



**NRPB**  
NATIONAL RECOVERY  
PROGRAM BUREAU

Reference No: *SX-NRPB-140867-CW-RFB*

# National Recovery Program Bureau

## Request for Bids Small Works

**Ship Recovery, Salvaging, Decommissioning, Cleaning  
Lagoon Shorelines**

**Client/Employer:** National Recovery Program Bureau

**Country:** Sint Maarten

Date of issue: 13 November, 2019

## Specific Procurement Notice

**Country:** Sint Maarten

**Name of Project:** Emergency Debris Management Project.

**Contract Title:** Ship Recovery, Salvaging, Decommissioning, Cleaning Lagoon Shorelines **Grant No.:** TF-A9261

**RFB Reference No.:** SX-NRPB-140867-CW-RFB

1. The *Government of Sint Maarten* has received a grant financing from the World Bank toward the cost of the Emergency Debris Management Project and intends to apply part of the proceeds toward payments under the contract for Ship Recovery, Salvaging, Decommissioning, Cleaning Lagoon shorelines.
2. The National Recovery Program Bureau (NRPB) now invites sealed Bids from eligible Bidders for *the salvaging, decommissioning and disposing of around 80 shipwrecks in the Simpson Bay Lagoon and Mullet Bay Pond as well as cleaning of the shores from remaining debris from Hurricanes Irma and Maria.*
3. Bidding will be conducted through international competitive procurement using a Request for Bids (RFB) as specified in the World Bank's "Procurement Regulations for IPF Borrowers" *November 2016, Revised November 2017 and August 2018* ("Procurement Regulations"), and is open to all Bidders as defined in the Procurement Regulations.
4. Interested eligible Bidders may obtain further information from the *NRPB* by sending an e-mail to [procurement@nrbsxm.org](mailto:procurement@nrbsxm.org).
5. Bids must be delivered to the address below on or before *December 5, 2019 at 14:00 local time Sint Maarten.* Electronic Bidding will *not* be permitted. Late Bids will be rejected. Bids will be publicly opened in the presence of the Bidders' designated representatives and anyone who chooses to attend at the address below on *December 5, 2019 at 14:00 local time Sint Maarten.*
6. All Bids must be accompanied by a *Bid-Securing Declaration.*
7. The address referred to above is:

National Recovery Program Bureau  
Walter J. A. Nisbeth Road 57  
Philipsburg, Sint Maarten  
+1 (721) 542-8887  
[procurement@nrbsxm.org](mailto:procurement@nrbsxm.org)  
[www.nrbsxm.org](http://www.nrbsxm.org)

# **Request for Bids**

# **Small Works**

**(One-Envelope Bidding Process)**

**Procurement of:**

**Ship Recovery, Salvaging, Decommissioning, Cleaning  
Lagoon Shorelines**

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Employer: **National Recovery Program Bureau (NRPB)**  
Project: **Emergency Debris Management Project (EDMP)**  
Contract title: **Ship Recovery, Salvaging, Decommissioning, Cleaning Lagoon  
Shorelines**  
Country: **Sint Maarten**  
Grant No.: **TF-A9261**  
RFB No: **SX-NRPB-140867-CW-RFB**  
Issued on: **November 13, 2019**

# Standard Procurement Document

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## **PART 1 – Bidding Procedures**



## Section I - Instructions to Bidders

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## Section I - Instructions to Bidders

### A. General

- 1. Scope of Bid**
  - 1.1 In connection with the Specific Procurement Notice - Request for Bids (RFB), specified in the Bid Data Sheet (BDS), the Employer, as specified **in the BDS**, issues this bidding document for the provision of Works as specified in Section VII, Works' Requirements. The name, identification and number of lots (contracts) of this RFB are specified **in the BDS**.
  - 1.2 Throughout this bidding document:
    - (a) the term "in writing" means communicated in written form (e.g. by mail, e-mail, and fax, including if specified **in the BDS**, distributed or received through the electronic-procurement system used by the Employer) with proof of receipt;
    - (b) if the context so requires, "singular" means "plural" and vice versa;
    - (c) "Day" means calendar day, unless otherwise specified as "Business Day". A Business Day is any day that is an official working day of the Borrower. It excludes the Borrower's official public holidays; and
    - (d) "ESHS" means environmental, social (including sexual exploitation and abuse (SEA) and gender based violence (GBV)), health and safety.
- 2. Source of Funds**
  - 2.1 The Borrower or Recipient (hereinafter called "Borrower") specified **in the BDS** has received or has applied for financing (hereinafter called "funds") from the International Bank for Reconstruction and Development or the International Development Association (hereinafter called "the Bank") in an amount specified **in the BDS**, toward the project named **in the BDS**. The Borrower intends to apply a portion of the funds to eligible payments under the contract(s) for which this bidding document is issued.
  - 2.2 Payment by the Bank will be made only at the request of the Borrower and upon approval by the Bank, and will be subject, in all respects, to the terms and conditions of the Loan (or other financing) Agreement. The Loan (or other financing) Agreement prohibits a withdrawal from the loan account for the purpose of any payment to persons or entities, or for any import of goods, equipment, plant, or materials, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations. No party other than the Borrower shall derive any rights from the Loan

(or other financing) Agreement or have any claim to the proceeds of the Loan (or other financing).

### 3. Fraud and Corruption

- 3.1 The Bank requires compliance with the Bank's Anti-Corruption Guidelines and its prevailing sanctions policies and procedures as set forth in the WBG's Sanctions Framework, as set forth in Section VI.
- 3.2 In further pursuance of this policy, bidders shall permit and shall cause their agents (where declared or not), subcontractors, subconsultants, service providers, suppliers, and their personnel, to permit the Bank to inspect all accounts, records and other documents relating to any initial selection process, prequalification process, bid submission, proposal submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the Bank.

### 4. Eligible Bidders

- 4.1 A Bidder may be a firm that is a private entity, or a state-owned enterprise or institution, subject to ITB 4.6, or any combination of them in the form of a joint venture (JV), under an existing agreement, or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the Bidding process and, in the event the JV is awarded the Contract, during contract execution. Unless specified **in the BDS**, there is no limit on the number of members in a JV.
- 4.2 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest for the purpose of this Bidding process, if the Bidder:
- (a) directly or indirectly controls, is controlled by or is under common control with another Bidder; or
  - (b) receives or has received any direct or indirect subsidy from another Bidder; or
  - (c) has the same legal representative as another Bidder; or
  - (d) has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the Bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or
  - (e) or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the Bid; or

- (f) or any of its affiliates has been hired (or is proposed to be hired) by the Employer or Borrower as Project Manager for the Contract implementation;
- (g) would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the BDS ITB 2.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm;
- (h) has a close business or family relationship with a professional staff of the Borrower (or of the project implementing agency, or of a recipient of a part of the loan) who: (i) are directly or indirectly involved in the preparation of the bidding document or specifications of the contract, and/or the Bid evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Bank throughout the procurement process and execution of the contract.

- 4.3 A firm that is a Bidder (either individually or as a JV member) shall not participate in more than one Bid, except for permitted alternative Bids. This includes participation as a Subcontractor in other Bids. Such participation shall result in the disqualification of all Bids in which the firm is involved. A firm that is not a Bidder or a JV member may participate as a subcontractor in more than one Bid.
- 4.4 A Bidder may have the nationality of any country, subject to the restrictions pursuant to ITB 4.8. A Bidder shall be deemed to have the nationality of a country if the Bidder is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or subconsultants for any part of the Contract including related Services.
- 4.5 A Bidder that has been sanctioned by the Bank, pursuant to the Bank's Anti-Corruption Guidelines, in accordance with its prevailing sanctions policies and procedures as set forth in the WBG's Sanctions Framework as described in Section VI paragraph 2.2 d., shall be ineligible to be prequalified for, initially selected for, bid for, propose for, or be awarded a Bank-financed contract or benefit from a Bank-financed contract, financially or otherwise, during such period of time as the Bank shall have determined. The list of debarred firms and individuals is available at the electronic address specified in the BDS.

- 4.6 Bidders that are state-owned enterprises or institutions in the Employer's Country may be eligible to compete and be awarded a Contract(s) only if they can establish, in a manner acceptable to the Bank, that they (i) are legally and financially autonomous (ii) operate under commercial law, and (iii) are not under supervision of the Employer.
- 4.7 A Bidder shall not be under suspension from Bidding by the Employer as the result of the operation of a Bid-Securing or Proposal-Securing Declaration.
- 4.8 Firms and individuals may be ineligible if so indicated in Section V and (a) as a matter of law or official regulations, the Borrower's country prohibits commercial relations with that country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the supply of goods or the contracting of works or services required; or (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 or contracting of works or services from that country, or any payments to any country, person, or entity in that country. When the Works are implemented across jurisdictional boundaries (and more than one country is a Borrower, and is involved in the procurement), then exclusion of a firm or individual on the basis of ITB 4.8 (a) above by any country may be applied to that procurement across other countries involved, if the Bank and the Borrowers involved in the procurement agree.
- 4.9 A Bidder shall provide such documentary evidence of eligibility satisfactory to the Employer, as the Employer shall reasonably request.
- 4.10 A firm that is under a sanction of debarment by the Borrower from being awarded a contract is eligible to participate in this procurement, unless the Bank, at the Borrower's request, is satisfied that the debarment;
- (a) relates to fraud or corruption, and
  - (b) followed a judicial or administrative proceeding that afforded the firm adequate due process.

## **5. Eligible Materials, Equipment and Services**

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

## B. Contents of Bidding Document

### 6. Sections of Bidding Document

6.1 The bidding document consists of Parts 1, 2, and 3, which include all the sections specified below, and which should be read in conjunction with any Addenda issued in accordance with ITB 8.

#### **PART 1 Bidding Procedures**

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

#### **PART 2 Works' Requirements**

- Section VII - Works' Requirements

#### **PART 3 Conditions of Contract and Contract Forms**

- Section VIII - General Conditions of Contract (GCC)
- Section IX - Particular Conditions of Contract (PCC)
- Section X - Contract Forms

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6.2 The Specific Procurement Notice - Request for Bids (RFB) issued by the Employer is not part of this bidding document.

6.3 Unless obtained directly from the Employer, the Employer is not responsible for the completeness of the bidding document, responses to requests for clarification, the minutes of the pre-Bid meeting (if any), or Addenda to the bidding document in accordance with ITB 8. In case of any contradiction, documents obtained directly from the Employer shall prevail.

6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the bidding document and to furnish with its Bid all information and documentation as is required by the bidding document.

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

7.1 A Bidder requiring any clarification of the bidding document shall contact the *Employer* in writing at the *Employer's* address specified **in the BDS** or raise its inquiries during the pre-Bid meeting if provided for in accordance with ITB 7.4. The *Employer* will respond in writing to any request for clarification, provided that such request is received prior to the deadline for submission of Bids within a period specified **in the BDS**. The *Employer* shall forward copies of its response to all Bidders who have acquired

the bidding document in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. If so specified **in the BDS**, the Employer shall also promptly publish its response at the web page identified in the BDS. Should the clarification result in changes to the essential elements of the bidding document, the Employer shall amend the bidding document following the procedure under ITB 8 and ITB 22.2.

- 7.2 The Bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense.
- 7.3 The Bidder and any of its personnel or agents will be granted permission by the *Employer* to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the *Employer* and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
- 7.4 If so specified **in the BDS**, the Bidder's designated representative is invited to attend a pre-Bid meeting and/or a Site of Works visit. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 7.5 The Bidder is requested, to submit any questions in writing, to reach the *Employer* not later than one week before the meeting.
- 7.6 Minutes of the pre-Bid meeting, if applicable, including the text of the questions asked by Bidders, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the bidding document in accordance with ITB 6.3 Any modification to the bidding document that may become necessary as a result of the pre-Bid meeting shall be made by the *Employer* exclusively through the issue of an addendum pursuant to ITB 8 and not through the minutes of the pre-Bid meeting. Nonattendance at the pre-Bid meeting will not be a cause for disqualification of a Bidder.

**8. Amendment of Bidding Document**

- 8.1 At any time prior to the deadline for submission of bids, the *Employer* may amend the bidding document by issuing addenda.
- 8.2 Any addendum issued shall be part of the bidding document and shall be communicated in writing to all who have obtained the bidding document from the *Employer* in accordance with ITB 6.

The Employer shall also promptly publish the addendum on the Employer's web page in accordance with ITB 7.1.

- 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their Bids, the *Employer* may, at its discretion, extend the deadline for the submission of Bids, pursuant to ITB 22.2.

### C. Preparation of Bids

- 9. Cost of Bidding** 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the *Employer* shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Bidding process.
- 10. Language of Bid** 10.1 The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the *Employer*, shall be written in the language specified **in the BDS**. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified **in the BDS**, in which case, for purposes of interpretation of the Bid, such translation shall govern.
- 11. Documents Comprising the Bid** 11.1 The Bid shall comprise the following:
- (a) **Letter of Bid** prepared in accordance with ITB 12;
  - (b) **Bill of Quantities or Activity Schedule**: completed in accordance with ITB 12 and ITB 14, as specified **in the BDS**;
  - (c) **Bid Security or Bid-Securing Declaration**, in accordance with ITB 19.1;
  - (d) **Alternative Bid**, if permissible, in accordance with ITB 13;
  - (e) **Authorization**: written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.3;
  - (f) **Bidder's Eligibility**: documentary evidence in accordance with ITB 17 establishing the Bidder's eligibility to Bid;
  - (g) **Qualifications**: documentary evidence in accordance with ITB 17 establishing the Bidder's qualifications to perform the contract if its Bid is accepted;
  - (h) **Conformity**: a technical proposal in accordance with ITB 16;



(i) any other document required **in the BDS**.

11.2 In addition to the requirements under ITB 11.1, Bids submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful bid shall be signed by all members and submitted with the Bid, together with a copy of the proposed Agreement.

11.3 The Bidder shall furnish in the Letter of Bid information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid.

#### **12. Letter of Bid and Schedules**

12.1 The Letter of Bid and Schedules shall be prepared using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITB 20.3. All blank spaces shall be filled in with the information requested.

#### **13. Alternative Bids**

13.1 Unless otherwise specified **in the BDS**, alternative Bids shall not be considered.

13.2 When alternative times for completion are explicitly invited, a statement to that effect will be included **in the BDS** and the method of evaluating different alternative times for completion will be described in Section III, Evaluation and Qualification Criteria.

13.3 Except as provided under ITB 13.4 below, Bidders wishing to offer technical alternatives to the requirements of the bidding document must first price the *Employer's* design as described in the bidding document and shall further provide all information necessary for a complete evaluation of the alternative by the *Employer*, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the Bidder with the Most Advantageous Bid conforming to the basic technical requirements shall be considered by the *Employer*.

13.4 When specified **in the BDS**, Bidders are permitted to submit alternative technical solutions for specified parts of the Works. Such parts will be identified **in the BDS** and described in Section VII, *Works' Requirements*. The method for their evaluation will be stipulated in Section III, Evaluation and Qualification Criteria.

#### **14. Bid Prices and Discounts**

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

14.2 The Bidder shall submit a Bid for the whole of the Works described in ITB 1.1 by filling in prices for all items of the Works, as identified in Section IV. Bidding Forms. In case of admeasurement contracts, the Bidder shall fill in rates and prices for all items of the

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

- 14.3 The price to be quoted in the Letter of Bid, in accordance with ITB 12.1, shall be the total price of the Bid, excluding any discounts offered.
- 14.4 The Bidder shall quote any discounts and indicate the methodology for their application in the Letter of Bid in accordance with ITB 12.1.
- 14.5 Unless otherwise specified **in the BDS** and the Conditions of Contract, the prices quoted by the Bidder shall be fixed. If the prices quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract, the Bidder shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data in Section IV- Bidding Forms and the Employer may require the Bidder to justify its proposed indices and weightings.
- 14.6 If so specified in ITB 1.1, Bids are invited for individual lots (contracts) or for any combination of lots (packages). Bidders wishing to offer discounts for the award of more than one Contract shall specify in their Bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITB 14.4, provided the Bids for all lots (contracts) are opened at the same time.
- 14.7 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of Bids, shall be included in the rates and prices<sup>1</sup> and the total Bid price submitted by the Bidder.

#### **15. Currencies of Bid and Payment**

- 15.1 The currency(ies) of the Bid and the currency(ies) of payments shall be the same and shall be **as specified in the BDS**.
- 15.2 Bidders may be required by the Employer to justify, to the Employer's satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Schedule of Adjustment Data are reasonable<sup>2</sup>, in which case a detailed breakdown of the foreign currency requirements shall be provided by Bidders.

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<sup>1</sup> In lump sum contracts, delete "rates and prices and the."

<sup>2</sup> For lump sum contracts, delete "unit rates and prices and shown in the Schedule of Adjustment Data are reasonable" and replace with "Lump Sum."

- 16. Documents Comprising the Technical Proposal**
- 16.1 The Bidder shall furnish a technical proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section IV, Bidding Forms, in sufficient detail to demonstrate the adequacy of the Bidders' proposal to meet the work's requirements and the completion time.
- 17. Documents Establishing the Eligibility and Qualifications of the Bidder**
- 17.1 To establish Bidder's eligibility in accordance with ITB 4, Bidders shall complete the Letter of Bid, included in Section IV, Bidding Forms.
- 17.2 In accordance with Section III, Evaluation and Qualification Criteria, to establish its qualifications to perform the Contract, the Bidder shall provide the information requested in the corresponding information sheets included in Section IV, Bidding Forms.
- 17.3 If a margin of preference applies as specified in accordance with ITB 33.1, domestic Bidders, individually or in joint ventures, applying for eligibility for domestic preference shall supply all information required to satisfy the criteria for eligibility specified in accordance with ITB 33.1.
- 18. Period of Validity of Bids**
- 18.1 Bids shall remain valid for the Bid Validity period specified **in the BDS**. The Bid Validity period starts from the date fixed for the Bid submission deadline (as prescribed by the Employer in accordance with ITB 22.1). A Bid valid for a shorter period shall be rejected by the *Employer* as nonresponsive.
- 18.2 In exceptional circumstances, prior to the expiration of the Bid validity period, the Employer may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB 19, it shall also be extended for twenty-eight (28) days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its Bid, except as provided in ITB 18.3.
- 18.3 If the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial Bid validity period, the Contract price shall be determined as follows:

- (a) in the case of **fixed price** contracts, the Contract price shall be the Bid price adjusted by the factor specified **in the BDS**;
- (b) in the case of **adjustable** price contracts, no adjustment shall be made; or
- (c) in any case, Bid evaluation shall be based on the Bid price without taking into consideration the applicable correction from those indicated above.

## 19. Bid Security

- 19.1 The Bidder shall furnish as part of its Bid, either a Bid-Securing Declaration or a Bid Security as specified **in the BDS**, in original form and, in the case of a Bid Security, in the amount and currency **specified in the BDS**.
- 19.2 A Bid Securing Declaration shall use the form included in Section IV, Bidding Forms.
- 19.3 *If a Bid Security is specified pursuant to ITB 19.1*, the Bid Security shall be a demand guarantee in any of the following forms at the Bidder's option:
- (a) an unconditional guarantee issued by a bank or non-bank financial institution (such as an insurance, bonding or surety company);
  - (b) an irrevocable letter of credit;
  - (c) a cashier's or certified check; or
  - (d) another security specified **in the BDS**,

from a reputable source from an eligible country. If an unconditional guarantee is issued by a non-bank financial institution located outside the Employer's Country, the issuing non-bank financial institution shall have a correspondent financial institution located in the Employer's Country to make it enforceable, unless the Employer has agreed in writing, prior to Bid submission, that a correspondent financial institution is not required. In the case of a bank guarantee, the Bid Security shall be submitted either using the Bid Security Form included in Section IV, Bidding Forms, or in another substantially similar format approved by the Employer prior to Bid submission. The Bid Security shall be valid for twenty-eight (28) days beyond the original validity period of the Bid, or beyond any period of extension if requested under ITB 18.2.

- 19.4 If a Bid Security or Bid Securing Declaration is specified pursuant to ITB 19.1, any Bid not accompanied by a substantially *responsive* Bid Security or Bid-Securing Declaration shall be rejected by the Employer as non-responsive.

- 19.5 If a Bid Security is specified pursuant to ITB 19.1, the Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's signing the Contract and furnishing the Performance Security and if required in the BDS, the Environmental, Social, Health and Safety (ESHS) Performance Security pursuant to ITB 48.
- 19.6 The Bid Security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required Performance Security. and if required in the BDS, the Environmental, Social, Health and Safety (ESHS) Performance Security.
- 19.7 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 Letter of Bid, or any extension thereto provided by the Bidder; or
  - (b) if the successful Bidder fails to:
    - (i) sign the Contract in accordance with ITB 47; or**
    - (ii) furnish a Performance Security and if required in the BDS, the Environmental, Social, Health and Safety (ESHS) Performance Security in accordance with ITB 48.**
- 19.8 The Bid Security or the Bid-Securing Declaration of a *JV* shall be in the name of the *JV* that submits the Bid. If the *JV* has not been constituted into a legally enforceable *JV*, at the time of Bidding, the Bid Security or the Bid-Securing Declaration shall be in the names of all future members as named in the letter of intent mentioned in ITB 4.1 and ITB 11.2.
- 19.9 If a Bid Security is **not required in the BDS**, pursuant to ITB 19.1, and;
- (a) if a Bidder withdraws its Bid during the period of Bid validity specified by the Bidder on the Letter of Bid; or
  - (b) if the successful Bidder fails to: sign the Contract in accordance with ITB 47, or furnish a Performance Security and if required in the BDS, the Environmental, Social, Health and Safety (ESHS) Performance Security in accordance with ITB 48;

the Borrower may, **if provided for in the BDS**, declare the Bidder ineligible to be awarded a contract by the Employer for a period of time **stated in the BDS**.

**20. Format and Signing of Bid**

- 20.1 The Bidder shall prepare one original of the documents comprising the Bid as described in ITB 11 and clearly mark it "ORIGINAL". Alternative Bids, if permitted in accordance with ITB 13, shall be clearly marked "ALTERNATIVE". In addition, the Bidder shall submit copies of the Bid in the number specified **in the BDS**, and clearly mark each of them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.
- 20.2 Bidders shall mark as "CONFIDENTIAL" information in their Bids which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.
- 20.3 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified **in the BDS** and shall be attached to the Bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Bid where entries or amendments have been made shall be signed or initialed by the person signing the Bid.
- 20.4 In case the Bidder is a JV, the Bid shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.
- 20.5 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.

**D. Submission and Opening of Bids****21. Sealing and Marking of Bids**

- 21.1 The Bidder shall deliver the Bid in a single, sealed envelope (one-envelope Bidding process). Within the single envelope the Bidder shall place the following separate, sealed envelopes:
- (a) in an envelope marked "ORIGINAL", all documents comprising the Bid, as described in ITB 11; and
  - (b) in an envelope marked "COPIES", all required copies of the Bid; and
  - (c) if alternative Bids are permitted in accordance with ITB 13, and if relevant:
    - (i) in an envelope marked " ORIGINAL - ALTERNATIVE BID", the alternative Bid; and
    - (ii) in the enveloped marked "COPIES – ALTERNATIVE BID" all required copies of the alternative Bid.

21.2 The inner and outer envelopes shall:

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

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

**22. Deadline for Submission of Bids**

22.1 Bids must be received by the *Employer* at the address and no later than the date and time specified **in the BDS. When so specified in the BDS**, Bidders shall have the option of submitting their Bids electronically. Bidders submitting Bids electronically shall follow the electronic bid submission procedures **specified in the BDS**.

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

**23. Late Bids**

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

**24. Withdrawal, Substitution, and Modification of Bids**

24.1 A Bidder may withdraw, substitute, or modify its Bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 20.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Bid must accompany the respective written notice. All notices must be:

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

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

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

## 25. Bid Opening

25.1 Except in the cases specified in ITB 23 and ITB 24.2, the Employer shall publicly open and read out in accordance with this ITB, all Bids received by the deadline, at the date, time and place specified **in the BDS**, in the presence of Bidders' designated representatives and anyone who chooses to attend. All Bidders, or their representatives and any interested party may attend a public opening. Any specific electronic Bid opening procedures required if electronic bidding is permitted in accordance with ITB 22.1, shall be **as specified in the BDS**.

25.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding Bid shall not be opened, but returned to the Bidder. No Bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Bid opening.

25.3 Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Bid opening.

25.4 Next, envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Bid. No Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at bid opening.

25.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the total Bid Price, per lot (contract) if applicable, including any discounts and alternative Bids; the presence or absence of a Bid Security, or Bid Securing Declaration, if required; and any other details as the Employer may consider appropriate.

25.6 Only Bids, alternative Bids and discounts that are opened and read out at Bid opening shall be considered further for evaluation. The Letter of Bid and the priced Schedules are to be initialed by representatives of the Employer attending Bid opening in the manner specified **in the BDS**.

25.7 The Employer shall neither discuss the merits of any Bid nor reject any Bid (except for late Bids, in accordance with ITB 23.1).



25.8 The *Employer* shall prepare a record of the Bid opening that shall include, as a minimum:

- (a) the name of the Bidder and whether there is a withdrawal, substitution, or modification;
- (b) the Bid Price, per lot (contract) if applicable, including any discounts;
- (c) the presence or absence of a Bid Security or Bid-Securing Declaration, if one was required; and
- (d) any alternative Bids.

25.9 The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders.

## **E. Evaluation and Comparison of Bids**

### **26. Confidentiality**

26.1 Information relating to the evaluation of Bids and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with the Bidding process until information on Intention to Award the Contract is transmitted to all Bidders in accordance with ITB 43.

26.2 Any effort by a Bidder to influence the Employer in the evaluation of the Bids or Contract award decisions may result in the rejection of its Bid.

26.3 Notwithstanding ITB 26.2, from the time of Bid opening to the time of Contract award, if a Bidder wishes to contact the *Employer* on any matter related to the Bidding process, it shall do so in writing.

### **27. Clarification of Bids**

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

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

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

- 28.1 During the evaluation of Bids, the following definitions apply:
- (a) "Deviation" is a departure from the requirements specified in the bidding document;
  - (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the bidding document; and
  - (c) "Omission" is the failure to submit part or all of the information or documentation required in the bidding document.

**29. Determination  
of  
Responsiveness**

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

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

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

29.3 The *Employer* shall examine the technical aspects of the Bid submitted in accordance with ITB 16, in particular, to confirm that all requirements of Section VII, Works' Requirements have been met without any material deviation, reservation or omission.

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

**30. Nonmaterial  
Nonconformities**

30.1 Provided that a Bid is substantially responsive, the *Employer* may waive any nonconformities in the Bid.

30.2 Provided that a Bid is substantially responsive, the *Employer* may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the Bid related to documentation

requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

30.3 Provided that a Bid is substantially responsive, the *Employer* shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or nonconforming item or component in the manner specified **in the BDS**.

### 31. Correction of Arithmetical Errors

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

- (a) only for admeasurement contracts, if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;
- (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

31.2 Bidders shall be requested to accept correction of arithmetical errors. Failure to accept the correction in accordance with ITB 31.1, shall result in the rejection of the Bid.

### 32. Conversion to Single Currency

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

### 33. Margin of Preference

33.1 Unless otherwise specified **in the BDS**, a margin of preference for domestic Bidders<sup>3</sup> shall not apply.

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<sup>3</sup> An individual firm is considered a domestic Bidder for purposes of the margin of preference if it is registered in the country of the Employer, has more than 50 percent ownership by nationals of the country of the Employer, and if it does not subcontract more than 10 percent of the contract price, excluding provisional sums, to foreign contractors. JVs are considered as domestic Bidders and eligible for domestic preference only if the individual member firms are registered in the country of the Employer or have more than 50 percent ownership by nationals of the country of the Employer, and the JV shall be registered in the country of the Borrower. The JV shall not subcontract more than 10 percent of the contract price, excluding provisional sums, to foreign firms. JVs between foreign and national firms will not be eligible for domestic preference.

- 34. Subcontractors**
- 34.1 Unless otherwise stated **in the BDS**, the Employer does not intend to execute any specific elements of the Works by subcontractors selected in advance by the Employer, Financial Parts
- 34.2 The subcontractor's qualifications shall not be used by the Bidder to qualify for the Works unless their specialized parts of the Works were previously designated by the Employer **in the BDS** as can be met by subcontractors referred to hereafter as 'Specialized Subcontractors', in which case, the qualifications of the Specialized Subcontractors proposed by the Bidder may be added to the qualifications.
- 34.3 Bidders may propose subcontracting up to the percentage of total value of contracts or the volume of works as specified **in the BDS**. Subcontractors proposed by the Bidder shall be fully qualified for their parts of the Works.
- 35. Evaluation of Bids**
- 35.1 The Employer shall use the criteria and methodologies listed in this ITB and Section III, Evaluation and Qualification criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies the Employer shall determine the Most Advantageous Bid. This is the Bid of the Bidder that meets the Qualification Criteria and whose Bid has been determined to be:
- (a) substantially responsive to the bidding document; and
  - (b) the lowest evaluated cost.
- 35.2 To evaluate a Bid, the *Employer* shall consider the following:
- (a) the Bid price, excluding Provisional Sums and the provision, if any, for contingencies in the Summary Bill of Quantities<sup>4</sup> for admeasurement contracts, but including Daywork<sup>5</sup> items, where priced competitively;
  - (b) price adjustment for correction of arithmetic errors in accordance with ITB 31.1;
  - (c) price adjustment due to discounts offered in accordance with ITB 14.4;

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<sup>4</sup> In lump sum contracts, delete "Bill of Quantities" and replace with "Activity Schedule."

<sup>5</sup> Daywork is work carried out following instructions of the Project Manager and paid for on the basis of time spent by workers, and the use of materials and the Contractor's equipment, at the rates quoted in the Bid. For Daywork to be priced competitively for Bid evaluation purposes, the Employer must list tentative quantities for individual items to be costed against Daywork (e.g., a specific number of tractor driver staff-days, or a specific tonnage of Portland cement), to be multiplied by the Bidders' quoted rates and included in the total Bid price.

- (d) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 32;
- (e) price adjustment for nonconformities in accordance with ITB 30.3; and
- (f) the additional evaluation factors are specified in Section III, Evaluation and Qualification Criteria.

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

35.4 If this bidding document allows Bidders to quote separate prices for different lots (contracts), the methodology to determine the lowest evaluated cost of the contract combinations, including any discounts offered in the Letter of Bid, is specified in Section III, Evaluation and Qualification Criteria.

### **36. Comparison of Bids**

36.1 The *Employer* shall compare the evaluated costs of all substantially responsive Bids established in accordance with ITB 35.2 to determine the Bid that has the lowest evaluated cost.

### **37. Abnormally Low Bids**

37.1 An Abnormally Low Bid is one where the Bid price, in combination with other constituent elements of the Bid, appears unreasonably low to the extent that the Bid price raises material concerns as to the capability of the Bidder to perform the Contract for the offered Bid price.

37.2 In the event of identification of a potentially Abnormally Low Bid, the Employer shall seek written clarifications from the Bidder, including detailed price analyses of its Bid price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the bidding document.

37.3 After evaluation of the price analyses, in the event that the Employer determines that the Bidder has failed to demonstrate its capability to perform the Contract for the offered Bid Price, the Employer shall reject the Bid.

### **38. Unbalanced or Front Loaded Bids**

38.1 If the Bid for an admeasurement contract, which results in the lowest evaluated cost is, in the Employer's opinion, seriously unbalanced or, front loaded, the *Employer* may require the Bidder to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the Bid prices *with the scope of works, proposed methodology, schedule and any other requirements of the bidding document.*

- 38.2 After the evaluation of the information and detailed price analyses presented by the Bidder, the Employer may as appropriate:
- (a) accept the Bid; or
  - (b) require that the amount of the Performance Security be increased at the expense of the Bidder to a level not exceeding 20% of the Contract Price; or
  - (c) reject the Bid.
- 39. Qualification of the Bidder**
- 39.1 The *Employer* shall determine to its satisfaction whether the eligible Bidder that is selected as having submitted the lowest evaluated cost and substantially responsive Bid meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.
- 39.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 17. The determination shall not take into consideration the qualifications of other firms such as the Bidder's subsidiaries, parent entities, affiliates, subcontractors (other than Specialized Subcontractors if permitted in the bidding document), or any other firm(s) different from the Bidder.
- 39.3 An affirmative determination of qualification shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the Bid, in which event the *Employer* shall proceed to the substantially responsive Bid which offers the next lowest evaluated cost to make a similar determination of that Bidder's qualifications to perform satisfactorily.
- 40. Most Advantageous Bid**
- 40.1 Having compared the evaluated costs of Bids, the Employer shall determine the Most Advantageous Bid. The Most Advantageous Bid is the Bid of the Bidder that meets the Qualification Criteria and whose Bid has been determined to be:
- (a) substantially responsive to the bidding document; and
  - (b) the lowest evaluated cost.
- 41. Employer's Right to Accept Any Bid, and to Reject Any or All Bids**
- 41.1 The *Employer* reserves the right to accept or reject any Bid, and to annul the Bidding process and reject all Bids at any time prior to Contract Award, without thereby incurring any liability to Bidders. In case of annulment, all Bids submitted and specifically, Bid securities, shall be promptly returned to the Bidders.
- 42. Standstill Period**
- 42.1 The Contract shall not be awarded earlier than the expiry of the Standstill Period. The Standstill Period shall be ten (10) Business Days unless extended in accordance with ITB 46. The Standstill Period commences the day after the date the Employer has

transmitted to each Bidder the Notification of Intention to Award the Contract. Where only one Bid is submitted, or if this contract is in response to an emergency situation recognized by the Bank, the Standstill Period shall not apply.

**43. Notification of Intention to Award**

43.1 The Employer shall send to each Bidder the Notification of Intention to Award the Contract to the successful Bidder. The Notification of Intention to Award shall contain, at a minimum, the following information:

- (a) the name and address of the Bidder submitting the successful Bid;
- (b) the Contract price of the successful Bid;
- (c) the names of all Bidders who submitted Bids, and their Bid prices as readout, and as evaluated;
- (d) a statement of the reason(s) the Bid (of the unsuccessful Bidder to whom the notification is addressed) was unsuccessful, unless the price information in c) above already reveals the reason;
- (e) the expiry date of the Standstill Period;
- (f) instructions on how to request a debriefing and/or submit a complaint during the standstill period.

**F. Award of Contract**

**44. Award Criteria**

44.1 Subject to ITB 41, the Employer shall award the Contract to the successful Bidder. This is the Bidder whose Bid has been determined to be the Most Advantageous Bid as specified in ITB 40.

**45. Notification of Award**

45.1 Prior to the expiration of the Bid Validity Period and upon expiry of the Standstill Period, specified in ITB 42.1 or any extension thereof, and, upon satisfactorily addressing any complaint that has been filed within the Standstill Period, the Employer shall notify the successful Bidder, in writing, that its Bid has been accepted. The notification of award (hereinafter and in the Conditions of Contract and Contract Forms called the "Letter of Acceptance") shall specify the sum that the Employer will pay the Contractor in consideration of the execution of the contract (hereinafter and in the Conditions of Contract and Contract Forms called "the Contract Price").

45.2 Within ten (10) Business Days after the date of transmission of the Letter of Acceptance, the Employer shall publish the Contract Award Notice which shall contain, at a minimum, the following information:

- (a) name and address of the Employer;

- (b) name and reference number of the contract being awarded, and the selection method used;
- (c) names of all Bidders that submitted Bids, and their Bid prices as read out at Bid opening, and as evaluated;
- (d) names of all Bidders whose Bids were rejected either as nonresponsive or as not meeting qualification criteria, or were not evaluated, with the reasons therefor;
- (e) the name of the successful Bidder, the final total contract price, the contract duration and a summary of its scope; and
- (f) successful Bidder's Beneficial Ownership Disclosure Form, if specified in BDS ITB 47.1.

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45.3 The Contract Award Notice shall be published on the Employer's website with free access if available, or in at least one newspaper of national circulation in the Employer's Country, or in the official gazette. The Employer shall also publish the contract award notice in UNDB online.

45.4 Until a formal contract is prepared and executed, the Letter of Acceptance shall constitute a binding Contract.

**46. Debriefing by the Employer**

46.1 On receipt of the Employer's Notification of Intention to Award referred to in ITB 43.1, an unsuccessful Bidder has three (3) Business Days to make a written request to the Employer for a debriefing. The Employer shall provide a debriefing to all unsuccessful Bidders whose request is received within this deadline.

46.2 Where a request for debriefing is received within the deadline, the Employer shall provide a debriefing within five (5) Business Days, unless the Employer decides, for justifiable reasons, to provide the debriefing outside this timeframe. In that case, the standstill period shall automatically be extended until five (5) Business Days after such debriefing is provided. If more than one debriefing is so delayed, the standstill period shall not end earlier than five (5) Business Days after the last debriefing takes place. The Employer shall promptly inform, by the quickest means available, all Bidders of the extended standstill period

46.3 Where a request for debriefing is received by the Employer later than the three (3)-Business Day deadline, the Employer should provide the debriefing as soon as practicable, and normally no later than fifteen (15) Business Days from the date of publication of Public Notice of Award of contract. Requests for debriefing received outside the three (3)-day deadline shall not lead to extension of the standstill period.



- 46.4 Debriefings of unsuccessful Bidders may be done in writing or verbally. The Bidder shall bear their own costs of attending such a debriefing meeting.
- 47. Signing of Contract**
- 47.1 The Employer shall send to the successful Bidder the Letter of Acceptance including the Contract Agreement, and, if specified in the BDS, a request to submit the Beneficial Ownership Disclosure Form providing additional information on its beneficial ownership. The Beneficial Ownership Disclosure Form, if so requested, shall be submitted within eight (8) Business Days of receiving this request.
- 47.2 The successful Bidder shall sign, date and return to the Employer, the Contract Agreement within twenty-eight (28) days of its receipt.
- 48. Performance Security**
- 48.1 Within twenty-eight (28) days of the receipt of the Letter of Acceptance from the *Employer*, the successful Bidder shall furnish the Performance Security and, if required in the BDS, the Environmental, Social, Health and Safety (ESHS) Performance Security in accordance with the General Conditions of Contract, subject to ITB 38.2 (b), using for that purpose the Performance Security and ESHS Performance Security Forms included in Section X, Contract Forms, or another form acceptable to the *Employer*. *If the Performance Security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Bidder to be acceptable to the Employer. A foreign institution providing a bond shall have a correspondent financial institution located in the Employer's Country, unless the Employer has agreed in writing that a correspondent financial institution is not required.*
- 48.2 Failure of the successful Bidder to submit the above-mentioned Performance Security and, if required in the BDS, the Environmental, Social, Health and Safety (ESHS) Performance Security, or to sign the Contract Agreement shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security. In that event the Employer may award the Contract to the Bidder offering the next Most Advantageous Bid.
- 49. Adjudicator**
- 49.1 The Employer proposes the person named **in the BDS** to be appointed as Adjudicator under the Contract, at the hourly fee specified **in the BDS**, plus reimbursable expenses. If the Bidder disagrees with this proposal, the Bidder should so state in his Bid. If, in the Letter of Acceptance, the Employer does not agree on the appointment of the Adjudicator, the Employer will request the Appointing Authority designated in the Particular Conditions of Contract (PCC) pursuant to Clause 23.1 of the General Conditions of Contract (GCC), to appoint the Adjudicator.

**50. Procurement  
Related  
Complaint**

50.1 The procedures for making a Procurement-related Complaint are as specified in the BDS.



## Section II - Bid Data Sheet (BDS)

The following specific data for the Works to be procured shall complement, supplement, or amend the provisions in the Instructions to Bidders (ITB). Whenever there is a conflict, the provisions herein shall prevail over those in ITB.

ITB Reference	<b>A. General</b>
ITB 1.1	<p>The number of the Invitation for Bids is: <b>No. 3</b></p> <p>The Employer is: <b>National Recovery Program Bureau (NRPB)</b></p> <p>The reference number of the Request for Bids (RFB) is: <b>SX-NRPB-140867-CW-RFB</b></p> <p>The name of the RFB is: <b>Ship Recovery, Salvaging, Decommissioning, Cleaning Lagoon Shorelines.</b></p> <p>The number and identification of lots (contracts) comprising this RFB is: <b>Not Applicable</b></p>
ITB 2.1	<p>The Recipient is: <b>Government of Sint Maarten</b></p> <p>Grant Agreement amount: <b>US\$25M (for the whole project)</b></p> <p>The name of the Project is: <b>Sint Maarten Emergency Debris Management Project (EDMP).</b></p>
ITB 4.1	<p>Maximum number of members in the Joint Venture (JV) shall be: <b>3 (three).</b></p>
ITB 4.5	<p>A list of debarred firms and individuals is available on the Bank's external website: <a href="http://www.worldbank.org/debarr">http://www.worldbank.org/debarr</a></p>
<b>B. Contents of Bidding Document</b>	
ITB 7.1	<p>For <b><u>Clarification of Bid purposes only</u></b>, the Employer's address is:</p> <p><b>National Recovery Program Bureau</b>  <b>Attn: Procurement</b>  <b>Walter Nisbeth Road # 57</b>  <b>Philipsburg, Sint Maarten</b>  <b>procurement@nrpbsxm.org</b>  Web page: <b>www.nrpbsxm.org</b></p>
ITB 7.1	<p>Requests for clarification should be received by the Employer no later than: <b>21 (twenty-one) days before bid opening.</b></p>
ITB 7.1	<p>Web page: <b>www.nrpbsxm.org</b></p>
ITB 7.4	<p>A Pre-Bid meeting <b>shall</b> take place.</p> <p>If a Pre-Bid meeting will take place, it will be at the following date, time and place: <b>Tuesday December 3, 9.30 am</b></p> <p>A site visit conducted by the Employer <b>shall</b> organized</p>

	<p>Interested bidders should register by sending an e-mail to <a href="mailto:procurement@nrpbsxm.org">procurement@nrpbsxm.org</a>, confirming their company's attendance and the number of persons attending.</p>
<h3>C. Preparation of Bids</h3>	
<p><b>ITB 10.1</b></p>	<p>The language of the Bid is: <b>English</b>.</p> <p>All correspondence exchange shall be in English language.</p> <p>Language for translation of supporting documents and printed literature is English.</p>
<p><b>ITB 11.1 (b)</b></p>	<p>The following schedules shall be submitted with the Bid: <b>Priced Activity Schedule</b></p>
<p><b>ITB 11.1 (i)</b></p>	<p>The Bidder shall submit the <b>Code of Conduct</b> that will apply to the Service Provider's employees and Sub-Service Providers. The Code of Conduct will state that the workers will comply with the following ESHS requirements:</p> <ul style="list-style-type: none"> <li>• Wearing of PPEs at all times in the workplace</li> <li>• Non-discrimination in dealing with the community including by race, ethnicity, gender, religion, disability, sexual orientation, gender identity, social, or health status</li> <li>• Respectful attitude while interacting with the community</li> <li>• Prohibit sexual harassment</li> <li>• Prohibit violence, including sexual and/ or gender -based violence</li> <li>• Respecting the reasonable work instructions.</li> <li>• Protection of and Proposer use of the property</li> <li>• In addition, the Bidder shall detail how this Code of Conduct will be implemented. This includes: how it will be introduced into conditions of employment/engagement, what training will be provided, how it will be monitored and how the Contractor proposes to deal with any breaches.</li> </ul> <p><b>Management Strategies and Implementation Plans (MSIP) to manage the (ESHS) risks</b></p> <p>The Bidder shall submit Management Strategies and Implementation Plans (MSIP) to manage the following key Environmental, Social, Health and Safety (ESHS) risks.</p> <ul style="list-style-type: none"> <li>• Strategy for the protection of workers and community from the project related hazards</li> <li>• Strategy to avoid spread of pests, specifically to avoid the spread of mosquito borne diseases, such as Dengue and Zika.</li> <li>• Pollution prevention (wastewater, and air and noise emissions) and management</li> <li>• A waste management plan for proper collection and disposal of wastes</li> </ul>

	<ul style="list-style-type: none"> <li>• Traffic management plan to ensure the safety of communities from project-generated traffic</li> <li>• Hazardous material management plan safe storage, handling, processing</li> <li>• Strategy to address labor influx impacts on the communities, if applicable</li> <li>• Gender-based violence and sexual exploitation and abuse prevention and response action plan</li> <li>• Emergency response plan and early warning system</li> <li>• The Contractor shall be required to submit for approval, and subsequently implement, the Contractor’s Environment and Social Management Plan (C-ESMP), in accordance with the Particular Conditions of Contract Sub-Clause 16.2, that includes the agreed Management Strategies and Implementation Plans described here.</li> </ul>
<b>ITB 13.1</b>	Alternative Bids <b>shall be</b> considered. <b>(the methodology for evaluation is defined in Section III, Evaluation and Qualification Criteria. See Section III for further details).</b>
<b>ITB 13.2</b>	Alternative times for completion <b>shall not be</b> permitted.
<b>ITB 13.4</b>	Alternative technical solutions shall be permitted for the following parts of the Works: <b>decommissioning of ships on land, on barges, or decommissioning out of the country after shipping out the shipwrecks without processing.</b> <b>(the evaluation method is specified in Section III, Evaluation and Qualification Criteria).</b>
<b>ITB 14.5</b>	The prices quoted by the Bidder <b>shall not be</b> subject to adjustment during the performance of the Contract.
<b>ITB 15.1</b>	The price shall be quoted by the Bidder in: <b>United States Dollar.</b> A Bidder expecting to incur expenditures in other currencies for inputs to the Works supplied from outside the Employer’s Country (referred to as the “foreign currency requirements”) and wishing to be paid accordingly, shall indicate up to three foreign currencies of their choice expressed as a percentage of the Bid price, together with the exchange rates used in the calculations in the appropriate form(s) included in Section IV, Bidding Forms.
<b>ITB 18.1</b>	The Bid validity period shall be <b>120</b> days.
<b>ITB 18.3 (a)</b>	The Bid price shall be adjusted by the following factor(s): <b>N/A</b>
<b>ITB 19.1</b>	A Bid Security <b>shall not be</b> required. A Bid-Securing Declaration <b>shall be</b> required.
<b>ITB 19.3 (d)</b>	Other types of acceptable securities: <b>None</b>

<b>ITB 19.9</b>	If the Bidder performs any of the actions prescribed in ITB 19.9 (a) or (b) of this provision, the Borrower will declare the Bidder ineligible to be awarded contracts by the Employer for a period of <b>2 years</b> .
<b>ITB 20.1</b>	In addition to the original of the Bid, the number of copies is: <b>3</b>
<b>ITB 20.3</b>	The written confirmation of authorization to sign on behalf of the Bidder shall consist of: <b>Power of attorney or copy of corporate document authorizing the signatory to commit the company.</b>
<b>D. Submission and Opening of Bids</b>	
<b>ITB 22.1</b>	<p>For <b><u>Bid submission purposes only</u></b>, the Employer's address is: For <b><u>Bid submission purposes only</u></b>, the Employer's address is:</p> <p><b>National Recovery Program Bureau</b>  <b>Attn: Procurement</b>  <b>Walter Nisbeth Road #57</b>  <b>Philipsburg, Sint Maarten</b>  <b>procurement@nrpbsxm.org</b></p> <p>The deadline for Bid submission is:  Date: <b>January 7, 2020</b>  Time: <b>14:00 pm</b></p> <p>Bidders <b>shall not</b> have the option of submitting their Bids electronically.  <b>Although no electronic bidding applies, in order to facilitate the evaluation bidders are encouraged to submit a memory flash with pdf copy of the full bid and particularly copy of the priced Schedule of Activities. Original hard version of the Bid will always prevail over all copies, hard or soft.</b></p>
<b>ITB 25.1</b>	<p>The Bid opening shall take place at:</p> <p><b>National Recovery Program Bureau</b>  <b>Walter Nisbeth Road #57</b>  <b>Philipsburg, Sint Maarten</b>  <b>Ground Floor Conference Room</b></p> <p>Date: <b>January 7, 2020</b>  Time: <b>14:00 pm</b></p>
<b>ITB 25.6</b>	The Letter of Bid and priced Activity Schedule shall be initialed <b>by all representatives of the Employer conducting the bid opening and shall be numbered sequentially in the order of opening of bids.</b>
<b>E. Evaluation and Comparison of Bids</b>	
<b>ITB 30.3</b>	The adjustment shall be based on the <b>average</b> price of the item or component as quoted in other substantially responsive Bids. If the price

	of the item or component cannot be derived from the price of other substantially responsive Bids, the Employer shall use its best estimate.
<b>ITB 32.1</b>	<p>The currency that shall be used for Bid evaluation and comparison purposes to convert at the selling exchange rate currencies of the Bid is: <b>US\$ (United States of America Dollar)</b>.</p> <p>The source of exchange rate shall be: <b>Central Bank of Curacao and Sint Maarten</b></p> <p>The date for the exchange rate shall be: <i>January 7, 2020</i></p>
<b>ITB 34.1</b>	At this time the Employer <b>does not intend to</b> execute certain specific parts of the Works by subcontractors selected in advance.
<b>ITB 34.2</b>	For any parts of the Works that may require Specialized Subcontractors, the relevant qualifications of the proposed Specialized Subcontractors <b>will be added</b> to the qualifications of the Bidder for the purpose of evaluation.
<b>ITB 34.3</b>	<p>Contractor's proposed subcontracting: Maximum percentage of subcontracting permitted is: <b>50% of the total contract amount or 50% of the volume of work.</b></p> <p>Bidders planning to subcontract more than <b>10%</b> of total volume of work shall specify, in the Letter of Bid, the activity (ies) or parts of the Works to be subcontracted along with complete details of the subcontractors and their qualification and experience.</p>
<b>F. Award of Contract</b>	
<b>ITB 47.1</b>	The successful Bidder <b>shall not</b> submit the Beneficial Ownership Disclosure Form.
<b>ITB 48.1 and 48.2</b>	The successful Bidder <b>shall not</b> be required to submit an Environmental, Social, Health and Safety (ESHS) Performance Security.
<b>ITB 49</b>	<p>The Adjudicator proposed by the Employer is: <b><i>Shan Marion Greer With residence at Clarke Street, Vigie in the city of Castries, State of Saint Lucia.</i></b> The hourly fee for this proposed Adjudicator shall be: <b><i>US\$350.00.</i></b></p> <p>The biographical data of the proposed Adjudicator is as follows:</p> <p><b>Personal Profile</b></p> <p>Name: Shan Greer</p> <p>Age: 43</p> <p>Nationalities: St Lucian/Canadian</p> <p>Education:</p> <ul style="list-style-type: none"> <li>- MSc Construction Law and Dispute Resolution (Merit), Kings College, London, 2006</li> </ul>



- Bar Vocational Course, Inns of Court School of Law, London, 2000
- LLB Degree (Upper Second Class Honours), University of London, London, 1999

### **Professional Profile**

Shan Greer is an arbitrator, mediator and lawyer residing in Saint Lucia. For more than 18 years, as Counsel, Shan Greer has dealt with a wide range of banking and finance, construction and infrastructure, energy, investment, commercial, intellectual property, joint venture and shareholders disputes, and with the enforcement of arbitration awards.

Shan Greer has represented clients and acts as arbitrator under ICC and UNCITRAL Rules as well as other *ad hoc* international and domestic arbitrations. Miss Greer is an active member of the Chartered Institute of Arbitrators. She is the Chair of its Caribbean Branch as well as an approved tutor and Regional Pathway Leader for the Americas.

In addition to her dispute resolution practice, she has an extensive non-contentious background, having worked as a legal advisor in the negotiation and preparation of contractual documents for several construction projects. Shan holds an MSc in Construction Law and Dispute Resolution from Kings College, London (2006). Her dissertation topic was Public Procurement for PPP and included an examination of public procurement in the Caribbean.

### **Arbitration Experience**

Cases handled as an arbitrator include large disputes, as well as a wide variety of other matters of varying size, involving corporations, privately held companies, governmental entities and individuals. Most recent pending and prior arbitrations include:

- An international arbitration relating to a loss and expense/defects liability claim for a commercial construction project governed by the FIDIC Red Book standard form of contract;
- Ad hoc arbitration concerning a claim brought by a property development company against a statutory body for damages caused by construction works;
- An international arbitration between an insurance company and lending institution with respect to the interpretation of terms relating to liability under an insurance policy;
- Under UNCITRAL rules, an arbitration involving a claim by a Chief Executive Officer against a statutory body for wrongful termination;
- Appointment to a Dispute Adjudication Board for a multimillion-dollar hospital project for architectural works and remediation of the mechanical, electrical and plumbing installations;
- A domestic arbitration under a commercial insurance policy for loss of property due to fire;

	<ul style="list-style-type: none"> <li>• Various statutory arbitrations relating to damages claimed against a public utility company.</li> </ul> <p><b>Bar Admissions</b>  England and Wales - 2000  Saint Lucia – 2000  Saint Vincent – 2013  Belize - 2016</p> <p><b>Law Society Admissions</b>  England and Wales - 2008</p>
<p><b>ITB 50.1</b></p>	<p>The procedures for making a Procurement-related Complaint are detailed in the “<a href="#">Procurement Regulations for IPF Borrowers</a> (Annex III).” If a Bidder wishes to make a Procurement-related Complaint, the Bidder should submit its complaint following these procedures, in writing (by the quickest means available, that is either by email or fax), to:</p> <p>For the attention: <b>Procurement Office</b>  Employer: <b>National Recovery Program Bureau</b>  Email address: <b>procurement@nrpbsmx.org</b></p> <p>In summary, a Procurement-related Complaint may challenge any of the following:</p> <ol style="list-style-type: none"> <li>1. the terms of the Bidding Documents; and</li> <li>2. the Employer’s decision to award the contract.</li> </ol>



Section III - Evaluation and Qualification Criteria

1.1.1

***This section contains all the criteria that the Employer shall use to evaluate Bids and qualify Bidders through post-qualification. No other factors, methods or criteria shall be used other than specified in this bidding document. The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms.***

Wherever a Bidder is required to state a monetary amount, Bidders should indicate the USD equivalent using the rate of exchange determined as follows:

- for construction turnover or financial data required for each year - Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year is to be converted) was originally established; or
- value of single contract - Exchange rate prevailing on the date of the contract.

Exchange rates shall be taken from the publicly available source identified in the ITB 32.1. Any error in determining the exchange rates in the Bid may be corrected by the Employer

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## **1. Margin of Preference**

**Not Applicable**

## **2. Evaluation**

In addition to the criteria listed in ITB 35.2 (a) – (e) the following criteria shall apply:

### **2.1 Adequacy of Technical Proposal**

- 2 Evaluation of the Bidder's Technical Proposal will include an assessment of the Bidder's technical capacity to mobilize key equipment and personnel for the contract consistent with its proposal regarding work methods, scheduling, and material sourcing in sufficient detail and fully in accordance with the requirements stipulated in Section VII, Works Requirements.

### **2.2 Multiple Contracts**

**Not Applicable**

### **2.3 Alternative Completion Times**

**Not Applicable**

### **2.4 Sustainable procurement**

**Not Applicable**

### **2.5 Alternative Technical Solutions for specified parts of Works**

Alternative technical solutions are admitted regarding the place for decommissioning ships: decommissioning of ships on land, on barges, or decommissioning out of the country after shipping out the shipwrecks without processing. Any of the three alternatives is acceptable and as long as there is compliance with the requisites set forth in the contract ESMP use of any of the specified alternative will not affect the evaluation.

### **2.6 Specialized Subcontractors**

Only the **specific experience** (4.2 a and b) of Subcontractors for specialized works permitted by the Employer will be considered. The general experience and financial resources of the Specialized Subcontractors shall not be added to those of the Bidder for purposes of qualification of the Bidder.

## 2. Qualification

Eligibility and Qualification Criteria			Compliance Requirements				Documentation
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All members Combined	Each Member	At least one Member	
<b>1. Eligibility</b>							
1.1	<b>Nationality</b>	Nationality in accordance with ITB 4.4	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Forms ELI – 1.1 and 1.2, with attachments
1.2	<b>Conflict of Interest</b>	No conflicts of interest in accordance with ITB 4.2	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Letter of Bid
1.3	<b>Bank Eligibility</b>	Not having been declared ineligible by the Bank, as described in ITB 4.5.	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Letter of Bid
1.4	<b>State-owned enterprise or institution of the Borrower country</b>	Meets conditions of ITB 4.6	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Forms ELI – 1.1 and 1.2, with attachments
1.5	<b>United Nations resolution or Borrower's country law</b>	Not having been excluded as a result of prohibition in the Borrower's country laws or official regulations against commercial relations with the Bidder's country, or by an act of compliance with UN Security Council resolution, both in	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Forms ELI – 1.1 and 1.2, with attachments

Eligibility and Qualification Criteria			Compliance Requirements				Documentation
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All members Combined	Each Member	At least one Member	
		accordance with ITB 4.8 and Section V.					
<b>2. Historical Contract Non-Performance</b>							
2.1	<b>History of Non-Performing Contracts</b>	Non-performance of a contract <sup>1</sup> did not occur as a result of contractor default since 1 <sup>st</sup> January 2016.	Must meet requirement <sup>1 &amp; 2</sup>	Must meet requirements	Must meet requirement <sup>2</sup>	N/A	Form CON-2
2.2	<b>Suspension Based on Execution of Bid /Proposal Securing Declaration by the Employer or withdrawal of the Bid within Bid validity period</b>	Not under suspension based on execution of a Bid/Proposal Securing Declaration pursuant to ITB 4.7 or withdrawal of the Bid pursuant ITB 19.9	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Letter of Bid
2.3	<b>Pending Litigation</b>	Bidder's financial position and prospective long term profitability sound according to	Must meet requirement	N/A	Must meet requirement	N/A	Form CON – 2

<sup>1</sup> Nonperformance, as decided by the Employer, shall include all contracts where (a) nonperformance was not challenged by the contractor, including through referral to the dispute resolution mechanism under the respective contract, and (b) contracts that were so challenged but fully settled against the contractor. Nonperformance shall not include contracts where Employers decision was overruled by the dispute resolution mechanism. Nonperformance must be based on all information on fully settled disputes or litigation, i.e. dispute or litigation that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the Bidder have been exhausted.

<sup>2</sup> This requirement also applies to contracts executed by the Bidder as JV member.



Eligibility and Qualification Criteria			Compliance Requirements			Documentation	
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All members Combined	Each Member	At least one Member	
		criteria established in 3.1 below and assuming that all pending litigation will be resolved against the Bidder					
2.4	<b>Litigation History</b>	No consistent history of court/arbitral award decisions against the Bidder <sup>3</sup> since 1 <sup>st</sup> January 2016.	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Form CON – 2
2.5	Declaration: Environmental, Social, Health, and Safety (ESHS) past performance	Declare any civil work contracts that have been suspended or terminated and/or performance security called by an employer for reasons related to the non-compliance of any environmental, or social (including sexual exploitation and abuse (SEA) and gender based	Must make the declaration. Where there are Specialized Sub-contractor/s, the Specialized Sub-contractor/s must also make the declaration.	N/A	Each must make the declaration. Where there are Specialized Sub-contractor/s, the Specialized Sub-contractor/s must also make the declaration.	N/A	Form CON-3 ESHS Performance Declaration

<sup>3</sup> The Bidder shall provide accurate information on the Letter of Bid about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the last five years. A consistent history of court/arbitral awards against the Bidder or any member of a joint venture may result in disqualifying the Bidder.

Eligibility and Qualification Criteria			Compliance Requirements			Documentation	
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All members Combined	Each Member	At least one Member	
		violence (GBV)), or health or safety requirements or safeguard in the past five years <sup>4</sup> .					
<b>3. Financial Situation and Performance</b>							
3.1	<b>Financial Capabilities</b>	(i) The Bidder shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as USD \$100,000 for the subject contract(s) net of the Bidder's other commitments	Must meet requirement	Must meet Requirement	N/A	N/A	Form FIN – 3.1, with attachments
		(ii) The Bidders shall also	Must meet requirement	Must meet requirement	N/A	N/A	

<sup>4</sup> The Employer may use this information to seek further information or clarifications in carrying out its due diligence.

Eligibility and Qualification Criteria			Compliance Requirements			Documentation	
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All members Combined	Each Member	At least one Member	
		demonstrate, to the satisfaction of the Employer, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.					
		(iii) The audited balance sheets or, if not required by the laws of the Bidder's country, other financial statements acceptable to the Employer, for the last 3 (2016, 2017, 2018) years shall be submitted and must demonstrate the current soundness of the Bidder's financial position and indicate its prospective long-term profitability.	Must meet requirement	N/A	Must meet requirement	N/A	

Eligibility and Qualification Criteria			Compliance Requirements				Documentation
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All members Combined	Each Member	At least one Member	
3.2	<b>Average Annual Construction Turnover</b>	Minimum average annual construction turnover of US100,000 as total certified payments received for contracts in progress and/or completed within the last 5 years (2014-2018).	Must meet requirement	Must meet requirement	Must meet 25% of the requirement	Must meet 40%, of the requirement	Form FIN – 3.2
<b>4. Experience</b>							
4.1 (a)	<b>General Construction Experience</b>	Experience under wreck salvage contracts in the role of prime contractor, JV member, subcontractor, or management contractor for at least the last 3 years, starting 1 <sup>st</sup> January 2016.	Must meet requirement	N/A	Must meet requirement	N/A	Form EXP – 4.1
4.2 (a)	<b>Specific Construction &amp; Contract Management Experience</b>	(i) A minimum number of 1 (one) similar contracts specified below that has been	Must meet requirement	Must meet requirement <sup>5</sup>	N/A	Must meet the following requirements for the key activities	Form EXP 4.2(a)

<sup>5</sup> In the case of JV, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single entity. In determining whether the JV meets the requirement of total number of contracts, only the number of contracts completed by all members each of value equal or more than the minimum value required shall be aggregated.

Eligibility and Qualification Criteria			Compliance Requirements			Documentation	
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All members Combined	Each Member	At least one Member	
		satisfactorily and substantially completed as a prime contractor, joint venture member management contractor or sub-contractor between 1st January 2014 and bid submission deadline: (i) with minimum value of USD\$500,000 ( five hundred thousand United States Dollar) The similarity of the contracts shall be based on the following: Salvage of multiple vessels in areas of intensive maritime traffic.				listed below [list key activities and the corresponding minimum requirements to be met by one member otherwise state: "N/A"]	
4.2 (b)		For the above and any other contracts	Must meet requirements	Must meet requirements	N/A	N/A	Form EXP – 4.2 (b)

Eligibility and Qualification Criteria			Compliance Requirements			Documentation	
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All members Combined	Each Member	At least one Member	
		<p>[substantially completed and under implementation] as prime contractor, joint venture member, or sub-contractor between 1st January 2014 and Application submission deadline, a minimum construction experience in the following key activities successfully completed<sup>6</sup>:</p> <p>environmentally safe Ship Decommissioning</p> <p>Environmentally safe Waste Disposal</p>					

<sup>6</sup> Volume, number or rate of production of any key activity can be demonstrated in one or more contracts combined if executed during same time period.

Eligibility and Qualification Criteria			Compliance Requirements			Documentation	
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All members Combined	Each Member	At least one Member	
		<sup>7</sup>					

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<sup>7</sup> The minimum experience requirement for multiple contracts will be the sum of the minimum requirements for respective individual contracts, unless specified otherwise.

### 3. Key Personnel

The Bidder must demonstrate that it will have a suitably qualified (and in adequate numbers) minimum Key Personnel, as described in the table below, that are required to perform the Contract.

The Bidder shall provide details of the Key Personnel and such other Key Personnel that the Bidder considers appropriate, together with their academic qualifications and work experience. The Bidder shall complete the relevant Forms in Section IV, Bidding Forms.

The Contractor shall require the Employer's consent to substitute or replace the Key Personnel (reference the Particular Conditions of Contract 9.1).

#### Key Personnel

Item No.	Position/specialization	Relevant academic qualifications	Minimum years of relevant work experience
1	Project Manager/ Contractor's Representative		10 years managing similar projects
2	Contractor's Field Manager		5 years as field manager in ship salvage works
<b>Suitable experts in the following specializations</b>			
3	Environmental Expert	degree in relevant environmental field (for "relevant field" ,if no degree, proven record of environmental practice in shipwreck salvage operations may suffice)	5-year work in similar work environments
4	Health and Safety Expert	degree in relevant H&S field (for "relevant field" ,if no degree, proven record of H&S practice in	5-year work in similar work environments



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		shipwreck salvage operations may suffice)	
5	Marine Engineer	Degree in marine engineering and proven track record of shipwreck decommissioning	5-year similar experience
6	Professional divers (number to be decided by the bidder)		Minimum of 5 years of work as professional diver

## **4. Equipment**

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

**3**

## Section IV - Bidding Forms

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## Letter of Bid

*INSTRUCTIONS TO BIDDERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE DOCUMENT*

*The Bidder must prepare this Letter of Bid on stationery with its letterhead clearly showing the Bidder's complete name and business address.*

*Note: All italicized text is to help Bidders in preparing this form.*

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

**RFB No.:** *[insert number of RFB process]*

**Alternative No.:** *[insert identification No. if this is a Bid for an alternative]*

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

- (a) **No reservations:** We have examined and have no reservations to the bidding document, including Addenda issued in accordance with ITB 8;
- (b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with ITB 4;
- (c) **Bid-Securing Declaration:** We have not been suspended nor declared ineligible by the Employer based on execution of a Bid-Securing Declaration or Proposal-Securing Declaration in the Employer's Country in accordance with ITB 4.7;
- (d) **Conformity:** We offer to execute in conformity with the bidding document the following Works: *[insert a brief description of the Works]*
- (e) **Bid Price:** The total price of our Bid, excluding any discounts offered in item (f) below is: *[Insert one of the options below as appropriate]*

*[Option 1, in case of one lot:] Total price is: [insert the total price of the Bid in words and figures, indicating the various amounts and the respective currencies];*

Or

*[Option 2, in case of multiple lots:] (a) Total price of each lot [insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies]; and (b) Total price of all lots (sum of all lots) [insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies];*

- (f) **Discounts:** The discounts offered and the methodology for their application are:

- (i) The discounts offered are: [*Specify in detail each discount offered.*]
- (ii) The exact method of calculations to determine the net price after application of discounts is shown below: [*Specify in detail the method that shall be used to apply the discounts*];
- (g) **Bid Validity Period:** Our Bid shall be valid for a period specified in BDS ITB 18.1 of days from the date fixed for the Bid submission deadline in accordance with the bidding document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (h) **Performance Security:** If our Bid is accepted, we commit to obtain a performance security [*and an Environmental, Social, Health and Safety (ESHS) Performance Security, Delete if not applicable*] in accordance with the bidding document;
- (i) **One Bid Per Bidder:** We are not submitting any other Bid(s) as an individual Bidder or as a subcontractor, and we are not participating in any other Bid(s) as a Joint Venture member, and meet the requirements of ITB 4.3, other than alternative Bids submitted in accordance with ITB 13;
- (j) **Suspension and Debarment:** We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the World Bank Group or a debarment imposed by the World Bank Group in accordance with the Agreement for Mutual Enforcement of Debarment Decisions between the World Bank and other development banks. Further, we are not ineligible under the Employer's Country laws or official regulations or pursuant to a decision of the United Nations Security Council;
- (k) **State-owned enterprise or institution:** [*select the appropriate option and delete the other*] [*We are not a state-owned enterprise or institution*] / [*We are a state-owned enterprise or institution but meet the requirements of ITB 4.6*];
- (l) **Commissions, gratuities and fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the Bidding process or execution of the Contract: [*insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity*]

Name of Recipient	Address	Reason	Amount

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

- (m) **Binding Contract:** We understand that this Bid, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- (n) **Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated cost Bid, the Most Advantageous Bid or any other Bid that you may receive; and
- (o) **Fraud and Corruption:** We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption; and
- (p) **Adjudicator:** 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 fees and biographical data are attached.

**Name of the Bidder:** *\*[insert complete name of person signing the Bid]*

**Name of the person duly authorized to sign the Bid on behalf of the Bidder:***\*\*[insert complete name of person duly authorized to sign the Bid]*

**Title of the person signing the Bid:** *[insert complete title of the person signing the Bid]*

**Signature of the person named above:** *[insert signature of person whose name and capacity are shown above]*

**Date signed** *[insert date of signing]* **day of** *[insert month]*, *[insert year]*

\*: In the case of the Bid submitted by joint venture specify the name of the Joint Venture as Bidder

\*\* : Person signing the Bid shall have the power of attorney given by the Bidder to be attached with the Bid

# Schedules

## 1. Activity Schedule

<i>Item no.</i>	<i>Description</i>	<i>Unit</i>	<i>Quant ity</i>	<i>Rate US\$</i>	<i>Amo unt US\$</i>
<b>1. MOBILIZATION-DEMobilIZATION, DECOMMISSIONING YARD RESTORATION</b>					
1.1	Mobilization	LS	1		
1.2	Demobilization	LS	1		
1.3	Decommissioning Yard Restoration (if applicable)	LS	1		
<b>Total</b>					
<b>2. SHIPWRECK SALVAGE SERVICES</b>					
2.1	wrecks behind the FedEx building. Silver Queen plus one.	LS	2		
2.2	wrecks about 100 meters North east of the Fed-Ex building.	LS	2		
2.3	wrecks behind Tropicana casino	LS	2		
2.4	wrecks at Snoppy Island bridge	LS	2		
2.5	wrecks at PDP grave yard	LS	11		
2.6	wreck at the right hand southern end of the bridge	LS	1		
2.7	wrecks at the left hand northern side of the bridge	LS	2		
2.8	wreck at the northern entrance of the causeway	LS	1		
2.9	wreck (sunk barge) near fairway buoy	LS	1		
2.10	wreck at the mullet pond	LS	1		
2.11	wreck at the mullet pond entrance	LS	1		
2.12	wrecks at little key.	LS	3		
2.13	Wrecks at Contractor Mr. Steve Coetzer's location. Most of those	LS	27		



	were salvaged and bundled up as a pile.			
2.14	wreck Pink Iguana along airport roundabout	LS	1	
2.15	wreck at stop and shop location (Rusty Rocket vicinity, Airport Corner).	LS	1	
2.16	wrecks behind Trifty car rental location.	LS	5	
2.17	wreck Yacht Hub 100 meters north of Hertz car rental location.	LS	1	
2.18	wrecks at Sint Maarten ship yard.	LS	2	
2.19	wreck (tug) between St maarten shipyard and red cross building.	LS	1	
2.20	wrecks behind red cross building	LS	3	
2.21	wrecks north of Bobby's marina Airport road	LS	3	
2.22	wrecks at the occupied working area by Mr. John Gifford	LS	9	
				Total
<b>3. SHORELINE DEBRIS REMOVAL</b>				
3.1	Debris removal along 10.53 km of shoreline	LS	1	
				Total
				Grand Total



## 2. Schedule of Payment Currencies

For .....insert name of Section of the Works

Separate tables may be required if the various sections of the Works (or of the Bill of Quantities) will have substantially different foreign and local currency requirements. The Employer should insert the names of each section of the Works.

	A	B	C	D
<b>Name of Payment Currency</b>	<b>Amount of Currency</b>	<b>Rate of Exchange to Local Currency</b>	<b>Local Currency Equivalent</b> $C = A \times B$	<b>Percentage of Total Bid Price (TBP)</b> $\frac{100 \times C}{TBP}$
<b>Local currency</b> _____		<b>1.00</b>		
<b>Foreign Currency #1</b> _____				
<b>Foreign Currency #2</b> _____				
<b>Foreign Currency #3</b> _____				
<b>Total Bid Price</b>				<b>100.00</b>
<b>Provisional Sums Expressed in Local Currency</b>		<b>1.00</b>		

<b>TOTAL BID PRICE (Including provisional sum)</b>				
--	--	--	--	--

**3. Schedule(s) of Adjustment Data  
(Not Applicable)**

## **Forms of Bid Security**

### **Form of Bid Security - Bank Guarantee**

**(Not Applicable)**

**Form of Bid Security – Bid Bond  
(Not Applicable)**

## Form of Bid-Securing Declaration

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

Bid No.: \_\_\_\_\_

Alternative No.: \_\_\_\_\_

To:

We, the undersigned, declare that:

We understand that, according to your conditions, Bids must be supported by a Bid-Securing Declaration.

We accept that we will automatically be suspended from being eligible for Bidding, or submitting Proposals in any contract with the Employer for the period of time of \_\_\_\_\_ starting on \_\_\_\_\_, 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 in the Letter of Bid; or
- (b) having been notified of the acceptance of our Bid by the Employer during the period of Bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security and, if required, the Environmental and Social (ES) Performance Security, in accordance with the ITB 47.

We understand this Bid-Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of your notification to us of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of our Bid.

Name of the Bidder\* \_\_\_\_\_

Name of the person duly authorized to sign the Bid on behalf of the Bidder\*\* \_\_\_\_\_

Title of the person signing the Bid \_\_\_\_\_

Signature of the person named above \_\_\_\_\_

Date signed \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_

\*: In the case of the Bid submitted by joint venture specify the name of the Joint Venture as Bidder

\*\* : Person signing the Bid shall have the power of attorney given by the Bidder attached to the Bid

*[Note: In case of a Joint Venture, the Bid-Securing Declaration must be in the name of all members to the Joint Venture that submits the Bid.]*





## **Technical Proposal**

### **Technical Proposal Forms**

- **Key Personnel Schedule**
- **Equipment**
- **Site Organization**
- **Method Statement**
- **Mobilization Schedule**
- **Works Schedule**
  -
- **ESHS Management Strategies and Implementation Plans**
  -
- **Code of Conduct (ESHS)**
- **Others**

## FORM PER -1

### Key Personnel Schedule

Bidders should provide the names and details of the suitably qualified Key Personnel to perform the Contract. The data on their experience should be supplied using the Form PER-2 below for each candidate.

#### Key Personnel

1.	<b>Title of position:</b>	
	<b>Name of candidate:</b>	
	<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	<b>Time commitment for this position:</b>	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	<b>Expected time schedule for this position:</b>	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart]</i>
2.	<b>Title of position:</b> <i>[Environmental Specialist]</i>	
	<b>Name of candidate:</b>	
	<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	<b>Time commitment for this position:</b>	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	<b>Expected time schedule for this position:</b>	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart]</i>
3.	<b>Title of position:</b> <i>[Health and Safety Specialist]</i>	
	<b>Name of candidate:</b>	

	<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	<b>Time commitment for this position:</b>	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	<b>Expected time schedule for this position:</b>	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart]</i>
4.	<b>Title of position:</b> <i>[Social Specialist]</i>	
	<b>Name of candidate:</b>	
	<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	<b>Time commitment for this position:</b>	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	<b>Expected time schedule for this position:</b>	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart]</i>
5.	<b>Title of position:</b> <i>[insert title]</i>	
	<b>Name of candidate</b>	
	<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	<b>Time commitment for this position:</b>	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	<b>Expected time schedule for this position:</b>	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart]</i>

**Form PER-2:  
Resume and Declaration  
Key Personnel**

Name of Bidder
----------------

Position [#1]: [title of position from Form PER-1]		
Personnel information	Name:	Date of birth:
	Address:	E-mail:
	Professional qualifications:	
	Academic qualifications:	
	Language proficiency:[language and levels of speaking, reading and writing skills]	
details	Address of employer:	
	Telephone:	Contact (manager / personnel officer):
	Fax:	
	Job title:	Years with present employer:

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

Project	Role	Duration of involvement	Relevant experience
---------	------	-------------------------	---------------------

[main project details]	[role and responsibilities on the project]	[time in role]	[describe the experience relevant to this position]

### Declaration

I, the undersigned Key Personnel, certify that to the best of my knowledge and belief, the information contained in this Form PER-2 correctly describes myself, my qualifications and my experience.

I confirm that I am available as certified in the following table and throughout the expected time schedule for this position as provided in the Bid:

Commitment	Details
Commitment to duration of contract:	[insert period (start and end dates) for which this Key Personnel is available to work on this contract]
Time commitment:	[insert the number of days/week/months/ that this Key Personnel will be engaged]

I understand that any misrepresentation or omission in this Form may:

- (a) be taken into consideration during Bid evaluation;
- (b) my disqualification from participating in the Bid;
- (c) my dismissal from the contract.

**Name of Key Personnel:** *[insert name]*

Signature: \_\_\_\_\_

Date: (day month year): \_\_\_\_\_

**Countersignature of authorized representative of the Bidder:**

Signature: \_\_\_\_\_

Date: (day month year): \_\_\_\_\_

## Equipment

The Bidder shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III (Evaluation and Qualification Criteria). A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Bidder. The Bidder shall provide all the information requested below, to the extent possible. Fields with asterisk (\*) shall be used for evaluation.

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

The following information shall be provided only for equipment not owned by the Bidder.

Owner	Name of owner	
	Address of owner	
	Telephone	Contact name and title

---

	Fax	Telex
Agreements	Details of rental / lease / manufacture agreements specific to the project	



## **Site Organization**

***[insert Site Organization information]***

**Method Statement**  
***[insert Method Statement]***

**Mobilization Schedule**  
***[insert Mobilization Schedule]***

**Works Schedule**

***[insert Works Schedule]***

## **ESHS Management Strategies and Implementation Plans**

### **(ESHS-MSIP)**

**The Bidder shall submit comprehensive and concise Environmental, Social, Health and Safety Management Strategies and Implementation Plans (ESHS-MSIP) as required by ITB 11.1 (i) of the Bid Data Sheet. These strategies and plans shall describe in detail the actions, materials, equipment, management processes etc. that will be implemented by the Contractor, and its subcontractors.**

**In developing these strategies and plans, the Bidder shall have regard to the ESHS provisions of the contract including those as may be more fully described in the Works Requirements in Section VII.**

## **Code of Conduct: Environmental, Social, Health and Safety (ESHS)**

**The Bidder shall submit the Code of Conduct that will apply to the Contractor's employees and subcontractors as required by ITB 11.1 (i) of the Bid Data Sheet. The Code of Conduct shall ensure compliance with the ESHS provisions of the contract, including those as may be more fully described in the Works Requirements in Section VII.**

**In addition, the Bidder shall submit an outline of how this Code of Conduct will be implemented. This will include: how it will be introduced into conditions of employment/engagement, what training will be provided, how it will be monitored and how the Contractor proposes to deal with any breaches.**

**Others**  
**(Not Applicable)**

## **Bidder's Qualification**

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



## Form ELI -1.1: Bidder Information Form

Date: \_\_\_\_\_  
 RFB No. and title: \_\_\_\_\_  
 Page \_\_\_\_\_ of \_\_\_\_\_ pages

Bidder's name
In case of Joint Venture (JV), name of each member:
Bidder's actual or intended country of registration: <i>[indicate country of Constitution]</i>
Bidder's actual or intended year of incorporation:
Bidder's legal address [in country of registration]:
Bidder's authorized representative information Name: _____ Address: _____ Telephone/Fax numbers: _____ E-mail address: _____
1. Attached are copies of original documents of <ul style="list-style-type: none"> <li><input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITB 4.4.</li> <li><input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1.</li> <li><input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITB 4.6 documents establishing:             <ul style="list-style-type: none"> <li>• Legal and financial autonomy</li> <li>• Operation under commercial law</li> <li>• Establishing that the Bidder is not under the supervision of the Employer</li> </ul> </li> </ul>
2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. <i>[If required under BDS ITB 47.1, the successful Bidder shall provide additional information on beneficial ownership, using the Beneficial Ownership Disclosure Form.]</i>

## Form ELI -1.2: Information Form for JV Bidders

(to be completed for each member of Joint Venture)

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

RFB No. and title: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

Bidder's Joint Venture name:
JV member's name:
JV member's country of registration:
JV member's year of constitution:
JV member's legal address in country of constitution:
JV member's authorized representative information Name: _____ Address: _____ Telephone/Fax numbers: _____ E-mail address: _____
<p>1. Attached are copies of original documents of</p> <p><input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITB 4.4.</p> <p><input type="checkbox"/> In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and is not under the supervision of the Employer, in accordance with ITB 4.6.</p> <p>2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. <i>[If required under BDS ITB 47.1, the successful Bidder shall provide additional information on beneficial ownership for each JV member using the Beneficial Ownership Disclosure Form.]</i></p>

## Form CON – 2: Historical Contract Non-Performance, Pending Litigation and Litigation History

Bidder's Name: \_\_\_\_\_

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

Joint Venture Member's Name \_\_\_\_\_

RFB No. and title: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria			
<input type="checkbox"/> Contract non-performance did not occur since 1 <sup>st</sup> January <i>[insert year]</i> specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.1.			
<input type="checkbox"/> Contract(s) not performed since 1 <sup>st</sup> January <i>[insert year]</i> specified in Section III, Evaluation and Qualification Criteria, requirement 2.1			
Year	Non-performed portion of contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and US\$ equivalent)
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Reason(s) for nonperformance: <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>
Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria			
<input type="checkbox"/> No pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.			
<input type="checkbox"/> Pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3 as indicated below.			

Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (currency), USD Equivalent (exchange rate)
		Contract Identification: _____ Name of Employer: _____ Address of Employer: _____ Matter in dispute: _____ Party who initiated the dispute: _____  Status of dispute: _____	
		Contract Identification: _____ Name of Employer: _____ Address of Employer: _____ Matter in dispute: _____ Party who initiated the dispute: _____ Status of dispute: _____	
Litigation History in accordance with Section III, Evaluation and Qualification Criteria			
<input type="checkbox"/> No Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4. <input type="checkbox"/> Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4 as indicated below.			
Year of award	Outcome as percentage of Net Worth	Contract Identification	Total Contract Amount (currency), USD Equivalent (exchange rate)

<i>[insert year]</i>	<i>[insert percentage]</i>	Contract Identification: [indicate complete contract name, number, and any other identification] Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Matter in dispute: <i>[indicate main issues in dispute]</i> Party who initiated the dispute: <i>[indicate "Employer" or "Contractor"]</i> Reason(s) for Litigation and award decision <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>
----------------------	----------------------------	---	------------------------

## Form CON – 3: Environmental, Social, Health, and Safety Performance Declaration

*[The following table shall be filled in for the Bidder, each member of a Joint Venture and each Specialized Subcontractor]*

Bidder's Name: *[insert full name]*

Date: *[insert day, month, year]*

Joint Venture Member's or Specialized Subcontractor's Name: *[insert full name]*

RFB No. and title: *[insert RFB number and title]*

Page *[insert page number]* of *[insert total number]* pages

### Environmental, Social, Health, and Safety Performance Declaration

in accordance with Section III, Qualification Criteria, and Requirements

- No suspension or termination of contract:** An employer has not suspended or terminated a contract and/or called the performance security for a contract for reasons related to Environmental, Social, Health, or Safety (ESHS) performance since the date specified in Section III, Qualification Criteria, and Requirements, Sub-Factor 2.5.
- Declaration of suspension or termination of contract:** The following contract(s) has/have been suspended or terminated and/or Performance Security called by an employer(s) for reasons related to Environmental, Social, Health, or Safety (ESHS) performance since the date specified in Section III, Qualification Criteria, and Requirements, Sub-Factor 2.5. Details are described below:

Year	Suspended or terminated portion of contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and US\$ equivalent)
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Reason(s) for suspension or termination: <i>[indicate main reason(s) e.g. for GBV/ SEA breaches]</i>	<i>[insert amount]</i>
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Employer: <i>[insert full name]</i>	<i>[insert amount]</i>

		Address of Employer: <i>[insert street/city/country]</i> Reason(s) for suspension or termination: <i>[indicate main reason(s)]</i>	
...	...	<i>[list all applicable contracts]</i>	...
<b>Performance Security called by an employer(s) for reasons related to ESHS performance</b>			
Year	Contract Identification		Total Contract Amount (current value, currency, exchange rate and US\$ equivalent)
<i>[insert year]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Reason(s) for calling of performance security: <i>[indicate main reason(s) e.g. for GBV/ SEA breaches]</i>		<i>[insert amount]</i>

## Form CCC: Current Contract Commitments / Works in Progress

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

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



## Form FIN – 3.1: Financial Situation and Performance

Bidder's Name: \_\_\_\_\_

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

Joint Venture Member's Name \_\_\_\_\_

RFB No. and title: \_\_\_\_\_

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### 1. Financial data

Type of Financial information in (currency)	Historic information for previous _____ years, _____				
	(amount in currency, currency, exchange rate, USD equivalent)				
	Year 1	Year 2	Year 3	Year 4	Year 5
Statement of Financial Position (Information from Balance Sheet)					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity/Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					
Information from Income Statement					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Cash Flow Information					
Cash Flow from Operating Activities					

## 2. Sources of Finance

Specify sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.

N o.	Source of finance	Amount (US\$ equivalent)
1		
2		
3		

## 3. Financial documents

The Bidder and its parties shall provide copies of financial statements for \_\_\_\_\_ years pursuant Section III, Evaluation and Qualifications Criteria, Sub-factor 3.2. The financial statements shall:

- (a) reflect the financial situation of the Bidder or in case of JV member , and not an affiliated entity (such as parent company or group member).
- (b) be independently audited or certified in accordance with local legislation.
- (c) be complete, including all notes to the financial statements.
- (d) correspond to accounting periods already completed and audited.

Attached are copies of financial statements<sup>1</sup> for the \_\_\_\_\_ years required above; and complying with the requirements

<sup>1</sup> If the most recent set of financial statements is for a period earlier than 12 months from the date of bid, the reason for this should be justified.



## Form FIN - 3.2: Average Annual Construction Turnover

Bidder's Name: \_\_\_\_\_

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

Joint Venture Member's Name \_\_\_\_\_

RFB No. and title: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

		Annual turnover data (construction only)	
Year	Amount Currency	Exchange rate	USD equivalent
<i>[indicate year]</i>	<i>[insert amount and indicate currency]</i>		
Average Annual Construction Turnover *			

\* See Section III, Evaluation and Qualification Criteria, Sub-Factor 3.2.

## Form FIN - 3.3: Financial Resources

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

Source of financing	Amount (US\$ equivalent)
1.	
2.	
3.	
4.	

## Form EXP - 4.1: General Construction Experience

Bidder's Name: \_\_\_\_\_  
 Date: \_\_\_\_\_

Joint Venture Member's Name \_\_\_\_\_  
 RFB No. and title: \_\_\_\_\_  
 Page \_\_\_\_\_ of \_\_\_\_\_ pages

Starting Year	Ending Year	Contract Identification	Role of Bidder
		Contract name: _____ Brief Description of the Works performed by the Bidder: _____ Amount of contract: _____ Name of Employer: _____ Address: _____	
		Contract name: _____ Brief Description of the Works performed by the Bidder: _____ Amount of contract: _____ Name of Employer: _____ Address: _____	
		Contract name: _____ Brief Description of the Works performed by the Bidder: _____ Amount of contract: _____ Name of Employer: _____ Address: _____	

## Form EXP - 4.2(a): Specific Construction and Contract Management Experience

Bidder's Name: \_\_\_\_\_

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

Joint Venture Member's Name \_\_\_\_\_

RFB No. and title: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

Similar Contract No.	Information			
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Managemen t Contractor <input type="checkbox"/>	Sub- contract or <input type="checkbox"/>
Total Contract Amount				US\$ *
If member in a JV or subcontractor, specify participation in total Contract amount			*	
Employer's Name:				
Address:				
Telephone/fax number				
E-mail:				

**Form EXP - 4.2(a) (cont.)**  
**Specific Construction and Contract Management**  
**Experience (cont.)**

<b>Similar Contract No.</b>	<b>Information</b>
Description of the similarity in accordance with Sub-Factor 4.2(a) of Section III:	
1. Amount	
2. Physical size of required works items	
3. Complexity	
4. Methods/Technology	
5. Construction rate for key activities	
6. Other Characteristics	



## Form EXP - 4.2(b): Construction Experience in Key Activities

Bidder's Name: \_\_\_\_\_

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

Joint Venture Member's Name \_\_\_\_\_

Subcontractor's Name<sup>2</sup> (as per ITB 34.2 and 34.3): \_\_\_\_\_

RFB No. and title: \_\_\_\_\_

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Subcontractor's Name (as per ITB 34.2 and 34.3): \_\_\_\_\_

All subcontractors for key activities must complete the information in this form as per ITB 34.2 and 34.3 and Section III, Qualification Criteria and Requirements, Sub-Factor 4.2.

1. Key Activity No One: \_\_\_\_\_

	<b>Information</b>			
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Manageme nt Contractor <input type="checkbox"/>	Sub- contractor <input type="checkbox"/>
Total Contract Amount			US\$	
Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year	Total quantity in the contract (i)	Percentage participation (ii)		Actual Quantity Performed (i) x (ii)
Year 1				
Year 2				
Year 3				
Year 4				

<sup>2</sup> \_\_\_\_\_  
If applicable.

Employer's Name:	
Address:	
Telephone/fax number	
E-mail:	

	<b>Information</b>
Employer's Name:	
Address:	
Telephone/fax number	
E-mail:	

	<b>Information</b>
Description of the key activities in accordance with Sub-Factor 4.2(b) of Section III:	

2. Activity No. Two

3. ....



## Section V - Eligible Countries

## 1.1.1.1.1

**Eligibility for the Provision of Goods, Works and Services in  
Bank-Financed Procurement**

In reference to ITB 4.8, and 5.1, for the information of the Bidders, at the present time firms, goods and services from the following countries are excluded from this Bidding process:

Under ITB 4.8 (a) and 5.1 **None**

Under ITB 4.8 (b) and 5.1 **None**



## Section VI - Fraud and Corruption

**(Section VI shall not be modified)****1. Purpose**

1.1 The Bank's Anti-Corruption Guidelines and this annex apply with respect to procurement under Bank Investment Project Financing operations.

**2. Requirements**

2.1 The Bank requires that Borrowers (including beneficiaries of Bank financing); bidders (applicants/proposers), consultants, contractors and suppliers; any sub-contractors, sub-consultants, service providers or suppliers; any agents (whether declared or not); and any of their personnel, observe the highest standard of ethics during the procurement process, selection and contract execution of Bank-financed contracts, and refrain from Fraud and Corruption.

•

2.2 To this end, the Bank:

a. Defines, for the purposes of this provision, the terms set forth below as follows:

- i. "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- ii. "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
- iii. "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- iv. "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- v. "obstructive practice" is:
  - (a) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
  - (b) acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under paragraph 2.2 e. below.

- b. Rejects a proposal for award if the Bank determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- c. In addition to the legal remedies set out in the relevant Legal Agreement, may take other appropriate actions, including declaring misprocurement, if the Bank determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the loan engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement process, selection and/or execution of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;
- d. Pursuant to the Bank's Anti- Corruption Guidelines and in accordance with the Bank's prevailing sanctions policies and procedures, may sanction a firm or individual, either indefinitely or for a stated period of time, including by publicly declaring such firm or individual ineligible (i) to be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;<sup>1</sup> (ii) to be a nominated<sup>2</sup> sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) to receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any Bank-financed project;
- e. Requires that a clause be included in bidding/request for proposals documents and in contracts financed by a Bank loan, requiring (i) bidders (applicants/proposers), consultants, contractors, and suppliers, and their sub-contractors, sub-consultants, service providers, suppliers, agents personnel, permit the Bank to inspect<sup>3</sup> all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the Bank.

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<sup>1</sup> For the avoidance of doubt, a sanctioned party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract.

<sup>2</sup> A nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider (different names are used depending on the particular bidding document) is one which has been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower.

<sup>3</sup> Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Bank or persons appointed by the Bank to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.

## **PART 2 – Works' Requirements**





Section VII - Works’ Requirements

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## Specifications

### Technical Specifications for Shipwreck Removal and Disposal and Shoreline Debris Removal

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## 1. DESCRIPTION OF SERVICES

The Contractor should provide the following services (further referred as “the Services”):

- i. Shipwreck Removal and Disposal: Provide the labor, materials and equipment necessary to remove and dispose of the sunken, grounded, moored, landed or otherwise abandoned vessels shown on the Vessel Inventory Spreadsheet (VIS). The locations of the vessels are shown on the VIS as well as on the Map of Shipwrecks. The status of the vessels listed in the VIS are subject to change due to ongoing salvage, owner reclamation and other conditions. General comments regarding the disposition of the vessels may be found in the VIS, which includes pictures of most of the shipwrecks.

Some information as to vessels type, size, and construction is described in the VIS. The Contractor shall provide all plant, labor, equipment, materials, supplies, divers and services as necessary to remove and dispose of the vessels listed on the VIS.

The intent of the contract is to have the vessels raised and legally disposed of in accordance with applicable laws and regulations, including but not limited to removal of petroleum fluids, batteries, gray or black water, salvageable metals, and subsequently dispose of the residual wood and fiberglass in the most cost effective and environmentally appropriate manner feasible. Metal hull boats were selected by the Nature Foundation of St. Maarten to be decommissioned and submerged at designated locations as recreational dive sites shown on the Dive Site Locations Map. The vessels selected to be used as dive sites are indicated on the VIS. The responsibility of the Contractor will be only decommissioning and transporting vessels to the indicated location and preparing the boats for recreational purposes as well as sinking them is the responsibility of the Nature Foundation of St. Maarten.

- ii. Shoreline and shallow water Debris Removal: Provide labor, materials and equipment necessary to perform removal and disposal of debris located along the shoreline and in the shallow (walkable) waters of the Simpson Bay Lagoon, not including vessels described in paragraph i, above. Shoreline and shallow water debris may include C & D debris, household or domestic trash, pieces of wood, wood or fiberglass parts of boats not otherwise identifiable as a vessel, and any other miscellaneous debris.

The debris is located along the shoreline and within the shallow waters along the entire Dutch side of the Simpson Bay Lagoon, including the Mullet Pond area. The area of cleanup includes the shoreline up to at least 5 (five) meters from the water side and the shallow waters within reasonable reach (walkable distance) from the shore.

If for any reason cleanup activities requires entry into private property premises the authorization for such activities and entries shall be sought with the Project Manager (supervision Engineer) who will address the request to VROMI.

- ii. Applicable Standards and Methods: National and international standards apply to this contract (see section 19 - ENVIRONMENTAL AND SAFETY CONCERNS)  
The Contractor shall be aware that there are size limitations associated with the maximum size of salvage vessels that may enter Simpson Bay Lagoon. The drawbridge

at the entry channel will allow vessels with no more than a 55 ft. beam and a 15 ft. draft. Salvage barges/vessels with larger beams/draft may not enter Simpson Bay Lagoon.

### ***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 Employer determines that such proposed deviations do not ensure substantially equal or higher quality, the Contractor shall comply with the standards specified in the documents.

## **2. SITE INVESTIGATIONS AND CONDITIONS AFFECTING THE WORK**

- i. The Contractor shall take steps reasonably necessary to ascertain the nature and location of the work, and review and understand the general and specific conditions that can affect the work or its cost. This includes but not is limited to (a) conditions bearing upon transportation, disposal, handling, and storage of materials; (b) the availability of labor, water, electric power, and roads; (c) uncertainties of weather, bridge openings, channel widths, tides, or similar physical conditions at the site; (d) the non-homogeneous distribution of varying types of debris on the shoreline that require removal; and (e) the character of equipment and facilities needed preliminary to and during work performance, as well as the transportation costs and availability to mobilize such equipment to Sint Maarten.
- ii. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Employer.
- iii. The Employer assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by The Employer. The Employer assumes no responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding, or representation is expressly stated in this contract.
- iv. All work shall be accomplished in accordance with the Contract, the National Legislation of the Country of St. Maarten, Marine Department Regulations, standard of care for the industry and BMPs. The Contractor shall also comply with all appropriate safety practices, regulations and policies, to include personal flotation devices and marine

safety requirements for all Contractor and Government personnel in or around the work area.

### 3. LOCATION OF LAGOON DEBRIS

- i. Shipwrecks - The vessels are located within the general Simpson Bay Lagoon area, including Cole Bay, Mullet Pond and the shallows, marinas and the shorelines surrounding. The vessels, when sunk, are generally within 15 feet of the surface, most at a bottom depth of 10 feet or less. The approximate GPS locations of the vessels are shown on the VIS and on the Map of Shipwreck Positions. Some vessels were observed to be located out of the water, above the shoreline. Some vessels have been towed or beached into relatively shallow water near the shorelines to prevent sinking. Some sunken vessels have been raised and re-floated and are moored or anchored.
- ii. Shoreline Debris - The quantity and location of the debris is unknown. The shoreline that comprises the area to be cleaned is approximately 10.53 kilometers in length. The debris field is inconsistent with varying accumulations of varying types of debris that was transported during and after the hurricane event in 2017.

### 4. PRE-WORK CONFERENCE

The Employer will conduct a pre-work meeting. It will be arranged by the Project Manager (PM), which will be a third-party consultant retained by the Employer to supervise the works and contract. The meeting will occur after award of the contract and shall be held before the Notice to Proceed is issued. The successful bidder will be notified and will be required to attend. The Employer's Representative (ER) will notify the Contractor of the time, date, and location set for the meeting. At this conference, the Contractor shall be oriented with respect to Government procedures and line of authority, contractual, administrative, and work-related matters.

This meeting shall include a tour of the proposed decommissioning facilities. This Scope of Work will be discussed, and any Contractor's questions or concerns will be addressed. Minutes of the meeting shall be prepared by the Project Manager and signed by both the Contractor, ER and Project Manager. The minutes shall become part of the contract file.

There may also be occasions when subsequent conferences will be called to reconfirm mutual understanding. The Contractor shall be prepared to discuss all plans and schedules for removing and disposing of the vessels and the conditions which may affect the work.

### 5. CONTRACT DRAWINGS

- i. Shipwrecks – There are no drawings. The contract drawings will be substituted by maps showing the listed vessel locations based on the information included in the VIS. In addition, a Vessel Image file shall be included.
- ii. Shoreline Debris – There are no drawings. The contract drawings will be substituted by a map showing the Extent of shoreline covered by this agreement.

The below listed items are incorporated as part of this contract.

<b>Title</b>	<b>Attachment No.</b>
Vessel Inventory Spreadsheet and File Vessel Image	1
Map of Shipwreck Positions	2
Map of Shoreline	3

## 6. PERMITS AND RESPONSIBILITIES

The Contractor shall, without additional expense to the Employer, be responsible for obtaining any necessary licenses and permits not already obtained by The Employer, and for complying with any National Legislation applicable to the performance of the works. The Contractor is encouraged to confirm with the Maritime Department which vessels already have salvage permits, if required.

The Contractor shall also be responsible for adequate insurance to cover all damages to persons or property that occur as a result of the Contractor's negligence or fault and shall take proper safety and health precautions to protect the work, the workers, the public, the marine environment and the property of others. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work.

The Contractor shall maintain a working inventory that summarizes the status of the decommissioning process for each vessel. The following minimum information shall be included:

- Vessel location I.D. as indicated on the VIS;
- The date that the vessel is salvaged or raised;
- The date that decommissioning is completed;
- The final disposition of the hull (i.e. shredded, landfilled, used as a reef, etc.);
- Photos of the vessel during the salvage process and, where applicable, decommissioning.

The Contractor shall maintain a working map of the shoreline covered to enable ongoing, post debris removal inspections. The Contractor is to maintain a daily inventory of materials that are collected and a progress report of which areas of shoreline have been cleaned and what remains.



The Contractor shall provide all waste disposal manifests for the materials that are transported from the decommissioning or site. This includes but is not limited to fiberglass, metals, batteries other hazardous materials, etc. as described in Section 17 – Removal and Disposal. The Employer reserves the right to withhold payment until acceptable final working list, waste disposal manifests and photographic documentation has been submitted.

7. INSURANCE. The Contractor is required to provide proof of adequate insurance coverage of:

#### 4

- General Liability and Marine General Liability
- Marine Protection and Indemnity
- Commercial Automobile Liability
- Longshoreman's
- Worker's Compensation
- Pollution Liability

### 7. BRIDGE-TO-BRIDGE COMMUNICATION

Because this work will occur within a body of water and channel with heavy traffic, and in order that radio communication may be made with passing vessels, all tugs or salvage vessels that work under this contract shall be equipped with bridge-to-bridge radio telephone equipment. The radio equipment shall operate on a single channel of very high frequency (VHF) FM, on a frequency of 156.8MHZ with low power output having a communication range of approximately ten miles. **Channel 16 must be monitored at all times.** Contractor must designate a separate work channel for internal communications.

### 8. MISPLACED MATERIAL

Should the Contractor, during the progress of the work, lose, dump, throw overboard, sink, or misplace any material, plant, machinery, or debris, the Contractor shall recover and remove the same with the utmost dispatch. The Contractor shall give immediate notice, with description and location of such obstructions, to the Project Manager and Employer, and when required shall mark or buoy such obstructions until the same are removed. Should the Contractor refuse, neglect or delay compliance with the above

requirements, such obstructions may be removed by the Employer, and the cost of such removal will be deducted from any money due or to become due to the Contractor.

## **9. FIELD MANAGEMENT BY THE CONTRACTOR**

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly supervise the work and have on the work site full time a competent field manager who has the authority to act and sign for the Contractor.

## **10. UNIDENTIFIED OBJECTS**

Should the Contractor, during salvage operations, encounter any unidentified vessels on the lagoon bottoms, shallows or shoreline, which has not been previously identified on the VIS, he/she shall notify the Project Manager immediately as to the location of vessel, and any other pertinent information necessary for the Project Manager's information and action as he/she determines to be necessary.

The Contractor's price for line items 005 and 006 on the Bid Price Form shall apply for salvage and decommissioning of vessels that the ER approves to be added to the scope of work.

## **11. INSPECTION BY THE EMPLOYER'S REPRESENTATIVE**

The ER and other designated personnel will inspect the salvage operations when in progress and at any time deemed appropriate by the ER. When requested, the Contractor is required and shall furnish the Employer or ER personnel transportation from shore to the site of salvage operations as necessary, at no additional cost.

## **12. DOCUMENTATION**

### **4.1.1**

The Project Manager will document the removal and disposal operations. The Contractor will be required to perform the work in an orderly fashion, with staging and hauling areas delineated from de-polluting, decommissioning and graving areas.

## **13. PAYMENT**

The Employer will pay the mobilization lump sum price when the Contractor has mobilized and arrived at the work site with the necessary plant and equipment to perform the work.

The Contractor shall submit percent completion invoices twice a month, broken down accordingly: (a) 1 to 15 and (b) 16 to last day of the month.

Each payment request shall include the following:

- Percent complete of shipwreck salvage determined as follows:

#### 4.1.2

$$\frac{\text{Number of vessels completed during the time period}}{\text{total of vessels in the project}} \times 100\%$$

The percent complete will be multiplied by the lump sum amount for the shipwreck decommissioning to determine the amount due for that invoice period.

- Percent complete of shoreline cleaned determined as follows:

#### 4.1.3

$$\frac{\text{Amount, in kilometers of shoreline cleaned during the time period}}{\text{Total amount, in kilometers of shoreline in the project}} \times 100$$

The percent complete will be multiplied by the lump sum amount for the shoreline cleaning to determine the amount due for that invoice period.

- Retention money in the amount of 10% will be withheld from the payment for each invoice and will be returned to the Contractor by the Employer following the Contract provisions on retention money.
- An inventory of vessels that have been completed during the invoice period shall accompany the payment application. The inventory shall include the information listed in Section 6 – Permits and Requirements.
- A map showing the area of shoreline that was completed during the invoice period and the daily reports for that time period.

The Employer will pay the demobilization lump sum price when the Contractor has completely left the work site and all final project requirements have been met, including closure and restoration of the Decommissioning Yard if any. These requirements are presented in Section 22 - Final Examination.

Payment for each invoice following satisfactory review by the Project Manager and acceptance of the ER will be issued within 30 days of submission.

## 14. WORK SCHEDULE

The Contractor will be required to work a minimum eight (8) hour day, six (6) days a week. The Contractor may work more than eight (8) hours per day if desired with the approval of the Employer. Delivery of debris to Waste and Debris Disposal Sites in Philipsburg for disposal/processing may only take place during its hours of operation.

The project timeframe from notice to proceed is 150 calendar days to complete the shipwreck removal and disposal and 150 calendar days to complete the shoreline debris removal.

The Contractor will submit a timeline projection with all activities listed. Work hours and schedules to be discussed and approved by the ER.

## **15. COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORKS**

- i. Shipwrecks - The Contractor is required to (a) commence removal operations under this contract within 30 calendar days after the date the Contractor receives the Notice to Proceed, (b) prosecute the work diligently, and (c) to complete the work (raising, towing, hauling, de-polluting, decommissioning and graving in its entirety not later than 150 calendar days after receipt of Notice to Proceed. The time stated for completion shall include final inspection, submittal of paperwork and successful return of assigned yard if any to the owner.
- ii. Shoreline Debris - The Contractor shall be required to (a) commence debris removal operations under this contract within 30 calendar days after the date the Contractor receives the Notice to Proceed, (b) prosecute the work diligently, and (c) to complete the work (debris collection, staging, transfer, transport, disposal and recycling in its entirety not later than 150 calendar days after receipt of Notice to Proceed.

## **16. REMOVAL AND DISPOSAL**

- i. Shipwrecks - Because of the variables on the individual vessel's construction and structural competence, the Contractor will have to perform a complete physical assessment of the vessels' structural stability prior to hauling. The removal of aluminum, stainless, lead, rigging, and other items of value will be made property of the Contractor for salvage, recycling or disposal always in compliance with the Project ESMP. The Contractor may utilize removal methods consistent with the standard of care for the industry and BMPs to complete the work defined in this contract. The Employer does require that certain actions occur during the removal and disposal operation. If any of the said conditions are not met, then the Contractor will not have met the contract expectations and will be in violation of the Contract agreement. The Contractor shall be required to correct all deficiencies at no additional cost to the Employer and without any further time extension.

At no time will debris or recyclables from this project be allowed to accumulate or 'stack up' anywhere, at the decommissioning yard, vendor yard or alternate location.

The Contractor may not operate their vessels or equipment on the French-owned side of the Simpson Bay Lagoon. Furthermore, as part of this contract, performing salvage activities of vessels that are not identified in the VIS without written approval from the Employer is strictly prohibited.

Waste from shipwreck decommissioning shall be sorted according to the classifications defined in Section 17.

Contractor must include, at a minimum, the following in the Technical Work Plan:

- Processes for removal/depolluting, spill response, storage, and recycling or disposal of batteries, fuels, hydraulic oils and potentially hazardous or explosive items such as propane tanks, gas cans, flares and the like;
- Spill control materials and equipment to be maintained on salvage vessels and at the depollution yard;
- Recycling procedures and vendors. The Bid proposal shall include the names, license information and insurance certificates of chosen recycling or disposal sub-contractor options. Changes to recycling subcontractors/vendors after award of the bid must be approved by the Employer prior to the initiation of transport and recycling of wastes;
- Disposal procedures and sites for non-burnable debris and fiberglass. At this time, disposal of fiberglass vessel hulls in part or in whole may not be disposed of at the Great Salt Pond Disposal Sites. Offsite disposal options must be approved by the Employer prior to initiating any disposal activities. Fiberglass boats may not be disposed of at sea. Grinding of fiberglass boats, if performed must be accomplished with no visible emissions;
- Expected flow rates for the various types of material that will be handled and processes/capacity for handling materials at off-site facilities (including locations). This will include maximum amount of materials that will be stockpiled for shipment off island, when applicable;
- Contractor must include a hurricane emergency action plan in the Bid Submittals, which at a minimum should include:
  - o Provisions for tying down or otherwise securing hauled vessels for hurricane conditions must be made and communicated to the Employer prior to initiating work.
  - o Provisions for securing the Contractor's equipment including, but not limited to, barges, cranes, travel lifts, fork lifts, backhoes, skip loaders and other heavy equipment, storage and recycling bins, disposal bins, storage tanks and debris for hurricane conditions must be made and communicated to the Employer prior to initiating work.

Approval from the Employer is required prior to the Contractor making a change in the location or facility for the final disposition of any vessel, fluid, structure, compound or related item.

Steel and Aluminum boats should be de-polluted and decommissioned. Vessels designated by the Employer to be used for dive site construction shall be placed at locations designated by the Nature Foundation St. Maarten (Shown in Attachment 5). The Contractor is responsible for disposal or recycling steel and aluminum vessels that are not designated to be used for dive sites.

Wood hulled boats may be disposed of at the Debris Disposal Site in Philipsburg after de-polluting and decommissioning.

- ii. Shoreline Debris - The Contractor's selected debris collection methods should minimize disturbance and/or damage to existing shoreline vegetation where possible. The Government does require that certain actions occur during the removal and disposal operation. If any of the said conditions are not met, then the Contractor will not have met the contract expectations and will be in violation of the Contract agreement. The Contractor shall be required to correct all deficiencies at no additional cost to the Government and without any further time extension.

Debris collected from the shoreline shall be brought to the Decommissioning Yard or site sorted in bins according to the debris classifications defined in Section 17. Spill prevention and containment procedures shall apply as necessary.

Disposal of the shoreline debris collected shall be stored in the bins located at the assigned Decommissioning Yard or site. Transportation and segregating/sorting shoreline debris into the proper bins is the responsibility of the Contractor.

Contractor shall be responsible for transporting all recyclable materials and wastes from the Decommissioning Yard to the final processing/disposal sites. Burnable and non-burnable debris and HHW (defined in Section 17 – Shipwreck and Shoreline Debris Classification) will be accepted at the Debris Disposal Sites.

Any deviations from these general guidelines must be discussed with and approved by the Employer prior to taking action.

## 17. SHIPWRECK AND SHORELINE DEBRIS CLASSIFICATION

Debris associated with the decommissioning of the shipwrecks and shoreline collection activities will be segregated into categories described in this Section.

- i. Burnable Debris - Burnable debris includes all biodegradable matter except that included in the following definitions of other categories of debris. It includes, but is not limited to, paper and cardboard goods, untreated structural timber; untreated wood products; and brush or organic biomass or other vegetative debris.
- ii. Non-Burnable Debris - Non-burnable debris includes, but is not limited to, treated timber; plastic (including fiberglass); glass; rubber products; metal products that cannot be recycled; sheet rock; cloth items; non-wood building materials, furniture, and carpet and padding, cushions life jackets and rings, and other debris commonly associated with Municipal Solid Waste, metals including roofing metal (zinc), keels, rudders, pintels, engines, transmissions, water heaters, shafts propellers, masts, railings, winches, anchors chain, chain-plates, and various other ship parts, fixtures, tanks and structural steel.
- iii. Household Hazardous Waste (HHW), Electronic Waste and White Goods - HHW includes household cleaners, oils, paints, flammables, insecticides, fuel cans, propane gas bottles, refrigerant, appliances, electronics and batteries.
- iv. Fiberglass Debris - At this time, disposal of fiberglass vessel hulls in part or in whole may not be disposed of at the Landfill. Offsite disposal options must be preapproved by the Employer prior to initiating any disposal activities. Fiberglass boats may not be disposed of at sea under any circumstances. Grinding of fiberglass boats, if proposed

for debris reduction, must be accomplished with no visible emissions using methods that are the standard care in the industry.

- v. **Ineligible Debris.** Debris that is not covered in this contract is debris located on private property (above 2 meters from high tide line) and household garbage not found on vessels or within 2 meters of the high tide line. Also not included are materials that knowingly contain asbestos, electrical transformers and known or suspected hazardous materials that are typically not classified as HHW. If suspected ACM is identified in a vessel, the Contractor shall test the material for presence or absence of asbestos before disturbing that material. If ACMs or other ineligible hazardous wastes are encountered on vessels, a change order will be issued for the appropriate management of that waste on a case by case basis.

## **18. PROTECTION OF EXISTING STRUCTURES, EQUIPMENT, AND UTILITIES**

The Contractor shall preserve and protect all structures, equipment, vegetation, and utilities at or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required at the work site. The Contractor shall repair any damage to those facilities, including those that are property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor refuses to repair the damage promptly, the Employer may have the necessary work performed and charge the cost to the Contractor.

The Contractor will be responsible for verifying the locations and depths of all utility crossings and take precautions against damages which might result from his work. If any damage occurs as a result of his operations, the Contractor will be required to suspend work until the damage is repaired and approved by the Employer. Costs of such repairs and downtime of the operation and attendant plant shall be at the Contractor's expense.

## **19. ENVIRONMENTAL AND SAFETY CONCERNS**

- i. Applicable regulation: The Contractor shall comply with the project ESMP. The ESMP is published on the NPRB website: [https://nrpbsxm.org/wp-content/uploads/2019/10/ESMP-Shipwreck-removal\\_final.pdf](https://nrpbsxm.org/wp-content/uploads/2019/10/ESMP-Shipwreck-removal_final.pdf)
- ii. The standard level of care for the industry and BMPs shall also be followed. The Contractor is obliged to exercise due care in rendering the services specifically regarding the protection of uplands, beach, and open waters from damages of any kind. Below are links for regulations, guidance and Best Management Practices applicable to this project:
  - United States National Oceanic and Atmospheric Administration: <https://marinedebris.noaa.gov/abandoned-and-derelict-vessel-publications>

Whenever need for comparison with National Legislation or for interpretation arose the matter shall be referred to the Project Manager for clarification by the Employer.

## **20. OBSTRUCTION OF NAVIGABLE WATERWAYS**

The Contractor shall:

- Promptly recover and remove any material, plant, machinery, or appliance which the Contractor loses, dumps, throws overboard, sinks, or misplaces, and which, in the opinion of the Project Manager, may be dangerous to or obstruct navigation.
- Give immediate notice, with the description and locations of any such obstructions, to the Project Manager.
- When required by the Project Manager, mark or buoy such obstructions until the same are removed.

The Project Manager may:

- Remove the obstruction by contract or otherwise should the Contractor refuse, neglect, or delay compliance with this paragraph; and
- Deduct the cost of removal from any monies due or to become due to the Contractor;

## **21. NOTIFICATION OF DEPARTMENT OF MARITIME AFFAIRS**

The Contractor must notify the Department of Civil Aviation, Shipping & Maritime Affairs prior to commencement of the work. Information pertaining to contract work schedule, location of rig and equipment during work, and potential hazards of the operation should be provided. The individual to be contacted locally will be provided by the Employer prior to the start of work. All vessels that are regulated by the Department of Maritime Affairs shall have current inspection reports before being placed in service for use for this contract.

Coast Guard will also be informed of planned activities.

## **22. FINAL EXAMINATION**

The Contractor and Employer will inspect the areas where the vessels and debris have been removed. Any items found at the work sites will be removed by the Contractor at no additional cost to the Employer. Inspection may include side-scan sweeping, diving, and/or visual if necessary, to ensure all wreckage and debris have been removed. The Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Employer.

After conclusion of the recovery, salvage, de-polluting, decommissioning, graving and final disposal of the vessels, the graving yard, if any, should be restored as closely as possible to its pre-operation condition. This will include the following:



- Removing waste bins, barges, cranes, derricks, land equipment such as travel lifts, front end loaders and excavators, above ground storage tanks, trash and debris remaining as a result of the subject operations;
- Restoration of damaged pavement or other physical plant facilities at the yard caused by the subject operations;
- Photographic documentation of the pre-condition and final condition of the yard, accompanied by waste disposal manifests for the various waste streams including hulls, metals, fuels and other liquids, as well as an inventory list of the vessels recovered and graved;
- Performance of an environmental assessment of the Decommissioning Yard that documents that the site has been restored to a condition similar to when the Contractor began work. This assessment must be reviewed, approved and confirmed by the Employer and ER as part of the project closure process.
- Final release of the yard back to the normal owner and/or operator and termination of the usage agreement between the Government and the owner and/or operator upon successful final inspection.

**23. ACCOMPANYING DOCUMENTS.**

- [Attachment 1: Vessel Inventory Spreadsheet; Image File](#)
- [Attachment 2: Map of Shipwrecks](#)
- [Attachment 3: Map of Shoreline](#)

## **Attachment 1: Vessel Inventory Spreadsheet; Image File**

**(Provided as separate file to this document)**

## **Attachment 2: Map of Shipwrecks**

**(Provided as separate file to this document)**

## **Attachment 3: Map of Shoreline**

**(Provided as separate file to this document)**

25. [Environmental, social, health and safety requirements](#) **Error! Bookmark not defined.**  
**(Provided as separate file to this document)**







# **PART 3 – Conditions of Contract and Contract Forms**

## Section VIII - General Conditions of Contract

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

These General Conditions of Contract have 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 GCC can be used for both smaller admeasurement contracts and lump sum contracts.

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## General Conditions of Contract

### A. General

#### 1. Definitions

1.1 Boldface type is used to identify defined terms.

- (a) The Accepted Contract Amount means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.
- (b) The Activity Schedule is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works in a lump sum contract. It includes a lump sum price for each activity, which is used for valuations and for assessing the effects of Variations and Compensation Events.
- (c) 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 23.
- (d) Bank means the financing institution **named in the PCC**.
- (e) Bill of Quantities means the priced and completed Bill of Quantities forming part of the Bid.
- (f) Compensation Events are those defined in GCC Clause 42 hereunder.
- (g) The Completion Date is the date of completion of the Works as certified by the Project Manager, in accordance with GCC Sub-Clause 53.1.
- (h) The Contract is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in GCC Sub-Clause 2.3 below.
- (i) The Contractor is the party whose Bid to carry out the Works has been accepted by the Employer.
- (j) The Contractor's Bid is the completed bidding document submitted by the Contractor to the Employer.
- (k) The Contract Price is the Accepted Contract Amount stated in the Letter of Acceptance and thereafter as adjusted in accordance with the Contract.
- (l) Days are calendar days; months are calendar months.
- (m) Dayworks are varied work inputs subject to payment on a time basis for the Contractor's employees and

- Equipment, in addition to payments for associated Materials and Plant.
- (n) A Defect is any part of the Works not completed in accordance with the Contract.
  - (o) The Defects Liability Certificate is the certificate issued by Project Manager upon correction of defects by the Contractor.
  - (p) The Defects Liability Period is the period **named in the PCC** pursuant to Sub-Clause 34.1 and calculated from the Completion Date.
  - (q) Drawings means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Employer in accordance with the Contract, include calculations and other information provided or approved by the Project Manager for the execution of the Contract.
  - (r) The Employer is the party who employs the Contractor to carry out the Works, **as specified in the PCC**.
  - (s) Equipment is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
  - (t) "In writing" or "written" means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
  - (u) The Initial Contract Price is the Contract Price listed in the Employer's Letter of Acceptance.
  - (v) The Intended Completion Date is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is **specified in the PCC**. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.
  - (w) Materials are all supplies, including consumables, used by the Contractor for incorporation in the Works.
  - (x) Plant is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
  - (y) The Project Manager is the person **named in the PCC** (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.

- (z) PCC means Particular Conditions of Contract.
- (aa) The Site is the area **defined as such in the PCC**.
- (bb) Site Investigation Reports are those that were included in the bidding document and are factual and interpretative reports about the surface and subsurface conditions at the Site.
- (cc) Specification means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.
- (dd) The Start Date is **given in the PCC**. 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.
- (ee) 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.
- (ff) Temporary Works are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
- (gg) A Variation is an instruction given by the Project Manager which varies the Works.
- (hh) The Works are what the Contract requires the Contractor to construct, install, and turn over to the Employer, **as defined in the PCC**.

## 2. Interpretation

- 2.1 In interpreting these GCC, words indicating one gender include all genders. Words indicating the singular also include the plural and words indicating the plural also include the singular. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager shall provide instructions clarifying queries about these GCC.
- 2.2 If sectional completion is **specified in the PCC**, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
- 2.3 The documents forming the Contract shall be interpreted in the following order of priority:

- (a) Agreement,
  - (b) Letter of Acceptance,
  - (c) Contractor's Bid,
  - (d) Particular Conditions of Contract,
  - (e) General Conditions of Contract, including Appendices,
  - (f) Specifications,
  - (g) Drawings,
  - (h) Bill of Quantities,<sup>1</sup> and
  - (i) any other document **listed in the PCC** as forming part of the Contract.
- 3. Language and Law**
- 3.1 The language of the Contract and the law governing the Contract are **stated in the PCC**.
- 3.2 Throughout the execution of the Contract, the Contractor shall comply with the import of goods and services prohibitions in the Employer's Country when
- (a) as a matter of law or official regulations, the Borrower's country prohibits commercial relations with that country; or
  - (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 any country, person, or entity in that country.
- 4. Project Manager's Decisions**
- 4.1 Except where otherwise specifically stated, the Project Manager shall decide contractual matters between the Employer and the Contractor in the role representing the Employer.
- 5. Delegation**
- 5.1 Otherwise **specified in the PCC**, the Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may revoke any delegation after notifying the Contractor.
- 6. Communications**
- 6.1 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.
- 7. Subcontracting**
- 7.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.

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<sup>1</sup> In lump sum contracts, delete "Bill of Quantities" and replace with "Activity Schedule."



- 8. Other Contractors**
- 8.1 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 the PCC**. 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.
- 9. Personnel and Equipment**
- 9.1 The Contractor shall employ the key personnel and use the equipment identified in its Bid, to carry out the Works or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.
- 9.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.
- 9.3 If the Employer, Project Manager or Contractor determines, that any employee of the Contractor be determined to have engaged in Fraud and Corruption during the execution of the Works, then that employee shall be removed in accordance with Clause 9.2 above.
- 10. Employer's and Contractor's Risks**
- 10.1 The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.
- 11. Employer's Risks**
- 11.1 From the Start Date until the Defects Liability Certificate has been issued, the following are Employer's risks:
- (a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to
    - (i) 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
    - (ii) 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.
  - (b) 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.

- 11.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer's risk except loss or damage due to
- (a) a Defect which existed on the Completion Date,
  - (b) an event occurring before the Completion Date, which was not itself an Employer's risk, or
  - (c) the activities of the Contractor on the Site after the Completion Date.

## **12. Contractor's Risks**

- 12.1 From the Starting Date until the Defects Liability 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.

## **13. Insurance**

- 13.1 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 PCC** for the following events which are due to the Contractor's risks:
- (a) loss of or damage to the Works, Plant, and Materials;
  - (b) loss of or damage to Equipment;
  - (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
  - (d) personal injury or death.
- 13.2 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.
- 13.3 If the Contractor does not provide any of the policies and certificates required, the Employer may effect 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.
- 13.4 Alterations to the terms of an insurance shall not be made without the approval of the Project Manager.

- 13.5 Both parties shall comply with any conditions of the insurance policies.
- 14. Site Data** 14.1 The Contractor shall be deemed to have examined any Site Data **referred to in the PCC**, supplemented by any information available to the Contractor.
- 15. Contractor to Construct the Works** 15.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.
- 16. The Works to Be Completed by the Intended Completion Date** 16.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.
- 17. Approval by the Project Manager** 17.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, for his approval.
- 17.2 The Contractor shall be responsible for design of Temporary Works.
- 17.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.
- 17.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.
- 17.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.
- 18. Safety and Protection of the Environment** 18.1 The Contractor shall be responsible for the safety of all activities on the Site.
- 18.2 The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.
- 19. Discoveries** 19.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.

- 20. Possession of the 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 PCC**, the Employer shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.
- 21. Access to the Site** 21.1 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.
- 22. Instructions, Inspections and Audits** 22.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.
- 22.2 The Contractor shall keep, and shall make all reasonable efforts to cause its Subcontractors and subconsultants to keep, accurate and systematic accounts and records in respect of the Works in such form and details as will clearly identify relevant time changes and costs.
- 22.3 Pursuant to paragraph 2.2 e. of Appendix B to the General Conditions, the Contractor shall permit and shall cause its subcontractors and subconsultants to permit, the Bank and/or persons appointed by the Bank to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by the Bank if requested by the Bank. The Contractor's and its Subcontractors' and subconsultants' attention is drawn to Sub-Clause 25.1 (Fraud and Corruption) which provides, inter alia, that acts intended to materially impede the exercise of the Bank's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Bank's prevailing sanctions procedures).]
- 23. Appointment of the Adjudicator** 23.1 The Adjudicator shall be appointed jointly by the Employer and the Contractor, at the time of the Employer's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Employer does not agree on the appointment of the Adjudicator, the Employer will request the Appointing Authority **designated in the PCC**, to appoint the Adjudicator within 14 days of receipt of such request.
- 23.2 Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority **designated in the PCC**

at the request of either party, within 14 days of receipt of such request.

**24. Procedure for Disputes**

- 24.1 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.
- 24.2 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.
- 24.3 The Adjudicator shall be paid by the hour at the **rate specified in the PCC**, together with reimbursable expenses of the types **specified in the PCC**, and 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 shall be final and binding.
- 24.4 The arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and in the place **specified in the PCC**.

**25. Fraud and Corruption**

- 25.1 The Bank requires compliance with the Bank's Anti-Corruption Guidelines and its prevailing sanctions policies and procedures as set forth in the WBG's Sanctions Framework, as set forth in Appendix A to the GCC.
- 25.2 The Employer requires the Contractor to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the bidding process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

**B. Time Control**

**26. Program**

- 26.1 Within the time **stated in the PCC**, after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works. In the case of a lump sum contract, the activities in the Program shall be consistent with those in the Activity Schedule.
- 26.2 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.

26.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period **stated in the PCC**. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount **stated in the PCC** 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. In the case of a lump sum contract, the Contractor shall provide an updated Activity Schedule within 14 days of being instructed to by the Project Manager.

26.4 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.

**27. Extension of the Intended Completion Date**

27.1 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.

27.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 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.

**28. Acceleration**

28.1 When the Employer wants the Contractor to finish before the Intended Completion Date, the Project Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Employer and the Contractor.

28.2 If the Contractor's priced proposals for an acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation.

**29. Delays Ordered by the Project Manager**

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

- 30. Management Meetings**
- 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. Early Warning**
- 31.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.
- 31.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

### **C. Quality Control**

- 32. Identifying Defects**
- 32.1 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.
- 33. Tests**
- 33.1 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.
- 34. Correction of Defects**
- 34.1 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 PCC**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

34.2 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.

**35. Uncorrected Defects**

35.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.

**D. Cost Control**

**36. Contract Price<sup>2</sup>**

36.1 The Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities is used to calculate the Contract Price. The Contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.

**37. Changes in the Contract Price<sup>3</sup>**

37.1 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, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change. The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Employer.

37.2 If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.

**38. Variations**

38.1 All Variations shall be included in updated Programs<sup>4</sup> produced by the Contractor.

38.2 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 (7) days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.

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<sup>2</sup> In lump sum contracts, replace GCC Sub-Clauses 36.1 as follows:

36.1 The Contractor shall provide updated Activity Schedules within 14 days of being instructed to by the Project Manager. The Activity Schedule shall contain the priced activities for the Works to be performed by the Contractor. The Activity Schedule is used to monitor and control the performance of activities on which basis the Contractor will be paid. If payment for materials on site shall be made separately, the Contractor shall show delivery of Materials to the Site separately on the Activity Schedule.

<sup>3</sup> In lump sum contracts, replace entire GCC Clause 37 with new GCC Sub-Clause 37.1, as follows:

37.1 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.

<sup>4</sup> In lump sum contracts, add "and Activity Schedules" after "Programs."



- 38.3 If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.
- 38.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.
- 38.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
- 38.6 If the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in Sub-Clause 39.1 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, 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>5</sup>
- 38.7 Value Engineering: The Contractor may prepare, at its own cost, a value engineering proposal at any time during the performance of the contract. The value engineering proposal shall, at a minimum, include the following;
- (a) the proposed change(s), and a description of the difference to the existing contract requirements;
  - (b) a full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs) the Employer may incur in implementing the value engineering proposal; and
  - (c) a description of any effect(s) of the change on performance/functionality.

The Employer may accept the value engineering proposal if the proposal demonstrates benefits that:

- (a) accelerate the contract completion period; or
- (b) reduce the Contract Price or the life cycle costs to the Employer; or

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<sup>5</sup> In lump sum contracts, delete this paragraph.

- (c) improve the quality, efficiency, safety or sustainability of the Facilities; or
  - (d) yield any other benefits to the Employer,
- without compromising the functionality of the Works.

If the value engineering proposal is approved by the Employer and results in:

- (a) a reduction of the Contract Price; the amount to be paid to the Contractor shall be the **percentage specified in the PCC** of the reduction in the Contract Price; or
- (b) an increase in the Contract Price; but results in a reduction in life cycle costs due to any benefit described in (a) to (d) above, the amount to be paid to the Contractor shall be the full increase in the Contract Price.

### **39. Cash Flow Forecasts**

39.1 When the Program,<sup>6</sup> is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.

### **40. Payment Certificates**

40.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.

40.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.

40.3 The value of work executed shall be determined by the Project Manager.

40.4 The value of work executed shall comprise the value of the quantities of work in the Bill of Quantities that have been completed.<sup>7</sup>

40.5 The value of work executed shall include the valuation of Variations and Compensation Events.

40.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

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<sup>6</sup> In lump sum contracts, add "or Activity Schedule" after "Program."

<sup>7</sup> In lump sum contracts, replace this paragraph with the following: "The value of work executed shall comprise the value of completed activities in the Activity Schedule."

## **41. Payments**

- 41.1 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 prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made.
- 41.2 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 as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- 41.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.
- 41.4 Items of the Works for which no rate or price has been entered in shall not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

## **42. Compensation Events**

- 42.1 The following shall be Compensation Events:
- (a) The Employer does not give access to a part of the Site by the Site Possession Date pursuant to GCC Sub-Clause 20.1.
  - (b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
  - (c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
  - (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
  - (e) 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.

42.2 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.

42.3 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 shall assume that the Contractor shall react competently and promptly to the event.

42.4 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor's not having given early warning or not having cooperated with the Project Manager.

#### **43. Tax**

43.1 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 payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC Clause 44.

#### **44. Currencies**

44.1 Where payments are made in currencies other than the currency of the Employer's Country **specified in the PCC**, the exchange

rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's Bid.

**45. Price Adjustment**

45.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the PCC**. If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type specified below applies to each Contract currency:

$$P_c = A_c + B_c \text{ Imc/loc}$$

where:

$P_c$  is the adjustment factor for the portion of the Contract Price payable in a specific currency "c."

$A_c$  and  $B_c$  are coefficients<sup>8</sup> **specified in the PCC**, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency "c;" and

$Imc$  is the index prevailing at the end of the month being invoiced and  $loc$  is the index prevailing 28 days before Bid opening for inputs payable; both in the specific currency "c."

45.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

**46. Retention**

46.1 The Employer shall retain from each payment due to the Contractor the proportion **stated in the PCC** until Completion of the whole of the Works.

46.2 Upon the issue of a Certificate of Completion of the Works by the Project Manager, in accordance with GCC 53.1, 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. The Contractor may substitute retention money with an "on demand" Bank guarantee.

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<sup>8</sup> The sum of the two coefficients  $A_c$  and  $B_c$  should be 1 (one) in the formula for each currency. Normally, both coefficients shall be the same in the formulae for all currencies, since coefficient A, for the nonadjustable portion of the payments, is a very approximate figure (usually 0.15) to take account of fixed cost elements or other nonadjustable components. The sum of the adjustments for each currency are added to the Contract Price.

**47. Liquidated Damages**

- 47.1 The Contractor shall pay liquidated damages to the Employer at the rate per day **stated in the PCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the PCC**. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.
- 47.2 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. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC Sub-Clause 41.1.

**48. Bonus**

- 48.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day **stated in the PCC** for each day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete.

**49. Advance Payment**

- 49.1 The Employer shall make advance payment to the Contractor of the amounts **stated in the PCC** by the date **stated in the PCC**, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest shall not be charged on the advance payment.
- 49.2 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.
- 49.3 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.

**50. Securities**

- 50.1 The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount **specified in the PCC**, by a bank or

surety acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 days from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond.

**51. Dayworks**

51.1 If applicable, the Dayworks rates in the Contractor's Bid shall be used only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.

51.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.

51.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

**52. Cost of Repairs**

52.1 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.

**E. Finishing the Contract**

**53. Completion**

53.1 The Contractor shall request the Project Manager to issue a Certificate of Completion of the Works, and the Project Manager shall do so upon deciding that the whole of the Works is completed.

**54. Taking Over**

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

**55. Final Account**

55.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 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.

**56. Operating and Maintenance Manuals**

- 56.1 If “as built” Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates **stated in the PCC**.
- 56.2 If the Contractor does not supply the Drawings and/or manuals by the dates **stated in the PCC** pursuant to GCC Sub-Clause 56.1, or they do not receive the Project Manager’s approval, the Project Manager shall withhold the amount **stated in the PCC** from payments due to the Contractor.

**57. Termination**

- 57.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 57.2 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;
  - (g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as **defined in the PCC**; or
  - (h) if the Contractor, in the judgment of the Employer has engaged in Fraud and Corruption, as defined in paragraph 2.2 a of the Appendix A to the GCC, in competing for or in executing the Contract, then the Employer may, after giving fourteen (14) days written notice to the Contractor, terminate the Contract and expel him from the Site.
- 57.3 Notwithstanding the above, the Employer may terminate the Contract for convenience.



57.4 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.

57.5 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 Sub-Clause 56.2 above, the Project Manager shall decide whether the breach is fundamental or not.

**58. Payment upon Termination**

58.1 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 **specified in the PCC**. 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.

58.2 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.

**59. Property**

59.1 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.

**60. Release from Performance**

60.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate 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.

**61. Suspension of Bank Loan or Credit**

61.1 In the event that the Bank suspends the Loan or Credit to the Employer, from which part of the payments to the Contractor are being made:

(a) The Employer is obligated to notify the Contractor of such suspension within 7 days of having received the Bank's suspension notice.

(b) If the Contractor has not received sums due to it within the 28 days for payment provided for in Sub-Clause 40.1, the Contractor may immediately issue a 14-day termination notice.



## **APPENDIX A TO GENERAL CONDITIONS**

### **Fraud and Corruption**

*(Text in this Appendix shall not be modified)*

#### **1. Purpose**

1.1 The Bank's Anti-Corruption Guidelines and this annex apply with respect to procurement under Bank Investment Project Financing operations.

#### **2. Requirements**

2.1 The Bank requires that Borrowers (including beneficiaries of Bank financing); bidders (applicants/proposers), consultants, contractors and suppliers; any sub-contractors, sub-consultants, service providers or suppliers; any agents (whether declared or not); and any of their personnel, observe the highest standard of ethics during the procurement process, selection and contract execution of Bank-financed contracts, and refrain from Fraud and Corruption.

2.2 To this end, the Bank:

a. Defines, for the purposes of this provision, the terms set forth below as follows:

- i. "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- ii. "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
- iii. "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- iv. "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- v. "obstructive practice" is:
  - (a) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

- (b) acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under paragraph 2.2 e. below.
- b. Rejects a proposal for award if the Bank determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- c. In addition to the legal remedies set out in the relevant Legal Agreement, may take other appropriate actions, including declaring misprocurement, if the Bank determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the loan engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement process, selection and/or execution of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;
- d. Pursuant to the Bank's Anti- Corruption Guidelines and in accordance with the Bank's prevailing sanctions policies and procedures, may sanction a firm or individual, either indefinitely or for a stated period of time, including by publicly declaring such firm or individual ineligible (i) to be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;<sup>1</sup> (ii) to be a nominated<sup>2</sup> sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) to receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any Bank-financed project;
- e. Requires that a clause be included in bidding/request for proposals documents and in contracts financed by a Bank loan, requiring (i) bidders(applicants/proposers), consultants, contractors, and suppliers, and their sub-contractors, sub-consultants, service providers, suppliers, agents personnel, permit the Bank to inspect<sup>3</sup> all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the Bank.

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<sup>1</sup> For the avoidance of doubt, a sanctioned party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract.

<sup>2</sup> A nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider (different names are used depending on the particular bidding document) is one which has been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower.

<sup>3</sup> Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Bank or persons appointed by the Bank to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.

## APPENDIX B

### Environmental, Social, Health and Safety (ESHS)

#### Metrics for Progress Reports

*Metrics for regular reporting:*

- a. *environmental incidents or non-compliances with contract requirements, including contamination, pollution or damage to ground or water supplies;*
- b. *health and safety incidents, accidents, injuries and all fatalities that require treatment;*
- c. *interactions with regulators: identify agency, dates, subjects, outcomes (report the negative if none);*
- d. *health and safety supervision:*
  - i. *safety officer: number days worked, number of full inspections & partial inspections, reports to construction/project management;*
  - ii. *number of workers, work hours, metric of PPE use (percentage of workers with full personal protection equipment (PPE), partial, etc.), worker violations observed (by type of violation, PPE or otherwise), warnings given, repeat warnings given, follow-up actions taken (if any);*
- e. *HIV/AIDS: provider of health services, information and/or training, location of clinic, number of non-safety disease or illness treatments and diagnoses (no names to be provided);*
- f. *gender (for expats and locals separately): number of female workers, percentage of workforce, gender issues raised and dealt with (cross-reference grievances or other sections as needed);*
- g. *environmental and social supervision:*
  - i. *environmentalist: days worked, areas inspected and numbers of inspections of work sites highlights of activities/findings (including violations of environmental and/or social best practices, actions taken), reports to environmental and/or social specialist/construction/site management;*
  - ii. *sociologist: days worked, number of partial and full site inspections, highlights of activities (including violations of environmental and/or social requirements observed, actions taken), reports to environmental and/or social specialist/construction/site management; and*
  - iii. *community liaison person(s): days worked (hours community center open), number of people met, highlights of activities (issues raised, etc.), reports to environmental and/or social specialist /construction/site management.*
- h. *Grievances: list new grievances (e.g. allegations of GBV / SEA) received in the reporting period and unresolved past grievances by date received, complainant, how*

received, to whom referred to for action, resolution and date (if completed), data resolution reported to complainant, any required follow-up (Cross-reference other sections as needed):

- iv. Worker grievances;
- v. Community grievances
- i. Traffic and vehicles/equipment:*
  - i. traffic accidents involving project vehicles or vessels & equipment: provide date, location, damage, cause, follow-up;
  - ii. accidents involving non-project vehicles, vessels, or property (also reported under immediate metrics): provide date, location, damage, cause, follow-up;
  - iii. overall condition of vehicles/equipment, vessels (subjective judgment by environmentalist); non-routine repairs and maintenance needed to improve safety and/or environmental performance (to control smoke, etc.).
- j. Environmental mitigations and issues (what has been done):*
  - i. dust: number of working bowzers, number of waterings/day, number of complaints, warnings given by environmentalist, actions taken to resolve;
  - ii. erosion control: controls implemented by location, status of water crossings, environmentalist inspections and results, actions taken to resolve issues, emergency repairs needed to control erosion/sedimentation;
  - iii. spill cleanups, if any: material spilled, location, amount, actions taken, material disposal (report all spills that result in water or soil contamination);
  - iv. waste management: types and quantities generated and managed, including amount taken offsite (and by whom) or reused/recycled/disposed on-site;
  - v. details of water and swamp protection mitigations required undertaken in the reporting period.
- k. compliance:*
  - vi. compliance status for conditions of all relevant consents/permits, for the Work, statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance;
  - vii. compliance status of C-ESMP/ESIP requirements: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
  - viii. compliance status of GBV/SEA prevention and response action plan: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
  - ix. compliance status of Health and Safety Management Plan re: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
  - x. other unresolved issues from previous reporting periods related to environmental and social: continued violations, continued failure of equipment, continued lack of

vehicle covers, spills not dealt with, continued compensation or blasting issues, etc. Cross-reference other sections as needed.

## Section IX - Particular Conditions of Contract

<b>A. General</b>	
<b>GCC 1.1 (d)</b>	The financing institution is: <b>The World Bank</b>
<b>GCC 1.1 (r)</b>	The Employer is <b>National Recovery Program Bureau (NRPB)</b>
<b>GCC 1.1 (v)</b>	The Intended Completion Date for the whole of the Works shall be <i>[insert date]</i>  <b>1. <u>Shipwreck Removal and Disposal</u> 150 days after Commencement of the Services</b>  <b>2. <u>Shoreline Debris Removal</u> 150 days after Commencement of the Services</b>
<b>GCC 1.1 (y)</b>	The Project Manager is <b>TBD</b>
<b>GCC 1.1 (aa)</b>	The Site is located at <b>Simpson Bay in Sint Maarten</b> and is defined in <b>Site Map</b> .
<b>GCC 1.1 (dd)</b>	The Start Date shall be <b>formally communicated in a commencement letter after contract signing.</b>
<b>GCC 1.1 (hh)</b>	The Works consist of:  i. <b><u>Shipwreck Removal and Disposal</u></b> : Provide the labor, materials and equipment necessary to remove and dispose of the sunken, grounded, moored, landed or otherwise abandoned vessels shown on the Vessel Inventory Spreadsheet (VIS). The locations of the vessels are shown on the VIS as well as on the Map of Shipwrecks.  ii. <b><u>Shoreline Debris Removal</u></b> : Provide labor, materials and equipment necessary to perform removal and disposal shoreline debris, not including vessels described in paragraph i, above. Shoreline debris may include C&D Debris, household or domestic trash, pieces of wood, wood or fiberglass parts of boats not otherwise identifiable as a vessel, paper goods, cloth or furniture, docks and/or timbers and any other miscellaneous debris.
<b>GCC 1.1 (ii)</b>	The following is added as GCC 1.1. (ii)



	“ESHS” means environmental, social (including sexual exploitation and abuse (SEA) and gender-based violence (GBV)), health and safety.
<b>GCC 2.2</b>	Sectional Completions are:  <b>1. <u>Shipwreck Removal and Disposal</u> 150 days after Commencement of the Services, xxx</b>  <b>2. <u>Shoreline Debris Removal</u> 150 days after Commencement of the Services, xxx</b>
<b>GCC 2.3(i)</b>	The following documents also form part of the Contract:  (i) <b>the ESHS Management Strategies and Implementation Plans; and</b> (ii) <b>Code of Conduct (ESHS).</b> (iii) <b>Vessel Inventory Spreadsheet</b> (iv) <b>Map of Shipwreck</b> (v) <b>Map of Shoreline</b> (vi) <b>Dive Site Location</b>
<b>GCC 3.1</b>	The language of the contract is <b>English</b> .  The law that applies to the Contract is the law of <b>Sint Maarten</b> .
<b>GCC 5.1</b>	The Project manager <b>may</b> delegate any of his duties and responsibilities.
<b>GCC 8.1</b>	Schedule of other contractors: <b>None</b> .
<b>GCC 9.1</b>	<b>Key Personnel</b> GCC 9.1 is replaced with the following:  9.1 Key Personnel are the Contractor’s personnel named in this GCC 9.1 of the Particular Conditions of Contract. The Contractor shall employ the Key Personnel and use the equipment identified in its Bid, to carry out the Works or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of Key Personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.  <i>[insert the name/s of each Key Personnel agreed by the Employer prior to Contract signature.]</i>
<b>GCC 9.2</b>	<b>Code of Conduct (ESHS)</b>

	<p>The following is inserted at the end of GCC 9.2:</p> <ul style="list-style-type: none"> <li>•“The reasons to remove a person include behavior which breaches the Code of Conduct (ESHS) (e.g. spreading communicable diseases, sexual harassment, gender-based violence (GBV), sexual exploitation or abuse, illicit activity or crime).”</li> <li>•</li> </ul>
<p><b>GCC 13.1</b></p>	<p>The minimum insurance amounts and deductibles shall be:</p> <ul style="list-style-type: none"> <li>(a) For loss or damage to Equipment:1,000,000.00 US Dollars</li> <li>(c) for loss or damage to property in connection with Contract: 1,000,000.00 US Dollars</li> <li>(d) for personal injury or death: <ul style="list-style-type: none"> <li>(i) of the Contractor’s employees: 1,000,000.00 US Dollars.</li> <li>(ii) of other people: 100,000 Us Dollars</li> </ul> </li> </ul> <p>In addition the Contractor shall provide proof of appropriate insurance against:</p> <ul style="list-style-type: none"> <li>- General Liability and Marine General Liability</li> <li>- Marine Protection and Indemnity</li> <li>- Commercial Automobile Liability</li> <li>- Longshoreman’s</li> <li>- Worker’s Compensation</li> <li>- Pollution Liability</li> </ul>
<p><b>GCC 14.1</b></p>	<p>Site Data are: Information on Site Data is provided in the following documents: <b>Specifications, Vessel Inventory Shipwreck, Map of Shipwreck, Map of Shoreline, Dive Site Locations.</b></p>
<p><b>GCC 16.1 (add new 16.2)</b></p>	<p><b>ESHS Management Strategies and Implementation Plans</b></p> <p>The following is inserted as a new sub-clause 16.2:</p> <p>“ <b>16.2</b> The Contractor shall not carry out any Works, including mobilization and/or pre-construction activities (e.g. limited clearance for haul roads, site accesses and work site establishment, geotechnical investigations or investigations to select ancillary features such as quarries and borrow pits), unless the Project Manager is satisfied that appropriate measures are in place to address environmental, social, health and safety risks and impacts. At a minimum, the Contractor shall apply the Management Strategies and Implementation Plans and Code of Conduct, submitted as part of the Bid and agreed as part of the Contract. The Contractor shall submit, on</p>

	<p>a continuing basis, for the Project Manager's prior approval, such supplementary Management Strategies and Implementation Plans as are necessary to manage the ESHS risks and impacts of ongoing works. These Management Strategies and Implementation Plans collectively comprise the Contractor's Environmental and Social Management Plan (C-ESMP). The C-ESMP shall be approved prior to the commencement of construction activities (e.g. excavation, earth works, bridge and structure works, stream and road diversions, quarrying or extraction of materials, concrete batching and asphalt manufacture). The approved C-ESMP shall be reviewed, periodically (but not less than every six (6) months), and updated in a timely manner, as required, by the Contractor to ensure that it contains measures appropriate to the Works activities to be undertaken. The updated C-ESMP shall be subject to prior approval by the Project Manager."</p>
<p><b>GCC 20.1</b></p>	<p>The Site Possession Date(s) shall be communicated in the commencement letter mentioned under SCC 1.1 (dd)</p>
<p><b>GCC 23.1 &amp; GCC 23.2</b></p>	<p>The Adjudicator proposed by the Employer is: <i>Shan Marion Greer of Clarke Street, Vigie in the city of Castries in the State of Saint Lucia</i>. The hourly fee for this proposed Adjudicator shall be: <i>US\$350.00</i>.</p> <p>The biographical data of the proposed Adjudicator is as follows:</p> <p><b>Personal Profile</b></p> <p>Name: Shan Greer</p> <p>Age: 43</p> <p>Nationalities: St Lucian/Canadian</p> <p>Education:</p> <ul style="list-style-type: none"> <li>- MSc Construction Law and Dispute Resolution (Merit), Kings College, London, 2006</li> <li>- Bar Vocational Course, Inns of Court School of Law, London, 2000</li> <li>- LLB Degree (Upper Second Class Honours), University of London, London, 1999</li> </ul> <p><b>Professional Profile</b></p> <p>Shan Greer is an arbitrator, mediator and lawyer residing in Saint Lucia. For more than 18 years, as Counsel, Shan Greer has dealt with a wide range of banking and finance, construction and infrastructure, energy, investment, commercial, intellectual property, joint venture and shareholders disputes, and with the enforcement of arbitration awards.</p> <p>Shan Greer has represented clients and acts as arbitrator under ICC and UNCITRAL Rules as well as other <i>ad hoc</i> international and domestic arbitrations. Miss Greer is an active member of the Chartered Institute of</p>

	<p>Arbitrators. She is the Chair of its Caribbean Branch as well as an approved tutor and Regional Pathway Leader for the Americas.</p> <p>In addition to her dispute resolution practice, she has an extensive non-contentious background, having worked as a legal advisor in the negotiation and preparation of contractual documents for several construction projects. Shan holds an MSc in Construction Law and Dispute Resolution from Kings College, London (2006). Her dissertation topic was Public Procurement for PPP and included an examination of public procurement in the Caribbean.</p> <p><b>Arbitration Experience</b></p> <p>Cases handled as an arbitrator include large disputes, as well as a wide variety of other matters of varying size, involving corporations, privately held companies, governmental entities and individuals. Most recent pending and prior arbitrations include:</p> <ul style="list-style-type: none"> <li>• An international arbitration relating to a loss and expense/defects liability claim for a commercial construction project governed by the FIDIC Red Book standard form of contract;</li> <li>• Ad hoc arbitration concerning a claim brought by a property development company against a statutory body for damages caused by construction works;</li> <li>• An international arbitration between an insurance company and lending institution with respect to the interpretation of terms relating to liability under an insurance policy;</li> <li>• Under UNCITRAL rules, an arbitration involving a claim by a Chief Executive Officer against a statutory body for wrongful termination;</li> <li>• Appointment to a Dispute Adjudication Board for a multimillion-dollar hospital project for architectural works and remediation of the mechanical, electrical and plumbing installations;</li> <li>• A domestic arbitration under a commercial insurance policy for loss of property due to fire;</li> <li>• Various statutory arbitrations relating to damages claimed against a public utility company.</li> </ul> <p><b>Bar Admissions</b></p> <p>England and Wales - 2000  Saint Lucia – 2000  Saint Vincent – 2013  Belize - 2016</p> <p><b>Law Society Admissions</b></p> <p>England and Wales - 2008</p>
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<b>GCC 24.3</b>	Hourly rate and types of reimbursable expenses to be paid to the Adjudicator: Hourly rate and types of reimbursable expenses to be paid to the Adjudicator: <i>350 USD</i>
<b>GCC 24.4</b>	<p>Institution whose arbitration procedures shall be used:</p> <p><b><i>“United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules:</i></b></p> <p>Any dispute, controversy, or claim arising out of or relating to this Contract, or breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.”]</p>
<b>B. Time Control</b>	
<b>GCC 26.1</b>	The Contractor shall submit for approval a Program for the Works within 14 days from the date of the Letter of Acceptance.
<b>GCC 26.2</b>	<p><b>ESHS Reporting</b></p> <p>Inserted at the end of GCC 26.2:</p> <ul style="list-style-type: none"> <li>• “In addition to the progress report, the Contractor shall also provide a report on the Environmental, Social, Health and Safety (ESHS) metrics set out in Appendix B. In addition to Appendix B reports, the Contractor shall also provide immediate notification to the Project Manager of incidents in the following categories. Full details of such incidents shall be provided to the Project Manager within the timeframe agreed with the Project Manager. <ul style="list-style-type: none"> <li>(a) confirmed or likely violation of any law or international agreement;</li> <li>(b) any fatality or serious (lost time) injury;</li> <li>(c) significant adverse effects or damage to private property (e.g. vehicle accident, vessel accident, working beyond the boundary)</li> <li>(d) major pollution of drinking water aquifer or damage or destruction of rare or endangered habitat (including protected areas) or species; or</li> <li>(e) any allegation of gender based violence (GBV), sexual exploitation or abuse, sexual harassment or sexual misbehavior, rape, sexual assault, child abuse or defilement, or other violations involving children.</li> </ul> </li> </ul>
<b>GCC 26.3</b>	The period between Program updates is <i>30</i> days.

	The amount to be withheld for late submission of an updated Program is <b>US\$1,000.00 for each day of delay.</b>
<b>C. Quality Control</b>	
<b>GCC 34.1</b>	The Defects Liability Period is: <b>Not Applicable.</b>
<b>D. Cost Control</b>	
<b>GCC 38.2</b>	At the end of 38.2 add after the first sentence:  “The Contractor shall also provide information of any ESHS risks and impacts of the Variation.”
<b>GCC 38.7</b>	If the value engineering proposal is approved by the Employer the amount to be paid to the Contractor shall be 50% of the reduction in the Contract Price.
<b>GCC 38.7</b>	In the first paragraph insert new sub-paragraph (d):  “(d) a description of the proposed work to be performed, a programme for its execution and sufficient ESHS information to enable an evaluation of ESHS risks and impacts;”
<b>GCC 40</b>	Add new GCC 40.7:  40.7 if the Contractor was, or is, failing to perform any ESHS obligations or work under the Contract, the value of this work or obligation, as determined by the Project Manager, may be withheld until the work or obligation has been performed, and/or the cost of rectification or replacement, as determined by the Project Manager, may be withheld until rectification or replacement has been completed. Failure to perform includes, but is not limited to the following:  (i) failure to comply with any ESHS obligations or work described in the Works’ Requirements which may include: working outside site boundaries, excessive dust, failure to keep public roads in a safe usable condition, damage to offsite vegetation, pollution of water courses from oils or sedimentation, contamination of land e.g. from oils, human waste, damage to archeology or cultural heritage features, air pollution as a result of unauthorized and/or inefficient combustion;  (ii) failure to regularly review C-ESMP and/or update it in a timely manner to address emerging ESHS issues, or anticipated risks or impacts;

	<ul style="list-style-type: none"> <li>(iii) failure to implement the C-ESMP e.g. failure to provide required training or sensitization;</li> <li>(iv) failing to have appropriate consents/permits prior to undertaking Works or related activities;</li> <li>(v) failure to submit ESHS report/s (as described in Appendix C), or failure to submit such reports in a timely manner;</li> <li>(vi) failure to implement remediation as instructed by the Project Manager within the specified timeframe (e.g. remediation addressing non-compliance/s).</li> </ul>
<b>GCC 44.1</b>	The currency of the Employer's Country is: <b>US\$ (United States Dollar) is the currency of the Contract.</b>
<b>GCC 45.1</b>	The Contract is not subject to price adjustment in accordance with GCC Clause 45.
<b>GCC 46.1</b>	The proportion of payments retained is: 10% of each payment certificate.
<b>GCC 47.1</b>	The liquidated damages for the whole of the Works are 0.05 percent per day. The maximum amount of liquidated damages for the whole of the Works is 10% of the final Contract Price. These percentages apply to each section of the two sections of the works.
<b>GCC 49.1</b>	The Advance Payments shall be: 15% of the agreed Contract Amount and shall be paid to the Contractor no later than 28 days from signature of the Contract and upon submission by the Contractor of acceptable Advance Payment Security.
<b>GCC 50.1</b>	<p>An Environmental, Social, Safety and Health (ESHS) Performance Security shall be provided to the Employer.</p> <p>"GCC 50.1 is replaced with the following</p> <p>The Performance Security and an Environmental, Social, Safety and Health (ESHS) Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in the amount of 5% the agreed contract amount.</p> <p>The Performance Security shall be issued by a bank or surety acceptable to the Employer and be denominated in the types and proportions of the currencies in which the Contract Price is payable. The ESHS Performance Security shall be issued by a bank acceptable to the Employer and denominated in the types and proportions of the currencies</p>

	in which the Contract Price is payable. The Performance Security and, if applicable, the ESHS Performance Security, shall be valid until a date 28 days from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond.”
<b>GCC 50.1</b>	The Performance Security amount is: <p>(a) Performance Security – Bank Guarantee: in the amount(s) 5 % of the Accepted Contract Amount and in the same currency(ies) of the Accepted Contract Amount.</p> <p>(b) Environmental, Social, Safety and Health (ESHS) Performance Security - Bank Guarantee: in the amount(s) of 2 % of the Accepted Contract Amount and in the same currency(ies) of the Accepted Contract Amount.</p>
<b>E. Finishing the Contract</b>	
<b>GCC 56.1</b>	The date by which operating and maintenance manuals are required is <b>(Not Applicable)</b>
<b>GCC 56.2</b>	The amount to be withheld for failing to produce “as built” drawings and/or operating and maintenance manuals by the date required in GCC 58.1 is <b>(Not Applicable)</b>
<b>GCC 57.2 (g)</b>	The maximum number of days is: 20 days.
<b>GCC 58.1</b>	The percentage to apply to the value of the work not completed, representing the Employer’s additional cost for completing the Works, is 20%.



Section X - Contract Forms

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## Notification of Intention to Award

**[This Notification of Intention to Award shall be sent to each Bidder that submitted a Bid.]**

**[Send this Notification to the Bidder's Authorized Representative named in the Bidder Information Form]**

For the attention of Bidder's Authorized Representative

Name: *[insert Authorized Representative's name]*

Address: *[insert Authorized Representative's Address]*

Telephone/Fax numbers: *[insert Authorized Representative's telephone/fax numbers]*

Email Address: *[insert Authorized Representative's email address]*

***[IMPORTANT: insert the date that this Notification is transmitted to Bidders. The Notification must be sent to all Bidders simultaneously. This means on the same date and as close to the same time as possible.]***

**DATE OF TRANSMISSION:** This Notification is sent by: *[email/fax]* on *[date]* (local time)

## Notification of Intention to Award

**Employer:** *[insert the name of the Employer]*

**Project:** *[insert name of project]*

**Contract title:** *[insert the name of the contract]*

**Country:** *[insert country where RFB is issued]*

**Loan No. /Credit No. / Grant No.:** *[insert reference number for loan/credit/grant]*

**RFB No:** *[insert RFB reference number from Procurement Plan]*

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period, you may:

- a) request a debriefing in relation to the evaluation of your Bid, and/or
- b) submit a Procurement-related Complaint in relation to the decision to award the contract.

### 1. The successful Bidder

<b>Name:</b>	<i>[insert name of successful Bidder]</i>
<b>Address:</b>	<i>[insert address of the successful Bidder]</i>
<b>Contract price:</b>	<i>[insert contract price of the successful Bid]</i>

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**2. Other Bidders [INSTRUCTIONS: insert names of all Bidders that submitted a Bid. If the Bid's price was evaluated include the evaluated price as well as the Bid price as read out.]**

Name of Bidder	Bid price	Evaluated Bid price (if applicable)
[insert name]	[insert Bid price]	[insert evaluated price]
[insert name]	[insert Bid price]	[insert evaluated price]
[insert name]	[insert Bid price]	[insert evaluated price]
[insert name]	[insert Bid price]	[insert evaluated price]
[insert name]	[insert Bid price]	[insert evaluated price]

**3. Reason/s why your Bid was unsuccessful**

**[INSTRUCTIONS: State the reason/s why this Bidder's Bid was unsuccessful. Do NOT include: (a) a point by point comparison with another Bidder's Bid or (b) information that is marked confidential by the Bidder in its Bid.]**

**4. How to request a debriefing**

**DEADLINE:** The deadline to request a debriefing expires at midnight on [insert date] (local time).

You may request a debriefing in relation to the results of the evaluation of your Bid. If you decide to request a debriefing your written request must be made within three (3) Business Days of receipt of this Notification of Intention to Award.

Provide the contract name, reference number, name of the Bidder, contact details; and address the request for debriefing as follows:

**Attention:** [insert full name of person, if applicable]

**Title/position:** [insert title/position]

**Agency:** [insert name of Employer]

**Email address:** [insert email address]

**Fax number:** [insert fax number] **delete if not used**

If your request for a debriefing is received within the 3 Business Days deadline, we will provide the debriefing within five (5) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (5) Business Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.

The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.

If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Business Days from the date of publication of the Contract Award Notice.

## 5. How to make a complaint

**Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight, [insert date] (local time).**

Provide the contract name, reference number, name of the Bidder, contact details; and address the Procurement-related Complaint as follows:

**Attention:** [insert full name of person, if applicable]

**Title/position:** [insert title/position]

**Agency:** [insert name of Employer]

**Email address:** [insert email address]

**Fax number:** [insert fax number] **delete if not used**

At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.

Further information:

For more information see the [Procurement Regulations for IPF Borrowers \(Procurement Regulations\)\[https://policies.worldbank.org/sites/ppf3/PPFDocuments/Forms/DispPage.aspx?docid=4005\]](https://policies.worldbank.org/sites/ppf3/PPFDocuments/Forms/DispPage.aspx?docid=4005) (Annex III). You should read these provisions before preparing and submitting your complaint. In addition, the World Bank's Guidance "[How to make a Procurement-related Complaint](http://www.worldbank.org/en/projects-operations/products-and-services/brief/procurement-new-framework#framework)" [<http://www.worldbank.org/en/projects-operations/products-and-services/brief/procurement-new-framework#framework>] provides a useful explanation of the process, as well as a sample letter of complaint.

In summary, there are four essential requirements:

1. You must be an 'interested party'. In this case, that means a Bidder who submitted a Bid in this bidding process, and is the recipient of a Notification of Intention to Award.
2. The complaint can only challenge the decision to award the contract.
3. You must submit the complaint within the period stated above.
4. You must include, in your complaint, all of the information required by the Procurement Regulations (as described in Annex III).

## 6. Standstill Period

**DEADLINE: The Standstill Period is due to end at midnight on [insert date] (local time).**

The Standstill Period lasts ten (10) Business Days after the date of transmission of this Notification of Intention to Award.

The Standstill Period may be extended as stated in Section 4 above.

If you have any questions regarding this Notification, please do not hesitate to contact us.

On behalf of the Employer:

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title/position:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Email:** \_\_\_\_\_

## Beneficial Ownership Disclosure Form (Not Applicable)

## Letter of Acceptance

*[on letterhead paper of the Employer]*

..... **[date]** .....

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

Subject: ..... **[Notification of Award Contract No.]** .....

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 PCC]** . . . . .  
for the Accepted Contract Amount of . . . . . **[insert amount in numbers and words and  
name of currency]**, as corrected and modified in accordance with the Instructions to Bidders  
is hereby accepted by our Agency.

You are requested to furnish (i) the Performance Security and an Environmental, Social, Health  
and Safety Performance Security **[Delete ESHS Performance Security if it is not required  
under the contract]** within 28 days in accordance with the Conditions of Contract, using for  
that purpose the of the Performance Security Form and the ESHS Performance Security Form,  
**[Delete reference to the ESHS Performance Security Form if it is not required under the  
contract]** and (ii) the additional information on beneficial ownership in accordance with BDS  
ITB 47.1, within eight (8) Business days using the Beneficial Ownership Disclosure Form,  
included in Section X - Contract Forms, of the bidding document.  
**[Choose one of the following statements:]**

We accept that \_\_\_\_\_ **[insert the name of Adjudicator proposed  
by the Bidder]** be appointed as the Adjudicator.

**[or]**

We do not accept that \_\_\_\_\_ **[insert the name of the Adjudicator  
proposed by the Bidder]** be appointed as the Adjudicator, and by sending a copy of this Letter  
of Acceptance to \_\_\_\_\_ **[insert name of the  
Appointing Authority]**, the Appointing Authority, we are hereby requesting such Authority to  
appoint the Adjudicator in accordance with ITB 48.1 and GCC 23.1.

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Agency: .....

**Attachment: Contract Agreement**

## Contract Agreement

THIS AGREEMENT made the . . . . .day of . . . . ., . . . . ., between . . . . . **[name of the Employer]**. . . . . (hereinafter “the Employer”), of the one part, and . . . . . **[name of the Contractor]**. . . . .(hereinafter “the Contractor”), of the other part:

WHEREAS the Employer desires that the Works known as . . . . . **[name of the Contract]**. . . . . should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein,

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.

2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.

- (a) the Letter of Acceptance
- (b) the Letter of Bid
- (c) the addenda Nos \_\_\_\_\_(if any)
- (d) the Particular Conditions
- (e) the General Conditions of Contract, including appendix;
- (f) the Specification
- (g) the Drawings
- (h) Bill of Quantities;<sup>29</sup> and
- (i) any other document **listed in the PCC** as forming part of the Contract;

3. In consideration of the payments to be made by the Employer to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.

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

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<sup>29</sup> In lump sum contracts, delete “Bill of Quantities” and replace with “Activity Schedule.”



IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of . . . . . ***[name of the borrowing country]***. . . . .on the day, month and year specified above.

Signed  
by: \_\_\_\_\_  
for and on behalf of the Employer

Signed  
by: \_\_\_\_\_  
for and on behalf the Contractor

in the  
presence  
of: \_\_\_\_\_  
Witness, Name, Signature, Address,  
Date

in the  
presence  
of: \_\_\_\_\_  
Witness, Name, Signature, Address, Date

## Performance Security - Bank Guarantee

*[Guarantor letterhead or SWIFT identifier code]*

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

**Date:** *\_ [Insert date of issue]*

**PERFORMANCE GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *\_ [insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. *[insert reference number of the contract]* dated *[insert date]* with the Beneficiary, 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 Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures] (\_\_\_\_\_)* *[insert amount in words]*,<sup>1</sup> such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the .... Day of ....., 2...<sup>2</sup>, and any demand for payment under it must be received by us at this office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

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<sup>1</sup> *The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Beneficiary.*

<sup>2</sup> *Insert the date twenty-eight days after the expected completion date as described in GC Clause 53.1. The Employer should note that in the event of an extension of this date 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 Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."*

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*[signature(s)]*

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

## **Performance Security - Performance Bond (Not Applicable)**

# Environmental, Social, Health and Safety (ESHS) Performance Security

## ESHS Demand Guarantee

*[Guarantor letterhead or SWIFT identifier code]*

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

**Date:** *\_ [Insert date of issue]*

**ESHS PERFORMANCE GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that \_\_\_\_\_ (hereinafter called "the Applicant") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_ (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 Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ (\_\_\_\_\_),<sup>1</sup> such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its Environmental, Social, Health and/or Safety (ESHS) obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the .... Day of ....., 2...<sup>2</sup>, and any demand for payment under it must be received by us at this office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

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<sup>1</sup> The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency (cies) of the Contract or a freely convertible currency acceptable to the Beneficiary.

<sup>2</sup> Insert the date twenty-eight days after the expected completion date as described in GC Clause 53.1. The Employer should note that in the event of an extension of this date 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 Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

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*[signature(s)]*

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

# Advance Payment Security

## Demand Guarantee

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** *[Insert name and Address of Employer]*

**Date:** *[Insert date of issue]*

**ADVANCE PAYMENT GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. *[insert reference number of the contract]* dated *[insert date]* with the Beneficiary, for the execution of *[insert name of contract and brief description of Works]* (hereinafter called "the Contract").

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

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* ( \_\_\_\_\_ ) *[insert amount in words]*<sup>1</sup> upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

- (a) has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or
- (b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Applicant on its account number *[insert number]* at *[insert name and address of Applicant's bank]*.

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<sup>1</sup> *The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.*

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the *[insert day]* day of *[insert month]*, 2 *[insert year]*,<sup>2</sup> whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

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*[signature(s)]*

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

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<sup>2</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: "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 Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."*