

KINGDOM OF CAMBODIA

National Standard Bidding Documents  
Procurement of Works

# Procurement Manual

Volume III

National Standard Bidding Documents  
Procurement of Works

For Externally Financed  
Projects/Programs in Cambodia



September 2005

# **Annex III c**

## **Standard National Competitive Bidding Documents**

### **The Procurement of Works**

## Preface

This document has been developed for use on own funded procurement within the Kingdom of Cambodia It has also been approved for use as national and local competitive bidding documents on projects funded by the International Bank for Reconstruction and Development (IBRD), its affiliate, the International Development Association (IDA), both hereinafter referred to as the WB and the Asian Development Bank (ADB). Through modification of the data sheets it is consistent with policies and procedures laid down in the *Guidelines: Procurement under IBRD Loans and IDA Credits* and *Guidelines for Procurement under Asian Development Bank Loans*. Its use is mandatory.

The standard Bidding Documents in this publication have been prepared for use in the procurement of works by national competitive bidding procedures (as described by the ADB as local competitive bidding) hereinafter referred to as NCB —valued at less than the threshold stated in Annex V of the Procurement Manual.

When the funding is either WB or ADB and valued in excess of the threshold stated in Annex V of the Procurement Manual the respective Bank's own international competitive bidding (ICB) Standard Bidding Documents must be used.

To obtain further information on procurement under World Bank and Asian Development Bank assisted projects, contact:

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<http://www.worldbank.org/procure>

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## ***INSTRUCTIONS***

These *Standard Bidding Documents* are intended as a model for admeasurement (unit prices or unit rates in a bill of quantities) and lump sum types of contract, which are the most common in 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 are supplied for use with lump sum contracts in boxes is shown as footnotes; these notes must be deleted from the final document before issue to bidders. Care must be exercised by Executing Agencies in selecting the alternative clauses.

The document is issued in the Khmer language, in the case of the World Bank, when prior review is required, the document may be submitted to the WB in Khmer. When Asian Development Bank is funding the procurement the document must be translated in to the English Language for review. The English language document shall 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 (the ITBs do not form part of the contract so it is preferable to define matters such as eligibility, Employer etc. as a GCC).

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

- (a) All the documents listed in the Table of Contents are normally required for the procurement of works. However, they should be adapted as necessary to the circumstances of the particular project, or the Borrower.
- (b) 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.

- (c) 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.
- (d) Where alternative clauses or text are shown, select those that best suit the particular works and discard the unused alternative text.
- (e) These documents and NCB is based on the assumption of post qualification as pre-qualification is not appropriate to 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 or school ablution units.

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

- in highway repaving contracts: each kilometer 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 ( or steel) per floor; cladding, per floor: services (electrical, water, sewers, drains), each payable as a percentage completed in relation to the service for the whole building.

***INVITATION FOR BIDS***

**The Kingdom of Cambodia**

[ insert *name of Project* ]

[ insert *Loan/Credit/Grant number* ]

[ insert *IFB title and Number* ]

1. The Government of Cambodia (GoC) [insert “has received” or “has applied for”] a [insert “Loan/Credit” or “Grant”] from the [insert “the International Development Association” or The Asian Development Bank] 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].

If the government is using its own funds delete the above paragraph renumbering the subsequent ones
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2. The [insert complete name of Employer] now invites sealed bids from eligible and qualified bidders for [insert brief description of the Works to be procured]. The delivery/construction period is [insert number of days/months/years or dates]<sup>1</sup>.

3. Procurement [insert “will be conducted through National Competitive Bidding Procedures as specified in “World Bank Guidelines: Procurement Under IBRD Loan and IDA Credits” and in accordance with the Loan/Credit Agreement” or “will be conducted through Local Competitive Bidding procedures consistent with Asian Development Bank: Guidelines for Procurement Under Asian Development Bank Loans” or “will be conducted through Competitive Bidding Procedures and under the laws and regulations governing public procurement within the Kingdom of Cambodia” as applicable].

4 This invitation is open to all bidders from all areas [if the Funding is ADB 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”]<sup>2</sup>.

5. Interested eligible bidders may obtain further information from and inspect the Bidding Documents at the address given below from [insert office hours]:

6. Prospective bidders’ attention is drawn to the Instructions to Bidders in the bidding documents and the qualification requirements include: [insert key qualification criteria as per ITB/Bid Data Sheet Clause 6.3).

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

<sup>2</sup> Occasionally, contracts may be financed out of special funds that would further restrict eligibility to a particular group of member countries. When this is the case, it should be mentioned in this paragraph.

7. A complete set of Bidding Documents 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 of *[insert amount in US Dollars]* or its equivalent in Cambodian Riel being *[insert Riel equivalent]*. The method of payment will be *[insert method of payment]*. The Bidding Documents will be sent by *[insert delivery procedure, example courier service]* 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. In case of any difficulty in purchase of the bidding documents, interested parties may contact in writing *[insert designation, address, telephone and fax number of government officer who should be in higher position in the Executing Agency than the official specified in para. 5 above]* and also send a copy of the communication to *[insert designation, address, telephone and fax number of concerned MEF official]*.

8. 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 at the address given below at *[insert the same time and date as the deadline for bid submission]*.

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

*Guidance note:*

*If a security is not required (as under WB and ADB financed contracts) replace the above paragraph with the following text*

9 All bids shall be accompanied by a Bid Securing Declaration as described in the Instructions to Bidders

10. The Government of Cambodia and the Funding Agency will respectively declare a firm ineligible either indefinitely or for a stated period of time, to be awarded a contract funded by the Government of Cambodia and the Funding Agency, if it at any time determines that the firm has engaged in corrupt or fraudulent, coercive or collusive practices in competing for or in executing a contract.

11. The address(es) referred to above is(are): *[insert detailed address(es) including complete legal name of the Employer, Office 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]*



***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 bids for the construction of Works, as described in the **BDS**. The name and identification number of the Contract is provided in the **BDS** and the **SCC**.
- 1.2 The successful Bidder shall be expected to complete the Works by the Intended Completion Date specified in the **BDS** and the **SCC**.

### **2. Source of Funds**

- 2.1 The Government of Cambodia, hereinafter referred to as “GoC”, intends to apply a portion of the proceeds of the funds provided by the Funding Agency named in the **BDS**, towards the cost of the Project defined in the **BDS**, to cover eligible payments under the contract(s) for which these Bidding Documents are issued.
- 2.2 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 Funding Agency requires that Borrowers or Recipients (including beneficiaries of the funds), as well as bidders, suppliers, contractors, and consultants observe the highest standard of ethics during the procurement and execution of contracts. In pursuance of this policy, the GoC and the Funding Agency:
  - (a) defines, for the purposes of this provision, the terms set forth below as follows:
    - (i) “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution; and
    - (ii) “fraudulent practice” means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Borrower, and includes collusive practices among bidders (prior to or after submission of bids and proposals) designed to establish prices at artificial, noncompetitive levels and to deprive the Government of the benefits of free and open competition;
    - (iii) “collusive practices” means a scheme or arrangement between two or more bidders, designed to establish bid prices at artificial, non-competitive levels or to influence the action of any party in the procurement process or the execution of a contract;
    - (iv) “coercive practices” means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract;

- (b) will reject a bid and/or proposal for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
  - (c) will respectively declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a contract funded by the GoC and the Funding Agency if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing a contract.
- 3.2 The Funding Agency will cancel the portion of the funds allocated to a contract if it determines at any time that representatives of the Borrower or Recipient or of a beneficiary of the funds engaged in corrupt, fraudulent, collusive or coercive practices during the procurement or the execution of that contract, without the Borrower or Recipient having taken timely and appropriate action satisfactory to the Funding Agency to remedy the situation.
- 3.3 The GoC and the Funding Agency retains the right to inspect and audit the records of any bidder or contractor relating to either the bidding process itself or the resulting award and execution of a contract. The inspection and audit may, at the discretion of the Finding Agency or GoC, be undertaken by independent auditors appointed by them. This provision is applicable to unsuccessful and successful bidders and their sub-contractors. Furthermore, the bidders' attention is drawn to GCC Sub-Clause 12.2.
- 3.4 All bidders are required to complete the Statement on Ethical Conduct and Fraud and Corruption which can be found in Section VIII, Forms of Bid, Qualification Information, Letter of Acceptance, and Agreement 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 1.2. 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 1.2 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.
- 4.2. Bidders should not be associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Purchaser to provide consulting services for the preparation of the design,

specifications, and other documents to be used for the procurement of the works under this Invitation for Bids.

- 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 in situations that could include the following:
- (d) have controlling shareholders in common;
  - (e) have been involved in the past either directly or indirectly with the Employer or any other entity that helped identify the requirements of this Invitation for Bids; or
  - (f) contributed to the design, specifications, and other documents for the Project or this procurement; or
  - (g) have controlling shareholders in common that are related to the second civil degree; or
  - (h) receive or have received any direct or indirect subsidy from any of them; or
  - (i) have the same authorized representative for purposes of this Bid; or
  - (j) participates in more than one bid either as a bidder or as a sub-contractor subject to ITB Clause 5.1; or
  - (k) have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Bid of another Bidder
  - (l) if any of the bidder's senior officers or controlling shareholders are related to any officer of the Employer who is involved with this procurement process.
- 4.4. A Bidder, and all parties constituting the Bidder, that is under a declaration of ineligibility for corrupt and fraudulent practices as described in ITB Sub-Clause 3.1 issued respectively by the Funding Agency and the GoC, at the date of contract award, shall be disqualified.
- 4.5. Government-owned enterprises in Cambodia may only participate if they are legally and financially autonomous, operate under commercial law, and are not a dependent agency of the Employer.
- 4.6. All bidders are required to complete and submit with their bids the appropriate forms listed in Section VIII attached hereto.

## **5. One bid per bidder**

5.1 Each Bidder shall submit only one Bid, either individually or as a partner in a joint venture. 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 provide in Section VIII “Forms of Bid, Qualification Information, Letter of Acceptance, and Agreement” the following information and 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 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 and auditor’s reports for the past five 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 10 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 above for each joint venture partner.
  - (b) All partners shall be required to meet the eligibility requirement described in ITB Clause 4.
  - (c) the Bid shall be signed so as to be legally binding on all partners;
  - (d) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
  - (e) one of the partners will be nominated as being 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
  - (f) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

- (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 the event of a successful bid shall be signed by all partners and submitted with the bid, together with a copy of the proposed Agreement.
- 6.3 To qualify for award of the Contract, bidders shall meet the following minimum qualifying criteria:
- (a) average annual volume of construction work over the last 3 years of least the amount stated in the **BDS**;
  - (b) experience as prime contractor in the construction of at least two works of a nature and complexity equivalent to the Works within the last 5 years (to comply with this requirement, works 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 Contract Manager with five years' experience in works of an equivalent nature and volume, including no less than three 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.
- 6.5 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 Sub-Clause 6.3(a) and (c). In addition; for a joint venture to qualify, each of its partners must meet at least 25 percent of minimum criteria of ITB Sub-Clause 6.3(a), (b) and (c) for an individual Bidder, and the partner in charge at least 40 percent of those minimum criteria. Failure to comply with this requirement will result in rejection of the joint venture's Bid. Subcontractors' experience and resources will not be taken into account in determining the Bidder's compliance with the qualifying criteria.

## 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.

## 8. Cost of bidding

8.1 The Bidder shall bear all costs associated with the preparation and submission of his Bid, and the Employer will in no case be responsible or liable for those costs.

## **B BIDDING DOCUMENTS**

### **9. Content of the bidding document**

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

Section I	Instruction 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

### **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 invitation to bid. The Employer will respond to any request for clarification received earlier than 14 days prior to the deadline for submission of bids. Copies of the Employer's response will be forwarded to all who 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 part of the Bidding Document and shall be communicated in writing to all who have obtained 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 Sub-Clause 19.2.

## **C PREPARATION OF BIDS**

### **12. Language of bids**

12.1 All documents relating to the Bid shall be in Khmer, unless otherwise stated 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 the format indicated in Section VIII
  - (b) Bid Security or Bid Securing Declaration, in accordance with ITB Clause 16;
  - (c) Priced Bill of Quantities<sup>3</sup>;
  - (d) Qualification Information Form and supporting documents, in accordance with Section VIII
  - (e) any other document required in the BDS

### **14. Bid Prices**

- 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.
- 14.2 The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items 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 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 days prior to the deadline for submission of bids, shall be included in the rates, prices, and total Bid price submitted by the Bidder.
- 14.4 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 24.4. 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
- 14.5 The unit rates and prices shall be quoted in United States Dollars. However, payment to the Contractor under the contract shall be made in United States Dollars and Cambodian Riels in the proportions specified in GCC Sub-Clause 42.1.

### **15. Bid validity**

- 15.1 Bids shall remain valid for the period specified in the **BDS**.
- 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 forfeiting its Bid Security or having its Bid Securing Declaration executed. A Bidder agreeing to the request shall not

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<sup>3</sup> For lump sum contracts deleted "Bill of Quantities" and replace it with "Activity Schedule"



be required or permitted to modify its Bid, but will be required to extend the validity of its Bid Security or Bid Securing Declaration for the period of the extension, and in compliance with ITB Clause 16 in all respects.

- 15.3 If the period of bid validity is extended beyond 60 days, the amounts payable shall be increased by  $\frac{1}{4}$  of 1 percent per month, or pro rata part thereof for the period of delay beyond 60 days after the expiry of the initial bid validity, up to the notification of award. Bid evaluation will be based on the Bid prices without taking the above correction into consideration.

## **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-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 Employer.

- 16.2 The Bid Security when required shall, at the Bidder's option, be in the form of a bank certified check or bank guarantee issued by a reputable bank located in Cambodia. Cash is not an acceptable form of Security. If submitted in the form of Bank Guarantee, it should be in accordance with the form of Bid Security (Bank Guarantee) provided in Section IX, Security Forms, of these bidding documents. The Bid Security should be valid for 30 days beyond the validity of the Bid.
- 16.3 The Bid Securing Declaration when required should be in accordance with the form of Bid Securing Declaration included in Section IX, Security Forms of these bidding documents. The Bid Securing Declaration should be valid for 30 days beyond the validity of the Bid.
- 16.4 Any Bid not accompanied by an acceptable Bid Security when required or a Bid Securing Declaration when required will be rejected by the Employer as non-responsive.
- 16.5 The Bid Security or Bid Securing Declaration 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 or Bid-Securing Declaration shall be in the names of all future partners as named in the letter of intent.
- 16.6 The Bid Security of unsuccessful Bidders shall be returned within seven working days of the successful Bidder's furnishing of the performance security.
- 16.7 The Bid Security of the successful Bidder shall be returned once the Bidder has signed the Contract and furnished the required Performance Security.
- 16.8 The Bid Security may be forfeited or 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 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 let by the GoC 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 total bid amount.

#### **17. Format and signing of bids**

- 17.1 The Bidder shall prepare one original of the documents comprising the Bid as described in ITB Clause 13 of these Instructions to Bidders, bound with the volume containing the Form of Bid, and clearly marked "ORIGINAL." In addition, the Bidder shall submit three copies of the Bid clearly marked as "COPIES." In the event of discrepancy between them, 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, in accordance with ITB Sub-Clause 6.1(c) as the case may be. All pages of the Bid where entries or amendments have been made shall be initialed by the person or persons signing the Bid.
- 17.3 The Bid shall contain no alterations or additions, except those to comply with instructions issued by the Employer, or as necessary to correct errors made by the Bidder, in which case such corrections shall be initialed by the person or persons signing the Bid.
- 17.4 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. 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 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."

- 18.2 The inner and outer envelopes shall
- (a) be addressed to the Employer at the address provided in the **BDS**;
  - (b) bear the name and identification number of the Contract as defined in the **BDS**; and
  - (c) 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 any envelope is not sealed and marked as required, the Employer shall assume no responsibility for the misplacement or premature opening of the bid.
- 18.4 In addition to the identification required in ITB Clause 18.2 the inner envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared late, pursuant to ITB Sub-Clause 19.3.

#### **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 in accordance with ITB Clause 11, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall then be subject to the new deadline.
- 19.3 Any Bid received by the Employer after the deadline prescribed in ITB Sub-Clause 19.1 will be returned unopened to the Bidder.

#### **20. Modification and withdrawal of bids**

- 20.1 Bidders may modify or withdraw their bids by giving notice in writing before the deadline prescribed in ITB Sub-Clause 19.1
- 20.2 Each Bidder’s modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with ITB Clauses 17 and 18, with the outer and inner envelopes additionally marked “MODIFICATION” or “WITHDRAWAL,” as appropriate.
- 20.3 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 Sub-Clause 16.8(a). No Bid may be modified after the deadline for submission of Bids.
- 20.4 Bidders may only offer discounts to, or otherwise modify the prices of their bids, by submitting bid modifications in accordance with this clause or included in the initial bid.

## **21. Bid opening**

- 21.1 The Employer will open the bids, including modifications made pursuant ITB Clause 20 in the presence of representatives of the bidders and project beneficiaries from the local community who choose to attend at the time and in the place specified in the **BDS**.
- 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 The bidders’ names, the Bid prices, the total amount of each Bid and any discounts, Bid modifications and withdrawals, the presence or absence of Bid Security or Bid Securing Declaration, and such other details as the Employer may consider appropriate, will be read out at the opening.
- 21.4 Bids (and modifications) that are not opened and read out at bid opening shall not be considered further for evaluation, irrespective of the circumstances<sup>4</sup>.
- 21.5 The Employer will prepare minutes of the Bid opening, including the information disclosed to those present in accordance with ITB Sub-Clause 21.3 announced by the Employer at the opening. The minutes shall be signed in original by all those present at the bid opening. Immediately upon conclusion of the bid opening proceedings, copies of the minutes shall be provided to the bidders and community representatives present at the bid 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 bid opening.

## **E EVALUATION OF BIDS**

### **22. Process to be confidential**

- 22.1 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.
- 22.2 Any effort by a Bidder to influence the Employer’s processing of bids or 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 bid, it should do so only in writing.

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<sup>4</sup> This is a new clause not included in NCB#1

### **23. Clarification of bids**

- 23.1 To assist in the examination, evaluation, and comparison of bids, the Employer may, at the Employer's discretion, ask any Bidder for clarification of the Bidder's Bid, including breakdowns of unit rates. 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 Employer in the evaluation of the bids in accordance with ITB Clause 25.

### **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 VIII;
  - (b) Bid Security or Bid Securing Declaration, in accordance with ITB Clause 16 and
  - (c) Priced Bill of Quantities<sup>5</sup>, in accordance with ITB Clause 14
- 24.2 Prior to the detailed evaluation of bids, the Employer will determine whether each Bid
- (a) meets the eligibility criteria defined in ITB Clause 4
  - (b) has been properly signed; 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 or reservation. A material deviation or reservation is one
- (a) which affects in any substantial way the scope, quality, or performance of the Works;
  - (b) which limits in any substantial way, inconsistent with the bidding documents, the Employer's rights or the Bidder's obligations under the Contract; or
  - (c) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.
- 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 errors**

- 25.1 Bids determined to be substantially responsive will be checked by the Employer for any arithmetic errors. Errors will be corrected by the Employer as follows:

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<sup>5</sup> For lump sum contracts deleted "Bill of Quantities" and replace it with "Activity Schedule"

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

## **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 Sub-Clause 24.3.
- 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) making any correction for errors pursuant to ITB Clause 25
  - (b) excluding provisional sums and the provision, if any, for contingencies in the Bill of Quantities<sup>6</sup>;
  - (c) making an appropriate adjustment for any other acceptable variations or deviations, submitted in accordance with ITB Sub-Clause 26.3; and
  - (d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with ITB Clause 20.4
- 26.3 The Employer reserves the right to accept or reject any variation or deviation, or alternative offer. Variations or deviations 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.

## **F POST QUALIFICATION AND AWARD**

### **27. Post qualification**

- 27.1 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.
- 27.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder pursuant to ITB Clauses 6.1 and 6.2, and any clarifications in accordance with ITB Clause 23.1.
- 27.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the

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<sup>6</sup> For lump sum contracts delete "Bill of Quantities" and replace it with "Activity Schedule"

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.

**28. Employers right accept or reject any bid**

- 28.1 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.

**29. Award Criteria**

- 29.1 Subject to ITB Clause 26 the Employer shall award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the Bidding Document and has offered the lowest evaluated Bid, provided that the Bidder has likewise been determined to be qualified to perform the Contract satisfactorily.

**30. Notification of award and signing of the agreement**

- 30.1 The Bidder whose Bid has been accepted shall be notified of the award by the Employer, prior to the expiration of the bid validity period, through the Letter of Acceptance which form is provided in Section VIII. This letter will state the sum that the Employer will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price").
- 30.2 Until a formal Contract is prepared and executed, the notification of award shall constitute a binding Contract.
- 30.3 Within fourteen (14) days following the notification of award along with the Letter of Acceptance, the Employer shall send to the successful Bidder a signed Agreement that incorporates all agreements between the Employer and the successful Bidder. The successful bidder shall sign and return the contract within fourteen (14) days.

**31. Performance security**

- 31.1 Within fourteen (14) days of the receipt of notification of award and Letter of Acceptance from the Employer, the successful Bidder shall furnish the Performance Security in an amount specified in the GCC, denominated in the currency of the Contract, and in accordance with the GCC.
- 31.2 The Performance Security shall be in the form of Bank Guarantee in accordance with the form included in Section IX "Security Forms" of these bidding documents, and issued by a reputable bank located in Cambodia and acceptable to the Employer.
- 31.3 Failure of the successful Bidder to comply with the requirements of ITB Clause 31.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Bid Security or execution of the Bid Declaration.

- 31.4 Upon receipt of the Performance Security, the Employer will promptly notify the other bidders of the results of the bidding.

### **32. Advance payment**

- 32.1 The Employer will provide an Advance Payment on the Contract Price as stipulated in the Conditions of Contract, subject to a maximum amount, as stated in the Special Conditions of Contract and subject to the provision of an acceptable advance payment security.

### **33. Adjudication**

- 33.1 The Employer proposes the person named in the **BDS** to be appointed as Adjudicator under the Contract, at an hourly fee specified in the **BDS**, plus reimbursable expenses. If the Bidder disagrees with this proposal, the Bidder should so state in the Bid. If, in the Letter of Acceptance, the Employer has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Conditions of Contract at the request of either party.

### **34. Debriefing**

- 34.1 After the award of contract has been announced, an unsuccessful bidder has the right to request a debriefing to ascertain why its bid was unsuccessful and the Employer the obligation to provide it. No commercial confidences will be breached and no information concerning other bids will be disclosed other than the information already read out at bid opening and the reasons for any and all bids rejection.
- 34.2 Within 14 days of a bidder's request for Debriefing, the Debriefing will either be delivered in writing by the Employer or a meeting held chaired by a representative of the Employer at the discretion of the Employer. If a meeting is held it will be minuted and minutes signed by both parties and a copy of the minutes issued to the bidder.

### **35. Complaints**

- 35.1 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.
- 35.2 Complaints shall be addressed to the Employer's Project Manager named in the **BDS**. 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.
- 35.3 In the event that the response from the Project Manager does not satisfy the bidder or there is no response the complaint received within 14 calendar days, it should be referred to the designated official of the Department of Public Procurement at the address indicated in the **BDS**. A copy of the complaint should also be sent to the designated official of the Department of Investment and Cooperation and to the representatives of the Funding Agency at the address indicated in the **BDS**. 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.

**36. Publication of Award**

36.1 The Employer shall

- (a) notify in writing all participating bidders of the results of the bid evaluation promptly 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 II, BID DATA SHEET**

<b>A. General</b>	
<b>ITB 1.1</b>	The Employer is <i>[insert name of Employer]</i>
<b>ITB 1.1</b>	The Works are: <i>[insert brief description of the Works]</i> .
<b>ITB 1.1</b>	The Contract Description and Identification are: <i>[insert name and identification number of the contract]</i> .
<b>ITB 1.2</b>	The Intended Completion Date is: <i>[insert contract implementation period in days]</i> .
<b>ITB 2.1</b>	The Funding Agency is: <i>[insert name of Funding Agency]</i>
<b>ITB 2.1</b>	The Project is <i>[insert name of the Project financed by the loan/credit/grant]</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 6.2</b>	The additional or modified requirements for joint ventures are as follows: <i>[list any additions or deletions to list; otherwise state “no additional or modified requirements”]</i>
<b>ITB 6.3 (a)</b>	The average annual volume of construction work for the successful Bidder over the last 3 years shall be <i>[insert amount in KH Riels which should be no less than 1.5 times the estimated annual cash flow of the contract]</i>
<b>ITB 6.3 (c)</b>	<i>The minimum amount of liquid assets and/or credit facilities net of other contractual commitments of the successful Bidder shall be [Insert amount in KH Riels which should be no less than 3 months of estimated cash flow of the contract ]</i>
<b>ITB 6.3 (d)</b>	<i>List here the essential equipment required. [list the minimum key equipment that the contractor is required to make available for the contract].</i>
<b>ITB 6.3 (f)</b>	<i>List here any additional qualification requirements or state “no</i>

	additional requirements”
<b>ITB 14.4</b>	The Contract <i>[specify “is” or “is not”]</i> subject to price adjustment <sup>7</sup> in accordance with GCC Sub-Clause 42.1.
<b>C. Preparation of Bids</b>	
<b>ITB 15.1</b>	The Bid shall be valid for <i>[insert number of days between 45 and 90]</i>
<b>ITB 16.1</b>	<i>[Select one of the following options and delete the other. For NCB/LCB contracts financed by WB or ADB, the Employer should select Option (a) Bid-Securing Declaration]</i>  (a) The Bid shall be accompanied with a Bid-Securing Declaration using the form included in Section IX, Security Forms  <b>OR</b>  (b) The Bid shall be accompanied with a Bid Security in the amount of: <i>[insert amount in US\$ should be the same as provided in the Invitation to Bid]</i> .
<b>ITB 18.2 (a)</b>	The Employer’s address for the purpose of Bid submission is <i>[insert the complete address which should be the same as provided in the Invitation for Bids]</i>
<b>ITB 18.2 (b)</b>	Name and Identification No. of the contract is as given in ITB 1.1 above in this sheet.
<b>ITB 19.1</b>	The deadline for submission of bids shall be <i>[insert time and date]</i> ;
<b>ITB 21.1</b>	The bid opening shall take place at: <i>[insert complete address which should be the same as provided in the Invitation for Bids]</i>  Date and Time of bid opening: <i>[insert date and time which should be the same as provided in the Invitation for Bids]</i>
<b>F. Post Qualification and Award</b>	
<b>ITB 33.1</b>	Name of Adjudicator proposed by Employer is <i>[insert name and address]</i> , the hourly fee is <i>[insert fee]</i> , the biographical data of the proposed Adjudicator is as below: <i>[provide relevant information, such as education, experience, age, nationality, and present position; attach additional pages as necessary. The proposed adjudicator should not be a serving government official]</i> .
<b>ITB 35.2</b>	The address for sending complaints to the Project Manager is: <i>[Insert title and address including telephone, fax and email]</i>

<sup>7</sup> Price adjustment is mandatory when the expected completion time exceeds 18 months.

<b>ITB 35.3</b>	<p>The address for forwarding complaints to Dept. of Public Procurement is <i>[insert title and address including telephone, fax No. and email of concerned DPP official]</i>.</p> <p>The address for copying complaints to the Dept. of Investment and Cooperation is: <i>[insert title and address including telephone, fax and email of concerned DIC official]</i>.</p> <p>The address for copying complaints to the Funding Agency is: <i>[Insert title and address including telephone, fax and email of the Task Team Leader in the Funding Agency]</i>.</p>
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***SECTION III, GENERAL CONDITIONS OF CONTRACT***

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

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

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

The use of standard General Conditions of Contract for building and civil works 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.
- 1.2 **Eligible** contractors, subcontractors, materials, equipment and services are those defined in the **SCC**
- 1.3 The **Contractor's Bid** is the completed bidding document submitted by the Contractor to the Employer.
- 1.4 **Bill of Quantities**<sup>8</sup> means the priced and completed Bill of Quantities forming part of the Bid.
- 1.5 The **Contract** is the Contract between the Employer and the Contractor as referenced in the **SCC**.
- 1.6 The **Contract Price** is the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.
- 1.7 **Drawings** include calculations and other information provided or approved by the Project Manager for the execution of the Contract.
- 1.8 **Letter of Acceptance** means the formal acceptance by the Employer of the Bid and denotes the formation of the Contract.
- 1.9 **Specification** means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.
- 1.10 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 35 hereunder.
- 1.11 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.
- 1.12 The **Employer** is the party defined in the **SCC** who employs the Contractor to carry out the Works.
- 1.13 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.
- 1.14 The **Funding Agency** is the agency named in the **SCC** that has lent or credited (or will do so) the GoC the funds covering this contract and is not a party to this contract.

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<sup>8</sup> Replace both references to "Bill of Quantities" to "Activity Schedule" in the case of lump sum contracts where the Activity Schedule shall replace the Bill of Quantities

- 1.15 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
- 1.16 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.
- 1.17 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.
- 1.18 The **Intended Completion Date** is the date on which it is intended that the Contractor shall complete the Works, as 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.
- 1.19 **Days** are calendar days; **months** are calendar months.
- 1.20 The **Defects Liability Period** is the period named in the **SCC** and calculated from the Completion Date.
- 1.21 The **Defects Liability Certificate** is the certificate issued by Project Manager upon correction of defects by the Contractor.
- 1.22 The **Completion Date** is the date of completion of the Works as certified by the Project Manager, in accordance with GCC Clause 33.
- 1.23 The **Contract Price** is the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.
- 1.24 **Retention Money** means the aggregate of all monies retained by the Employer pursuant to GCC Clause 46.
- 1.25 **Compensation Events** are those defined in GCC Clause 45 hereunder.
- 1.26 **Equipment** is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
- 1.27 A **Defect** is any part of the Works not completed in accordance with the Contract.
- 1.28 **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.

- 1.29 **Materials** are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- 1.30 **Plant** is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
- 1.31 The **Site** is the area defined as such in the **SCC**.
- 1.32 **Site Investigation Reports** are those that were included in the bidding documents, listed in the **SCC** 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.
- 1.33 **Temporary Works** are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
- 1.34 A **Variation** is an instruction given by the Project Manager which varies the Works.
- 1.35 The **Works** are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as defined in the **SCC**.
- 1.36 In interpreting these Conditions of Contract, 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. Interpretation

- 2.1 In interpreting these Conditions of Contract, 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 Conditions of Contract 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:
- (1) Agreement,
  - (2) Letter of Acceptance,
  - (3) Contractor's Bid,
  - (4) Special Conditions of Contract,
  - (5) General Conditions of Contract,
  - (6) Specifications,
  - (7) Drawings,

- (8) Bill of Quantities, and
- (9) 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 Khmer, and the law governing those in force in the Kingdom of Cambodia.

### **4. Communications**

- 4.1. Communications between parties that are referred to in the Conditions 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 1.15 and 1.16.

## **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 Commencement Date and shall proceed expeditiously and without delay 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 value. 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 (where required) to the design of the Temporary Works.

### **9. Safety, security and the 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 32.
- 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 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 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 permit the Employer or the Funding Agency as indicated in the Bidding Documents 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 of Cambodia or the Funding Agency.

#### **13. Personnel**

- 13.1. The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the SCC, to carry out the functions stated in the Schedule or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their

relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule.

- 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 and citing examples of a lack of professional competence or personal misconduct, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.
- 13.3. During continuance of the of the contract, the Contractor and his subcontractors shall abide at all times by all labor laws, including child labor related enactments, and other relevant rules.

#### **14. Subcontracting**

- 14.1. The Contractor may subcontract to the limits and parties indicated in its bid without the prior approval of the Project Manager. Subcontracting outside of that specifically described in the Contractor's Bid 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:
  - 33.1. loss of or damage to the Works, Plant, and Materials;
  - 33.2. loss of or damage to Equipment;
  - 33.3. loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
  - 33.4. 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 first portion of the retention monies described in GCC Clause 46.2.

#### **19. Performance security**

- 19.1. The Performance Security shall be provided to the Employer no later than 14 days after the Contractor’s receipt of the Letter of Acceptance and shall be issued in an amount and form described in the **SCCs**. The Performance Security shall be valid until a date 30 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 Contract Data, 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 35 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 queries on the Contract.

**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:
- 32.1. 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.
- 32.2. 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 Correction 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
- o a Defect which existed on the Completion Date,
  - o an event occurring before the Completion Date, which was not itself an Employer's risk, or
  - o the activities of the Contractor on the Site after the Completion Date

**D. CONTRACT MANAGEMENT**

**27. Program**

- 27.1. Within the time stated in the SCC, 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.



- 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 Contract Data 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. Acceleration**

- 28.1. When the Employer wants the Contractor to finish 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.
- 28.2. 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.

## **29. Suspension of Works**

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

## **30. Management meeting**

- 30.1. 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.
- 30.2. The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. 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.

## **31. Extension of time**

- 31.1. 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.

- 31.2. The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 14 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.

### **32. Variations**

- 32.1 All Variations shall be included in updated Programs<sup>9</sup> produced by the Contractor.
- 32.2 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 seven days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.
- 32.3 When the works covered by such a Variation are on the critical path and the ordering is beyond seven days, the time period beyond seven days shall be added to the time for completion and be regarded as a delay ordered by the Project Manager in accordance with GCC Clause 45.1(c).
- 32.4 If the work in the Variation corresponds with an item description in the Bill of Quantities and if the quantity of work is below the limit stated in GCC Clause 40.3 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 40.3, 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 shall be in the form of new rates for the relevant items of work<sup>10</sup>.
- 32.5 If the Variation is urgent and required to ensure the damage to the works, the site or its immediate environs or affects the safety of any personnel present on the site, the Project Manager may decide 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. Completion**

- 33.1 The Contractor shall request the Project Manager to issue a certificate of Completion of the Works.
- 33.2 Within 14 days of the Contractor requesting a Certificate of Completion, the Project Manager shall either notify the Contractor that he considers that the Contractor has completed the Works stating the date accordingly or notify the Contractor of the remaining works to be completed.

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<sup>9</sup> *In lump sum contracts, add “and Activity Schedules” after “Programs.”*

<sup>10</sup> *In lump sum contracts, delete this paragraph*

- 33.3 The Employer shall take over the Site and the Works within seven days of the Project Manager's issuing a Certificate of Completion.

**34. Early warning**

- 34.1 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.
- 34.2 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.
- 34.3 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.

**35. Resolution of disputes**

- 35.1 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.
- 35.2 If the Employer and the Contractor are unable to reach mutual agreement on the appointment of the Adjudicator, the Cambodian Chamber of Commerce as the Appointing Authority, may be asked by either party to provide the CV's of three available adjudicators, none of whom will be nationals of the Contractor'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
- 35.3 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 within 14 days of the notification of the Project Manager's decision.
- 35.4 The Adjudicator shall be paid by the hour at the rate proposed by the Cambodian Chamber of Commerce, together with reasonable expenses to cover accommodation, travel and communications as necessary. The cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.
- 35.5 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 under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators

appointed in accordance with said Rules. The ruling of the Arbitrator shall be binding on both parties.

## **E. QUALITY CONTROL**

### **36. Identifying defects**

36.1 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.

### **37. Tests**

37.1 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

### **38. Correction of defects**

38.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the SCC. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

38.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice. Any defect noticed by the Contractor shall be corrected by the Contractor before the expiry of the Defects Liability Period.

38.3 The Project Manager shall approve all corrected defects.

38.4 If the Contractor has not corrected a defect within the time specified in the Project Manager's notice, the Project Manager will correct it using a third party and the Contractor will pay this amount.

### **39. Cost of repairs**

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

## **F. COST CONTROL**

### **40. Bill of Quantities<sup>11</sup>**

40.1 The Bill of Quantities<sup>12</sup> shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.

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<sup>11</sup> Replace reference to "Bill of Quantities" in the heading and text replacing it with "Activity Schedule" in the case of lump sum contracts

- 40.2 The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item.
- 40.3 <sup>13</sup>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 more than 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.
- 40.4 The Project Manager shall not adjust rates for changes in quantities except with the prior approval of the Employer.

#### **41. Taxes and duties**

- 41.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax, duties and other levies payable by the Contractor, provided such changes are not already reflected in the Contract Price.

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

#### **42. Payment and currency**

- 42.1 If so 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.
- 42.2 Payment shall be made in United States Dollars and Cambodian Riels in the proportion specified in SCC. The portion of the payment in Cambodian Riels shall be made using the average exchange rate of selling and buying published by the Central Bank of Cambodia on the date of payment.

#### **43. Advance payment**

- 43.1 Should the Contractor request it, the Employer shall make advance payment to the Contractor of the amounts stated in the SCC within 28 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

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<sup>12</sup> In lump sum contracts, delete 40.1 and 40.2 and replace them as , as follows:

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

40.2 The Contractor shall show delivery of Materials to the Site separately on the Activity Schedule if payment for Materials on Site shall be made separately

<sup>13</sup> In lump sum contracts, delete 40.3 and 40.4 and insert the following:

40.3 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

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.

- 43.2 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.
- 43.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

#### **44. Payment certificates**

- 44.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- 44.2 Within 14 days of its receipt the Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.
- 44.3 The value of work executed shall be determined by the Project Manager.
- 44.4 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 28 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.
- 44.5 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment at the rate of three percent per annum. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.

#### **45. Compensation Events**

- 45.1 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 Contract Data.
  - 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. The Project Manager unreasonably does not approve a subcontract to be let.
- f. Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
- g. The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
- h. 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.
- i. The advance payment is delayed.
- j. The effects on the Contractor of any of the Employer's Risks.
- k. The Project Manager unreasonably delays issuing a Certificate of Completion.
- l. If the Contractor incurs cost as a result of any of the Employer's Risk events, the Contractor shall be entitled to the amount of such cost.
- m. Other Compensation Events described in the Contract or determined by the Project Manager shall apply.

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

45.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager will assume that the Contractor will react competently and promptly to the event.

45.4 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.

#### **46. Retention**

46.1 The Employer shall retain ten percent from each payment due to the Contractor until Completion of the whole of the Works.

46.2 On completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the

Project Manager to the Contractor before the end of this period have been corrected.

- 46.3 On completion of the whole Works, the Contractor may substitute retention money with an “on demand” Bank guarantee valid for one calendar month beyond the expiry of the Defects Liability Period.

#### **47. Final payment**

- 47.1 Within 14 days after either the expiry of the Defects Notification Period, or the remedying of notified defects or the completion of outstanding work whichever is the later the Contractor shall submit a final account to the Employer together with any documentation reasonably required to enable the Employer to ascertain the final contract value.
- 47.2 The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 28 days of receiving the Contractor’s account if it is correct and complete. If it is not, the Project Manager shall issue within 28 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.

## **H TERMINATION**

#### **48. Frustration**

- 48.1 If the Contract is frustrated by the outbreak of war or by any other event of force majeure and the event continues for a period of 84 days, on the first working day after the 84th 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.

#### **49. Default by the Contractor**

- 49.1 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 or is, despite a written complaint, in breach of the Contract, the Employer may give notice referring to this Sub-Clause and stating the default.
- 49.2 If the Contractor has not taken all practicable steps to remedy the default within 14 days after the Contractor's receipt of the Employer's notice, the Employer may, by a second notice given within a further 21 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.
- 49.3 All Materials on the Site, Plant, 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



**50. Default by the Employer**

- 50.1 If the Employer fails to pay in accordance with the Contract, or is, despite a written complaint, in breach of the Contract, the Contractor may give notice referring to this Sub-Clause and stating the default. If the default is not remedied within 7 days after the Employer's receipt of this notice, the Contractor may suspend the execution of all or parts of the Works.
- 50.2 If the default is not remedied within 28 days after the Project Manager's receipt of the Contractor's notice, the Contractor may, by a second notice given within a further 21 days, terminate the Contract. The Contractor shall then demobilize from the Site.

**51. Parties right to terminate**

- 51.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 51.2 Fundamental breaches of Contract shall include, but shall not be limited to the following:
- a. the Contractor stops work for 28 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 28 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 days of the date of the Project Manager's certificate
  - e. the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
  - f. the Contractor does not maintain a Security, which is required; and
  - g. the Contractor has delayed the completion of the Works by 100 days being the maximum amount of liquidated damages.
  - h. if the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.
- 51.3. For the purpose of GCC Clause 51.2(h) :“corrupt practice” means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution, “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Borrower of the benefits of free and open competition.
- 51.4 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 51.2

above, the Project Manager shall decide whether the breach is fundamental or not.

- 51.5 Notwithstanding the above, the Employer may terminate the Contract for convenience.
- 51.6 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.
- 51.7 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.

## **52. Payment on termination**

- 52.1 .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.
- 52.2 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.
- 52.3 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.
  - d. The net balance due shall be paid or repaid within 28 days of the notice of termination.

***SECTION IV, SPECIAL CONDITIONS OF CONTRACT***

A. General	
<b>GCC 1.2</b>	<p><b><i>Insert the following Para. 1 if the procurement is funded by the World Bank or by the ADB</i></b></p> <p>1. “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, in accordance with the countries listed below 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><b><i>Depending on whether the procurement is funded by WB or by ADB, select and insert the applicable Para. 2 :</i></b></p> <p>[2. For WB, Eligible Countries are:</p> <p>The World Bank permits firms and individuals from all countries to offer goods, works and services for World Bank financed projects. As an exception, firms of a Country or goods manufactured in a Country may be excluded if:</p> <p>(a) as a matter of law or official regulation, the Borrower Country prohibits commercial relations with that Country, provided that the World Bank is satisfied that such exclusion does not preclude effective competition for the supply of the Goods or Works required, or</p> <p>(b) by an Act of Compliance with a Decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower’s Country prohibits any import of goods from that Country or any payments to persons or entities in that Country.]</p>

	<p>[2. For ADB, Eligible Countries are:</p> <p>[Insert here the most recent list of ADB member countries obtainable from the ADB Business Opportunities or the ADB’s web page at www.adb.org.]</p> <p><b>Add the following para. 3 only when ADB or WB Special resources are being used that place specific limitations on eligibility of certain countries:</b></p> <p>3. In addition, the following countries are ineligible for this bidding:</p> <p><b>Insert the list of ADB or WB developed member countries which have not contributed to such special resources and therefore are excluded from this bidding.</b></p>
<b>GCC 1.5</b>	<i>Insert the Contract name and reference</i>
<b>GCC 1.11</b>	<i>Insert name and full registered address of the Contractor</i>
<b>GCC 1.12</b>	<i>Insert name and full registered address of the Employer</i>
<b>GCC 1.14</b>	<i>Insert name of the Funding Agency (for example, “The Asian Development Bank” or “The World Bank” as Appropriate)</i>
<b>GCC 1.15</b>	<i>Insert full name and address of the Project Manager</i>
<b>GCC 1.16</b>	<i>Insert full name and address of Contractor’s Representative – to be completed at time of contract award</i>
<b>GCC 1.17</b>	The Start Date shall be <i>[insert date]</i> .
<b>GCC 1.18</b>	The Intended Completion Date for the whole of the Works shall be <i>[insert date or the 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 1.20</b> <b>GCC 38.1</b>	The Defects Liability Period is <i>[insert period of time from the Completion Date]</i>
<b>GCC 1.31</b>	The Site is located at <i>[insert address of Site ]</i> and is defined in drawings No. <i>[insert numbers]</i>
<b>GCC 1.32</b>	<i>List here all site investigation reports that are provided to the bidders or state “None”</i>
<b>GCC 1.35</b>	The Works consist of <i>[insert brief summary]</i> .
<b>GCC 2.2</b>	Sectional Completions are: <i>[insert nature and dates, if appropriate]</i>
<b>GCC 2.3 (9)</b>	The following documents also form part of the Contract: <i>[list documents,</i>

	<i>if any, or state “There are no additional documents”.</i>
<b>B. The contractors rights, obligations and responsibilities</b>	
<b>GCC 13.1</b>	Key Personnel: <i>[insert Schedule of Key Personnel]</i>
<b>GCC 15.1</b>	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: <ul style="list-style-type: none"> <li>(a) for the Works, Plant and Materials: <i>[insert amounts]</i>.</li> <li>(b) for loss or damage to Equipment: <i>[insert amounts]</i>.</li> <li>(c) for loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract <i>[insert amounts]</i>.</li> <li>(d) for personal injury or death: <ul style="list-style-type: none"> <li>(i) of the Contractor’s employees: <i>[insert amount]</i>.</li> <li>(ii) of other people: <i>[insert amount]</i></li> </ul> </li> </ul>
<b>GCC 19.1</b>	The Performance Security amount is <i>[insert amount, being ten percent of the Contract Price]</i> in the form of an unconditional (on demand) Bank Guarantee in the form and wording shown Section IX, Security Forms. The currency shall be that of the Contract.
<b>D. Contract management</b>	
<b>GCC 27.1</b>	The Contractor shall submit for approval a Program for the Works within <i>[number]</i> days from the date of the Letter of Acceptance
<b>GCC 27.3</b>	The period between Program updates is <i>[insert number]</i> days. The amount to be withheld for late submission of an updated Program is <i>[insert amount]</i> .
<b>G. Payments to the Contractor</b>	
<b>GCC 42.1</b>	If the contract is equal to or less than 18 months in duration, <i>state “no adjustments will be made”</i>  <i>If the Contract is of over 18 months duration state:</i>  The payment shall be adjusted by increasing the payment amount by one third of one percent for each entire month starting from the nineteenth month after the date of contract signature.
<b>GCC 42.2</b>	Proportion of the currencies for Payment: Payment shall be made in US

	<p>Dollars and Cambodian Riel according to the following proportions:</p> <p>In US Dollars:.....% <i>[for externally financed contracts, insert the applicable percentage of reimbursement by the funding agency as specified in the loan/credit/grant agreement]</i></p> <p>In Cambodian Riels:.....% <i>[For externally financed contracts, insert the balance percentage representing the government counterpart contribution].</i></p>
<b>GCC43.1</b>	<p>The Advance Payments shall be: <i>[insert percentage of the contract value]</i></p>

## ***SECTION V, SPECIFICATIONS & PERFORMANCE REQUIREMENTS***

A set of precise and clear Specifications is a prerequisite for bidders to respond realistically and competitively to the requirements of the 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 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>14</sup>***

**Objectives**

The objectives of the Bill of Quantities are:

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

In order to attain these objectives, Works should be itemized in the Bill of Quantities in sufficient detail to distinguish between the different classes of Works, or between Works of the same nature carried out in different locations or in other circumstances which may give rise to different considerations of cost. Consistent with these requirements, the layout and contents of the Bill of Quantities should be as simple and brief as possible, 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.

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.

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<sup>14</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.”*

***SECTION VIII, FORMS OF BID, QUALIFICATION INFORMATION, LETTER  
OF ACCEPTANCE, AND AGREEMENT***

## 1. CONTRACTOR'S BID

The **Bidder** shall fill in and submit this Bid form with the Bid.

*[date]*

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

To: *[name and address of Employer]*

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

The advance payment required is *[insert US Dollar amount in numbers]*, *[insert US Dollar amount in words]*

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

*[or]*

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

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

We hereby confirm that this Bid complies with the Bid validity and, if required, Bid Security or Bid-Securing Declaration as required by the Bidding Documents and specified in the BDS.

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

We have no conflict of interest in accordance with ITB Clauses 4.2 and 4.3;

Our firm, its affiliates or subsidiaries including any subcontractors or suppliers for any part of the contract, has not been declared ineligible by the World Bank or Asian Development Bank or by the Government of Cambodia, in accordance with ITB Clause 3.1 (c).

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

Name and address of agent	Amount and Currency	Purpose of Commission or gratuity
_____	_____	_____
	_____	

National Standard Bidding Documents, Procurement of Works

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\_\_\_\_\_  
\_\_\_\_\_  
(if none, state "none")

Authorized Signature and Date: \_\_\_\_\_

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

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

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

The **Bidder** shall fill in and submit this form with the Bid.

## **2. STATEMENT ON ETHICAL CONDUCT AND FRAUD AND CORRUPTION**

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

1. Neither we, nor any of our employees, associates, agents, shareholders, consultants, partners or their relatives or associates have any relationship that could be regarded as a conflict of interest as set out in the bidding document.
2. Should we become aware of the potential for such a conflict will report it immediately to the procuring organization.
3. That 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 or proposal.
4. We understand our obligation to allow the Government or the funding agency be the Asian Development Bank or World Bank to inspect all records relating to the preparation of our bid and any contract that may result from such irrespective of if we are awarded a contract or not.
5. That 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, Purchaser, or Client.

Signed

Name



National Standard Bidding Documents, Procurement of Works

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



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

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

1.6 Proposed subcontracts and firms involved. Refer to ITB Sub-Clause 6.1(l) and GCC Clause 14.1.

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

1.7 Access to financial resources to meet the qualification requirements, cash in bank account hand, lines of credit, etc., 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 and confirming that such funds have been set aside exclusively for the proposed contract, 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 the amount that is at the disposal of the bidder for the contract.

Amount 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 Financial reports for the last 5 years: balance sheets, profit and loss statements, auditors’ reports, etc. *[List below and*

*attach copies.]*

- 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 and schedule). Descriptions, drawings, and charts, as necessary, to comply with the requirements of the Bidding Documents.

- 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(ies) 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.

#### 4. LETTER OF ACCEPTANCE

*[letterhead paper of the Employer]*

*[The Letter of Acceptance shall be the basis for formation of the Contract as described in ITB Clauses 30 and 31. This Standard Form of Letter of Acceptance shall be filled in and sent to the successful Bidder only after evaluation of bids has been completed, subject to any review by the Funding Agency required under the Loan Agreement.]*

*[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 the SCC]* for the Contract Price of United States Dollars *[insert amount in numbers and words]* as corrected and modified<sup>15</sup> in accordance with the Instructions to Bidders is hereby accepted by our Agency.

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

- (a) We accept that *[insert name proposed by bidder]* be appointed as the Adjudicator.
- (b) We do not accept that *[insert name proposed by bidder]* be appointed as Adjudicator, and by sending copy of this letter of Acceptance to *[insert name of the Appointing Authority]*, we are hereby requesting *[insert name]*, the Appointing Authority, to appoint the Adjudicator in accordance with ITB Clause 33.1.

You are hereby instructed to (a) proceed with the execution of the said Works in accordance with the Contract Documents, (b) sign and return the attached Contract Documents, and (c) forward the performance security pursuant to ITB Clause 31.1, i.e., within 14 days after receipt of this Letter of Acceptance, and pursuant to GCC Clause 19.1.

Authorized Signature: \_\_\_\_\_  
Name and Title of Signatory: \_\_\_\_\_  
Name of Agency: \_\_\_\_\_

Attachment: Agreement

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<sup>15</sup> Delete "corrected and" or "and modified" if not applicable. See Notes on Standard Form of Agreement, next page

## 5. AGREEMENT

*[The Agreement shall incorporate any corrections or modifications to the Bid resulting from corrections of errors (ITB Clause 25), acceptable deviations (ITB Clause 26 ), or any other mutually-agreeable changes allowed for in the Conditions of Contract, such as changes in key personnel, subcontractors, scheduling, and the like.]*

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

Whereas the Employer is desirous that the Contractor execute *[insert name and identification number of Contract]* (hereinafter called “the Works”) and the Employer has accepted the Bid by the Contractor for the execution and completion of such Works and the remedying of any defects therein.

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 hereinafter referred to, and they shall be deemed to form and be read and construed as part of this Agreement.
2. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, 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.
3. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects wherein 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 the day and year first before written.

The Common Seal of *[Witness entity]* \_\_\_\_\_  
was hereunto affixed in the presence of: \_\_\_\_\_

Signed, Sealed, and Delivered by the said \_\_\_\_\_  
in the presence of: \_\_\_\_\_

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

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

***SECTION IX, SECURITY FORMS***

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

## 1. FORM OF BID SECURITY (BANK GUARANTEE)

*[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 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]* (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 IFB number]* ("the IFB").

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

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

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Form of Bid; or
- (b) does not accept the correction of errors in accordance with the Instructions to Bidders (hereinafter "the ITB") of the IFB; 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 Form, if required, 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, upon the earlier of (i) our receipt of a copy of your notification to the Bidder that the Bidder was unsuccessful, or (ii) thirty days after the expiration of the Bidder's Bid.



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

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

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*[Name, title, and signature(s) of the bank's authorized representative(s) ]*

## 2. BID-SECURING DECLARATION

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

Date: *[insert date]*  
Name of contract: *[insert name]*  
Contract Identification N<sup>o</sup>: *[insert number]*  
Invitation for Bid No.: *[insert number]*

To: \_\_\_\_\_ *[insert name and address of Employer]*

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 time of *three (3) years* starting from the expiry of the bid validity, or pay to the Employer two percent (2%) of the total bid amount as penalty, if we are in breach of our obligation(s) under the bid conditions, because we:

- (a) have withdrawn our Bid during the period of bid validity specified by us in the Bid Form; 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 Form, 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: (a) if we are the successful bidder, upon receipt of copies of the Contract signed by us and of the Performance Security provided by us; or (b) if we are not the successful bidder, upon the earlier of (i) our receipt of a copy of your notification to us that we were unsuccessful; or (ii) thirty days after the expiration 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]* In the Capacity of *[insert title]*

Name *[insert printed or typed name]*

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

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

### 3. PERFORMANCE BANK GUARANTEE

(Unconditional)

*[The **bank** issuing the Guarantee shall fill in this 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 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. *[insert reference number of the Contract]* dated with you, for the execution of *[insert name of Contract and brief description of Works]* (hereinafter called "the Contract").

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

At the request of the Contractor, we *[insert name of Bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures in US Dollars] ([insert amount in words]<sup>16</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 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 number day of [insert month], [insert year]<sup>17</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.

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<sup>16</sup> *The Guarantor (bank) shall insert an amount representing the percentage of the Contract Price specified in the Contract denominated in US Dollars.*

<sup>17</sup> *Insert the date thirty 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][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."*

*[Name, title, and signature(s) of authorized representative(s) of the Bank]*

#### 4. BANK GUARANTEE FOR ADVANCE PAYMENT

The **bank** issuing 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

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

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

**Date:** [insert date]

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

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

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

At the request of the Contractor, we [insert name of Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [insert amount in figures] ([insert amount in words]<sup>18</sup>) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the Advance Payment for purposes other than the costs of mobilization in respect of the Works.

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

The maximum amount of this guarantee shall be progressively reduced by the amount of the Advance Payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall 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 month], [insert year]<sup>19</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.

---

<sup>18</sup> The Guarantor shall insert an amount representing the amount of the Advance Payment and denominated in the currency(ies) of the Advance Payment as specified in the Contract.

<sup>19</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 is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

\_\_\_\_\_  
*[insert name, title, and signature(s) of authorized representative(s) of bank]*

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*this guarantee for a period not to exceed [six months] [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 III d**

# **National Shopping Documents**

# **The Procurement of Works**



## **Preface**

The use of this document is mandatory for all works with an estimated value of less than the threshold stated in Annex V of the Procurement Manual when the procurement is funded by the Government, the Asian Development Bank and the World Bank.

The World Bank (WB) and Asian Development Banks' (ADB) guidelines for procurement describe a different shopping process to those set out in this document. The processes set out in this document are the Government of Cambodia's and these processes have been agreed with both the ADB and WB. Therefore when this document is used no conflict exists between the Government's and Banks' procurement processes, accordingly the processes set out in this document must be followed.

All works procurement with an estimated value above the threshold stated in Annex V of the Procurement Manual 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 bidding documents and submit a quotation, including foreign firms, free of charge.

For Works procurement under Shopping procedures with an estimated value below the threshold stated in Annex V of the Procurement Manual there is no need to advertise and the document may be sent directly and free of charge to as many as reasonably possible of reputable and qualified firms known to be in the business of construction similar to which the bids are being invited, so as to ensure that at least three bids are received in response.

Bidders will be required to submit sealed bids which will be opened in public but they will not be required to provide a bid security, only a bid and performance securing declaration as described in the attached documents. Representatives of Bidders or of Project beneficiaries from the local community who choose to attend the public opening of quotations shall be allowed to do so

The time period between the appearance of the advertisement and the opening of sealed bids will be at least 14 days.

***This preface is to be deleted from the document issued to bidders.***

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***INVITATION TO BID***

***THE INSERT NAME OF THE EMPLOYER***

**Wishes to engage a contractor to implement the following Project:**

**Insert brief description of the works**

1. The Government of Cambodia (GoC) has received a [insert "Loan/Credit" or "Grant"] from the [insert "the International Development Association" or "The Asian Development Bank] 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].

If the government is using its own funds delete the above paragraph renumbering the subsequent ones

2. Construction will begin on [insert expected start date] and will be completed by end of [insert expected completion date]
3. Interested qualified eligible contractors are invited to request a copy of the bidding documents free of charge.
4. To be considered eligible a contractor must:
  - a. Be 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 Government, The Asian Development Bank or the World Bank
5. To be considered qualified a contractor must
  - a. Have completed at least one contract of a similar nature of at least 75% of the value of the bid for each of the last 3 years.
  - b. Have completed, in the last 2 years, contracts with a total cumulative value of three times the bid amount..
  - c. The proposed works manager must at least 3 years of experience in works of an equivalent nature and volume and no less than one year as a manager.  
Documentary evidence to demonstrate the bidder's qualifications must be submitted with the bid..
6. 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 public immediately thereafter at the same address in the presence of the Bidders' representatives and the project's beneficiaries from the concerned local community who choose to attend shall be allowed to be present in person.
7. The Employer shall award the Contract to the Bidder whose offer has been determined 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.
8. All bids must be accompanied by a bid securing declaration as described in the bidding documents, any bid not accompanied by one will be rejected as non-responsive.
9. The address where the document may be inspected and obtained is: [Insert name of Executing Agency, Office designation (room number), name of concerned officer in Executing Agency,, Street address, City, and telephone and fax numbers]
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 [insert designation, address, telephone and fax number of concerned MEF official].
11. The address for bid submission and bid opening is: [Insert name of Executing Agency, Office designation (room number), name of officer, street address, City)
12. The GoC and the Funding Agency will respectively declare a firm ineligible either indefinitely or for a stated period of time, to be awarded a contract funded by the GoC and the Funding Agency, if it at any time determines that the firm has engaged in corrupt or fraudulent, coercive or collusive practices in competing for or in executing a contract.

***SECTION 1- INSTRUCTIONS TO BIDDERS***

1. **Description of Works:** The .....[*name of the Employer*], as the Employer, invites bids for the construction of.....[*name of contract and brief description of the Works*] as described in the Conditions of Contract (CC). The successful contractor will be expected to construct the works within the time allowed under the Conditions of Contract.
2. **Eligibility of Bidders:** 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 debarment issued by the Government, The Asian Development Bank or the World Bank
3. **Qualification of the Bidder:** Only bidders who meet the following criteria will be qualified for an award of contract:
  - a. Have completed at least one contract of a similar nature of at least 75% of the value of the bid.
  - b. Have completed, in the last 2 years, contracts with a total cumulative value of at least three times the bid amount.
  - c. The proposed works manager must at least 3 years of experience in works of an equivalent nature and volume and no less than one year as a manager.  
Documentary evidence to demonstrate the bidder's qualifications must be submitted with the bid.
4. **Fraud and Corruption.** The Funding Agency requires that Borrowers or Recipients (including beneficiaries of the funds), as well as bidders, suppliers, contractors and consultants observe the highest standard of ethics during the procurement and execution of contracts. In pursuance of this policy, both the Government of Cambodia (GoC) and the Funding Agency:
  - (a) defines, for the purposes of this provision, the terms set forth below as follows:
    - (i) "*corrupt practice*" means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution; and
    - (ii) "*fraudulent practice*" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the GoC of the benefits of free and open competition;

- (iii) *“collusive practices” means a scheme or arrangement between two or more bidders, designed to establish bid prices at artificial, non-competitive levels or to influence the action of any party in the procurement process or the execution of a contract;*
- (iv) *“coercive practices” means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract;*
- (b) will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent, coercive or collusive practices in competing for the contract in question;
- (c) will respectively declare a firm or individual ineligible, either indefinitely or for a stated period of time, to be awarded a contract financed by the GoC and the Funding Agency if it at any time determines that the firm has engaged in corrupt or fraudulent, coercive or collusive practices in competing for, or in executing, any contract.
- (d) will have the right to inspect and audit the records of any bidder or supplier relating to either the bidding process itself or the resulting award and execution of a contract. The inspection and audit may, at the discretion of the GoC or the Funding Agency, be undertaken by independent auditors appointed by them.
- (e) The Funding Agency will cancel the portion of the funds allocated to a contract if it determines at any time that representatives of the Borrower or Recipient or of a beneficiary of the funds engaged in corrupt, fraudulent, collusive or coercive practices during the procurement or the execution of that contract, without the Borrower or Recipient having taken timely and appropriate action satisfactory to the Funding Agency to remedy the situation.
- (f) All bidders are required to complete the Statement on Ethical Conduct and Fraud and Corruption provided in and submit it with their bid.

5. **Contents of Bid Documents:** The set of Bid documents comprises the documents listed below:

Invitation to Bid  
SECTION 1: INSTRUCTIONS TO BIDDERS  
SECTION 2: CONDITIONS OF CONTRACT ((CC)  
SECTION 3: BILL OF QUANTITIES (For Reference Only)  
SECTION 4: TECHNICAL SPECIFICATIONS AND DRAWINGS  
SECTION 5: FORM OF BID  
SECTION 6: ACTIVITY SCHEDULE  
SECTION 7: FORM OF CONTRACT AGREEMENT  
SECTION 8: BID AND PERFORMANCE SECURING  
DECLARATION

6. **Prices and Currency of Bids:**

- a. Rates and prices shall be quoted in US Dollars for all Activities of Works described in the Activity Schedule, and Activities for which no rate has been quoted will not be covered by the other rates in the Activity Schedule.
  - 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 bid 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 Bid:** The Bid submitted by the Contractor shall comprise the following documents:
- Form of Bid
  - Priced Activity Schedule
  - Priced Bill of Quantities (for reference purposes only)
  - Bid and Performance Securing Declaration
8. **Bid and Evaluation Criteria:** The bid 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 bid has been determined 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
9. **Validity of Bid.** The bid shall remain valid for the period of sixty (60) calendar days counted from the deadline for submission of bids specified in Paragraph 12 of these Instructions. The Employer may request 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 cable. A Bidder may refuse the request for extension of bid validity in which case he may withdraw his Bid without any penalty. A Bidder agreeing to the request will not be required or permitted to otherwise modify its Bid.
10. **Language of the Bid:** All documents relating to the Bid and contract shall be in the Khmer language.
11. **Preparation and Sealing of Bid:** The Bidder shall prepare one original of the documents comprising the Bid as described in Paragraph 7 of these Instructions, with the Form of Bid, 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 Bid shall be signed by a person or persons duly authorized to sign on behalf of the Bidder. All the pages of the Bid where entries or amendments or corrections have been made shall be initialed by the person or persons signing the Bid. The Bidder shall seal the original and the copy of the Bid 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 Invitation to Bid shall provide a warning not to open before the specified time and date for Bid opening as defined paragraph 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 Bid.

12. **Place and Deadline for Submission of Bids:** The Bids shall be delivered to the Employer NO LATER than .....(*time, date*) at the address.....(*full address, including building and room No., street, city*) . Any Bid received by the Employer after the deadline prescribed in this clause will be returned unopened to the Bidder.
13. **Bid and Performance Securing Declaration:** The Bid and Performance Securing Declaration should be in accordance with the form included in Section 7: Bid and Performance securing declaration shall be valid up to the end of the guarantee period specified in para. 18 of CC. Any Bid not accompanied by a Bid and Performance Securing Declaration when required will be rejected by the Employer as non-responsive. The execution of a bid securing declaration will result in the Bidder being held ineligible for all contracts let by the GoC irrespective of the funding source for a period of two years from the expiry of the Bid Validity unless, at a Bidder's option, the Bidder pays an administrative penalty of two percent of the total amount bid to the Employer. The Bid Securing and Performance Declaration will be executed:
  - (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Bid Form or
  - (b) if the Bidder does not accept the correction of its Bid Price pursuant to paragraph 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 Bids:** No Bids shall be modified after the deadline for submission of Bids specified above in paragraph 12 of these Instructions. Withdrawal of a Bid between the deadline for submission of Bids and the expiration of the validity of the Bids as specified in paragraph 9 of these Instructions above will result in the execution of the Bid Securing and Performance Declaration.
15. **Opening of Bids:** The Employer will open the Bids 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 bids and at the same address specified in paragraph 12 of these Instructions. The bidders' names, the total amount of each Bid, unconditional discounts if any, and the present/absence of bid securing and performance declarations will be announced by the Employer at the Bid opening. The written record of public opening shall be signed in original by all those present. Immediately upon conclusion of the bid opening proceedings, copies of the minutes shall be provided to the bidders and community representatives present at the bid 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 bid opening.



16. **Process to be Confidential:** Any information relating to the examination, clarification, evaluation and comparison of bids for the contract award shall not be disclosed until the award to the successful Bidder has been announced.
17. **Evaluation and Comparison of Bids:** The Employer will award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the Bid documents and who has offered the lowest evaluated Bid and has been determined to be qualified to perform the Contract satisfactorily. In evaluating the Bids, the Employer will determine for each Bid the evaluated Bid by adjusting the Bid 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 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 Contractor refuses to accept the correction, his Bid will be rejected and Bid Securing and Performance Declaration executed.
18. **Employer's Right to Accept Any Bids and to Reject any or all Bids:** The Employer reserves the right to accept or reject any bid, and to cancel the process of competition and reject all bids, at any time prior to the award of the Contract, without thereby incurring any liability to the affected Contractor(s).
19. **Notification of Award and Signing of Contract:** The Contractor whose Bid has been accepted will be notified of the award by the Employer prior to the expiration of the validity period of the Bid, by registered letter. The written notification of award will constitute the formation of the 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 bid was unsuccessful and the Employer the obligation to provide it.

21. **Complaints**

- 21.1 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 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 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 Department of Investment and Cooperation, Ministry of Economy and Finance.....(*insert name, address, tel. and fax Nos. of the designated official of the Department of Investment and Cooperation*) and to the representative of the Funding Agency.....(*insert name, address, tel. and fax Nos. of the designated Task Team Leader for the Project*). 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

- (i) notify in writing all participating bidders of the results of the bid evaluation after the contract has been awarded, and
- (ii) 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 (CC)***

**Article 1 General Provisions**

1. The Employer has appointed .....(*insert name of person*) 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 Form of Bid 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 Specificationstogether form the Contract
3. The Employer has approved the Activity Schedule in the bid submitted by the Contractor and the person representing the Contractor, who will act as Works Manager.
4. The Contract shall be amended only by written agreement between the Employer and the Contractor.
5. 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 for adjudication in accordance with the under the Rules of Conciliation and Arbitration of the International Chamber of Commerce.

**Article 2 Employer's and Contractor's obligations**

6. The Employer and the Contractor now agree as follows:
  - 29.1. The Employer pledges to pay the Contractor the Lump-Sum Contract Price,.....(*Insert amount in works and figures*). This amount is for completion of the whole Works shown in the Drawings and Technical Specifications, including materials, transport to the site, labor and profit.

29.2. The Contractor pledges to construct the following works:  
.....  
(insert description of works).

### **Article 3      Conditions for Execution of the Works**

7. 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.
8. The Contractor shall start the Contract and implementation of the Works on .....(insert start date, or state “the date falling two weeks after contract signing”) and shall complete the whole of the works not later than ..... (insert 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 Work Plan, agreed with the Project Manager, for approval by the Employer.
9. If, 15 days after the 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 30 days beyond the dates shown in the Work Plan, the Employer has the right to terminate the contract. In either circumstances should the delays be attributable to a breach on the part of the Contractor the Employer will execute the Bid and Performance Securing Declaration and the Contractor will be debarred from providing any goods works or services on any publicly funded contract in Cambodia for a period of not less than three years.
10. The Employer will reduce the payment to the Contractor by 0.1% of the total price of the project for every day after the Completion Date shown in paragraph 8 of this CC or any amendment thereof, approved by the Employer until the work is complete. The reduction is up to a maximum of 10%, then after the Employer may terminate the contract.
11. 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.
12. 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.
13. 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.

14. 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.
15. The Contractor's Work Plan 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.
16. 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 place of disposing of excavated earth, dirty water or other waste materials must be approved by the Employer before disposal starts.
17. 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.
18. The contractor guarantees the work against defects or omissions for a period of six months, starting from the actual date of completion of the Works shown on the Progress Report issued by the Project Manager. The Contractor agrees to make good, at his own expense, any defect or omissions that appears during that time due to quality of materials or workmanship.
19. If war or natural disaster 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**

20. The Contractor shall provide updated Activity Schedules within 14 days of being instructed to by the Project Manager. The activities on the Activity Schedule shall be coordinated with the activities on the Program.
21. 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
22. 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

23. 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 accordance 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, and that the conditions for release of payment have been met. 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.
24. The Employer shall retain ten percent from each payment due to the Contractor until Completion of the whole of the 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 Works, the Contractor may substitute retention money with an "on demand" Bank guarantee valid for one calendar month beyond the expiry of the Guarantee Period
25. 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.
26. 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 bid].*

<b>Stages of Payment</b>	<b>% of Total Lump-Sum Contract Price</b>	<b>Amount of Lump—Sum Payments (USD)</b>	<b>Payment Conditions</b> <i>(Physical Stages of Works)</i>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>
Payment No 1			
Payment No 2			
Payment on Completion of the Whole Works			
1 <sup>st</sup> -half Retention Payment			Upon satisfactory completion of the

			whole Works, as certified by the Project Manager
2 <sup>nd</sup> -half Retention Payment			Upon satisfactory completion of the Guarantee Period, as certified by the Project Manager.
TOTAL.			

27. Payment shall be made in US Dollars and Cambodian Riels in the proportion specified below. The portion of the payment in Cambodian Riels shall be made using the exchange rate for selling published by the Central Bank of Cambodia on the date of payment.

In US Dollars.....% *[for externally financed contracts, insert the applicable percentage of reimbursement by the funding agency as specified in the loan/credit/grant agreement]*

In Cambodian Riels:.....% *[For externally financed contracts, insert the balance percentage representing the government counterpart contribution]*

28. 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.

29. 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 2% 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 days during which the payment is delayed will automatically be added on to the time for completion of the project.

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      Special Conditions**

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

◆ <i>Name of Employer</i>		◆ <i>Name of Contractor</i>	
Signature of Authorized Representative		Signature of Authorized Representative	
_____		_____	
Name	: -----	Name	: -----
Position	: -----	Position	: -----
Date	: -----	Date	: -----



***SECTION 3 - BILL OF QUANTITIES (BOQ):***

*[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 Bid. Bidders should read the Preamble carefully.

***PREAMBLE TO THE BOQ:-***

- 1. THIS BOQ IS FOR REFERENCE PURPOSES ONLY, AND SHALL BE USED EXCLUSIVELY FOR DETERMINING THE PRICE OF ADDITIONAL 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 BID PRICE OR THE CONTRACT PRICE, NOR FOR PAYMENTS UNDER THE CONTRACT.***
  
- 3. THE BID 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.***

<b>Bill of Quantities for the Works</b>					
Province:					
Name of Project					
Bidder's name		ID Card number			
No.	Description of item (1)	Qty (2)	Unit (3)	Price/Unit (4)	Price for Item (5)
1					
2					
3					
4					
5					
7					
8					
9					
10					
etc.					

Name, Title and Signature of Bidder's Authorized representative:.....

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 bids. 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.

There are considerable advantages in standardizing General Specifications for repetitive Works where similar conditions prevail, such as those prepared in the SEILA Technical Manual. 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

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 FORM OF BID***

\_\_\_\_\_ (Date)

To: \_\_\_\_\_ (Employer's Name)

\_\_\_\_\_ (Employer's Address)

\_\_\_\_\_

We offer to execute the \_\_\_\_\_ (name and number of Contract) in accordance with the Draft Civil Works Contract accompanying this Bid for the Contract Price of \_\_\_\_\_ (amount in words and numbers) ( \_\_\_\_\_ ) (name of currency) \_\_\_\_\_. We agree to complete the works according to the Drawings and the Specification and within the time allowed.

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

We hereby confirm that this Bid will remain valid for 60 days after then Deadline for Submission of Bids.

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

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

Name of Contractor: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Phone Number \_\_\_\_\_  
Fax Number, if any \_\_\_\_\_

**SECTION 6 ACTIVITY SCHEDULE**

***THIS FORM MUST BE FILLED-IN BY THE BIDDER AND SUBMITTED WITH THE BID. THE ACTIVITY SCHEDULE SUBMITTED BY THE BIDDER SHALL CONSTITUTE THE BASIS FOR THE BID PRICE AND THE SUBSEQUENT CONTRACT PRICE. .***

<b>Province:</b>		<b>District:</b>		<b>Commune:</b>		<b>Name of Project:</b>	
<b>Name of Contractor:</b>			<b>Telephone:</b>		<b>Name of Works Manager:</b>		<b>Telephone:</b>
<b>Contract Start Date:</b>				<b>Contract Completion Date:</b>			
Description of Works Activities	Lump-sum Amount (USD)	Start Date	Finish Date	Key Stage for Technical Monitoring	Name of Subcontractor, if any.	Contract Implementation	
						Problems	Solutions
<b>Total for Payment No. 1 – (insert the condition/stage for Payment No. 1 as stipulated in Price Schedule of CC)</b>							
<b>Total for Payment No. 2– (insert the condition/stage for payment No. 2 as stipulated in Price Schedule of CC)</b>							
<b>Total for Payment on Completion of Whole Works</b>							

National Standard Bidding Documents, Procurement of Works

<b>1<sup>st</sup> - half Retention Payment</b>							
<b>2<sup>nd</sup> -half Retention Payment</b>							
<b>TOTAL LUMP-SUM BID PRICE (insert this amount in the Bid Form)</b>							
<b>Name, Title, and Signature of Bidder/Contractor's authorized Representative:.....</b>							
<b>Date: .....</b>							



***SECTION 7 FORM OF CONTRACT AGREEMENT***

AGREEMENT

This Agreement, made the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between

\_\_\_\_\_  
(name and address of Employer hereinafter called “the Employer”) and

\_\_\_\_\_  
(name and address of Contractor hereinafter called “the Contractor”) of 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 Bid submitted by the Contractor for the execution and completion of such Works and the remedying of any defects therein.

**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. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, 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.
3. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects wherein 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 the days and year first before written

The Common Seal of

---

---

was hereunto affixed in the presence of:

Signed, Sealed, and Delivered by the  
said

---

in the presence of :

Binding Signature of Employer: \_\_\_\_\_

Binding Signature of Contractor: \_\_\_\_\_

***SECTION 8 BID AND PERFORMANCE SECURING DECLARATION***

*The Bidder shall fill in this form in accordance with the instructions indicated in brackets, and submit with the Bid.*

Date: *[insert date]*  
Name of contract: *[insert name]*  
Contract Identification N<sup>o</sup>: *[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 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 a period of time of two (2) years starting on the date of the Employer's execution of this Declaration, or pay 2% of the contract price as a penalty, if we are in breach of our obligation(s) under the bid conditions and contract 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 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 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 bid securing shall expire if we are not the successful bidder, upon the earlier of (i) our receipt of a copy of your notification that we were unsuccessful; or (ii) thirty days after the expiration of our bid, or in the event that our bid is successful and we are awarded a contract we understand that this bid and performance securing declaration will expire upon successful completion of the Guarantee period specified in paragraph 18. of the Conditions of Contract..
4. We understand that if we are a JV, the Bid and Performance 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]* In the Capacity of *[insert title]*

Name *[insert printed or typed name]*

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

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

Developed with the assistance of:



Asian Development Bank



The World Bank