of defects and instruct the contractor to rectify the defects. The EA/IA will monitor the rectification works and if they have not been remedied, it will issue a notice to extend the expiry of the DLP.</li> <li>(ii) One month before of expiry of the DLP or the extended DLP, the EA/IA will send an Invitation letter to the Inspection and Acceptance Committee attaching a list of defects rectified for final check for acceptance.</li> <li>(iii) During the Inspection, if the Committee finds that some defects have not been rectified satisfactorily, the Project Manager will instruct the Contractor to rectify within 2 weeks, and if the Contractor fails to rectify the defects within this period, the EA/IA will proceed to cash the bank guarantee for the retention money. The EA/IA will engage a new contractor through direct contracting to remedy the works and the retention money will used to pay for the works. In special circumstances, such as heavy rainy season, where work cannot be undertaken on time, the EA/IA will extend the DLP and request the Contractor to extend the bank guarantee at least 30 days before the expiry of the extended DLP. If the Contractor fails to extend the bank guarantee with 30 days from the dated of the request, the EA/IA will cash the bank</li> </ul> </li> </ul>

	<p>guarantee.</p> <p>(iv) After the final inspection by the Committee, the DLP Inspection Report shall be produced by the EA/IA and the Defects Liability Certificate will be issued by the EA/IA if the defects have been satisfactorily rectified, and</p> <p>(v) the Inspection Report and Defect Liability Certificate will be shared with GDICDM of MEF, and kept as a record in the project files.</p>
<b>GCC 48.3.</b>	<p><i>[List the 'as built' drawings and manuals required.]</i></p> <p><i>[If none required state: "None"].</i></p>
<b>GCC 48.4.</b>	<p><i>[If "None" in SCC 48.3 above state: "Not Applicable"].</i></p> <p><i>[If SCC 48.3 requires these documents state:</i></p> <p><i>"The amount shall be 30% of the Final Payment."]</i></p>

# Section V

## Specifications & Performance Requirements

*[For guidance purpose only to prepare the specifications and performance requirements.]*

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

Samples of Specifications from previous similar projects in the same country are useful in to prepare Specifications. The use of metric units is encouraged. Most Specifications are normally written specially by the Employer or Project Manager to suit the Contract Works in hand. There is no standard set of Specifications for universal application in all sectors, but there are established principles and practices, which are reflected in these documents.

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

Care must be taken in drafting Specifications to ensure that they are not restrictive. In the Specifications of standards for goods, materials, and workmanship, recognized international standards should be used as much as possible. Where other particular standards are used, whether national standards of Cambodia or other standards, the Specifications should state that goods, materials, and workmanship that meet other authoritative standards, and which ensure substantially equal or higher quality than the standards mentioned, shall also be acceptable. To that effect, the following sample clause may be inserted in the Special Conditions or Specifications.

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

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



specified and the proposed alternative standards shall be fully described in writing by the Contractor and submitted to the Project Manager at least 28 calendar days prior to the date when the Contractor desires the Project Manager's consent. In the event the Project Manager determines that such proposed deviations do not ensure substantially equal or higher quality, the Contractor shall comply with the standards specified in the documents.

These Notes for Preparing Specifications are intended only as information for the Employer or the person drafting the Bidding Documents. They should not be included in the final documents.

# Section VI

## Drawings

*[Insert here a List of Drawings.*

*The actual drawings, including site plans, should be attached to this section or annexed in a separate folder.]*

# Section VII

## Bill of Quantities<sup>1</sup>

*[For guidance purpose only and should not be included in the Bidding Documents]*

### Objectives

The objectives of the Bill of Quantities are:

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

In order to attain these objectives, Works should be itemized in the Bill of Quantities in sufficient detail to distinguish between the different classes of Works, or between Works of the same nature carried out in different locations or in other circumstances which may give rise to different considerations of cost. Consistent with these requirements, the layout and contents of the Bill of Quantities should be as simple and brief as possible, but the Employer must specify at a minimum the item reference number, brief description of each item, quantity and unit. Unit rates and amounts should be entered by the bidder.

### Day-work Schedule

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

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

### Provisional Sums

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

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<sup>1</sup> In lump sum contracts, the "Bill of Quantities" is prepared for information; it is not contractual. The contractual document prepared by the Bidder shall be an "Activity Schedule."

The estimated cost of specialized work to be carried out, or of special goods to be supplied, by other contractors should be indicated in the relevant part of the Bill of Quantities as a particular provisional sum with an appropriate brief description. A separate procurement procedure is normally carried out by the Employer to select such specialized contractors.

To provide an element of competition among the bidders in respect of any facilities, amenities, attendance, etc., to be provided by the successful Bidder as prime Contractor for the use and convenience of the specialist contractors, each related provisional sum should be followed by an item in the Bill of Quantities inviting the Bidder to quote a sum for such amenities, facilities, attendance, etc.

These Notes for Preparing a Bill of Quantities are intended only as information for the Employer or the person drafting the Bidding Documents. They should not be included in the final documents.

**Section VIII**  
**Forms of Bid,**  
**Qualification Information,**  
**Letter of Acceptance, and Agreement**

# Bid Form (Contractor's Bid)

*[The Bidder shall fill in and submit this Bid Form with the Bid.]*

*[Date.]*

Identification No and Title of Contract: *[insert identification number and title of the Contract].*

To: *[name and address of Employer]*

We undersigned declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB) 8.
- (b) We offer to execute in conformity with the Bidding Documents the following Works: *[insert description of Works].*
- (c) The total price of our Bid, excluding any discounts offered in item (d) below is: *[insert currency, amount in words and figures].*
- (d) The discounts offered and the methodology for their application are as follows: *[insert discounts and methodology for their application if any, or "the discount and the methodology is provided in the Letter duly signed by me as the authorized representative and attached to this Bid Form in accordance with ITB 14.4."].*
- (e) Our Bid shall be valid for a period of 120 calendar days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
- (f) If our Bid is accepted, we commit to obtain a performance security in accordance with the Bidding Documents.
- (g) Our firm, including any Subcontractors or Suppliers for any part of the Contract, have nationalities from eligible countries in accordance with ITB 4.1. and 4.2.
- (h) We, including any Subcontractor or Supplier for any part of the contract, do not have any conflict of interest in accordance with ITB 4.3.
- (i) We are not participating, as a Bidder, either individually or as partner in a Joint Venture, in more than one Bid in this bidding process in accordance with ITB 5.1., other than alternative offers, where permitted, submitted in accordance with ITB 12.2.
- (j) We have not been suspended or declared ineligible by the Employer based on execution of a Bid-Securing Declaration in accordance with ITB 4.6.; or suspended temporarily or debarred by the Development Partner in accordance with ITB 3.
- (k) We have not paid and will not pay any commissions, gratuities, or fee with respect to the bidding process or execution of the Contract.

*[OR]*

We have paid, or will pay the following commissions, gratuities, or fee with respect to the bidding process or execution of the Contract:

Name of Recipient	Address	Reason	Amount
_____	_____	_____	_____

*[select only one of the above, as applicable]*

- (l) We understand that this Bid, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed.
- (m) We understand that you are not bound to accept the lowest evaluated Bid or any other Bid that you may receive.
- (n) We understand that any misrepresentation that knowingly or recklessly misleads, or attempts to mislead may lead to the automatic rejection of the Bid or cancellation of the contract, if awarded; and may result in remedial actions, in accordance with DP's prevailing Anticorruption Policy and Integrity Principles and Guidelines.

Name: *[insert complete name of person signing the bid]*.

In the capacity of *[insert legal capacity of person signing the bid]*.

Signed: *[insert signature of person whose name and capacity are shown above]*.

Duly authorized to sign the Bid for and on behalf of *[insert complete name of the Bidder and affix Seal]*.

Date: *[insert date of signing]*.

## Statement on Ethical Conduct and Fraud and Corruption

We the undersigned confirm in the preparation of our bid that:

- (i) Neither we, nor any of our employees, associates, agents, shareholders, partners, consultants or their relatives or associates have any relationship that could be regarded as a conflict of interest as set out in the bidding document.
- (ii) Should we become aware of the potential for such a conflict, we will report it immediately to the Employer.
- (iii) Neither we, nor any of our employees, associates, agents, shareholders, partners consultants or their relatives or associates have entered into corrupt, fraudulent, coercive or collusive practices in respect of our bid.
- (iv) We understand our obligation to allow the Government or the funding agency to inspect all records relating to the preparation of our bid and any contract that may result from such, irrespective of being awarded a contract or not.
- (v) No payments in connection with this procurement exercise have been made by us, our associates, agents, shareholders, partners or their relatives or associates to any of the staff, associates, consultants, employees or relatives of such who are involved with the procurement process on behalf of the Employer.
- (vi) We understand that if we are found to be in breach of this declaration, we will be ineligible to be considered for any contracts with Government of the Kingdom of Cambodia funded by the funding agency and /or other sources for a period to be determined by them.

Signed: *[Must be the Authorized Representative of the Bidder who signs the Bid Form].*

*[Insert complete Name of Authorized Representative and Title.]*

In the capacity of *[insert legal capacity of person signing].*

Duly authorized to sign the Bid for and on behalf of *[insert complete Name of the Bidder and affix official Seal of the Bidder's Firm.]*

Dated on: \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing].*

*[The Bidder shall fill in and submit the Declaration with the Bid].*



# Qualification Information

*[The information to be filled in by Bidders in the following pages shall be used for purposes of post qualification. This information shall not be incorporated in the Contract. Attach additional pages as necessary.]*

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

1.1. Constitution or Legal Status of Bidder: *[attach copy]*.

Place of Registration: *[insert]*.

Principal Place of Business: *[insert]*.

Power of Attorney/Organizational Document authorizing the Signatory of Bid: *[attach]*.

1.2. Annual turnover of construction works performed in each of the last 3 years and their average over the last 3 years *[refer ITB 6.1(d)]*:

*[insert amounts for each year and attached supporting documents to substantiate the amounts]*

Year 1 ( 201\_) Total Amount:

Year 2 ( 201\_) Total Amount:

Year 3 ( 201\_) Total Amount:

Average:

1.3. Number of Contracts of a nature and amount similar to the Works performed as prime Contractor over the last 5 years. *[Attach copies of the contracts performed. Refer to ITB Clause 6.1.(e). The amounts should be indicated in KH Riel or USD.]*

*[For contracts substantially completed i.e. 75% complete, state % complete in third column of the table below.]*

Contract Name and Country	Name of Client and Contact Person	Type of Work Performed and Year of Completion	Value of Contract (KH Riel or USD)
(a) ... ..			
(b) ... ..			

1.4. Major items of Contractor's Equipment proposed for carrying out the Works. *[List all information requested below and attached supporting document to substantiate ownership or leasing arrangement. Refer also to ITB Clause 6.1.(f).]*

Item of Equipment	Description, Make, and Age (years)	Condition (new, good, poor) and Number Available	Owned, Leased (from whom?), or to be Purchased (from whom?)

Item of Equipment	Description, Make, and Age (years)	Condition ( <i>new, good, poor</i> ) and Number Available	Owned, Leased ( <i>from whom?</i> ), or to be Purchased ( <i>from whom?</i> )
(a) ... ..			
(b) ... ..			

1.5. Qualifications and experience of key personnel proposed for administration and execution of the Contract. [Attach biographical data. Refer also to ITB Clause 6.1.(g) and GCC Clause 13.1.]

Position	Name	Qualification	Years of Experience (Overall)	Years of Experience in Proposed Position
(a) Project Manager/ Construction Manager				
(b) ... ..				

1.6. Proposed Subcontractors. [Refer to ITB Sub-Clause 6.1.(1) and GCC Clause 14.1.]

Subcontracted Works	Value of Subcontract	Subcontractor ( <i>name and address</i> )	Experience in Similar Work ( <i>years and number of such contracts</i> )
(a) ... ..			
(b) ... ..			

1.7. Access to financial resources to meet the qualification requirements, [cash in bank account, lines of credit, other current assets and financial resources that could be allocated exclusively for the proposed contract. Refer to ITB Sub-Clause 6.1.(i). List below and attach supporting evidence e.g. letter from the bidder's bank certifying the availability of the required amount in the bidder's bank account or letter from the bidder's bank certifying that a credit line for the required amount has been established for the bidder exclusively for the proposed contract. The bank letters should explicitly indicate the name of the proposed contract and the amount that is at the disposal of the bidder for the contract].

Cash in bank, set aside exclusively for the proposed contract. Attach evidence.	Amount of Credit Line from bank, exclusively for the proposed contract. Attach evidence.	Any other liquid assets, set aside exclusively for the proposed contract. Specify amount and attach evidence.	Total liquid assets available and set aside exclusively for the proposed contract

- 1.8. Attached Certified/ Audited Financial Reports for the last 3 years: *[certified financial reports by independent licenced accountant (not an employee of company) of balance sheets, profit and loss statements (in case your firm is not required under Cambodian Law to submit audited financial statements), or audited financial statements which is mandatory requirement. Failure to submit these supporting documents will result in disqualification].*
- 1.9. Name, address, and telephone, telex, and facsimile numbers of banks *[that may provide references if contacted by the Employer].*
- 1.10. Information on current litigation(s) in which the Bidder is involved.

Other Party(ies)	Cause of Dispute	Amount Involved
(a) ... ..		
(b) ... ..		

- 1.11. Proposed Program (Work Method Statement and Schedule).

**2. Joint Ventures**

- 2.1. *[The information listed in 1.1 - 1.10 above shall be provided for each partner of the joint venture.]*
- 2.2. *[The information in 1.11 above shall be provided for the joint venture.]*
- 2.3. *[Attach the power of attorney of the signatory of the Bid authorizing signature of the Bid on behalf of the joint venture.]*
- 2.4. *[Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that:*
  - (a) *all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;*
  - (b) *one of the partners shall be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and*
  - (c) *the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.]*

**3. Additional Requirements**

- 3.1. *[Bidders should provide any additional information required in the BDS.]*

[Letterhead of the Employer/ EA]

[If the Bid Data Sheet specifies in ITB 31.1 that Standstill provisions shall not apply, this Notice of Intention for Award of Contract shall be deleted.]

## Notice of Intention for Award of Contract

Date: .....

To: [name of the Bidder].

Attention: [name of the Bidder's Authorized Representative].

Address: [address of the Bidder].

Telephone/Fax numbers: [telephone/fax numbers of the Bidder].

E-mail Address: [e-mail address of the Bidder's Authorized Representative].

This is to notify you of our intention to award the contract [insert name of the contract and identification number, as given in the Bid Data Sheet]. You have ten (10) Business Days, from the date of this notification to (i) request for a debriefing in relation to the evaluation of your Bid, and/or (ii) submit a bidding-related complaint in relation to the intention for award of contract, in accordance with the procedures specified in ITB 37.1.

The summary of the evaluation are as follows:

1. List of Bidders: [insert names of Bidders that submitted a bid together with the corresponding bid price at opening and evaluated bid price]

Name of Bidder	Bid Price as Read Out at Opening	Evaluated Bid Price

2. Reason/s why your Bid was unsuccessful:

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

3. The successful Bidder is:

Name of Bidder:

Address:

Contract Price:

Duration of Contract:

Scope of the Contract Awarded:

Amount Performance Security Required:

Authorized Signature:

[Name and Title of Signatory: Project Director or Project Manager]

Name of Project:

Name of Project Office:

*[Letterhead of the Employer/EA]*

## Letter of Acceptance

*[This Standard Form of Letter of Acceptance shall be filled in and sent to the successful Bidder only after evaluation of bids has been completed, expiry of standstill period (if applicable) and subject to any review by DP, if required.]*

*[Insert Date.]*

Identification No. and Title of Contract: *[insert identification number and title of the Contract]*.

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

This is to notify you that your Bid dated *[insert date]* for execution of the *[insert name of the Contract and identification number, as given in BDS]* for the Accepted Contract Amount of United States Dollars *[insert amount in words and figures]* and, as corrected and modified in accordance with the Instructions to Bidders, is hereby accepted by our Agency.

You are hereby instructed to (a) sign and return the attached Contract Documents, and (b) furnish the performance security in accordance with the Conditions of Contract in the Form included in Section IX *[insert if required - "and any additional security required pursuant to Instructions to Bidders"]*, within 14 calendar days after receipt of this Letter of Acceptance.

Authorized Signature:

*[Name and Title of Signatory: Project Director or Project Manager]*.

Name of Project:

Name of Project Office:

Attachment: *[Agreement: ... ..]*

# Contract Agreement

This Agreement, made the *[insert day]* day of *[insert month]*, *[insert year]* between *[insert name and address of the Employer]* (hereinafter called “the Employer”), of one part and *[insert name and address of the Contractor]* (hereinafter called “the Contractor”) of the other part.

Whereas the Employer desires that the Works know as *[insert name of the Contract]* should be executed by the Contractor and has accepted the Bid by the Contractor for the execution and completion of such Works and the remedying of any defects therein,

The Employer and the Contractor agree as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to, and they shall be deemed to form and be read and construed as part of this Agreement.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents:
3. In consideration of the payments to be made by the Employer to the Contractor as indicated in this Agreement, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties thereto have caused this Agreement to be executed with the laws of the Kingdom of Cambodia on the day, month, and year indicated above.

Authorized Signature:

Authorized Signature:

On Behalf of the Employer

On Behalf of the Contractor

*(Name and Affix Seal)*

*(Name and Affix Seal)*

In the presence of:

In the presence of:

*[Witness, Name , Signature, Address, Date]*

*[Witness, Name, Signature, Address, Date]*

# Section IX

## Security Forms

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

*[If Bid Data Sheet specified in the ITB 16.1 that Bid-Securing Declaration shall be used, delete this Bid Security Form.]*

## Form of Bid Security (Bank Guarantee)

*[Bid Security is not normally required but in exceptional cases, **If required, the bank shall fill in this bank guarantee form on the Bank's letterhead in accordance with the instructions indicated in brackets.]***

---

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

**Beneficiary:** *[insert name and address of the Employer].*

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

**BID GUARANTEE No.:** *[insert number].*

We have been informed that *[insert name of the Bidder; if a joint venture, list complete legal names of partners<sup>1</sup>]* (hereinafter called "the Bidder") has submitted to you its bid dated *[insert date]* (hereinafter called "the Bid") for the execution of *[insert name of Contract]* under Invitation for Bids No. *[insert number]* ("the IFB").

Furthermore, we understand that, according to your conditions, Bids must be supported by a Bid Security in the form of a Bank Guarantee.

At the request of the Bidder, we *[insert name of bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert currency, amount in words and figures]* 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 bidding conditions, because the Bidder:

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Bid Form; or
- (b) does not accept the correction of errors in accordance with the Instructions to Bidders (hereinafter "the ITB") of the Bidding Documents; or
- (c) 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 ITB.

This Guarantee shall expire: (a) if the Bidder is the successful bidder, upon our receipt of copies of the Contract signed by the Bidder and of the Performance Security issued to you by the Bidder; or (b) if the Bidder is not the successful bidder on *[insert date 30 calendar days after the expiry of the Bid validity]*.

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

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

---

*[Signature of Authorized Representative and Bank Seal.]*

Name and Title:

---

<sup>1</sup> The Bid Security of a JV must be in the name of the JV that submits the bid. If the JV has not been legally constituted at the time of bidding, the Bid Security shall be in the names of all future partners as named in the letter of intent mentioned in Section VIII "Qualification Information, paragraph 2.



*[If Bid Data Sheet specified in the ITB 16.1 that Bid Security shall be used, delete this Bid- Securing Declaration Form.]*

## **Bid-Securing Declaration**

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

Date: *[insert date]*.

Name of Contract: *[insert name]*.

Contract Identification No: *[insert number]*.

Invitation for Bid No.: *[insert number]*.

To: \_\_\_\_\_

We, the undersigned, declare that:

1. We understand that, according to your conditions, bids must be supported by a bid-securing declaration.
2. We accept that we shall be suspended from being eligible for bidding in any contract with the Employer for the period of 3 years maximum starting from the date of the expiry of our bid, or be required to pay to the Employer two percent (2%) of our total bid amount, if we are in breach of our obligation(s) under the bidding conditions, because we:
  - (a) have withdrawn our Bid during the period of bid validity specified by us in the Bid Submission Sheet; or
  - (b) do not accept the correction of errors in accordance with the Instructions to Bidders (hereinafter "the ITB") of the Bidding Documents; or
  - (c) having been notified of the acceptance of our Bid by the Employer during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the performance security, in accordance with the ITB.
3. We understand this Bid Securing Declaration shall expire if we are not the successful bidder or 30 calendar days after the expiry of the validity of our Bid.
4. We understand that if we are a JV, the Bid Securing Declaration must be in the name of the JV that submits the bid. If the JV has not been legally constituted at the time of bidding, the Bid Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed *[insert signature(s) of Authorized Representative]*.

Name *[insert printed or typed name]*.

In the capacity of *[insert legal capacity of person duly authorized to sign the bid for and on behalf of (name of Bidder) and affix Seal]*.

Dated on *[insert day]* day of *[insert month]*, *[insert year]*.

# Performance Security (Bank Guarantee)

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

*[The **bank** issuing the Guarantee shall fill in this form on the bank's letterhead in accordance with the instructions indicated in brackets.]*

**Beneficiary:** *[insert name and address of Employer].*

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

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

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

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

At the request of the Contractor, we *[insert name of Bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert name of currency and amount in words and figures]*<sup>2</sup>, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall remain valid and in full effect until thirty (30) calendar days after the date of issuance of the Certificate of Completion, calculated based on a copy of such Certificate which shall be provided to us, or on the *[insert date]* day of *[insert month]*, *[insert year]*,<sup>3</sup> 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) of an Authorized Representative(s) and the bank's Seal]*

*[Name and Title of signatory]*

---

<sup>2</sup> The Guarantor (bank) shall insert an amount representing the percentage of the Contract Price specified in the Contract and denominated either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Employer.

<sup>3</sup> Insert the date twenty-eight days after the expected Completion date. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this Guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the Guarantee. In preparing this Guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this Guarantee for a period not to exceed *[six months]* or *[one year]*, in response to the Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the Guarantee."

# Advance Payment Security (Bank Guarantee)

*[Insert name of the Bank and address of issuing branch or office.]*

*[The **bank** providing the Guarantee shall fill in this form on the Bank's letterhead in accordance with the instructions indicated in brackets, if an Advance Payment is to be provided under the Contract.]*

**Beneficiary:** *[insert name and address of the Employer].*

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

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

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

Furthermore, we understand that, according to the Conditions of the Contract, an advance payment in the sum of *[name of currency and amount in words and figures]* is to be made against an advance bank guarantee.

At the request of the Contractor, we *[insert name of Bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert name of currency and amount in words and figures]*<sup>4</sup> upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the Advance Payment for purposes other than the costs of mobilization in respect of the Works or has failed to repay the advance payment when it has become due and payable in accordance with the Conditions of Contract, specifying the amount payable by the Contractor.

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

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until you receive full repayment of the same amount from the Contractor or on the *[insert number]* day of *[insert*

---

<sup>4</sup> The Guarantor shall insert an amount representing the amount of the Advance Payment and denominated either in the currency(ies) of the Advance Payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.

*month*], [*insert year*<sup>5</sup>], 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) of Authorized Representative(s) and bank Seal]*

*[Name and Title of Signatory]*

---

<sup>5</sup> Insert the expected expiration date of the 'Time for Completion'. The Employer should note that in the event of an extension of the 'Time for Completion' of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "We agree to a one-time extension of this guarantee for a period not to exceed [*six months*] or [*one year*], in response to the Employer's written request for such extension, such request to be presented to us before the expiry of the guarantee."

**ANNEX VI-d**

**Standard Request for Quotations  
(Shopping) Document for  
Procurement of Works**

## Preface

*[The preface is only for guidance and not included in the Bidding Documents.]*

The use of this standard document is recommended for procurement of all works with an estimated value of less than the threshold for National Competitive Bidding stated in **Annex IV-a** of this Standard Operating Procedures on Procurement.

The need for advertisement of the Request for Quotations will depend on the threshold values (Request for Quotations with Advertisement) stated in **Annex IV-a** of this Standard Operating Procedures on Procurement. For all works procurement above the specified threshold, the Request for Quotations must be advertised in the Khmer language in a provincial or national newspaper of wide circulation that has been continuously published for a period of not less than two years. It is also advisable to advertise in an English Language national newspaper. Any interested party may obtain the Bidding Documents and submit a quotation, including foreign contractors, free of charge.

For works procurement under the specified threshold (Request for Quotations without Advertisement), there is no need for advertisement and the document may be sent directly and free of charge to, as many as reasonably possible, reputable and qualified contractors.

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# Request for Quotations

The *[Insert Name of the Employer]*

Wishes to engage a contractor to execute the following Works:

*[Insert brief description of the works.]*

1. The Kingdom of Cambodia has received a *[insert "Loan/Credit" or "Grant"]* from the *[insert name of the Development Partner]* toward the cost of *[insert name of the Project]*, and it intends to apply part of the proceeds of this *[insert "Loan/Credit" or "Grant"]* to payments under the Contract for *[insert name/no. of the Contract]*.

<p><i>If the government is using its own funds delete the above paragraph renumbering the subsequent ones.</i></p>
--

2. Construction is scheduled to begin on *[insert expected start date]* and completed by end of *[insert expected completion date]*.
3. Interested qualified eligible contractors are invited to obtain a copy of the Bidding Documents free of charge from the address given below.
4. To be considered eligible a contractor must:
  - (a) Meet the eligibility criteria *[insert name of DP]*.
  - (b) Not be under any notice of disbarment issued by the Government or *[state name of Development Partner]*.
5. To be considered qualified a contractor must:
  - (a) Have completed at least two contracts of similar works in the preceding 3 years of a value not less than *[insert value=75% of estimate contract price]*.
  - (b) Have completed contracts with a total cumulative construction turnover in the preceding two years equal to at least *[insert value=1.5 times of estimate contract price]*.
  - (c) The proposed works manager must have at least 3 years of experience in the supervision of works of an equivalent nature and size and no less than one year as a manager.
  - (d) Submit documentary evidence to demonstrate the bidder's qualifications.
6. Quotations must be delivered to the address given below on or before *[insert time and date, and year]*. Late Quotations will be rejected. Quotations will be opened in public immediately thereafter at the same address in the presence of the Bidders' representatives.
7. The Employer shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated quotation and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.
8. All quotations must be accompanied by a performance securing declaration as described in the Bidding Documents. Any quotation not accompanied by one will be rejected as non-responsive.



9. The address where the Bidding Document may be inspected and obtained is: *[Insert Project Management Office, full address, telephone/fax/nos.]* You may contact *[name of contact person and designation]* on *[Phone no.]* or *[Email address]* to obtain the Bidding Documents at no cost.
10. In case of any difficulty in obtaining the Bidding Documents, interested parties may contact in writing *[insert name, position, complete address, telephone and fax numbers of government officer who should be in higher position in the Executing Agency than the official specified above]* and also send a copy of the communication to:  
Director General  
  
General Department of International Cooperation and Debt Management,  
Ministry of Economy and Finance  
Building A 2<sup>nd</sup> Floor, Street 92,  
Sangkat Wat Phnom, Khan Daun Penh, Cambodia.  
  
The address for quotation submission and quotation opening is:  
*[Insert name of Executing Agency, Office designation (room number), name of officer, street address, City].*
11. The quotation must be submitted on or before *[insert time and date]* at the following address: *[insert name of Executing Agency, Office designation (room number), name of officer, street address, City].*
12. The Government and/or the *[name of Development Partner]* will declare a firm ineligible either indefinitely or for a stated period of time, to be awarded a contract funded by the Government and the *[name of Development Partner]*, if it at any time determines that the firm has engaged in fraud and corruption during the procurement and execution of this contract as described in ITB Clause 4.
13. A complaint may be made by any party at any stage of the procurement process. The procedure is described in Instructions to Bidders, Clause 21 of the Bidding Documents.

# Section 1

## Instructions to Bidders

### 1. Description of Works:

The \_\_\_\_\_ [*Name of the Employer*], as the Employer, invites quotations for the construction of \_\_\_\_\_ as described in the Conditions of Contract (CC). The successful bidder will be expected to construct the works within the time allowed under the Conditions of Contract.

### 2. Eligibility of the Bidder:

Only bidders who meet the following criteria will be eligible for an award of contract:

- (a) Those from a ADB member country [*delete this requirement when the funding is not ADB*].
- (b) Not be under any notice of disbarment issued by the RGC of the [*name of Development Partner*].

### 3. Qualification of the Bidder:

- (a) Have completed in the last three years at least two contracts of a similar nature of at least [*insert value=75% of estimate contract price*].
- (b) Have cumulative construction turnover in the last two years equal to at least [*insert value=1.5 times of estimate contract price*].
- (c) The proposed works manager must at least 3 years of experience in the supervision of works of an equivalent nature and size and no less than one year as a manager.

Documentary evidence to demonstrate the bidder's qualifications must be submitted with the quotation.

### 4. Fraud and Corruption:

The Development Partner requires that Government or Recipients (including beneficiaries of the funds), as well as bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standards of ethics during the procurement and execution of contracts. In pursuance of this policy, the Government:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
  - (i) "Corrupt Practice" is the offering, giving, receiving, or soliciting directly or indirectly of anything of value to influence improperly the actions of another party<sup>1</sup>;
  - (ii) "Fraudulent Practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit, or to avoid an obligation<sup>2</sup>;

---

<sup>1</sup> For the purpose of this sub-paragraph, "another party" refers to a public official acting in relation to the selection process or contract execution. In this context "public official" includes Government and DP staff, and employees of other organizations taking or reviewing selection decisions.

- (iii) “Coercive Practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party, or the property of the party to influence improperly the actions of a party<sup>3</sup>;
  - (iv) “Collusive Practice” is an arrangement between two or more parties, designed to achieve an improper purpose, including to influence improperly the actions of another party<sup>4</sup>;
  - (v) “Abuse” means theft, waste, or improper use of assets related to the DP-financed project activity, either committed intentionally or through reckless disregard;
  - (vi) “Conflict of Interest” means any situation in which a party has interests that could improperly influence that party’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations;
  - (vii) “Obstructive Practice” is (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation, or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice by the competent Government and DP authority; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or (b) acts intended to materially impede the exercise of the Government or DP inspection and audit rights;
  - (viii) “Integrity Violation” is any act, as defined under the DP Integrity Principles accepted by the Government, which violates the Anti-Corruption Policies, where applicable, including points (i) to (vii), stated above and the following: violations of the Government and DP sanctions, retaliation against whistleblowers or witnesses, and other violations of the Anti-Corruption Policies, including failure to adhere to the highest ethical standards;
- (b) will reject a recommendation for award of the contract if it is determined that the firm or individual recommended for award, or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees have directly or indirectly engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations in competing for the contract in question;
  - (c) will cancel the portion of the financing allocated to a contract if it is determined at any time that representatives of the Government or of a beneficiary of the DP financing have engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations during the procurement or the execution of

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<sup>2</sup> For the purpose of this sub-paragraph, “party” refers to a public official; the terms “benefit” and “obligation” relate to the selection process or contract execution; and the “act or omission” is intended to influence the selection process or contract execution.

<sup>3</sup> For the purpose of this sub-paragraph, “party” refers to a participant in the selection process or contract execution.

<sup>4</sup> For the purpose of this sub-paragraph, “parties” refers to participants in the procurement or selection process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

that contract, without the Government having taken timely and appropriate action satisfactory to the DP to remedy the situation;

- (d) will sanction a firm or individual, at any time, in accordance with prevailing Government and/or DP sanctions procedures<sup>5</sup>, including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded or otherwise benefit from a Government or a DP-financed contract, financially or in any other manner; (ii) to be a nominated<sup>6</sup> sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Government or a DP-financed contract; and (iii) to receive the proceeds of any loan made by the DP or otherwise to participate further in the preparation or implementation of any DP-financed project, if it is determined at any time that the firm or individual has engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations in competing for, or in executing, a DP-financed contract.

All bidders are required to complete the Statement on Ethical Conduct and Fraud and Corruption which can be found in Section 5.1 Form of Quotation and submit it with their quotation. If the Statement is not signed and submitted with the Quotation by the Bidder, its Quotation will be rejected.

## 5. **Contents of Quotation Documents:**

The set of Quotation documents comprises the documents listed below:

Request for Quotations,

Section 1 - Instructions to Bidders,

Section 2 - Conditions of Contract,

Section 3 - Bill of Quantities,

Section 4 - Technical Specifications and Drawings,

Section 5 - Statement of Ethical Conduct and Fraud and Corruption; Form of Quotation,

Section 6 - Activity Schedule,

Section 7 - Form of Contract Agreement,

Section 8 - Quotation and Performance Securing Declaration.

## 6. **Prices and Currency of Quotation:**

- (a) Rates and prices shall be quoted in US Dollars or KH Riel for all Activities of Works described in the Activity Schedule. Activities for 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 other rates and prices in the Activities Schedule.

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<sup>5</sup> A firm or an individual may be declared ineligible to be awarded a contract upon (i) completion of the sanctions proceedings as per its sanctions procedures, including inter alia: cross-debarment as agreed by DP and other International Financial Institutions; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanction's proceedings in accordance with the Government and DP guidelines.

<sup>6</sup> A nominated sub-contractor, consultant, manufacturer or supplier, or service provider is one which has been either (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Government.

- (b) All duties, taxes, and other levies paid or payable by the Contractor under the Contract, or for any other cause shall be included in the rates, prices, and total quoted price submitted by the Bidder.
- (c) Prices shall remain fixed and not subject to price adjustment during the period of performance of the contract.

**7. Documents Comprising the Quotation:**

The Quotation submitted by the Contractor shall comprise the following documents:

- (a) Form of Quotation,
- (b) Priced Activity Schedule,
- (c) Priced Bill of Quantities,
- (d) Quotation and Performance Securing Declaration.

**8. Quotation and Evaluation Criteria:**

The quotation and the Contract shall be for the whole Works, including materials, equipment, labor, transport and profit. The Employer shall award the contract to the Bidder whose quotation has been determined to be the lowest evaluated quotation and is substantially responsive to the Bidding Documents, provided further that the bidder is determined to be qualified to perform the contract satisfactorily.

**9. Validity of Quotation:**

The quotation shall remain valid for the period of sixty (60) calendar days counted from the deadline for submission of quotations specified in Clause 12 of these Instructions. The Employer may request the Bidders to extend the period of validity for a specified additional period. The Employer's request and the Bidders' responses shall be made in writing or by fax or by email. A Bidder may refuse the request for extension of quotation validity in which case he may withdraw his Quotation without any penalty. A Bidder agreeing to the request will not be required or permitted to otherwise modify its Quotation.

**10. Language of the Quotation:**

All documents relating to the Quotation and contract shall be in [Khmer or English] language.

**11. Preparation and Sealing of Quotation:**

The Bidder shall prepare one original of the documents comprising the Quotation as described in Clause 5 of these Instructions, with the Form of Quotation, and clearly marked "Original". In addition, the Bidder shall also submit one copy which shall be clearly marked as "COPY". In the event of discrepancy between them the original shall prevail. The original and the copy of the Quotation shall be signed by a person or persons duly authorized to sign on behalf of the Bidder. All the pages of the Quotation where entries or amendments or corrections have been made shall be initialed by the person or persons signing the Quotation. The Bidder shall seal the original and the copy of the Quotation in two inner envelopes and one outer envelope, duly marking the inner envelopes as "ORIGINAL" and "COPY". The inner and the outer envelopes shall be addressed to the Employer at the address provided in the Request for Quotations shall provide a warning not to open before the specified time and date for Quotation opening

as defined Clause 15 of these Instructions. The inner envelopes shall indicate the name and full address of the Bidder. If the outer envelope is not sealed and marked as above, the Employer will assume no responsibility for the misplacement or premature opening of the Quotation.

**12. Place and Deadline for Submission of Quotations:**

The Quotations shall be delivered to the Employer NO LATER than..... [Time, Date] at the address..... [Full address, including building and room No., street, city]. Any Quotation received by the Employer after the deadline prescribed in this clause will be rejected and returned unopened to the Bidder.

**13. Quotation and Performance Securing Declaration:**

The Quotation and Performance Securing Declaration should be in accordance with the form included in QUOTATION AND PERFORMANCE SECURING DECLARATION and shall be valid up to the end of the guarantee period specified in Clause 18 of Conditions of Contract (CC). Any Quotation not accompanied by a Quotation and Performance Securing Declaration when required will be rejected by the Employer as non-responsive. The execution of a quotation and performance securing declaration will result in the Bidder being held ineligible for all contracts procured by the RGC irrespective of the funding source for a period of two years from the expiry of the Quotation Validity unless, at a Bidder's option, the Bidder chooses to pay an administrative penalty of two percent of the total amount quotation to the Employer. The Quotation and Performance Securing Declaration will be executed:

- (a) if a Bidder withdraws its quotation during the period of quotation validity specified by the Bidder on the Form of Quotation or
- (b) if the Bidder does not accept the correction of its quoted Price pursuant to Clause 17 of these Instructions.
- (c) if the successful Bidder fails within the specified time to sign the Contract:
- (d) if the successful bidder, once contracted commits a fundamental breach of contract leading to the Employer's termination of the contract for reasons of the successful bidder's default.

**14. Modification and Withdrawal of Quotations:**

No Quotations shall be modified after the deadline for submission of Quotations specified above in Clause 12 of these Instructions. Withdrawal of a Quotation between the deadline for submission of Quotations and the expiration of the validity of the Quotations as specified in Clause 9 of these Instructions above will result in the execution of the Quotation Securing and Performance Declaration.

**15. Opening of Quotations:**

The Employer will open the Quotations in the presence of the bidders' representatives and representatives of the project's beneficiaries from the local community who choose to attend, immediately after the deadline for submission of quotations and at the same address specified in Clause 12 of these Instructions. The bidders' names, the total amount of each Quotation, unconditional discounts if any, and the present/absence of quotation securing and performance declarations will be announced by the Employer at the Quotation opening. The written record of public opening shall be signed in original by all

those present. Immediately upon conclusion of the quotation opening proceedings, copies of the minutes shall be provided to the bidders and community representatives present at the quotation opening. In addition, a copy of the minutes shall promptly be posted at a prominent and freely accessible location outside the office of the Employer, and also sent to all those who purchased the Bidding Documents but were not present at the quotation opening.

**16. Process to be Confidential:**

Any information relating to the examination, clarification, evaluation and comparison of quotations for the contract award shall not be disclosed until the award to the successful Bidder has been announced.

**17. Evaluation and Comparison of Quotations:**

The Employer will award the Contract to the Bidder whose Quotation has been determined to be substantially responsive to the Quotation documents and who has offered the lowest evaluated Quotation. In evaluating the Quotations, the Employer will determine for each Quotation the evaluated Quotation by adjusting the Quotation by making any correction for any arithmetic errors as follows:

- (a) where there is a discrepancy between amounts in figures and in words, the amount in words will govern;
- (b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will govern;

If a Bidder refuses to accept the correction, his Quotation will be rejected and Quotation Securing and Performance Securing Declaration executed.

**18. Employer's Right to Accept Any Quotations and to Reject any or all Quotations:**

The Bidder reserves the right to accept or reject any quotation, and to cancel the process of competition and reject all quotations, at any time prior to the award of the Contract, without thereby incurring any liability to the affected Bidder(s).

**19. Notification of Award and Signing of Contract:**

The Contractor whose Quotation has been accepted will be notified of the award by the Employer prior to the expiration of the validity period of the Quotation, by registered letter. The written notification of award will constitute the formation of the Contract. In the event that no notification of award is issued the signature of the Contract by the Employer and Bidder shall constitute the formation of Contract.

**20. Debriefing:**

After the award of contract has been announced, an unsuccessful bidder has the right to request, in writing a debriefing to ascertain why its quotation was unsuccessful and the Employer has the obligation to provide it. No commercial confidences will be breached and no detailed information concerning other quotations will be disclosed other than the information already read out at quotation opening and the reasons for any and all quotations rejection.

**21. Complaints**

A complaint may be made by any party at any stage of the procurement process. No complaint will be responded to during the evaluation period. Complaints received during

the evaluation period will be reviewed by the Employer and a response issued only after the evaluation is completed. Complaints shall be addressed to the designated representative of the Employer ..... (*insert name, address, tel. and fax Nos. of the representative of the Employer designated to receive complaints*). The designated representative of the Employer will investigate the grounds for the complaint and, with the exception of those complaints received during the evaluation period as described above, respond to in writing within 14 calendar days of receiving the complaint. In the event that the response from the designated representative of the Employer does not satisfy the bidder or there is no response to the complaint it should be referred to the Director General, General Department of Public Procurement, Ministry of Economy and Finance, 92, Sangkat Wat Phnom, Khan Daun Penh, Phnom Penh, Kingdom of Cambodia. In such case, a copy of the complaint should also be sent to the designated official of the Director General, General Department of International Cooperation and Debt Management, Ministry of Economy and Finance and to the representative of ..... [*Name, address, and fax No. of the designated Task Team Leader for the Project from the Development Partner*]. The Department of Public Procurement shall respond to the complaint within 14 calendar days. This is without prejudice to any other recourse that a bidder may choose under the laws of Cambodia.

## **22. Publication of Award:**

The Employer shall:

- (a) notify in writing all participating bidders of the results of the quotation evaluation after the contract has been awarded, and
- (b) publish in a national newspaper, at the end of each quarter, a notice informing the general public of the availability of contract awards summary and contract registers in the office of the Employer.



# Section 2

## Conditions of Contract for Civil Works

### Article 1. General Provisions

1. The Employer has appointed..... *[Name]* to be the Project Manager of the Contract who will supervise implementation of the Contract.
2. The Contractor confirms that he has examined, read and understood fully all the Contract Documents, being:
  - (a) the Form of Quotation submitted by the Contractor,
  - (b) the Priced Activity Schedule,
  - (c) the Form of Contract,
  - (d) the Conditions of Contract,
  - (e) the Contractor's Priced Bill of Quantities *(to be used only in the determination of price of additional Works, if any, approved by the Project Manager)*,
  - (f) the Drawings, and
  - (g) the Technical Specifications,which all together form the Contract.
3. The Employer has approved the Activity Schedule and the detailed Work Plan submitted by the Contractor, including the Works Start Date, the Works Completion Date, and the person representing the Contractor, who will act as Works Manager.
4. The Start Date is \_\_\_\_\_ *[insert Date]* and the Intended Completion Date is \_\_\_\_\_ *[insert Date]*.
5. The language of the Contract is English, and the law is that governing contracts in force in the Kingdom of Cambodia.
6. The Contract shall be amended only by written agreement between the Employer and the Contractor.
7. Every effort shall be made to resolve disputes amicably and without recourse or referral to third parties. Any dispute that cannot be resolved amicably shall be referred by either Party to the Cambodian Chamber of Commerce *[Arbitration Council of Cambodia - discuss]* for adjudication in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce.

### Article 2. Employer's and Contractor's Obligations

8. The Employer and the Contractor now agree as follows:
  - 8.1 The Employer pledges to pay the Contractor the Contract Price of *[Insert amount in figures and words and currency]*. This amount is all inclusive price for the full quantity

of work shown on the Drawings, including materials, transport to the site, labor, profit, and all taxes and duties.

- 8.2 The Contractor pledges to construct the following works:  
.....  
..... [insert description of works]. On or before the Works Start Date, the Project Manager or a Technical Supervisor, acting as a representative of the Project Manager, will indicate the exact location where the works are to be constructed.

### Article 3. Conditions for Execution of the Works

9. The Contractor shall not sub-contract more than ..... % [insert the percentage, which should normally not be more than 30%] of the whole of the works. The Contractor shall not, without the written consent of the Employer, sub-contract any part of the Works. In the event the Employer approves the sub-contracting; such consent shall not relieve the Contractor of his obligations under the Contract.
10. The Contractor shall start the Contract and implementation of the Works on ..... [Start date, or state "the date falling two weeks after contract signing"] and shall complete the whole of the works not later than ..... [Completion Date, or the period in months with reference to the Start Date]. If implementation of the Contract is delayed due to any circumstances or event, which could not have been foreseen by an experienced contractor, the Contractor must inform the Project Manager immediately about the delay. If the Project Manager considers that an extension of time for the Contract is justified, the Contractor must submit an amended Activity Schedule and Work Plan, agreed with the Project Manager, for approval by the Employer.
11. If, 15 days after the Works Start Date, the Contractor has not started to implement the project, the Employer has the right to cancel the contract. If, at any time, implementation of any part of the Works is delayed by more than 100 calendar days beyond the dates shown in the Work Plan, the Employer has the right to cancel the contract. In either circumstances should the delays be attributable to a breach on the part of the Contractor the Employer will execute the Quotation and Performance Securing Declaration and the Contractor will be disbarred from providing any goods, works or services on any publicly funded contract for a period of not less than three years.
12. The Employer has the right to reduce the payment to the Contractor by 0.1% of the total price of the project for every day of delay after the Works Completion Date or as extended by the Project Manager in accordance with Paragraph 8 of these Conditions of Contract, until the work is complete. The reduction is up to a maximum of 10%, after which the Employer may terminate the contract.
13. The Contractor's Works Manager will be present on site all the time that work is in progress. The Works Manager will keep a Works Notebook to record progress of the work.
14. The Project Manager, or any other person named as a representative by the Employer and notified to the Contractor, may inspect the work at any time. The Project Manager may instruct the Contractor to provide samples of materials for quality testing. The Project Manager may instruct the Contractor to dig inspection holes in completed sections of the work in order to allow inspection. The Contractor will cooperate with the Project Manager

and allow the Project Manager to use the Contractor's staff and equipment as necessary to carry out inspections of the work.

15. All additional works undertaken on the instructions of the Project Manager for the purposes of inspection will be reimbursed at the rates shown in the Activity Schedule provided that such works inspected do not prove defective. Should the works prove defective all costs of inspection will be borne by the Contractor.
16. The Project Manager may issue instructions to the Contractor to ensure compliance with the Drawings and the Specification. The Project Manager may agree minor changes to the Drawings and the Specification, provided that these do not change substantially the final quantity and quality of the Works. The Project Manager may not instruct the Contractor to change the quantity of work shown in the Drawings, or to make any change that will substantially change the quality of the finished Works, without the written agreement of the Employer.
17. The Activity Schedule and the Work Program submitted by the Contractor shows stages of work that must be inspected and approved by the Project Manager. When these stages are reached the Contractor must not proceed further with the work until the Project Manager has given his approval. If the Contractor proceeds with the work without waiting for the Project Manager to inspect, so that the work to be inspected has been covered over, the Project Manager may instruct the Contractor to destroy that part of the work and construct again.
18. The Contractor agrees to ensure that the work is carried out in a safe manner and with the minimum disturbance to people living close to or passing by the site, or damage to the environment. The Employer must approve the place of disposing of excavated earth, dirty water or other waste materials before disposal starts.
19. On completion of the works the contractor shall be responsible for removing all plant, surplus materials and wastes from the site and for restoring the site to a clean and tidy condition.
20. The contractor guarantees the work for twelve months, starting from the actual date of completion of construction shown on Progress Report issued by the Project Manager. The Contractor agrees to make good, at his own expense, any defect that appears during that time due to quality of materials or workmanship.
21. From the Start Date until the end of the guarantee period, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Material, and Construction Equipment) are Contractor's risks.
22. The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the guarantee period, in the following amounts and deductibles for the events which are due to the Contractor's risks:
  - (a) *[insert an amount equal to Contract Price]* for Works, Plant and Materials;
  - (b) *[insert an amount equal to 20% of Contract Price]* for loss or damage to Construction Equipment; and
  - (c) *[insert an amount between USD 20,000 to USD 50,000]* for personal injury or death of Contractor's employees and all other people.

23. The policies and certificates for the insurance specified in Clause 19 above shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date.
24. If Force Majeure makes completion of the contract impossible, the Contractor may ask the Employer to release him from the Contract. The Contractor may request payment for that part of the works that is complete and intact at the time the request for release is made.

#### **Article 4. Payment Provisions**

25. The Contractor shall provide updated Activity Schedules within 14 days of being instructed to by the Project Manager. The activities on the Activity Schedule shall be coordinated with the activities on the Contractor's Work Program.
26. The Contractor shall show delivery of Materials to the Site separately on the Activity Schedule if payment for Materials on Site shall be made separately
27. The Activity Schedule shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor's own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule
28. When the Contractor wishes to apply for payment he must submit a written Request for Payment to the Employer. The Project Manager will then verify the quantity of work completed and will check that the quality of the materials used and the quality of the Contractor's workmanship is in line with the Contract. The Project Manager will also check that the construction is following the Drawings and any instructions given by the Project Manager to the Contractor. The Project Manager shall then either:
  - (a) Issue a Progress Report (or Completion Report on completion of the Works) certifying that the conditions for release of the payment have been met, or;
  - (b) Issue a Progress Report detailing further work that must be done to meet the conditions for release of the payment.
29. The Employer shall retain ten percent from each payment due to the Contractor until completion of the whole Works. On completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and half when the Guarantee Period has passed and the Project Manager has certified that all defects notified by the Project Manager to the Contractor before the end of this period have been corrected. On completion of the whole of Works, the Contractor may substitute retention money with an "on demand" bank guarantee valid for 30 calendar days beyond the expiry of the Guarantee Period. On receiving a Progress Report (or Completion Report) from the Project Manager, indicating that the conditions for release of any payment have been met, the Employer will issue a Payment Certificate. On receiving a Progress Report (or Completion Report) from the Project Manager, indicating that the conditions for release of any payment have been met, the Employer will issue a Payment Certificate.
30. Payments shall be made on a lump-sum basis upon fulfillment of the "payment conditions" as per the following Schedule:

[Columns 1, 2 and 4 of the payment schedule should be filled-in by the Employer before issuing the Bidding Documents. Column 3 to be filled-in before contract signing based on the amounts quoted by the bidder in the Activity Schedule submitted with the quotation].

<b>Stage of Payment</b>	<b>% of Total Lump-Sum Contract Price</b>	<b>Amount of Lump – Sum Payments (2) X Contract Price</b>	<b>Deduction for Retention Money 10% of (3)</b>	<b>Payment Conditions (Physical Stages of Works to be Completed)</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>
Payment No. 1				
Payment No. 2				
Payment on Completion of the Whole Works				
1 <sup>st</sup> half Retention Payment <sup>1</sup>	50% of the Retention Money		Nil	Upon satisfactory completion of the whole Works, as certified by the Project Manager.
2 <sup>nd</sup> half Retention Payment	50% of the Retention Money		Nil	Upon satisfactory completion of the Guarantee Period, as certified by the Project Manager or submission of “on demand” bank guarantee for an equivalent amount and valid until the expiry of the guarantee period.
<b>Total</b>			<b>N/A</b>	<b>N/A</b>

31. Payment shall be made in the currency of the quotation price of the winning contractor.
32. Time allowed for processing of payments will be as follows:
  - (a) The Project Manager will inspect the Works and report to the Employer within 1 week after receiving the Request for Payment.

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<sup>1</sup> Retention money means any part of the contract price retained during the progress or after the completion of the work under the contract or subcontract.

- (b) If a satisfactory progress report is issued before the scheduled date for payments, the Employer must issue a Certificate for Payment not later than 2 week after receiving progress report from the Project Manager.
  - (c) Payment will be made within 2 weeks of the date issue of the Payment Certificate.
  - (d) Therefore, the Due Date for Payment will be 5 weeks after the date of Request for Payment.
33. If any payment is delayed for more than 1 calendar month after the Due Date for Payment, the Employer will pay interest to the Contractor at the rate of 1% of the amount of the payment for the first month and for each subsequent full calendar month during which payments are delayed. In addition, the number of calendar days during which the payment is delayed will automatically be added on to the time for completion of the project.
34. The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 calendar days before the submission of quotations for the Contract and the date of the last Completion Certificate. The adjustment shall be the change in the amount of tax, duties and other levies payable by the Contractor, provided such changes are not already reflected in the Contract Price.
35. If the Contract is cancelled because of the fault of the Contractor, the Employer has the right to take over the Works and complete them by any other method. No payment will be made to the Contractor until the Works have been completed. Payment to the Contractor will be limited to the difference between the Contract price and the cost to the Employer of completing the part of the work that was not implemented by the Contractor.

## **Article 5. Fraud and Corruption**

36. The Development Partner requires that Government or Recipients (including beneficiaries of the funds), as well as bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standards of ethics during the procurement and execution of contracts. In pursuance of this policy, the Government:
- (a) defines, for the purposes of this provision, the terms set forth below as follows:
    - (i) “Corrupt Practice” is the offering, giving, receiving, or soliciting directly or indirectly of anything of value to influence improperly the actions of another party<sup>2</sup>;
    - (ii) “Fraudulent Practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit, or to avoid an obligation<sup>3</sup>;

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<sup>2</sup> For the purpose of this sub-paragraph, “another party” refers to a public official acting in relation to the selection process or contract execution. In this context “public official” includes Government and DP staff, and employees of other organizations taking or reviewing selection decisions.

<sup>3</sup> For the purpose of this sub-paragraph, “party” refers to a public official; the terms “benefit” and “obligation” relate to the selection process or contract execution; and the “act or omission” is intended to influence the selection process or contract execution.

- (iii) “Coercive Practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party, or the property of the party to influence improperly the actions of a party<sup>4</sup>;
  - (iv) “Collusive Practice” is an arrangement between two or more parties, designed to achieve an improper purpose, including to influence improperly the actions of another party<sup>5</sup>;
  - (v) “Abuse” means theft, waste, or improper use of assets related to the DP-financed project activity, either committed intentionally or through reckless disregard;
  - (vi) “Conflict of Interest” means any situation in which a party has interests that could improperly influence that party’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations;
  - (vii) “Obstructive Practice” is (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation, or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice by the competent Government and DP authority; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or (b) acts intended to materially impede the exercise of the Government or DP inspection and audit rights;
  - (viii) “Integrity Violation” is any act, as defined under the DP Integrity Principles accepted by the Government, which violates the Anti-Corruption Policies, including points (i) to (vii), stated above and the following: violations of the Government and DP sanctions, retaliation against whistle-blowers or witnesses, and other violations of the Anti-Corruption Policies, including failure to adhere to the highest ethical standards;
- (b) will reject a recommendation for award of the contract if it is determined that the firm or individual recommended for the award, or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees have directly or indirectly engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations in competing for the contract in question;
  - (c) will cancel the portion of the financing allocated to a contract if it is determined at any time that representatives of the Government or of a beneficiary of the DP financing have engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations during the procurement or the execution of that contract, without the Government having taken timely and appropriate action satisfactory to the DP to remedy the situation;

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<sup>4</sup> For the purpose of this sub-paragraph, “party” refers to a participant in the selection process or contract execution.

<sup>5</sup> For the purpose of this sub-paragraph, “parties” refers to participants in the procurement or selection process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

- (d) will sanction a firm or individual, at any time, in accordance with prevailing Government and/or DP sanctions procedures<sup>6</sup>, including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded or otherwise benefit from a Government or a DP-financed contract, financially or in any other manner; (ii) to be a nominated<sup>7</sup> sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Government or a DP-financed contract; and (iii) to receive the proceeds of any loan made by the DP or otherwise to participate further in the preparation or implementation of any DP-financed project, if it is determined at any time that the firm or individual has engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations in competing for, or in executing, a DP -financed contract.

**Article 6. Termination of Contract**

- 37. If the Contractor abandons the Works, refuses or fails to comply with a valid instruction of the Project Manager or fails to proceed expeditiously and without delay, the Employer may terminate the Contract by giving one week’s notice.

**Article 7. Special Conditions**

38. ....  
 .....  
 .....  
 .....  
 .....  
 .....  
 .....  
 .....  
 .....  
 .....  
 .....  
 .....  
 .....  
 .....  
 .....

- 39. In witness of what has been agreed above, the signatures of the authorized representatives of the two Parties are affixed below on the date shown.

---

<sup>6</sup> A firm or an individual may be declared ineligible to be awarded a contract upon (i) completion of the sanctions proceedings as per its sanctions procedures, including inter alia: cross-debarment as agreed by DP and other International Financial Institutions; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanction’s proceedings in accordance with the Government and DP guidelines.

<sup>7</sup> A nominated sub-contractor, consultant, manufacturer or supplier, or service provider is one which has been either (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Government.



▪ **Employer**

▪ **Contractor**

*Affix Official Seal*

*Affix Official Seal*

Name of the  
Authorised  
Representative : -----

Name of the  
Authorized  
Representative : -----

Position : -----

Position : -----

Date : -----

Date : -----

# Section 3

## Bill of Quantities

*[In preparing the Bidding Documents, the Employer should provide the indicative description of items, quantities and units in Columns 1, 2 and 3.]*

*[Bidders should fill in the unit and item prices in Columns 4 and 5 respectively, and submit this BOQ with the Quotation. Bidders should read the Preamble carefully.]*

### **Preamble to the Bill of Quantities (BOQ):**

1. This BOQ is for reference purposes only, and shall be used exclusively for determining the price of additional works not covered under the original scope of works, if any, approved by the project manager.
2. The description of items and quantities shown in the BOQ are indicative and the Employer provides no assurance of their accuracy. The BOQ, including prices quoted therein by the bidder, shall not constitute the basis for determination of the quotation price or the contract price, nor for payments under the contract.
3. The quotation price and contract price shall be based on the prices quoted by the bidder in the activity schedule-Section 6.
4. Payments under the contract shall be made on lump-sum basis at the specified stages stipulated in the payment schedule as per the conditions of contract.

## Bill of Quantities for the Works

Name of Project:

Description of Contract:

Site Location:

Bidder Name:

No.	Description of item	Qty	Unit	Unit Price	Total Price for Item
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
etc.					

We agree that the unit rates quoted above will be used to determine the price for any additional scope or works as instructed and approved by the Project Manager.

*[Name, Title and Signature of the Bidder's Authorized Representative]*

Affix Official Seal: ..... Date: .....

## Section 4

# Technical Specifications and Drawings

A set of precise and clear Specifications is a prerequisite for bidders to respond realistically and competitively to the requirements of the Employer without qualifying or conditioning their quotations. These should be included here. The Specifications must be drafted to permit the widest possible competition and, at the same time, present a clear statement of the required standards of workmanship, materials, and performance of the goods and services to be procured. The Specifications should require that all goods and materials to be incorporated in the Works be new, unused, of the most recent or current models, and incorporate all recent improvements in design and materials unless provided otherwise in the Contract.

Samples of Specifications from previous similar projects in the same country are useful in to prepare Specifications. The use of metric units is encouraged. Most Specifications are normally written specially by the Employer or Project Manager to suit the Contract Works in hand.

*[Insert here a list of Drawings]*

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

# Section 5.1

## Statement on Ethical Conduct and Fraud and Corruption

We the undersigned confirm in the preparation of our quotation that:

- (i) Neither we, nor any of our employees, associates, agents, shareholders, partners, consultants or their relatives or associates have any relationship that could be regarded as a conflict of interest as set out in the bidding document.
- (ii) Should we become aware of the potential for such a conflict, we will report it immediately to the Employer.
- (iii) Neither we, nor any of our employees, associates, agents, shareholders, partners consultants or their relatives or associates have entered into corrupt, fraudulent, coercive or collusive practices in respect of our quotation.
- (iv) We understand our obligation to allow the Government or the funding agency to inspect all records relating to the preparation of our quotation and any contract that may result from such, irrespective of being awarded a contract or not.
- (v) No payments in connection with this procurement exercise have been made by us, our associates, agents, shareholders, partners or their relatives or associates to any of the staff, associates, consultants, employees or relatives of such who are involved with the procurement process on behalf of the Employer.
- (vi) We understand that if we are found to be in breach of this declaration we will be ineligible to be considered for any contracts with the Government of the Kingdom of Cambodia funded by the funding agency and/or other sources for a period to be determined by them.

Signed: *[Must be the Authorized Representative of the Bidder who signs the Bid Form].*

*[Insert complete Name of the Authorized Representative and Title.]*

In the capacity of *[insert legal capacity of person signing].*

Duly authorized to sign the Bid for and on behalf of *[insert complete Name of the Bidder and affix official Seal of the Bidder's Firm].*

Dated on: \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing].*

*[The Bidder shall fill in and submit the Declaration with the Bid.]*

# Section 5.2

## Form of Quotation

\_\_\_\_\_ [Date]

To: \_\_\_\_\_ [Employer's Name]  
\_\_\_\_\_ [Employer's Address]  
\_\_\_\_\_

We offer to execute the \_\_\_\_\_ [name and number of Contract] in accordance with the Conditions of Contract accompanying this Quotation for the Contract Price of \_\_\_\_\_ [amount in figures and words and currency] excluding any discounts offered below. We agree to complete the works according to the Drawings and the Specification and within the time allowed.

The discounts offered and the methodologies for their application are: [insert discounts and methodology for their application, if any].

This Quotation and your written acceptance will constitute a binding Contract between us. We understand that you are not bound to accept the lowest or any Quotation you receive.

We hereby confirm that this Quotation will remain valid for 60 calendar days after then Deadline for Submission of Quotations.

We note and accept without reservation the Government's and the [name of Development Partner] (when other than the Government) right to audit and inspect any and all records relating both to the preparation of our Quotation, and if our Quotation is successful, the execution of the resulting contract.

Name: [insert complete name of person signing the bid].

In the capacity of [insert legal capacity of person signing].

Signed: [insert signature of person whose name and capacity are shown above].

Duly authorized to sign the Bid for and on behalf of [insert complete name of the Bidder and affix official seal of the Bidder].

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ [insert date of signing].

[The **Bidder** shall fill in and submit the Submission Form with the Bid.]

## Section 6 - Activity Schedule

*[This form must be filled-in by the bidder and submitted with the quotation. The activity schedule submitted by the bidder shall constitute the basis for the quotation price and the subsequent contract price].*

<b>Name of Project:</b>							
<b>Name of Contractor:</b>				<b>Name of Works Manager:</b>			
Contract Start Date:				Contract Completion Date:			
Description of Works Activities	Lump-sum Amount for Stage Payment (USD)	Start Date	Finish Date	Key Stage for Technical Monitoring	Name of Subcontractor, if any	Problems (if any)	Proposed Solution
1.							
2.							
3.							
<b>Describe above the Physical Works to be completed before 1<sup>st</sup> Stage Payment can be approved.</b>							
1.							
2.							
3.							
<b>Describe above the Physical Works to be completed before 2<sup>nd</sup> Stage payment can be approved.</b>							
Name, Title, and Signature of Bidder/Contractor's Authorized Representative: .....							
Date: .....							
<b>Name of Project:</b>							

Footnote 1: Contract Implementation. The Contractor can point out the problems that may be encountered and the offer solutions to overcome them. However there can be no conditions introduced which will make the bid conditional. Quotation must be unconditional, otherwise it shall be rejected.

# Section 7

## Form of Contract Agreement

### AGREEMENT

This Agreement, made on *[insert date]* day of *[insert month]*, *[insert year]*, between

\_\_\_\_\_

*[Name and address of the Employer]* (hereinafter called “the Employer”) and

\_\_\_\_\_

*[Name and address of the Contractor]* (hereinafter called “the Contractor”) on the other part.

**Whereas** the Employer is desirous that the Contractor execute \_\_\_\_\_

\_\_\_\_\_

*[Name and identification number of Contract]* (hereinafter called “the Works”) and the Employer has accepted the Quotation by the Contractor for the execution and completion of such Works and the remedying of any defects therein in the sum of *[insert amount of contract price, in words and figures, expressed in United States Dollars or KH Riel, as applicable]* (hereinafter called “the Contract Price”).

#### **NOW THIS AGREEMENT WITNESSED AS FOLLOWS:**

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract, hereafter referred to, and they shall be deemed to form and be read and construed as part of this Agreement.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
3. In consideration of the payments to be made by the Employer to the Contractor as indicated in this Agreement, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

**IN WITNESS** whereof the parties thereto have caused this Agreement to be executed with the laws of the Kingdom of Cambodia on the day, month and year indicated above.

Authorized Signature:

On Behalf of the Employer

*(Name and Affix Official Seal)*

In the presence of

*[Witness, Name, Signature, Address, Date]*

Authorized Signature:

On Behalf of the Contractor

*(Name and Affix Official Seal)*

In the presence of

*[Witness, Name, Signature, Address, Date]*



[Letterhead of the Employer/ EA]

## Letter of Acceptance

[This Standard Form of Letter of Acceptance shall be filled in and sent to the successful Bidder only after evaluation of quotations has been completed, subject to any review by DP, if required.]

[Insert Date]

Identification No and Title of Contract: [insert identification number and title of the Contract].

To: [insert name and address of the Contractor].

This is to notify you that your Quotation dated [insert date] for execution of the [insert name of the Contract and identification number, as given in BDs] for the Contract Amount of United States Dollars or KH Riel [insert amount in words and figures] as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by our Agency.

You are hereby instructed to sign and return the attached Contract Documents within 14 calendar days after receipt of this Letter of Acceptance.

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

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

Name of Agency: \_\_\_\_\_

Attachment: [Agreement ... ..]

# Section 8

## Quotation and Performance Securing Declaration

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

Date: *[insert date]*

Name of contract: *[insert name]*.

Contract Identification No: *[insert number]*.

Request for Quotations No.: *[insert number]*.

To: \_\_\_\_\_

We, the undersigned, declare that:

1. We understand that, according to your conditions, quotations must be supported by a quotation and performance securing declaration.
2. We accept that we shall be suspended from being eligible for bidding in any contract with the Employer and the Government of Cambodia for the period of two years starting on the date of the Employer's execution of this Declaration, if we are in breach of our obligation(s) under the quotation conditions and contract conditions, because we:
  - (a) have withdrawn our Quotation during the period of quotation validity specified by us in the Quotation Submission Sheet; or
  - (b) do not accept the correction of errors in accordance with the Instructions to Bidders of the Bidding Documents, or
  - (c) having been notified of the acceptance of our Quotation by the Employer during the period of quotation validity, fail or refuse to execute the Contract Form, if required, or
  - (d) committed a fundamental breach of contract leading to the Employer's termination of the contract for reasons of our default.
3. We understand this quotation securing declaration shall expire if we are not the successful bidder or 30 calendar days after the expiry of the validity of our Bid. In the event that our quotation is successful and we are awarded a contract, we understand that this quotation and performance securing declaration will expire six months after the completion of the works.
4. We understand that if we are a JV, the Quotation and Performance Securing Declaration must be in the name of the JV that submits the quotation. If the JV has not been legally constituted at the time of bidding, the Quotation Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed *[insert signature(s) of Authorized Representative]*.

Name *[insert printed or typed name]*.

In the Capacity of *[insert legal capacity of person]*.

Duly authorized to sign the quotation for and on behalf of *[name of Bidder and affix seal]*.

Dated on *[insert day]* day of *[insert month]*, *[insert year]*.

**ANNEX VI-e**

**Standard Request for Quotations  
(Shopping) Document for  
Procurement of Goods  
(Below Advertising Threshold)**

# Request for Quotations (Shopping)

(Procurement of Goods, Below Advertising Threshold)

## Names & Addresses of prospective Bidders that received a copy of this document

No.	Name	Address
1		
2		
3		
4		

## Specific Information Table

Request for Quotation (RfQ) No.	
Date of the Letter of Invitation Sent	
Contract No:	
Deadline for Submission of Quotation	Time Date
Validity after Submission Deadline	Thirty (30) days
Warranty period after delivery of all Goods	<i>[Preferred minimum]</i> 6 months

## Scope of Supply

*[State the description of Goods.]*

**[COVER PAGE NOT TO BE ISSUED TO BIDDERS]**

*[Name of the EA/IA]*  
*]Funding Reference and Project Name]*  
*]RFQ No. ... ..]*

## **Request for Quotations**

The Kingdom of Cambodia has received *[insert a "loan/credit" or "grant"]* from *[insert Development Partner]* toward the cost of *[insert name of Project]* and intends to apply a part of the proceeds of this *[insert "loan/credit", or "grant"]* to payments under the contracts for *[insert name /no. of Contract]*. The eligibility of bidders and of goods and services offered are subject to the applicable rules of the Government and DP.

1. The *[Name of the EA/IA]* hereinafter called "The Purchaser" now invites sealed quotations from eligible Suppliers hereinafter called "The Supplier" for *[Description of Goods]*.
2. The quantity and description of all the goods to be supplied and related services and the delivery place & schedule are listed in **Annex C: Quotation Price Schedule**.
3. The quotation should be enclosed in a sealed envelope marked in capital letters: "QUOTATION FOR RfQ - *reference number*".
4. The envelopes should be delivered before *[time]* on *[date]* to the following office: *[Name, physical and postal addresses and other contact information]*.
5. The quotation shall remain valid 30 days after the Deadline for Submission.

We are looking forward to receiving your complete and responsive quotation before the time limit stipulated above and in the manner described in **Annex A: Instruction to Bidders**.

## Annex A. Instructions to Bidders

### 1. Eligibility of the Bidder and Goods

- 1.1 The Bidder must come from, and the goods must be manufactured in an ADB member country *[delete this requirement when the funding is not ADB]* or the quotation is opened to all bidder who are not under any notice of disbarment by the RGC and DP.

### 2. Language of Quotation

- 2.1 The quotation prepared by the Bidder shall be written in English *[amend as appropriate]*.

### 3. Document comprising the Quotation and Currency

- 3.1 The Bidder shall complete the attached Quotation Price Schedule (see **Annex C**).
- 3.2 Prices shall be quoted in US Dollar or KH Riels *[amend as appropriate]*.

### 4. Conformance to Specification

- 4.1 Documents Establishing Goods/Services' Conformity to Specifications and Quality Standards.
- 4.2 The Bidder shall furnish documents establishing the conformity of all proposed goods and services as follows:
- (a) a detailed description of the essential technical and performance characteristics of the goods/services;
  - (b) an item-by-item commentary on the Purchaser's Technical Specifications demonstrating substantial responsiveness of the goods and services to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.

### 5. Bidder Prices

- 5.1 Prices should be inclusive of all costs such as customs duties, sales and other taxes paid or payable if the contract is awarded, transportation, insurance, and other local charges required. Prices shall remain fixed and is not subject to price adjustment during the period of performance of the contract.

### 6. Award Criteria

- 6.1 The Purchaser will award the contract to the successful Bidder whose responsive Quotation has been determined to be the lowest priced one and a Letter of Award issued which will form the basis of the Contract.

### 7. Purchaser's Right to Accept any Quotation and to Reject any or All Quotations

- 7.1 The Purchaser reserves the right to accept or reject any quotation, and to annul the quotation process and reject all quotations at any time prior the Letter of Award ,

without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the Purchaser's action.

## 8. Fraud and Corruption

8.1 The Development Partner requires that Government or Recipients (including beneficiaries of the funds), as well as bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standards of ethics during the procurement and execution of contracts. In pursuance of this policy, the Government:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
  - (i) "Corrupt Practice" is the offering, giving, receiving, or soliciting directly or indirectly of anything of value to influence improperly the actions of another party<sup>1</sup>;
  - (ii) "Fraudulent Practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit, or to avoid an obligation<sup>2</sup>;
  - (iii) "Coercive Practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party, or the property of the party to influence improperly the actions of a party<sup>3</sup>;
  - (iv) "Collusive Practice" is an arrangement between two or more parties, designed to achieve an improper purpose, including to influence improperly the actions of another party<sup>4</sup>;
  - (v) "Abuse" means theft, waste, or improper use of assets related to the DP-financed project activity, either committed intentionally or through reckless disregard;
  - (vi) "Conflict of Interest" means any situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations;

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<sup>1</sup> For the purpose of this sub-paragraph, "another party" refers to a public official acting in relation to the selection process or contract execution. In this context "public official" includes Government and DP staff, and employees of other organizations taking or reviewing selection decisions.

<sup>2</sup> For the purpose of this sub-paragraph, "party" refers to a public official; the terms "benefit" and "obligation" relate to the selection process or contract execution; and the "act or omission" is intended to influence the selection process or contract execution.

<sup>3</sup> For the purpose of this sub-paragraph, "party" refers to a participant in the selection process or contract execution.

<sup>4</sup> For the purpose of this sub-paragraph, "parties" refers to participants in the procurement or selection process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish prices at artificial, non-competitive levels, or are privy to each other's bid prices or other conditions.

- (vii) “Obstructive Practice” is (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation, or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice by the competent Government and DP authority; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or (b) acts intended to materially impede the exercise of the Government or DP inspection and audit rights;
  - (viii) “Integrity Violation” is any act, as defined under the DP Integrity Principles accepted by the Government, which violates the Anti-Corruption Policies, where applicable, including points (i) to (vii), stated above and the following: violations of the Government and DP sanctions, retaliation against whistle-blowers or witnesses, and other violations of the Anti-Corruption Policies, including failure to adhere to the highest ethical standards;
- (b) will reject a recommendation for award of the contract if it is determined that the firm or individual recommended for the award or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees have directly or indirectly engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations in competing for the contract in question;
  - (c) will cancel the portion of the financing allocated to a contract if it is determined at any time that representatives of the Government or of a beneficiary of the DP financing have engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations during the procurement or the execution of that contract, without the Government having taken timely and appropriate action satisfactory to the DP to remedy the situation;
  - (d) will sanction a firm or individual, at any time, in accordance with prevailing Government and/or DP sanctions procedures<sup>5</sup>, including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded or otherwise benefit from a Government or a DP-financed contract, financially or in any other manner; (ii) to be a nominated<sup>6</sup> sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Government or a DP-financed contract; and (iii) to receive the proceeds of any loan made by the DP or otherwise to participate further in the preparation or implementation of any DP-financed project, if it is determined at any time that the firm or individual

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<sup>5</sup> A firm or an individual may be declared ineligible to be awarded a contract upon (i) completion of the sanctions proceedings as per its sanctions procedures, including inter alia: cross-debarment as agreed by DP and other International Financial Institutions; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanction’s proceedings in accordance with the Government and DP guidelines.

<sup>6</sup> A nominated sub-contractor, consultant, manufacturer or supplier, or service provider is one which has been either (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Government.



has engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations in competing for, or in executing, a DP-financed contract.

- 8.2 All bidders are required to complete the Statement on Ethical Conduct and Fraud and Corruption which can be found in **Annex E** and submit it with their quotation.

## Annex B. Technical Specifications

Items	Description of Equipment/ Related Services Required		Description of Equipment/Related Services Offered
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18	Services		

## Annex C. Quotation Price Schedule

1	2	3	4	5	6	7	8
Item	Description	Country of Origin	Unit	Quantity	Unit Price (Delivery at Final Destination)	Total Price (col. 5*6)	Expected Delivery
<i>Description of Contract:</i>							
1							
2							
3							
4							
5							
6							
7							
8							
9							
18	Services						
<b>State currency of quotation (USD or KH RIEL):</b>							

Signature of Bidder \_\_\_\_\_

Note: In case of discrepancy between unit price and total, the unit price shall prevail.

## Annex D. Quotation Form

To: *[name, address, contact information of the EA/IA]*

Dear Sir,

We are pleased to offer the following quotation for *[ Description of Goods]* as specified in your "REQUEST FOR QUOTATIONS (RfQ - *reference number* )" for the sum of \_\_\_\_\_ *[Amount in figures and words and currency]*.

We agree to supply the goods and services on the following conditions:

1. Warranty / Guarantee Period: \_\_\_\_\_ .
2. Delivery/Completion Period: *[Delivery shall be according to actual orders]*.
3. Terms of Payment: Term of Payment will be in accordance with Article 3: Payment Provision specified in the attached Conditions of Contract.

We understand that you are not bound to accept all or any quotations you may receive.

Dated this \_\_\_\_\_ Day of \_\_\_\_\_ , 20 ... ..

\_\_\_\_\_  
*(Signature and Company)*

\_\_\_\_\_  
*(In the capacity of)*

*[The Bidder shall fill in and submit this Form with the Quotation.]*

## **Annex E.**

### **Statement on Ethical Conduct and Fraud and Corruption**

We the undersigned confirm in the preparation of our quotation that:

- (i) Neither we, nor any of our employees, associates, agents, shareholders, partners, consultants or their relatives or associates have any relationship that could be regarded as a conflict of interest as set out in the bidding document.
- (ii) Should we become aware of the potential for such a conflict, we will report it immediately to the Purchaser.
- (iii) Neither we, nor any of our employees, associates, agents, shareholders, partners consultants or their relatives or associates have entered into corrupt, fraudulent, coercive or collusive practices in respect of our quotation.
- (iv) We understand our obligation to allow the Government or the funding agency to inspect all records relating to the preparation of our quotation and any contract that may result from such, irrespective of being awarded a contract or not.
- (v) No payments in connection with this procurement exercise have been made by us, our associates, agents, shareholders, partners or their relatives or associates to any of the staff, associates, consultants, employees or relatives of such who are involved with the procurement process on behalf of the Purchaser.
- (vi) We understand that if we are found to be in breach of this declaration we will be ineligible to be considered for any contracts with the Government of the Kingdom of Cambodia funded by the funding agency and/or other sources for a period to be determined by them.

Signed *[Must be the Authorized Representative of the Bidder who signs the Bid Form.]*

*[Name of Authorized Representative and Title.]*

*[Name of Bidder and affix Seal of Firm.]*

Date:

# Letter of Award

[Name of the EA/IA]

TO: [Name and address of Successful Bidder].

FROM: [Name and contact information for the EA/IA].

Date: ... ..

SUBJECT: [Contract Number and Description].

Dear Sir,

We are pleased to accept your offer of the below goods/services [amend as appropriate] as per the below detail and as per your attached quotation for the sum of US\$/KH Riel and we agree that you supply these goods / perform the services [amend as appropriate] on the following conditions:

1.

Item	Description	Unit	Quantity	Unit Price USD/KH Riel	Total Price USD/KH Riel
	<b>Grand Total:</b>				USD/KH Riel

2. Warranty/Guarantee period: 12 months [amend as appropriate].

3. Warranty/Guarantee Conditions: The goods are in line with the manufacturer's specifications attached and that they will perform in line with these specifications and the manufacturers guarantee / warranty also attached [amend as appropriate].

4. Delivery conditions: Good must be delivered at the specified address on or before [day] from the date of this Letter of Award.

5. Terms of Payment: The terms of payment will be in accordance with Article 3: Payment Provisions specified in the attached Conditions of Contract.

6. The attached Conditions of Contract for the Supply of Goods apply to this Letter of Award.

FOR THE PURCHASER

FOR THE SUPPLIER

Signed, Stamped, Delivered by:

Signed, Stamped, Delivered by:

[Name of the Purchaser]

[Name of the Supplier]

Title: [Authorised Representative of the EA]

Title: [Authorised Representative of the Supplier]

Date .....

Date .....

Attached:

Supplier/ Contractor's Quotation

Manufacturer's Specifications

Manufacturer's Guarantee/ Warranty

# Conditions of Contract for the Supply of Goods

## Article 1. General Provisions

1. The Supplier confirms that he has examined, read and understood fully all the Contract Documents, being:
  - The Request for Quotations,
  - The Technical Specifications,
  - The Letter of Award,
  - The Quotation Price Schedule,
  - The Quotation Form,
  - The Conditions of Contract,which together form the Contract.
2. The Contract shall be amended only by written agreement between the Purchaser and the Supplier.
3. The laws of the Kingdom of Cambodia will be applicable to the Contract. Every effort shall be made to resolve disputes amicably and without recourse or referral to third parties. Any dispute that cannot be resolved amicably shall be referred by either Party to the (Arbitration Council of Cambodia) Cambodian Chamber of Commerce for adjudication in accordance with the under the Rules of Conciliation and Arbitration of the International Chamber of Commerce.

## Article 2. Purchaser's and Supplier's Obligations

4. The Purchaser and the Supplier now agree as follows:
  - The Purchaser pledges to pay the Supplier, the Contract Price, \_\_\_\_\_ (Insert amount in words and figures). This amount is for the full delivery of the goods listed in the Price and Delivery Schedule.
  - The Supplier shall supply:  
.....  
(insert description of the goods) on or before the delivery date and at the final destination (Project Site), as stipulated in the Price and Delivery Schedule, and conforming to the standards as stipulated in the Technical Specifications. The Supplier shall be responsible for fully insuring the Goods against loss or damage from "warehouse to warehouse" (final destination) on "All Risk basis".
5. The Purchaser has the right to reduce the payment to the Supplier by 0.1% of the total price of the Contract for each day of delay beyond the delivery date shown in the Price and Delivery Schedule. The reduction is up to a maximum of 10%, after which the Purchaser may terminate the contract.
6. If Force Majeure makes completion of the contract impossible, the Supplier may ask the Purchaser to release him from the Contract.

7. The Supplier guarantees that all goods supplied will be new and unused and carry a warranty of \_\_\_\_\_ months [insert warranty period required of between 6 months to 12 months depending on the goods being purchased] starting from the actual delivery date of the goods. Throughout this period the Supplier agrees to make good, at its own expense, any defect that appears during that time due to quality of materials or workmanship.

### Article 3. Payment Provisions

8. Payments will only be made on or after the due date shown in the schedule below, and after fulfillment of the “payment conditions” (whichever is the later).

*[Note: The following is a sample payment schedule, which the Purchaser may retain or reasonably modify, if necessary, to suit the specific requirements of the contract. This note should be deleted from the final contract].*

<b>Payment Schedule</b>			
<b>Steps of Payment</b>	<b>Amount</b>	<b>Scheduled Date</b>	<b>Payment Conditions</b>
Payment No 1	90% of the value of delivered Goods		Upon receipt of the Goods and warranty certificate issued by the Manufacturer
Payment No 2	10% of the value of delivered goods		Upon inspection and acceptance of the goods

9. Time allowed for processing of payments will be as follows:
- 90% of the value of the goods delivered. The Purchaser will issue a receipt for the goods upon delivery and receipt of the necessary warranty certificates issued by the manufacturer. The Supplier shall submit its commercial invoice with the original receipt attached and three copies of both, signed by the supplier as true and correct copies. The Purchaser will effect payment within 30 calendar days of submission;
  - Balance 10% of the value of the goods delivered. Within 30 calendar days of receiving the goods, the Purchaser will undertake any inspections and tests that it deems necessary. Provided that the goods pass any such inspection or tests the Purchaser will issue an acceptance certificate to the Supplier. The Supplier shall submit its commercial invoice with the original acceptance certificate attached and three copies of both, signed by the supplier as true and correct copies. The Purchaser will effect payment within 30 calendar days of submission.
  - In the event that after the expiry of 30 calendar days after the delivery of the goods, the Purchaser does not provide the Supplier with an acceptance certificate (or issue instructions to repair or replace any defective goods), the Supplier shall submit its invoice in three copies signed as true and correct, for 5% of the value of the goods delivered and the Purchaser will effect payment within 30 calendar days of submission.



10. If any payment is delayed for more than 1 calendar month after the Due Date for Payment, the Purchaser will pay interest to the Supplier at the rate of 1% of the amount of the payment for the first month and for each subsequent full calendar month during which payments are delayed.

**Article 4. Fraud and Corruption**

11. The Development Partner requires that Government or Recipients (including beneficiaries of the funds), as well as bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standards of ethics during the procurement and execution of contracts. In pursuance of this policy, the Government:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
  - (i) “Corrupt Practice” is the offering, giving, receiving, or soliciting directly or indirectly of anything of value to influence improperly the actions of another party<sup>1</sup>;
  - (ii) “Fraudulent Practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit, or to avoid an obligation<sup>2</sup>;
  - (iii) “Coercive Practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party, or the property of the party to influence improperly the actions of a party<sup>3</sup>;
  - (iv) “Collusive Practice” is an arrangement between two or more parties, designed to achieve an improper purpose, including to influence improperly the actions of another party<sup>4</sup>;
  - (v) “Abuse” means theft, waste, or improper use of assets related to the DP-financed project activity, either committed intentionally or through reckless disregard;
  - (vi) “Conflict of Interest” means any situation in which a party has interests that could improperly influence that party’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations;
  - (vii) “Obstructive Practice” is (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation, or making false

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<sup>1</sup> For the purpose of this sub-paragraph, “another party” refers to a public official acting in relation to the selection process or contract execution. In this context “public official” includes Government and DP staff, and employees of other organizations taking or reviewing selection decisions.

<sup>2</sup> For the purpose of this sub-paragraph, “party” refers to a public official; the terms “benefit” and “obligation” relate to the selection process or contract execution; and the “act or omission” is intended to influence the selection process or contract execution.

<sup>3</sup> For the purpose of this sub-paragraph, “party” refers to a participant in the selection process or contract execution.

<sup>4</sup> For the purpose of this sub-paragraph, “parties” refers to participants in the procurement or selection process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice by the competent Government and DP authority; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or (b) acts intended to materially impede the exercise of the Government or DP inspection and audit rights;

- (viii) "Integrity Violation" is any act, as defined under the DP Integrity Principles accepted by the Government, which violates the Anti-Corruption Policies, including points (i) to (vii), stated above and the following: violations of the Government and DP sanctions, retaliation against whistle-blowers or witnesses, and other violations of the Anti-Corruption Policies, including failure to adhere to the highest ethical standards.
- (b) will reject a recommendation for award of the contract if it is determined that the firm or individual recommended for the award, or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees have directly or indirectly engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations in competing for the contract in question;
- (c) will cancel the portion of the financing allocated to a contract if it is determined at any time that representatives of the Government or of a beneficiary of the DP financing have engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations during the procurement or the execution of that contract, without the Government having taken timely and appropriate action satisfactory to the DP to remedy the situation;
- (d) will sanction a firm or individual, at any time, in accordance with prevailing Government and/or DP sanctions procedures<sup>5</sup>, including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded or otherwise benefit from a Government or a DP-financed contract, financially or in any other manner; (ii) to be a nominated<sup>6</sup> sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Government or a DP-financed contract; and (iii) to receive the proceeds of any loan made by the DP or otherwise to participate further in the preparation or implementation of any DP-financed project, if it is determined at any time that the firm or individual has engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations in competing for, or in executing, a DP-financed contract.

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<sup>5</sup> A firm or an individual may be declared ineligible to be awarded a contract upon (i) completion of the sanctions proceedings as per its sanctions procedures, including inter alia: cross-debarment as agreed by DP and other International Financial Institutions; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanction's proceedings in accordance with the Government and DP guidelines.

<sup>6</sup> A nominated sub-contractor, consultant, manufacturer or supplier, or service provider is one which has been either (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Government.

**Article 5. Special Conditions**

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In witness of what has been agreed above, the signatures of the authorized representatives of the two Parties are affixed below on the date shown.

<p>▪ <b>Purchaser</b></p> <p>_____</p> <p><i>Affix Official Seal</i></p> <p>Name : -----</p> <p>Position : -----</p> <p>Date : -----</p>	<p>▪ <b>Supplier</b></p> <p>_____</p> <p><i>Affix Official Seal</i></p> <p>Name : -----</p> <p>Position : -----</p> <p>Date : -----</p>
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**ANNEX VI-f**

**Standard Request for Quotations  
(Shopping) Document for  
Procurement of Works  
(Below Advertising Threshold)**

# Request for Quotations (Shopping)

(Procurement of Works, Below Advertising Threshold)

Names & Addresses of prospective Bidders that received a copy of this document

No.	Name	Address
1		
2		
3		

## Specific Information Table

Request for Quotation (RfQ) No.	
Date of the Letter of Invitation Sent:	
Contract No.	
Deadline for Submission of Quotation	Time Date
Validity after Submission Deadline	Thirty (30) days
Guarantee Period	<i>[Preferred minimum]</i> 180 days after completion of works.

## Scope of Works

*[State here the functional objective of the procurement, e.g. to build a classroom suitable for teaching 50 children.]*

**[COVER PAGE NOT TO BE ISSUED TO BIDDERS]**

[Name of the EA/IA]  
[Funding Reference and Name of Project]  
[RfQ No. ... ..]

## Request for Quotations

The Kingdom of Cambodia has received a ["loan/credit" or "grant" amend as appropriate] from [insert name of the DP] towards the cost of [insert name of Project] and intends to apply a portion of the proceeds of this [insert 'loan/credit' or 'grant'] to eligible payments under the contract [insert name/no. of Contract]. The eligibility of bidders and of goods and services offered are subject to the applicable rules of the Government and DP.

1. The [EA/IA] hereinafter called "the Employer" now invites sealed quotations from eligible contractors hereinafter called "the Contractor" for [description of the works].
2. The quantity and description of all the works to be performed and the site & schedule are listed in **Annex C: Priced Activity Schedule**.
3. The quotation should be enclosed in a sealed envelope marked in capital letters: "QUOTATION FOR [reference title] RfQ - [reference number]".
4. The envelopes should be delivered before [time] on [date] to the following office: [name, physical and postal addresses and other contact information].
5. The quotation shall remain valid 30 days after the Deadline for Submission.

We are looking forward to receiving your complete and responsive quotation before the time limit stipulated above and in the manner described in **Annex A: Instruction to Bidders**.

# Annex A. Instructions to Bidders

## 1. Eligibility of the Bidder and Goods

- 1.1. The Bidder must come from, and the materials used must be manufactured in an ADB member country *[delete this requirement when the funding is not ADB]* or the quotation is opened to all bidders who are not under any notice of disbarment from the RGC/DP.

## 2. Language of Quotation

- 2.1. The quotation prepared by the Bidder shall be written in Khmer or English *[amend as appropriate]*.

## 3. Document comprising the Quotation and Currency

- 3.1. The Bidder shall complete the attached **Annex C: Priced Activity Schedule**
- 3.2. Prices shall be quoted in US Dollar or KH Riels *[amend as appropriate]*.

## 4. Conformance to Specification

- 4.1. Documents Establishing Works/Services' Conformity to Specifications and Quality Standards (**Annex B**).
- 4.2. The Bidder shall furnish documents establishing the conformity of all proposed works and services as follows:
  - (a) a detailed description of the essential technical and performance characteristics of the works/services;
  - (b) an item-by-item commentary on the Contractor's Technical/Design Specifications demonstrating substantial responsiveness of the works and services to the design specifications, and a statement on the methodology of construction.

## 5. Bidder Prices:

- 5.1. Rates and prices shall be quoted for all items and the whole works and items where no rate has been quoted will not be paid by the Employer and shall be deemed covered by the other rates and prices in the Priced Activity Schedule.
- 5.2. All duties, taxes, and other levies payable by the Bidder under the Contract, or for any other cause, shall be included in the rates, prices, and the total quoted price submitted by the Bidder.
- 5.3. Prices shall remain fixed and is not subject to price adjustment during the period of performance of the contract.

## 6. Award Criteria

- 6.1. The Employer will award the Contract to the successful Bidder whose responsive Quotation has been determined to be the lowest priced one provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

## 7. Employer's Right to Accept any Quotation and to Reject any or All Quotations

- 7.1. The Employer reserves the right to accept or reject any quotation, and to annul the quotation process and reject all quotations at any time prior the issuance of the Letter of Award, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the Purchaser's action.

## 8. Fraud and Corruption

- 8.1. The Development Partner requires that Government or Recipients (including beneficiaries of the funds), as well as bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standards of ethics during the procurement and execution of contracts. In pursuance of this policy, the Government:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
- (i) "Corrupt Practice" is the offering, giving, receiving, or soliciting directly or indirectly of anything of value to influence improperly the actions of another party<sup>1</sup>;
  - (ii) "Fraudulent Practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit, or to avoid an obligation<sup>2</sup>;
  - (iii) "Coercive Practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party, or the property of the party to influence improperly the actions of a party<sup>3</sup>;
  - (iv) "Collusive Practice" is an arrangement between two or more parties, designed to achieve an improper purpose, including to influence improperly the actions of another party<sup>4</sup>;

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<sup>1</sup> For the purpose of this sub-paragraph, "another party" refers to a public official acting in relation to the selection process or contract execution. In this context "public official" includes Government and DP staff, and employees of other organizations taking or reviewing selection decisions.

<sup>2</sup> For the purpose of this sub-paragraph, "party" refers to a public official; the terms "benefit" and "obligation" relate to the selection process or contract execution; and the "act or omission" is intended to influence the selection process or contract execution.

<sup>3</sup> For the purpose of this sub-paragraph, "party" refers to a participant in the selection process or contract execution.



- (v) “Abuse” means theft, waste, or improper use of assets related to the DP-financed project activity, either committed intentionally or through reckless disregard;
  - (vi) “Conflict of Interest” means any situation in which a party has interests that could improperly influence that party’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations;
  - (vii) “Obstructive Practice” is (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation, or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice by the competent Government and DP authority; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or (b) acts intended to materially impede the exercise of the Government or DP inspection and audit rights;
  - (viii) “Integrity Violation” is any act, as defined under the DP Integrity Principles accepted by the Government, which violates the Anti-Corruption Policies, where applicable, including points (i) to (vii), stated above and the following: violations of the Government and DP sanctions, retaliation against whistle-blowers or witnesses, and other violations of the Anti-Corruption Policies, including failure to adhere to the highest ethical standards.
- (b) will reject a recommendation for award of the contract if it is determined that the firm or individual recommended for the award or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees have directly or indirectly engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations in competing for the contract in question;
  - (c) will cancel the portion of the financing allocated to a contract if it is determined at any time that representatives of the Government or of a beneficiary of the DP financing have engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations during the procurement or the execution of that contract, without the Government having taken timely and appropriate action satisfactory to the DP to remedy the situation;
  - (d) will sanction a firm or individual, at any time, in accordance with prevailing Government and/or DP sanctions procedures<sup>5</sup>, including by publicly

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<sup>4</sup> For the purpose of this sub-paragraph, “parties” refers to participants in the procurement or selection process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

<sup>5</sup> A firm or an individual may be declared ineligible to be awarded a contract upon (i) completion of the sanctions proceedings as per its sanctions procedures, including inter alia: cross-debarment as agreed by DP and other International Financial Institutions; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanction’s proceedings in accordance with the Government and DP guidelines.

declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded or otherwise benefit from a Government or a DP-financed contract, financially or in any other manner; (ii) to be a nominated<sup>6</sup> sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Government or a DP-financed contract; and (iii) to receive the proceeds of any loan made by the DP or otherwise to participate further in the preparation or implementation of any DP-financed project, if it is determined at any time that the firm or individual has engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations in competing for, or in executing, a DP-financed contract.

- 8.2. All bidders are required to complete the Statement on Ethical Conduct and Fraud and Corruption which can be found in **Annex E** and submit it with their quotation.

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<sup>6</sup> A nominated sub-contractor, consultant, manufacturer or supplier, or service provider is one which has been either (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Government.

## Annex B-1. Technical Specification and Drawing

A set of precise and clear Specifications is a prerequisite for bidders to respond realistically and competitively to the requirements of the Employer without qualifying or conditioning their quotations. These should be included here. The Specifications must be drafted to permit the widest possible competition and, at the same time, present a clear statement of the required standards of workmanship, materials, and performance of the goods and services to be procured. The Specifications should require that all goods and materials to be incorporated in the Works be new, unused, of the most recent or current models, and incorporate all recent improvements in design and materials unless provided otherwise in the Contract.

Samples of Specifications from previous similar projects in the same country are useful in to prepare Specifications. The use of metric units is encouraged. Most Specifications are normally written specially by the Employer or Project Manager to suit the Contract Works in hand.

*[Insert here a list of Drawings]*

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

## Annex B-2. Technical/ Design Specifications

Items	Description of Major Work Required		Statement on Design Specifications and Construction Methodology
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			

*[To be completed by Bidder.]*

## Annex C. Priced Activity Schedule

1	2	3	4	5	6	7	8
Item	Description of Works Activities	Unit	Quantity	Unit Price	Total Lump Sum Price (col 4*5)	Start Date	Finish Date
1							
2							
3							
4							
5							
<b>Total:</b>							

Signature of Bidder \_\_\_\_\_

**Note:** In case of discrepancy between unit price and total, the unit price shall prevail.

## Annex D. Quotation Form

To: *[Name, address, contact information of the EA/IA].*

Dear Sir,

We are pleased to offer the following quotation for *[description of works]* as specified in your "REQUEST FOR QUOTATIONS (RfQ - *[reference number]*) for the fixed lump sum price of \_\_\_\_\_ *[Amount in figures and words and currency]*.

We agree to execute the works on the following conditions:

1. Guarantee Period: 6 months form date of issuance of completion certificate
2. Completion Date: *[State Intended Completion Date]*.
3. Terms of Payment: We will submit progress payment request when 50% of the Works is completed and payments will be made when progress is certified by the Project Manager. The Balance of 50% will be paid on completion of the Works *[if the works is of large value, payment can be based on monthly progress payments as certified by the Project Manager]*.
4. Contract Price: The Contract Price is on lump sum based and shall remain fixed and is not subject to price adjustment.

We understand that you are not bound to accept all or any quotations you may receive.

Dated this \_\_\_\_\_ Day of \_\_\_\_\_, 20 ... ..

\_\_\_\_\_  
*(Signature and Company)*

\_\_\_\_\_  
*(In the capacity of)*

[The **Bidder** shall fill in and submit this Form with the Quotation.]

## **Annex E.**

### **Statement on Ethical Conduct and Fraud and Corruption**

We the undersigned confirm in the preparation of our quotation that:

- (i) Neither we, nor any of our employees, associates, agents, shareholders, partners, consultants or their relatives or associates have any relationship that could be regarded as a conflict of interest as set out in the bidding document.
- (ii) Should we become aware of the potential for such a conflict, we will report it immediately to the Employer.
- (iii) Neither we, nor any of our employees, associates, agents, shareholders, partners consultants or their relatives or associates have entered into corrupt, fraudulent, coercive or collusive practices in respect of our quotation.
- (iv) We understand our obligation to allow the Government or the funding agency to inspect all records relating to the preparation of our quotation and any contract that may result from such, irrespective of being awarded a contract or not.
- (v) No payments in connection with this procurement exercise have been made by us, our associates, agents, shareholders, partners or their relatives or associates to any of the staff, associates, consultants, employees or relatives of such who are involved with the procurement process on behalf of the Employer.
- (vi) We understand that if we are found to be in breach of this declaration we will be ineligible to be considered for any contracts with the Government of the Kingdom of Cambodia funded by the funding agency and/or other sources for a period to be determined by them.

Signed: [Must be the Authorized Representative of the Bidder who signs the Bid Form].

[Name of Authorized Representative and Title.]

[Name of Bidder and affix Seal of Firm.]

Date:

# Letter of Award

[Name of the EA/Employer]

TO: [Name and address of successful bidder].

FROM: [Name and contact information for the EA/IA].

Date:

SUBJECT: [Contract No/Description of Works].

Dear Sir,

We are pleased to accept your offer for the execution of [description of the Works] as per your attached quotation dated [date, month and year] for the fixed lump sum price amount of \_\_\_\_\_ [amount in figures and words and currency]. We agree that you execute the said works on the following conditions:

1.

Item	Description	Unit	Quantity	Unit Price USD/KH Riel	Total Price USD/KH Riel
	<b>Grand Total:</b>				USD/KH Riel

2. Guarantee Period: Six months from date of the issuance of Completion Certificate by the Employer's designated Project Manager of the Contract.
3. Completion Date: The Start Date is: [insert date, normally at least 14 calendar days after the signing of this Letter]. Completion is [calendar days] after the Start Date.
4. Terms of Payment: The Terms of Payments will be in accordance with Article 3: Payment Provisions of the attached Conditions of Contract.
5. The Employer's Designated Project Manager is: [state name and contact details].
6. The attached Conditions of Contract for Civil Works apply to this Contract.

FOR THE EMPLOYER

Signed, Stamped, Delivered by:

[Name of the Employer]

Title: [Authorised Representative of the EA]

Date .....

Attached: Conditions of Contract.

FOR THE CONTRACTOR

Signed, Stamped, Delivered by:

[Name of the Contractor]

Title: [Authorised Representative of the Contractor]

Date .....



# Conditions of Contract for Civil Works

## Article 1. General Provisions

1. The Employer has appointed the person named in the Letter of Award to be the Project Manager who will supervise implementation of the contract.
2. The Contractor confirms that he has examined, read and understood fully all the Contract Documents, being:
  - (a) The Request for Quotations,
  - (b) The Technical Specifications and the Drawings,
  - (c) The Priced Activity Schedule,
  - (d) The Quotation Form,
  - (e) The Letter of Award, and
  - (f) The Conditions of Contract,which all together form the Contract
3. The Employer has approved the Work Plan submitted by the Contractor, including the Works Start Date, the Works Completion Date, and the person representing the Contractor, who will act as Works Manager.
4. The language of the Contract is English, and the law is that governing contracts in force in the Kingdom of Cambodia.
5. The Contract shall be amended only by written agreement between the Employer and the Contractor.
6. Every effort shall be made to resolve disputes amicably and without recourse or referral to third parties. Any dispute that cannot be resolved amicably shall be referred by either Party to the Cambodian Chamber of Commerce [Arbitration Council of Cambodia-discuss] for adjudication in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce.

## Article 2. Employer's and Contractor's Obligations

7. The Employer and the Contractor now agree as follows:
  - 7.1. The Employer pledges to pay the Contractor the Contract Price stated in the Letter of Award. This amount is all inclusive price for the full quantity of work shown on the Drawings, including materials, transport to the site, labor, profit, and all taxes and duties.
  - 7.2. The Contractor pledges to construct the works on or before the completion date. On or before the Works Start Date, the Project Manager or a Technical Supervisor, acting as a representative of the Project Manager, will indicate the exact location where the works are to be constructed.

### **Article 3. Conditions for Execution of the Works**

8. The Contractor shall not, without the written consent of the Employer, sub-contract any part of the Works. In the event the Employer approves the sub-contracting; such consent shall not relieve the Contractor of his obligations under the Contract.
9. The Contractor shall start the Contract and implementation of the Works on the start date specified in the Letter of Award and shall complete the whole of the works not later than the number of calendar days stated in the Letter of Award. If implementation of the Contract is delayed due to any circumstances or event, which could not have been foreseen by an experienced contractor, the Contractor must inform the Project Manager immediately about the delay. If the Project Manager considers that an extension of time for the Contract is justified, the Contractor must submit an amended Work Plan, agreed with the Project Manager, for approval by the Employer.
10. If, 15 days after the Works Start Date, the Contractor has not started to implement the project, the Employer has the right to cancel the contract. If, at any time, implementation of any part of the Works is delayed by more than 100 calendar days beyond the dates shown in the Work Plan, the Employer has the right to cancel the contract. In either circumstances should the delays be attributable to a breach on the part of the Contractor, the Contractor will be disbarred from providing any goods, works or services on any publicly funded contract for a period of not less than three years.
11. The Employer has the right to reduce the payment to the Contractor by 0.1% of the total price of the Contract for every day of delay after the Intended Completion Date or as extended by the Project Manager in accordance with Paragraph 9 of these instructions, until the work is complete. The reduction is up to a maximum of 10%, after which the Employer may terminate the contract.
12. The Contractor's Works Manager will be present on site all the time that work is in progress. The Works Manager will keep a Works Notebook to record progress of the work.
13. The Project Manager, or any other person named as a representative by the Employer and notified to the Contractor, may inspect the work at any time. The Project Manager may instruct the Contractor to provide samples of materials for quality testing. The Project Manager may instruct the Contractor to dig inspection holes in completed sections of the work in order to allow inspection. The Contractor will cooperate with the Project Manager and allow the Project Manager to use the Contractor's staff and equipment as necessary to carry out inspections of the work.
14. All additional works undertaken on the instructions of the Project Manager for the purposes of inspection will be reimbursed at the rates shown in the Quotation Price Schedule provided that such works inspected do not prove defective. Should the works prove defective all costs of inspection will be borne by the Contractor.
15. The Project Manager may issue instructions to the Contractor to ensure compliance with the Drawings and the Specification. The Project Manager may agree minor changes to the Drawings and the Specification, provided that these do not change substantially the final quantity and quality of the Works. The Project Manager may not instruct the Contractor to change the quantity of work shown in the Drawings, or to make any change that will substantially change the quality of the finished Works, without the written agreement of the Employer.

16. The Work Program submitted by the Contractor shows stages of work that must be inspected and approved by the Project Manager. When these stages are reached the Contractor must not proceed further with the work until the Project Manager has given his approval. If the Contractor proceeds with the work without waiting for the Project Manager to inspect, so that the work to be inspected has been covered over, the Project Manager may instruct the Contractor to destroy that part of the work and construct again.
17. The Contractor agrees to ensure that the work is carried out in a safe manner and with the minimum disturbance to people living close to or passing by the site, or damage to the environment. The Employer must approve the place of disposing of excavated earth, dirty water or other waste materials before disposal starts.
18. On completion of the works the contractor shall be responsible for removing all plant, surplus materials and wastes from the site and for restoring the site to a clean and tidy condition.
19. The contractor guarantees the work for six months, starting from the actual date of completion of construction shown on Completion Certificate issued by the Project Manager. The Contractor agrees to make good, at his own expense, any defect that appears during that time due to quality of materials or workmanship.
20. If Force Majeure makes completion of the contract impossible, the Contractor may ask the Employer to release him from the Contract. The Contractor may request payment for that part of the works that is complete and intact at the time the request for release is made.

#### **Article 4. Payment Provisions**

21. The Contractor shall provide updated Work Plan within 14 days of being instructed to by the Project Manager. The Work Plan shall show the activities that the Contractor will carry out and the corresponding completion date for the activity.
22. The Work Plan shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor's own discretion.
23. The first payment will be made when the progress in the construction reaches 50% and the second payment on completion of whole of the Works. The Contractor can apply for payment by submitting a written Request for Payment to the Employer. The Project Manager will then verify the quantity of work completed and will check that the quality of the materials used and the quality of the Contractor's workmanship is in line with the Contract. The Project Manager will also check that the construction is following the Drawings and any instructions given by the Project Manager to the Contractor. The Project Manager shall then either:
  - (a) Issue a Progress Report (or Completion Report) certifying that the conditions for release of the payment have been met, or
  - (b) Issue a Progress Report detailing further work that must be done to meet the conditions for release of the payment.

*[In case payments are to be made in more than two stage payments, amend the clause accordingly to match the number of staged payment.]*
24. The Employer shall retain ten percent from the first payment due to the Contractor until completion of the whole Works. On completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and half when the Guarantee Period

has passed and the Project Manager has certified that all defects notified by the Project Manager to the Contractor before the end of this period have been corrected. On completion of the whole of Works, the Contractor may substitute retention money with an "on demand" bank guarantee valid for 30 calendar days beyond the expiry of the Guarantee Period. On receiving a Progress Report (or Completion Report) from the Project Manager, indicating that the conditions for release of any payment have been met, the Employer will issue a Payment Certificate.

25. Payments shall be made on a lump-sum basis upon fulfillment of the “payment conditions” as per the following Schedule:

*[Columns 1, 2 and 4 of the payment schedule should be filled-in by the Employer before issuing the Bidding Documents. Column 3 to be filled-in before contract signing based on the amounts quoted by the bidder in the Activity Schedule submitted with the quotation].*

<b>Payment Schedule</b>				
<b>Stages of Payment</b>	<b>% of Total Lump-Sum Contract Price</b>	<b>Amount of Lump – Sum Payment (2) X Contract Price</b>	<b>Deduction for Retention Money 10 % of (3)</b>	<b>Payment Conditions <i>(Physical Stages of Works to be Completed)</i></b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(4)</b>
Payment No. 1	50% of the Contract Price			Progress of the Works reaches 50%
Payment No. 2	Balance 50% of the Contract Price			On Completion of the Whole Works
1st Retention Payment	50% of Retention Money		Nil	Upon satisfactory completion of the whole Works and issuance of a Completion Report by the Project Manager.
2nd Retention Payment	50% of Retention Money		Nil	Upon expiry of the Guarantee Period or on submission of an “on demand” bank guarantee for an equivalent amount and valid until the expiry of the Guarantee Period after issuance of Completion Report.
<b>Total</b>			<b>N/A</b>	<b>N/A</b>

*[Payments can also be made in more than two stage payments in which case the payment schedule should be amended to match the number of stage payment.]*

26. Payment shall be made in the currency of the quotation price of the winning contractor.
27. Time allowed for processing of payments will be as follows:
  - (a) The Project Manager will inspect the Works and report to the Employer within 1 week after receiving the Request for Payment;
  - (b) If a satisfactory progress report is issued before the scheduled date for payments, the Employer must issue a Certificate for Payment not later than 1 week after receiving progress report from the Project Manager;
  - (c) Payment will be made within 1 week of the date issue of the Payment Certificate;
  - (d) Therefore, the Due Date for Payment will be 3 weeks after the date of Request for Payment.
28. If any payment is delayed for more than 1 calendar month after the Due Date for Payment, the Employer will pay interest to the Contractor at the rate of 1% of the amount of the payment for the first month and for each subsequent full calendar month during which payments are delayed. In addition, the number of calendar days during which the payment is delayed will automatically be added on to the time for completion of the project.
29. The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 calendar days before the submission of quotations for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax, duties and other levies payable by the Contractor, provided such changes are not already reflected in the Contract Price and can be substantiated with supporting documents
30. If the Contract is cancelled because of the fault of the Contractor, the Employer has the right to take over the Works and complete them by any other method. No payment will be made to the Contractor until the Works have been completed. Payment to the Contractor will be limited to the difference between the Contract price and the cost to the Employer of completing the part of the work that was not implemented by the Contractor.

## **Article 5. Fraud and Corruption**

31. The Development Partner requires that Government or Recipients (including beneficiaries of the funds), as well as bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standards of ethics during the procurement and execution of contracts. In pursuance of this policy, the Government:
  - (a) defines, for the purposes of this provision, the terms set forth below as follows:
    - (i) “Corrupt Practice” is the offering, giving, receiving, or soliciting directly or indirectly of anything of value to influence improperly the actions of another party<sup>1</sup>;

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<sup>1</sup> For the purpose of this sub-paragraph, “another party” refers to a public official acting in relation to the selection process or contract execution. In this context “public official” includes Government and DP staff, and employees of other organizations taking or reviewing selection decisions.

- (ii) “Fraudulent Practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit, or to avoid an obligation<sup>2</sup>;
  - (iii) “Coercive Practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party, or the property of the party to influence improperly the actions of a party<sup>3</sup>;
  - (iv) “Collusive Practice” is an arrangement between two or more parties, designed to achieve an improper purpose, including to influence improperly the actions of another party<sup>4</sup>;
  - (v) “Abuse” means theft, waste, or improper use of assets related to the DP-financing project activity, either committed intentionally or through reckless disregard;
  - (vi) “Conflict of Interest” means any situation in which a party has interests that could improperly influence that party’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations;
  - (vii) “Obstructive Practice” is (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation, or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice by the competent Government and DP authority; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or (b) acts intended to materially impede the exercise of the Government or DP inspection and audit rights;
  - (viii) “Integrity Violation” is any act, as defined under the DP Integrity Principles accepted by the Government, which violates the Anti-Corruption Policies, where applicable, including points (i) to (vii), stated above and the following: violations of the Government and DP sanctions, retaliation against whistleblowers or witnesses, and other violations of the Anti-Corruption Policies, including failure to adhere to the highest ethical standards;
- (b) will reject a recommendation for award of the contract if it is determined that the firm or individual recommended for the award, or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees have directly or indirectly engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations in competing for the contract in question;

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<sup>2</sup> For the purpose of this sub-paragraph, “party” refers to a public official; the terms “benefit” and “obligation” relate to the selection process or contract execution; and the “act or omission” is intended to influence the selection process or contract execution.

<sup>3</sup> For the purpose of this sub-paragraph, “party” refers to a participant in the selection process or contract execution.

<sup>4</sup> For the purpose of this sub-paragraph, “parties” refers to participants in the procurement or selection process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

- (c) will cancel the portion of the financing allocated to a contract if it is determined at any time that representatives of the Government or of a beneficiary of the DP financing have engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations during the procurement or the execution of that contract, without the Government having taken timely and appropriate action satisfactory to the DP to remedy the situation;
- (d) will sanction a firm or individual, at any time, in accordance with prevailing Government and/or DP sanctions procedures<sup>5</sup>, including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded or otherwise benefit from a Government or a DP-financed contract, financially or in any other manner; (ii) to be a nominated<sup>6</sup> sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Government or a DP-financed contract; and (iii) to receive the proceeds of any loan made by the DP or otherwise to participate further in the preparation or implementation of any DP-financed project, if it is determined at any time that the firm or individual has engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations in competing for, or in executing, a DP-financed contract.

**Article 6. Special Conditions**

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In witness of what has been agreed above, the signatures of the authorized representatives of the two Parties are affixed below on the date shown.

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<sup>5</sup> A firm or an individual may be declared ineligible to be awarded a contract upon (i) completion of the sanctions proceedings as per its sanctions procedures, including inter alia: cross-debarment as agreed by DP and other International Financial Institutions; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanction’s proceedings in accordance with the Government and DP guidelines.

<sup>6</sup> A nominated sub-contractor, consultant, manufacturer or supplier, or service provider is one which has been either (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Government.

▪ **Employer**

▪ **Contractor**

\_\_\_\_\_  
*Affix Official Seal*

\_\_\_\_\_  
*Affix Official Seal*

Name : -----

Name : -----

Position : -----

Position : -----

Date : -----

Date : -----



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