

# Standard Bidding Documents

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## Procurement of Works Medium Value Contracts

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This document prepared by The African Development Bank is intended to fulfill the objectives of paragraph. 3.5.2 of The Rules of Procedure for Procurement of Goods and Works, December 1996 edition:

"Borrowers shall use the appropriate Standard Bidding Documents (SBDs) issued by the Bank with minimum changes, acceptable to the Bank, as necessary to address country and project specific issues. Any such changes shall be introduced only through bid or contract data sheets, or through special conditions of contract, and not by introducing changes in the standard wording of the Bank's SBDs."

Users of this document should ensure the above requirements are complied with.

The African Development Bank

January 1997

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## Preface

Procurement under projects financed by the African Development (ADB), African Development Fund (ADF) and the Nigeria Trust Fund (NTF),<sup>1</sup> is carried out in accordance with policies and procedures laid down in the Rules of Procedure for Procurement of Goods and Works (hereinafter called Rules of Procurement ).

The standard bidding documents in this publication have been prepared for use by borrowers in the procurement of works for "medium value" contracts—valued at generally less than UA 10 million—by international competitive bidding (ICB). These documents may also be adapted to national competitive bidding (NCB). However, substantive changes to adapt to NCB are generally necessary in the Instructions to Bidders and the Conditions of Contract.

For complex works under UA 10 million, such as marine works and water treatment plants, it may be preferable to use the African Development Bank's Standard Bidding Documents, Procurement of Works.

To obtain further information on procurement under ADB Group-assisted projects, contact:

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<sup>1</sup> ADB, ADF and NTF are generally called the African Development Bank Group (ADB Group). Since the procurement requirements for ADB, ADF and NTF are identical, "African Development Bank " in this handbook refers to ADB, NTF and ADF , and "loan" refers to either an ADB or NTF loan or an ADF loan or grant. However, for the Invitation for Bids, the distinctions are retained.

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## Introduction

These Standard Bidding Documents are intended as a model for admeasurement (unit prices or unit rates in a bill of quantities) and lump sum types of Contract, which are the most common in Works contracting. Lump sum contracts are used in particular for buildings and other forms of construction where the Works are well defined and are unlikely to change in quantity or specification, and where encountering difficult or unforeseen site conditions (for example, hidden foundation problems) is unlikely. The main text refers to admeasurement contracts. Alternative clauses or texts are supplied for use with lump sum contracts<sup>2</sup>.

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

- (a) All the documents listed in the Table of Contents are normally required for the procurement of Works. However, they should be adapted as necessary to the circumstances of the particular Project.
- (b) Details to be provided by the Employer prior to release of the bidding documents are limited to the Invitation for Bids, Bidding Data, and Contract Data (Section 4), in addition to Sections 5-7, which deal with Specifications, Drawings, and Bill of Quantities, respectively. Specific details should be furnished in the spaces indicated by italicized notes inside brackets. Those details not filled in by the Employer are the responsibility of the Bidder.
- (c) This bidding document is intended to serve on a repetitive basis in a Borrower's country, once agreement between the Borrower and the African Development Bank has been reached. Modifications for specific Project or Contract needs should be provided only in the Contract Data as amendments to Conditions of Contract. If modifications must be made to bidding procedures, they can be presented in the Bidding Data.
- (d) The notes inside boxes with single borders are not part of the text, but rather contain instructions for the user, as do the Preface and this Introduction section. They should not be incorporated in the bidding documents. The cover should be modified as required to identify the bidding documents as to the names of the Project, Contract, and Employer, in addition to date of issue.
- (e) The notes inside boxes with double borders should be retained in the issued bidding documents, since these notes provide important guidance to bidders.

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<sup>2</sup> Lump sum contracts should be used for Works that can be defined in their full physical and qualitative characteristics before bids are called, or where the risks of substantial design variations are minimal, usually construction of buildings, pipelaying, power transmission towers, and series of small structures, such as bus shelters or school ablution units. In lump sum contracts, the concept of priced "activity schedules" has been introduced, to enable payments to be made as "activities" are completed. Payments can also be made on the basis of percentage completion of each activity.

- (f) The standard documents have been prepared for bidding where either prequalification or postqualification applies. The process of prequalification of bidders is not covered in these standard documents. Refer to *Standard Prequalification Documents, Procurement of Works* issued by the African Development Bank.

## Section I. Invitation for Bids

### Notes on the Invitation for Bids

The Invitation for Bids (see Rules of Procurement, para. 3.2.1) is normally issued as

- (a) an advertisement in at least one newspaper of general circulation in the Employer's country and in a national Newspaper;
- (b) a circular (usually a copy of the advertisement) issued to consular or diplomatic representatives of eligible countries with potential bidders; and
- (c) a letter addressed to contractors who, following the publication of the General Procurement Notice, had expressed interest in bidding for the Works.

Its purpose is to supply information to enable potential bidders to decide on their participation. Apart from the essential items listed in the sample documents, the Invitation for Bids should also indicate any important or unusual bid evaluation criteria (for example, the application of a margin of preference in bid evaluation).

If prequalification is used, the above notifications advertise a Request for Prequalification. After the prequalification process, only the prequalified applicants receive the Invitation for Bids.

The Invitation for Bids may be incorporated in the bidding documents merely for the record, or it may be omitted. In either event, the information contained in the Invitation for Bids should conform to the bidding documents, and in particular, to the relevant information in the Bidding Data and Contract Data.

## Invitation for Bids (IFB)

Date: *[of issue of invitation]*  
Contract Identification N<sup>o</sup>:  
ADB Loan Number:  
ADB Loan Name:

1. The *[name of Borrower]* has received<sup>3</sup> a loan from the African Development Bank<sup>4</sup> towards the cost of *[name of Project]* and intends to apply part of the funds to cover eligible payments under the Contract for *[name and identification number of Contract]*.<sup>5</sup> Bidding is open to all bidders from eligible source countries as defined in the ADB's Rules of Procedure for Procurement of Goods and Works.
2. The *[name of Employer and statement of its relationship to the Borrower, if different from the Borrower]* invites sealed bids from eligible bidders for the construction of *[brief description of the Works]*.
3. Bidding documents (and additional copies) may be purchased at *[name and address of office]* for a nonrefundable fee of *[amount in local currency]*,<sup>6</sup> or its equivalent in a freely-convertible currency, for each set. Interested bidders may obtain further information at the same address.
4. Bids shall be valid for a period of *[days]* after Bid opening and must be accompanied by

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<sup>3</sup> Substitute “has applied for,” if appropriate.

<sup>4</sup> Substitute “African Development Fund”, or “Nigeria Trust Fund”, for “African Development Bank”, where appropriate.

<sup>5</sup> See definitions in the Conditions of Contract (“the Contract”).

<sup>6</sup> This fee is a nominal amount to cover the cost of printing and mailing or shipping documents only.

security of *[amount in local currency]*<sup>7</sup> or its equivalent in a convertible currency, and shall be delivered to *[name and full address of receiving office]* on or before *[time and date of Bid closing]*, at which time they will be opened in the presence of the bidders who wish to attend.

5. Qualified domestic or regional contractors may be eligible to receive a margin of preference of 10 per cent or 7½ per cent respectively, in Bid evaluation.<sup>8</sup>

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<sup>7</sup> An amount in local currency should be indicated, in preference to a percentage of the Bid price. It should not exceed the equivalent of 3 percent of the estimated Contract value (see Clause 16 of Section II, Instructions to Bidders, and Bidding Data).

<sup>8</sup> Qualified domestic or regional contractors may receive a margin of preference if allowed for in the Loan Agreement. Otherwise, delete this sentence.

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## **Section II. Instructions to Bidders**

### **Notes on the Instructions to Bidders**

This section of the bidding documents should provide the information necessary for bidders to prepare responsive bids, in accordance with the requirements of the Employer. It should also give information on bid submission, opening and evaluation, and on the award of Contract.

Matters governing the performance of the Contractor, payments under the Contract, or matters affecting the risks, rights, and obligations of the parties under the Contract are not normally included in this Section, but rather under Section IV, Conditions of Contract, and/or Section V, Contract Data. If duplication of a subject is inevitable in the different sections of the documents, care must be exercised to avoid contradiction between clauses dealing with the same matter.

These Instructions to Bidders will not be part of the Contract and will cease to have effect once the Contract is signed.

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## **Instructions to Bidders**

### **A. General**

#### **1. Scope of Bid**

1.1 The Employer as defined<sup>1</sup> in the Contract Data, invites bids for the construction of Works, as described in the Contract Data. The name and identification number of the Contract is provided in the Contract Data.

1.2 The successful Bidder will be expected to complete the Works by the Intended Completion Date specified in the Contract Data.

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

The Borrower, as defined in the Bidding Data, intends to apply part of the funds of a loan from the African Development Bank, as defined in the Bidding Data, towards the cost of the Project, as defined in the Bidding Data, to cover eligible payments under the Contract for the Works. Payments by the African Development Bank will be made only at the request of the Borrower and upon approval by the African Development Bank in accordance with the Loan Agreement, and will be subject in all respects to the terms and conditions of that Agreement. Except as the African Development Bank may specifically otherwise agree, no party other than the Borrower shall derive any rights from the Loan Agreement or have any rights to the loan proceeds.

#### **3. Eligible Bidders**

3.1 This Invitation for Bids is open to all bidders from eligible countries as defined in the Rules of Procurement. Any materials, equipment, and services to be used in the performance of the Contract shall have their origin in eligible source countries.

3.2 All bidders shall provide in Section 2, Forms of Bid and Qualification Information, a statement that the Bidder (including all members of a joint venture and subcontractors) is not associated, nor has been associated in the past, directly or indirectly, with the consultant or any other entity that has prepared the design, specifications, and other documents for the Project or being proposed as Project Manager for the Contract. A firm that has been engaged by the Borrower to provide consulting services for the preparation or supervision of the Works, and any of its affiliates, shall not be eligible to bid.

- 3.3 Government-owned enterprises in the Employer's country may only participate if they are legally and financially autonomous, operate under commercial law, and are not a dependent agency to the Borrower or the Sub-Borrower.
- 3.4 Bidders shall not be under a declaration of ineligibility for corrupt and fraudulent practices issued by the African Development Bank in accordance with sub-clause 37.1.

#### **4. Qualification of the Bidder**

- 4.1 All bidders shall provide in Section III, Forms of Bid and Qualification Information, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.
- 4.2 In the event that prequalification of potential bidders has been undertaken, only bids from prequalified bidders will be considered for award of Contract. These qualified bidders should submit with their bids any information updating their original prequalification applications or, alternatively, confirm in their bids that the originally-submitted prequalification information remains essentially correct as of the date of bid submission. The update or confirmation should be provided in Section III.
- 4.3 If the Employer has not undertaken prequalification of potential bidders, all bidders shall include the following information and documents with their bids in Section III, unless otherwise stated in the Bidding Data:
  - (a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the Bid to commit the Bidder;
  - (b) total monetary value of construction work performed for each of the last five years;
  - (c) experience in works of a similar nature and size for each of the last five years, and details of work under way or contractually committed; and clients who may be contacted for further information on those contracts;
  - (d) major items of construction equipment proposed to carry out the Contract;
  - (e) qualifications and experience of key site management and technical personnel proposed for the Contract;
  - (f) reports on the financial standing of the Bidder, such as profit and loss statements and auditor's reports for the past five years;

- (g) evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
  - (h) authority to seek references from the Bidder's bankers;
  - (i) information regarding any litigation, current or during the last five years, in which the Bidder is involved, the parties concerned, and disputed amount; and
  - (j) proposals for subcontracting components of the Works amounting to more than 10 percent of the Contract Price.
- 4.4 Bids submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated in the Bidding Data:
- (a) the Bid shall include all the information listed in Sub-Clause 4.3 above for each joint venture partner;
  - (b) the Bid shall be signed so as to be legally binding on all partners;
  - (c) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
  - (d) one of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
  - (e) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.
- 4.5 To qualify for award of the Contract, bidders shall meet the following minimum qualifying criteria:
- (a) annual volume of construction work of at least the amount specified in the Bidding Data;<sup>2</sup>
  - (b) experience as prime contractor in the construction of at least two works of a nature and complexity equivalent to the Works over the last 10 years (to comply with this requirement, works cited should be at least 70 percent complete);
  - (c) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed in the Bidding Data;

- (d) a Contract Manager with five years' experience in works of an equivalent nature and volume, including no less than three years as Manager; and
- (e) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than the amount specified in the Bidding Data.<sup>3</sup>

A consistent history of litigation or arbitration awards against the Applicant or any partner of a Joint Venture may result in disqualification.

- 4.6 The figures for each of the partners of a joint venture shall be added together to determine the Bidder's compliance with the minimum qualifying criteria of Sub-Clause 4.5(a) and (e); however, for a joint venture to qualify, each of its partners must meet at least 25 per cent of minimum criteria 4.5(a), (b), and (e) for an individual Bidder, and the partner in charge at least 40 percent of those minimum criteria. Failure to comply with this requirement will result in rejection of the joint venture's Bid. Subcontractors' experience and resources will not be taken into account in determining the Bidder's compliance with the qualifying criteria, unless otherwise stated in the Bidding Data.
- 4.7 Bidders applying for eligibility for a margin of preference in bid evaluation, shall supply all information to satisfy the criteria for eligibility as described in Clause 30 of these Instructions to Bidders.<sup>4</sup>

## **5. One Bid per Bidder**

- 5.1 Each Bidder shall submit only one Bid, either individually or as a partner in a joint venture. A Bidder who submits or participates in more than one Bid (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the proposals with the Bidder's participation to be disqualified.

## **6. Cost of Bidding**

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

## 7. Site Visit

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

### B. Bidding Documents

## 8. Content of Bidding Documents

- 8.1 The set of bidding documents comprises the documents listed in the table below and addenda issued in accordance with Clause 10:

Section II	Instructions to Bidders
III	Forms of Bid and Qualification Information
IV	Conditions of Contract
V	Contract Data
VI	Specifications
VII	Drawings
VIII	Bill of Quantities <sup>5</sup>
IX	Forms of Securities

- 8.2 Three copies of Sections III, V, and VIII are supplied to the prospective Bidder. The number of copies to be completed and returned with the Bid is specified in the Bidding Data.

## 9. Clarification of Bidding Documents

- 9.1 A prospective Bidder requiring any clarification of the bidding documents may notify the Employer in writing or by cable ("cable" includes telex and facsimile) at the Employer's address indicated in the invitation to bid. The Employer will respond to any request for clarification received earlier than 28 days<sup>6</sup> prior to the deadline for submission of bids. Copies of the Employer's response will be forwarded to all purchasers of the bidding documents, including a description of the inquiry, but without identifying its source.

## 10. Amendment of Bidding Documents

- 10.1 Before the deadline for submission of bids, the Employer may modify the bidding documents by issuing addenda.
- 10.2 Any addendum thus issued shall be part of the bidding documents and shall be communicated in writing or by cable to all purchasers of the bidding documents.<sup>7</sup> Prospective bidders shall acknowledge receipt of each addendum by cable to the Employer.

- 10.3 To give prospective bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer shall extend, as necessary, the deadline for submission of bids, in accordance with Sub-Clause 20.2 below.

### **C. Preparation of Bids**

#### **11. Language of Bid**

- 11.1 All documents relating to the Bid shall be in the language specified in the Contract Data<sup>8</sup>. Provided that any printed literature furnished by the Bidder may be written in another language, as long as such literature is accompanied by a translation of its pertinent passages in the language specified in the Contract Data; in which case, for purposes of interpretation of the Bid, the translation shall govern.

#### **12 Documents Comprising the Bid**

- 12.1 The Bid submitted by the Bidder shall comprise the following:

- (a) The Bid (in the format indicated in Section III);
- (b) Bid Security;
- (c) Priced Bill of Quantities;<sup>9</sup>
- (d) Qualification Information Form and Documents;
- (e) Alternative offers where invited;

and any other materials required to be completed and submitted by bidders, as specified in the Bidding Data.

#### **13. Bid Prices**

- 13.1 The Contract shall be for the whole Works, as described in Sub-Clause 1.1, based on the priced Bill of Quantities<sup>10</sup> submitted by the Bidder.
- 13.2 The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities.<sup>11</sup> Items for which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities.
- 13.3 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the rates, prices, and total Bid price submitted by the Bidder.<sup>12</sup>

- 13.4 The rates and prices<sup>13</sup> quoted by the Bidder shall be subject to adjustment during the performance of the Contract if provided for in the Bidding and Contract Data and the provisions of Clause 47 of the Conditions of Contract. The Bidder shall submit with the Bid all the information required under the Contract Data and Clause 47 of the Conditions of Contract.

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

- 14.1 The unit rates and prices<sup>14</sup> shall be quoted by the Bidder entirely in the currency of the Employer's country as specified in the Contract Data. Foreign currency requirements shall be indicated as a percentage of the Bid price (excluding provisional sums<sup>15</sup>) and shall be payable at the option of the Bidder in (a) the currency of the Bidder's home country or (b) a currency widely used in international trade, always provided that a Bidder expecting expenditures in currency(ies) other than those stated in (a) or (b) above for portions of the foreign currency requirements, and wishing to be paid accordingly, shall indicate the relevant currencies and percentages in the Bid.
- 14.2 The rates of exchange to be used by the Bidder in arriving at the local currency equivalent and the percentage(s) mentioned in para. 14.1 above shall be the selling rates for similar transactions established by the authority specified in the Bidding Data prevailing on the date 15 days prior to the latest deadline for submission of bids. These exchange rates shall apply for all payments so that no exchange risk will be borne by the Bidder. If the Bidder uses other rates of exchange, the provisions of Clause 28.1 shall apply. In any case, payments will be computed using the rates quoted in the Bid.
- 14.3 Bidders shall indicate details of their expected foreign currency requirements in the Bid.
- 14.4 Bidders may be required by the Employer to clarify their foreign currency requirements and to substantiate that the amounts included in the rates and prices<sup>16</sup> and in the Contract Data are reasonable and responsive to Sub-Clause 14.1.

#### **15. Bid Validity**

- 15.1 Bids shall remain valid for the period<sup>17</sup> specified in the Bidding Data.
- 15.2 In exceptional circumstances, the Employer may request that the bidders extend the period of validity for a specified additional period. The request and the bidders' responses shall be made in writing or by cable. A Bidder may refuse the request without forfeiting the Bid Security. A Bidder agreeing to the request will not be required or permitted to otherwise modify the Bid, but will be required to extend the validity of Bid Security for the period of the extension, and in compliance with Clause 16 in all respects.

- 15.3 In the case of contracts in which the Contract Price is fixed (not subject to price adjustment), if the period of bid validity is extended beyond 60 days, the amounts payable in local and foreign currency to the Bidder selected for award, shall be increased by applying to both the local and the foreign currency component of the payments, respectively, the factors specified in the bidding data or in the request for extension, for the period of delay beyond 60 days after the expiry of the initial bid validity, up to the notification of award. Bid evaluation will be based on the Bid prices without taking the above correction into consideration.

## **16. Bid Security**

- 16.1 The Bidder shall furnish, as part of the Bid, a Bid Security in local currency or in a freely convertible currency, in the amount specified in the Bidding Data.<sup>18</sup>
- 16.2 The Bid Security shall, at the Bidder's option, be in the form of a certified check, bank draft, letter of credit, or a bank guarantee from a reputable bank located in the country of the Employer or in any eligible country abroad. The format of the Bid Security should be in accordance with the form of Bid Security included in Section IX or another form acceptable to the Employer. Bid Security shall be valid for 28 days beyond the validity of the Bid.
- 16.3 Any bid not accompanied by an acceptable Bid Security shall be rejected by the Employer. The Bid Security of a joint venture must define as "bidder" all joint venture partners and list them in the following manner: a joint venture consisting of "\_\_\_\_\_", "\_\_\_\_\_", and "\_\_\_\_\_".
- 16.4 The Bid Security of unsuccessful bidders will be returned within one week after concluding the contract and after a performance security has been furnished by the successful Bidder.
- 16.5 The Bid Security of the successful Bidder will be discharged when the Bidder has signed the Agreement and furnished the required Performance Security.
- 16.6 The Bid Security may be forfeited
- (a) if the Bidder withdraws the Bid after Bid opening during the period of Bid validity;
  - (b) if the Bidder does not accept the correction of the Bid price, pursuant to Clause 27; or
  - (c) in the case of a successful Bidder, if the Bidder fails within the specified time limit to
    - (i) sign the Agreement; or
    - (ii) furnish the required Performance Security.

## **17. Alternative Proposals by Bidders**

- 17.1 Bidders shall submit offers that comply with the requirements of the bidding documents, including the basic technical design as indicated in the drawings and specifications. Alternatives will not be considered, unless specifically allowed in the Bidding Data. If so allowed, Sub-Clause 17.2 shall govern.
- 17.2 If so allowed in the Bidding Data, bidders wishing to offer technical alternatives to the requirements of the bidding documents must also submit a Bid that complies with the requirements of the bidding documents, including the basic technical design as indicated in the drawings and specifications. In addition to submitting the basic Bid, the Bidder shall provide all information necessary for a complete evaluation of the alternative by the Employer, including design calculations, technical specifications, breakdown of prices, proposed construction methods and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Employer.

## **18. Format and Signing of Bid**

- 18.1 The Bidder shall prepare one original of the documents comprising the Bid as described in Clause 12 of these Instructions to Bidders, bound with the volume containing the Form of Bid, and clearly marked "ORIGINAL." In addition, the Bidder shall submit copies of the Bid, in the number specified in the Bidding Data, and clearly marked as "COPIES." In the event of discrepancy between them, the original shall prevail.
- 18.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Bidder, pursuant to Sub-Clauses 4.3(a) or 4.4(b), as the case may be. All pages of the Bid where entries or amendments have been made shall be initialed by the person or persons signing the Bid.
- 18.3 The Bid shall contain no alterations or additions, except those to comply with instructions issued by the Employer, or as necessary to correct errors made by the Bidder, in which case such corrections shall be initialed by the person or persons signing the Bid.
- 18.4 The Bidder shall furnish information as described in the Form of Bid on commissions or gratuities, if any, paid or to be paid to agents relating to this Bid, and to contract execution if the Bidder is awarded the contract.

## **D. Submission of Bids**

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

- 19.1 The Bidder shall seal the original and all copies of the Bid in two inner envelopes and one outer envelope, duly marking the inner envelopes as “ORIGINAL” and “COPIES”.
- 19.2 The inner and outer envelopes shall
- (a) be addressed to the Employer at the address<sup>19</sup> provided in the Bidding Data;
  - (b) bear the name and identification number of the Contract as defined in the Bidding and Contract Data; and
  - (c) provide a warning not to open before the specified time and date for Bid opening as defined in the Bidding Data.
- 19.3 In addition to the identification required in Sub-Clause 19.2, the inner envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared late, pursuant to Clause 21.
- 19.4 If the outer envelope is not sealed and marked as above, the Employer will assume no responsibility for the misplacement or premature opening of the Bid.

### **20. Deadline for Sub-mission of Bids**

- 20.1 Bids shall be delivered to the Employer at the address specified above no later than the time and date specified in the Bidding Data.
- 20.2 The Employer may extend the deadline for submission of bids by issuing an amendment in accordance with Clause 10, in which case all rights and obligations of the Employer and the bidders previously subject to the original deadline will then be subject to the new deadline.

### **21. Late Bids**

- 21.1 Any Bid received by the Employer after the deadline prescribed in Clause 20 will be returned unopened to the Bidder.

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

- 22.1 Bidders may modify or withdraw their bids by giving notice in writing before the deadline prescribed in Clause 20.

- 22.2 Each Bidder's modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clauses 18 and 19, with the outer and inner envelopes additionally marked "MODIFICATION" or "WITHDRAWAL," as appropriate.
- 22.3 No Bid may be modified after the deadline for submission of Bids.
- 22.4 Withdrawal of a Bid between the deadline for submission of bids and the expiration of the period of Bid validity specified in the Bidding Data or as extended pursuant to Sub-Clause 15.2 may result in the forfeiture of the Bid Security pursuant to Clause 16.
- 22.5 Bidders may only offer discounts to, or otherwise modify the prices of their bids by submitting Bid modifications in accordance with this clause, or included in the original Bid submission.

#### **E. Bid Opening and Evaluation**

#### **23. Bid Opening**

- 23.1 The Employer will open the bids, including modifications made pursuant to Clause 22, in the presence of the bidders' representatives who choose to attend at the time and in the place specified in the Bidding Data.
- 23.2 Envelopes marked "WITHDRAWAL" shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to Clause 22 shall not be opened.
- 23.3 The bidders' names, the Bid prices, the total amount of each Bid and of any alternative Bid (if alternatives have been requested or permitted), any discounts, Bid modifications and withdrawals, the presence or absence of Bid Security, will all be announced by the Employer at the bid opening. Further, any such other details as the Employer may consider appropriate, will also be announced.
- 23.4 Bids or modifications that are not opened and read out at bid opening shall not be considered further for evaluation, irrespective of the circumstances. In particular, any discount offered by a Bidder which is not read out at bid opening shall not be considered further.
- 23.5 The Employer will prepare minutes of the Bid opening, including the information disclosed to those present in accordance with Sub-Clause 23.3<sup>20</sup>.
- 23.6 No bid will be rejected at bid opening except for late bids, which will be returned unopened to the bidder, pursuant to ITB Clause 21.

**24. Process to Be Confidential**

24.1 Information relating to the examination, clarification, evaluation, and comparison of bids and recommendations for the award of a contract shall not be disclosed to bidders or any other persons not officially concerned with such process until the award to the successful Bidder has been announced. Any effort by a Bidder to influence the Employer's processing of bids or award decisions may result in the rejection of his Bid.

**25. Clarification of Bids and Contacting the Employer**

25.1 To assist in the examination, evaluation, and comparison of bids, the Employer may, at the Employer's discretion, ask any Bidder for clarification of the Bidder's Bid, including breakdowns of unit rates.<sup>21</sup> The request for clarification and the response shall be in writing or by cable, telex, or facsimile, but no change in the price or substance of the Bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids in accordance with Clause 27.

25.2 Subject to sub-clause 25.1 no Bidder shall contact the Employer on any matter relating to its bid from the time of the bid opening to the time the contract is awarded. If the Bidder wishes to bring additional information to the notice of the Employer, it should do so in writing.

25.3 Any effort by the Bidder to influence the Employer in the Employer's bid evaluation, bid comparison or contract award decisions may result in the rejection of the Bidder's bid.

**26. Examination of Bids and Determination of Responsiveness**

26.1 Prior to the detailed evaluation of bids, the Employer will determine whether each Bid (a) meets the eligibility criteria defined in Clause 3; (b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the bidding documents.

26.2 A substantially responsive Bid is one which conforms to all the terms, conditions, and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the Works; (b) which limits in any substantial way, inconsistent with the bidding documents, the Employer's rights or the Bidder's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.

- 26.3 If a Bid is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

## **27. Correction of Errors**

- 27.1 Bids determined to be substantially responsive will be checked by the Employer for any arithmetic errors. Errors will be corrected by the Employer as follows:<sup>22</sup>
- (a) where there is a discrepancy between the amounts in figures and in words, the amount in words will govern; and
  - (b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will govern, unless in the opinion of the Employer there is an obviously gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted will govern, and the unit rate will be corrected.
- 27.2 The amount stated in the Bid will be adjusted by the Employer in accordance with the above procedure for the correction of errors and, with the concurrence of the Bidder, shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the Bid will be rejected, and the Bid Security may be forfeited in accordance with Sub-Clause 16.6(b).

## **28. Currency for Bid Evaluation**

- 28.1 Bids will be evaluated as quoted in the currency of the Employer's country as defined in the Contract Data in accordance with Sub-Clause 14.1, unless a Bidder has used different exchange rates than those prescribed in Sub-Clause 14.2, in which case the Bid will be first converted into the amounts payable in different currencies using the rates quoted in the Bid and then reconverted to the Employer's currency using the exchange rates prescribed in Sub-Clause 14.2.

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

- 29.1 The Employer will evaluate and compare only the bids determined to be substantially responsive in accordance with Clause 26.
- 29.2 In evaluating the bids, the Employer will determine for each Bid the evaluated Bid price by adjusting the Bid price as follows:
- (a) making any correction for errors pursuant to Clause 27;
  - (b) excluding provisional sums and the provision, if any, for contingencies in the Bill of Quantities,<sup>23</sup> but including Daywork,<sup>24</sup> where priced competitively;

- (c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with Clause 17; and
  - (d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with Sub-Clause 22.5.
- 29.3 The Employer reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors which are in excess of the requirements of the bidding documents or otherwise result in unsolicited benefits for the Employer will not be taken into account in Bid evaluation.
- 29.4 The estimated effect of any price adjustment conditions under Clause 47 of the Conditions of Contract, during the period of implementation of the Contract, will not be taken into account in Bid evaluation.

### **30. Preference for Domestic or Regional Bidders**

- 30.1 If so indicated in the Bidding Data, domestic or regional contractors may receive a margin of preference in Bid evaluation, for which the following Option A shall apply if domestic preference is granted, and, alternatively, Option B if regional preference is granted.

#### **Option A: Domestic Preference**

- 30.2 Domestic contractors shall provide all evidence necessary to prove that they meet the following criteria to be eligible for a 10 per cent margin of preference in the comparison of their bids with those of contractors who do not qualify for the preference, A contractor is deemed domestic if:
- (a) its legal constitution is in accordance with the laws of the Borrower's country where it must have its registered office and undertake the majority of its activities; and
  - (b) the majority of the capital shares are held by nationals of that country, and
  - (c) the majority of the members of the board of directors are nationals of that country, and
  - (d) not less than 50 per cent of the key personnel are nationals of that country, and
  - (e) there is no arrangement whereby any major part of the net profits or other tangible benefits of the domestic contractor will accrue or be paid to persons not nationals of that country or to firms which would not be

eligible under this Sub-Clause<sup>36</sup>.

- 30.3 Joint ventures between domestic and foreign firms may be eligible for the margin of preference provided the domestic partner or partners
- (a) individually satisfy the above criteria of eligibility for the preference;
  - (b) demonstrate a beneficiary interest of no less than 50 percent in the joint venture, as demonstrated by the profit and loss sharing provisions of the joint venture agreement;
  - (c) will, under the arrangements proposed, carry out at least 50 percent of the Works, measured in terms of value, which shall exclude any materials or plant which are to be directly imported by the domestic partner (s) (always provided that the domestic partner or partners are qualified to carry out that amount of work, in accordance with the criteria of Sub-Clause 4.3); and
  - (d) satisfy any other criteria specified for the purpose of domestic preference eligibility, as specified in the Bidding Data.
- 30.4 The following procedure will be used to apply the margin of preference:
- (a) Responsive bids will be classified into the following groups:
    - (i) Group A: bids offered by domestic bidders and joint ventures meeting the respective criteria of Sub-Clauses 30.2 and 30.3 above; and
    - (ii) Group B: all other bids.
  - (b) For the purpose of further evaluation and comparison of bids only, an amount equal to 10 percent of the evaluated Bid prices determined in accordance with Clause 29.2 (a), b), and (d), will be added to all bids classified in Group B.

### **Option B: Regional Preference**

- 30.2 Contractors from regional Member countries that have joined the Borrower's country in a regional cooperation agreement designed to foster economic integration by a customs union or free trade area (in this Clause referred to as "Regional contractors") shall provide all evidence necessary to prove that they meet the following criteria to be eligible for a 7½-percent margin of preference in the comparison of their bids with those of bidders who do not qualify for the preference. A contractor is deemed to be a Regional contractor if:

- (a) it is legally constituted in accordance with the laws of a regional Member country which is party to the established regional preferential arrangement and has a registered office in that particular country and does business mainly in the same or other countries that are parties to the said regional preferential arrangement; and
  - (b) at least a majority of its capital shares is owned by nationals of countries that are parties to the said regional preferential arrangement; and
  - (c) the majority of the members of the board of directors are nationals of countries that are parties to the said regional arrangement; and
  - (d) not less than 50 percent of its key personnel are nationals of countries that are parties to the said regional preferential arrangement; and
  - (e) there are no arrangements whereby any major part of the net profits of other tangible benefits of the Regional contractor or will accrue or be paid to persons not nationals of the countries which are parties to the said regional preferential arrangement or to firms that would not be eligible under this Sub-Clause<sup>36</sup>.
- 30.3 Joint ventures between Regional contractors and foreign firms may be eligible for the margin of preference provided the Regional contractor or contractors
- (a) individually satisfy the above criteria of eligibility for the preference;
  - (b) demonstrate a beneficiary interest of no less than 50 percent in the joint venture, as demonstrated by the profit and loss sharing provisions of the joint venture agreement;
  - (c) will, under the arrangements proposed, carry out at least 50 percent of the Works, measured in terms of value, which shall exclude any materials or plant which are to be directly imported by the Regional contractor (s) are qualified to carry out that amount of works, in accordance with the criteria of Sub-Clause 4.3); and
  - (d) satisfy any other criteria specified for the purpose of regional preference eligibility, as specified in the Bidding Data.

30.4 The following procedure will be used to apply the margin of preference:

(a) Responsive bids will be classified into the following groups:

- (i) Group A: bids offered by Regional contractors and joint ventures meeting the respective criteria of Sub-Clauses 30.2 and 30.3 above; and
  - (ii) Group B: all other bids.
- (b) For the purpose of further evaluation and comparison of bids only, an amount equal to 7½ percent of the evaluated Bid prices determined in accordance with Clause 29.2 (a), (b), and (d), will be added to all bids classified in Group B.

## **F. Award of Contract**

### **31. Award Criteria**

31.1 Subject to Clause 32, the Employer will award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the bidding documents and who has offered the lowest evaluated Bid price, provided that such Bidder has been determined to be (a) eligible in accordance with the provisions of Clause 3, and (b) qualified in accordance with the provisions of Clause 4.

### **32. Employer's Right to Accept any Bid and to Reject any or all Bids**

32.1 Notwithstanding Clause 31, the Employer reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the Employer's action.<sup>25</sup>

### **33. Notification of Award and Signing of Agreement**

33.1 The Bidder whose Bid has been accepted will be notified of the award by the Employer prior to expiration of the Bid validity period by cable, telex, or facsimile confirmed by registered letter. This letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") will state the sum that the Employer will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price").

33.2 The notification of award will constitute the formation of the Contract, subject

to the Bidder furnishing the Performance Security in accordance with Clause 34 and signing the Agreement in accordance with Sub-Clause 33.3.

- 33.3 The Agreement will incorporate all agreements between the Employer and the successful Bidder. It will be signed by the Employer and sent to the successful Bidder, within 28 days following the notification of award. Within 21 days of receipt, the successful Bidder will sign the Agreement and deliver it to the Employer.
- 33.4 Upon the furnishing by the successful Bidder of the Performance Security, the Employer will, within one week, notify the other bidders that their bids have been unsuccessful.

### **34. Performance Security**

- 34.1 Within 21 days after receipt of the Letter of Acceptance, the successful Bidder shall deliver to the Employer a Performance Security in the amount and in the form (Bank Guarantee<sup>26</sup> and/or Bond<sup>27</sup>) stipulated in the Contract Data, denominated in the type and proportions of currencies in accordance with the Conditions of Contract.
- 34.2 If the Performance Security is provided by the successful Bidder in the form of a Bank Guarantee, it shall be issued either (a) at the Bidder's option, by a bank located in the country of the Employer or a foreign bank through a correspondent bank located in the country of the Employer, or (b) with the agreement of the Employer directly by a foreign bank acceptable to the Employer.
- 34.3 If the Performance Security is to be provided by the successful Bidder in the form of a Bond, it shall be issued by a surety which the Bidder has determined to be acceptable to the Employer.
- 34.4 Failure of the successful Bidder to comply with the requirements of Sub-Clause 34.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Bid Security

### **35. Advance Payment and Security**

- 35.1 The Employer will provide an Advance Payment on the Contract Price as stipulated in the Conditions of Contract, subject to a maximum amount<sup>28</sup>, as stated in the Bidding Data.

### **37. Corrupt or Fraudulent Practices**

- 37.1 The African Development Bank requires that Borrowers (including beneficiaries

of Bank loans), as well as Bidders/Suppliers/Contractors under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Bank:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
  - (i) "corrupt practice" means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution; and
  - (ii) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Borrower of the benefits of free and open competition;
- (b) will reject a proposal for award if its "no objection" has been requested or issued on the basis of incomplete, inaccurate or misleading information furnished by the Borrower, or if it is established, by a decision of a court of law, or following a special audit, that the contract was awarded on the basis of corrupt practices. In that event the bidder may also be sanctioned by curtailing its participation on Bank funded projects for a specified period of time determined by the Bank.

37.2 Furthermore, Bidders shall be aware of the provision stated in sub-clause 59.2 of the General Conditions of Contract;

### **G. Bidding Data<sup>29</sup>**

#### **Instructions to Bidders Clause Reference**

- (2.1) The Borrower is *[name of Borrower and statement of relationship with the Employer, if different from the Borrower]*.<sup>30</sup>
- (2.1) The "African Development Bank means *[insert "African Development Bank (ADB)" or "African Development Fund (ADF)" or "Nigeria Trust Fund (NTF)" as appropriate]*, and loan refers to an *[insert "ADB loan" or "ADF loan" or "NTF loan" as appropriate]* which, as of the date of issue of the bidding documents *[insert "has been solicited" or "has been approved," as appropriate]* by the African Development Bank.
- (2.1) The Project is *[name and summary description of the Project financed by the African Development Bank loan]*.

- The loan number is *[insert number if available]*.
- (4.3)<sup>31</sup> The information required from bidders in Sub-Clause 4.3 is modified as follows: *[list any additions or deletions to list in Sub-Clause 4.4; otherwise list "none"]*.
- (4.4) The qualification data required from bidders in Sub-Clause 4.4 are modified as follows: *[list any additions or deletions to list in Sub-Clause 4.4; otherwise list "none"]*.
- (4.5) The qualification criteria in Sub-Clause 4.5 are modified as follows: *[list any additions or deletions to list in Sub-Clause 4.5; otherwise list "none"]*.
- (4.5a) The minimum required annual volume of construction work for the successful Bidder in any of the last five years shall be *[insert figure in international trading currency, specified in Bidding Data]*.
- (4.5c) The essential equipment to be made available for the Contract by the successful Bidder shall be *[insert equipment list]*.
- (4.5e)<sup>32</sup> The minimum amount of liquid assets and/or credit facilities net of other contractual commitments of the successful Bidder shall be *[insert figure in international trading currency specified in Bidding Data]*.
- (8.2)  
(18.1) The number of copies of the Bid to be completed and returned shall be *[insert number, usually two: more if essential]*.
- (13.4) The Contract *[specify "is" or "is not"]* subject to price adjustment<sup>33</sup> in accordance with Clause 47 of the Conditions of Contract.
- (14.1) The date of the exchange rate is *[insert date 15 days before Bid opening]*.
- The authority for establishing the rates of exchange shall be *[name, usually of the central bank in the Employer's country]*.
- (15.1) The period of Bid validity shall be *[insert number]* days after the deadline for Bid submission specified in the Bidding Data.
- (15.3) The adjustment of Bid price in accordance with Clause 15.3 shall be calculated on the basis of an annual increase for foreign costs of *[insert]* percent and an annual increase for local costs of *[insert]* per cent.
- (16.1) The amount of Bid Security shall be *[insert amount in local currency, as provided in the Invitation to Bid]* or an equivalent amount in a freely-convertible currency.
- (17.0)

Alternative proposals to the requirements of the bidding documents *[insert "will" or "will not," as appropriate]* be permitted with respect to *[describe the alternatives to be permitted, or delete, as appropriate]*.

- (19.2) The Employer's address for the purpose of Bid submission is *[insert the receiving address provided in the Invitation for Bids]*.
- (20.1) The deadline for submission of bids shall be *[insert time and date; the date should be the same and the time, in no event, earlier than that given in the Invitation for Bids, unless subsequently amended pursuant to Sub-Clause 20.2]*
- (30.0) Insert one (only) of the following alternatives:
- (a) Domestic contractors may receive a margin of preference in Bid evaluation.<sup>48</sup>
  - (b) Regional contractors may receive a margin of preference in Bid evaluation.<sup>49</sup>
  - (c) No preference will be granted.
- (35.0) The Advance Payment shall be limited to *[insert]* per cent of the Contract Price.

### **Section III. Forms of Bid, Qualification Information**

#### **Letter of Acceptance, and Agreement**

#### **Contractor's Bid**

#### **Notes on Form of Contractor's Bid**

The Bidder shall fill in and submit this Bid form with the Bid. Additional details on the price should be inserted if the Bid is in various currencies. If the Bidder objects to the Adjudicator proposed by the Employer in the bidding documents, he should so state in his Bid, and present an alternative candidate, together with the candidate's daily fees

and biographical data, in accordance with Clause 36 of the Instructions to Bidders.

[date]

To: [name and address of Employer]

We offer to execute the [name and identification number of Contract] in accordance with the Conditions of Contract accompanying this Bid for the Contract Price of [amount in numbers], [amount in words] [name of currency].

The Contract shall be paid in the following currencies:

Currency	Percentage payable in currency	Rate of exchange: one foreign equals [insert local]	Inputs for which foreign currency is required
(a)			
(b)			

The advance payment required is:

Amount	Currency
(a)	
(b)	

We accept the appointment of [name proposed in Bidding Data] as the Adjudicator.

[or]

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

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

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

Amount and Currency	Name and Purpose of address of agent	Commission <u>or gratuity</u>
_____	_____	

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

We hereby confirm that this Bid complies with the Bid validity and Bid Security required by the bidding documents and specified in the Bidding Data.

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

## Qualification Information

### Notes on Form of Qualification Information

The information to be filled in by bidders in the following pages will be used for purposes of postqualification or for verification of prequalification as provided for in Clause 4 of the Instructions to Bidders. This information will not be incorporated in the Contract. Attach additional pages as necessary. Pertinent sections of attached documents should be translated into English. If used for prequalification verification, the Bidder should fill in updated information only.

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

1.1 Constitution or legal status of Bidder: *[attach copy]*

Place of registration: *[insert]*

Principal place of business: *[insert]*

Power of attorney of signatory of Bid: *[attach]*

1.2 Total annual volume of construction work performed in five years, in the internationally traded currency specified in the Bidding Data: *[insert]*

1.3 Work performed as prime Contractor on works of a similar nature and volume over the last five years. The values should be indicated in the same currency used for Item 1.2 above. Also list details of work under way or committed, including expected completion date.

Project name and country	Name of client and contact person	Type of work performed and year of completion	Value of contract
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(a)

(b)

1.4 Major items of Contractor's Equipment proposed for carrying out the Works. List all information requested below. Refer also to Sub-Clause 4.3(c) of the Instructions to Bidders.

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

(b)

- 1.5 Qualifications and experience of key personnel proposed for administration and execution of the Contract. Attach biographical data. Refer also to Sub-Clause 4.3(e) of the Instructions to Bidders and Sub-Clause 9.1 of the Conditions of Contract.

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

- 1.6 Proposed subcontracts and firms involved. Refer to Clause 7 of Conditions of Contract.

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

- 1.7 Financial reports for the last five years: balance sheets, profit and loss statements, auditors' reports, etc. List below and attach copies.

- 1.8 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of support documents.

- 1.9 Name, address, and telephone, telex, and facsimile numbers of banks that may provide references if contacted by the Employer.

- 1.10 Information on current litigation in which the Bidder is involved.

Other party(ies)	Cause of dispute	Amount involved
(a)		
(b)		

- 1.11 Statement of compliance with the requirements of Sub-Clause 3.2 of the Instructions to Bidders.

- 1.12 Proposed Program (work method and schedule). Descriptions, drawings, and charts, as necessary, to comply with the requirements of the bidding documents.

## **2. Joint Ventures**

- 2.1 The information listed in 1.1 - 1.11 above shall be provided for each partner of the joint venture.
- 2.2 The information in 1.12 above shall be provided for the joint venture.
- 2.3 Attach the power of attorney of the signatory(ies) of the Bid authorizing signature of the Bid on behalf of the joint venture.
- 2.4 Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that
  - (a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
  - (b) one of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
  - (c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

## **3. Additional Requirements**

- 3.1 Bidders should provide any additional information required in the Bidding Data or to fulfill the requirements of Sub-Clause 4.1 and Clause 30 of the Instructions to Bidders, if applicable.

**Letter of Acceptance***[letterhead paper of the Employer]***Notes on Standard Form of Letter of Acceptance**

The Letter of Acceptance will be the basis for formation of the Contract as described in Clauses 33 and 34 of the Instructions to Bidders. This Standard Form of Letter of Acceptance should be filled in and sent to the successful Bidder only after evaluation of bids has been completed, subject to any review by the African Development Bank required under the Loan Agreement.

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

This is to notify you that your Bid dated *[date]* for execution of the *[name of the Contract and identification number, as given in the Contract Data]* for the Contract Price of the equivalent<sup>9</sup> of *[amount in numbers and words]* *[name of currency]*, as corrected and modified<sup>10</sup> in accordance with the Instructions to Bidders is hereby accepted by our Agency.

- (a) We accept that *[name proposed by bidder]* be appointed as the Adjudicator.<sup>11</sup>
- (b) We do not accept that *[name proposed by bidder]* be appointed as adjudicator, and by sending a copy of this letter of acceptance to *[insert the name of the Appointing Authority]*, we are hereby requesting *[name]*, the Appointing Authority, to appoint the Adjudicator in accordance with Clause 36.1 of the Instructions to Bidders.<sup>12</sup>

We instruct you to submit to us latest (*insert date 21 days after receipt*) the Performance Security stipulated in the Contract.

You are hereby instructed to proceed with the execution of the said Works in accordance with the Contract documents.

Authorized Signature:

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

Name of Agency: \_\_\_\_\_

Attachment: Agreement

**Agreement**

<sup>9</sup> Delete “of the equivalent” if the Contract Price is expressed wholly in one currency.

<sup>10</sup> Delete “corrected and” or “and modified” if not applicable. See Notes on Standard Form of Agreement, next page.

<sup>11</sup> To be used only if the Contractor disagrees in the Bid with the Adjudicator proposed by the Employer in the Instructions to Bidders, and has accordingly offered another candidate. If the Employer does not accept the counterproposal, the sentence should so state, and be followed by an additional sentence: “We therefore shall request the *[name of Appointing Authority as named in the Contract Data]* to appoint the Adjudicator in accordance with Clause 36 of the Instructions to Bidders.”

<sup>12</sup> To be used only if the Contractor disagrees in the Bid with the Adjudicator proposed by the Employer in the Instructions to Bidders, and has accordingly offered another candidate. If the Employer does not accept the counterproposal, the sentence should so state, and be followed by an additional sentence: “We therefore shall request the *[name of Appointing Authority as named in the Contract Data]* to appoint the Adjudicator in accordance with Clause 36 of the Instructions to Bidders.”

### **Notes on Standard Form of Agreement**

The Agreement should incorporate any corrections or modifications to the Bid resulting from corrections of errors (Instructions to Bidders, Clause 27), price adjustment during the evaluation process (Instructions to Bidders Sub-Clause 15.3 or Clause 47 of the Conditions of Contract), selection of an alternative offer (Invitation for Bids Sub-Clause 17.2), acceptable deviations (Invitation for Bids Clause 26), or any other mutually-agreeable changes allowed for in the Conditions of Contract, such as changes in key personnel, subcontractors, scheduling, and the like.

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

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

Now this Agreement witnesseth as follows:

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

In Witness whereof the parties thereto have caused this Agreement to be executed the day and year first before written.

For the Employer:

Name of Signatory

For the Contractor:

Name of Signatory

## **Section IV. Conditions of Contract**

### **Notes on Conditions of Contract**

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

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

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

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

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## Conditions of Contract

### A. General

#### 1. Definitions

1.1 Boldface type is used to identify defined terms.

The Adjudicator is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in Clauses 24 and 25 hereunder.

Bill of Quantities means the priced and completed Bill of Quantities forming part of the Bid.

Compensation Events are those defined in Clause 44 hereunder.

The Completion Date is the date of completion of the Works as certified by the Project Manager, in accordance with Sub-Clause 55.1.

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 Clause 2.3 below.

The Contractor is a person or corporate body whose Bid to carry out the Works has been accepted by the Employer.

The Contractor's Bid is the completed bidding document submitted by the Contractor to the Employer.

The Contract Price is the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.

Days are calendar days; months are calendar months.

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.

A Defect is any part of the Works not completed in accordance with the Contract.

The Defects Liability Certificate is the certificate issued by Project Manager upon correction of defects by the Contractor.

The Defects Liability Period is the period named in the Contract Data and calculated from the Completion Date.

Drawings include calculations and other information provided or approved by the Project Manager for the execution of the Contract.

The Employer is the party who employs the Contractor to carry out the Works.

Equipment is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.

The Initial Contract Price is the Contract Price listed in the Employer's Letter of Acceptance.

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 Contract Data. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.

Materials are all supplies, including consumables, used by the Contractor for incorporation in the Works.

Plant is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.

The Project Manager is the person named in the Contract Data (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.

The Site is the area defined as such in the Contract Data.

Site Investigation Reports are those that were included in the bidding documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.

Specification means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.

The Start Date is given in the Contract Data. 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.

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.

Temporary Works are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.

A Variation is an instruction given by the Project Manager which varies the Works.

The Works are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as defined in the Contract Data.

## **2. Interpretation**

- 2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager will provide instructions clarifying queries about these Conditions of Contract.
- 2.2 If sectional completion is specified in the Contract Data, references in the Conditions of Contract to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
- 2.3 The documents forming the Contract shall be interpreted in the following order of priority:
  - (1) Agreement,
  - (2) Letter of Acceptance,
  - (3) Contractor's Bid,
  - (4) Contract Data,
  - (5) Conditions of Contract,
  - (6) Specifications,
  - (7) Drawings,
  - (8) Bill of Quantities,<sup>34</sup> and
  - (9) any other document listed in the Contract Data 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 Contract Data.

**4. Project Manager's Decisions**

4.1 Except where otherwise specifically stated, the Project Manager will decide contractual matters between the Employer and the Contractor in the role representing the Employer.

**5. Delegation**

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

**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.

**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 Contract Data. 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**

9.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the Contract Data, to carry out the functions stated in the Schedule or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule.

- 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.

## **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 Correction 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 Correction Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer's risk except loss or damage due to

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

### **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 Contract Data 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 Investigation Reports**

14.1 The Contractor, in preparing the Bid, shall rely on any Site Investigation Reports referred to in the Contract Data, supplemented by any information available to the Bidder

### **15. Queries about the Contract Data**

15.1 The Project Manager will clarify queries on the Contract Data.

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

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

**17. The Works to Be Completed by the Intended Completion Date**

17.1 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.

**18. Approval by the Project Manager**

18.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings.

18.2 The Contractor shall be responsible for design of Temporary Works.

18.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.

18.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.

18.5 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.

**19. Safety**

19.1 The Contractor shall be responsible for the safety of all activities on the Site.

**20. Discoveries**

20.1 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.

**21. Possession of the Site**

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

**22. Access to the Site**

22.1 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.

### **23. Instructions**

23.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.

### **24. 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.

### **25. Procedure for Disputes**

25.1 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.

25.2 The Adjudicator shall be paid by the hour at the rate specified in the Bidding Data and Contract Data, together with reimbursable expenses of the types specified in the Contract Data, 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 will be final and binding.

25.3 The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place shown in the Contract Data.<sup>35</sup>

## **B. Time Control**

### **27. Program**

27.1 Within the time stated in the Contract Data, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works.

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

27.3 The Contractor shall submit to the Project Manager for approval an updated

Program at intervals no longer than the period stated in the Contract Data. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount stated in the Contract Data from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted.

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

## **28. Extension of the Intended Completion Date**

- 28.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.

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

## **29. Acceleration**

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

- 29.2 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.

## **30. Delays Ordered by the Project Manager**

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

## **31. Management Meetings**

- 31.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.

31.2 The 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.

## **32. Early Warning**

32.1 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.

32.2 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**

## **33. Identifying Defects**

33.1 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.

## **34. Tests**

34.1 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.

## **35. Correction of Defects**

35.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period,<sup>36</sup> which begins at Completion, and is defined in the Contract Data. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

35.2 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.

**36. Uncorrected Defects**

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

**D. Cost Control****37. Bill of Quantities<sup>37</sup>**

- 37.1 The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.
- 37.2 The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item.

**38. Changes in the Quantities<sup>38</sup>**

- 38.1 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.
- 38.2 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.
- 38.3 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.

**39. Variations**

- 39.1 All Variations shall be included in updated Programs<sup>39</sup> produced by the Contractor.

**40. Payments for Variations**

- 40.1 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.
- 40.2 If the work in the Variation corresponds with an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in Sub-Clause 38.1 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>40</sup>

- 40.3 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.
- 40.4 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.
- 40.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.

#### **41. Cash Flow Forecasts**

- 41.1 When the Program<sup>41</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.

#### **42. Payment Certificates**

- 42.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- 42.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.
- 42.3 The value of work executed shall be determined by the Project Manager.
- 42.4 The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed.<sup>42</sup>
- 42.5 The value of work executed shall include the valuation of Variations and Compensation Events.
- 42.6 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.

#### **43. Payments<sup>13</sup>**

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It should be noted that the Bank neither pays for interest charges resulting from payment delays, nor the portion

- 43.1 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.
- 43.2 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.
- 43.3 Unless otherwise stated, all payments and deductions will be paid or charged in the proportions of currencies comprising the Contract Price.
- 43.4 Items of the Works for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

#### **44. Compensation Events**

- 44.1 The following shall be Compensation Events:
- (a) The Employer does not give access to a part of the Site by the Site Possession Date stated in the Contract Data.
  - (b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
  - (c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
  - (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
  - (e) The Project Manager unreasonably does not approve a subcontract to be let.
  - (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the

Site.

- (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
  - (h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
  - (i) The advance payment is delayed.
  - (j) The effects on the Contractor of any of the Employer's Risks.
  - (k) The Project Manager unreasonably delays issuing a Certificate of Completion.
  - (l) Other Compensation Events described in the Contract or determined by the Project Manager shall apply.
- 44.2 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.
- 44.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager will assume that the Contractor will react competently and promptly to the event.
- 44.4 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.

**45. Tax**

- 45.1 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 Clause 47.

**46. Currencies**

46.1 Where payments are made in currencies other than the currency of the Employer's country, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's Bid.

**47. Price Adjustment**

47.1 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the Contract Data. If so provided, the amounts certified in each payment certificate, after 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 indicated below applies to each Contract currency:

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

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>43</sup> specified in the Contract Data, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency "c"; and

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

47.2 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.

**48. Retention**

48.1 The Employer shall retain<sup>44</sup> from each payment due to the Contractor the proportion stated in the Contract Data until Completion of the whole of the Works.

48.2 On completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected.

48.3 On completion of the whole Works, the Contractor may substitute retention money with an "on demand" Bank guarantee.

#### **49. Liquidated Damages**

- 49.1 The Contractor shall pay liquidated damages<sup>45</sup> to the Employer at the rate per day stated in the Contract Data 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 Contract Data. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.
- 49.2 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 Sub-Clause 43.1.

#### **50. Bonus**

- 50.1 The Contractor shall be paid a Bonus<sup>46</sup> calculated at the rate per calendar day stated in the Contract Data 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.

#### **51. Advance Payment**

- 51.1 The Employer shall make advance payment to the Contractor of the amounts stated in the Contract Data by the date stated in the Contract Data, 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 will not be charged on the advance payment.
- 51.2 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.
- 51.3 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.

## **52. Securities**

52.1 The Performance Security shall be provided to the Employer no later than 21 days after receipt of the Letter of Acceptance and shall be issued in an amount and form and 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.

## **53. Dayworks**

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

53.2 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.

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

## **54. Cost of Repairs**

54.1 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**

## **55. Completion**

55.1 The Contractor shall request the Project Manager to issue a certificate of Completion of the Works, and the Project Manager will do so upon deciding that the work is completed.

## **56. Taking Over**

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

## **57. Final Account**

- 57.1 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.

## **58. Operating and Maintenance Manuals**

- 58.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the Contract Data.
- 58.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the Contract Data, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount stated in the Contract Data from payments due to the Contractor.

## **59. Termination**

- 59.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 59.2 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 Contract Data; and
- (h) if the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this paragraph:

"corrupt practice" means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.

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

- 59.3 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under Sub-Clause 59.2 above, the Project Manager shall decide whether the breach is fundamental or not.
- 59.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.
- 59.5 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

## **60. Payment upon Termination**

- 60.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the Contract Data. 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.
- 60.2 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.

## **61. Property**

61.1 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.

## **62. Release from Performance**

62.1 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.

## **63. Suspension of African Development Bank Loan**

63.1 In the event that the African Development 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 African Development Bank's suspension notice.
- (b) If the Contractor has not received sums due it within the 28 days for payment provided for in Sub-Clause 43.1, the Contractor may immediately issue a 14-day termination notice.

## **Section V. Contract Data**

Except where otherwise indicated, all Contract Data should be filled in by the Employer prior to issuance of the bidding documents. Schedules and reports to be provided by the Employer should be annexed.

### **2.3 The following documents are also part of the Contract:**

- 58.0** Schedule of Operating and Maintenance Manuals
- 8.0** Schedule of Other Contractors
- 9.0** The Schedule of Key Personnel
- 14.0** Site Investigation Reports

- 1.1** The Borrower is *[name of Borrower and statement of relationship with the Employer, if different from the Borrower]*.
- The “African Development Bank” means *[insert “African Development Bank”, African Development Fund” or “Nigeria Trust Fund”, as appropriate]*, and “loan” refers to an *[insert “ADB loan” or “ADF loan” or “NTF loan”, as appropriate]*.<sup>47</sup>
- The Employer is *[Name, address, and name of authorized representative]*.
- The Project Manager is *[Name, address, and name of authorized representative]*.
- The name and identification number of the Contract is *[insert name and number as indicated in the Invitation for Bids (or Prequalification, if any)]*.
- The Works consist of *[brief summary, including relationship to other contracts under the Project]*.
- The Start Date shall be *[insert date]*.
- The Intended Completion Date for the whole of the Works shall be *[insert date]*.<sup>48</sup>
- The following documents also form part of the Contract: *[list documents]*
- 27.0** The Contractor shall submit a revised Program for the Works within *[number]* days of delivery of the Letter of Acceptance.
- 21.0** The Site Possession Date shall be *[location]*.<sup>49</sup>
- 1.0** The Site is located at *[location]* and is defined in drawings No: *[insert numbers]*
- 35.0** The Defects Liability Period is *[number]* days.
- 13.0** The minimum insurance covers shall be:
- (a) The maximum deductible for insurance of the Works and of Plant and Materials is *[amount]*.
  - (b) The minimum cover for insurance of the Works and of Plant and Materials in respect of the Contractor’s faulty design is *[amount]*.
  - (c) The maximum deductible for insurance of Equipment is *[amount]*.
  - (d) The minimum cover for loss or damage to Equipment is *[amount]*.
  - (e) The maximum deductible for insurance of other property is

[amount].

- (f) The minimum for insurance of other property is [amount].
- (g) The minimum cover for personal injury or death insurance
- (i) for the Contractor's employees is [amount].
- (ii) and for other people is [amount].

**44.0** The following events shall also be Compensation Events: [list events]

**27.0** The period between Program updates is [number] days.

The amount to be withheld for late submission of an updated Program is [amount].

**3.0** The language of the Contract documents is [language].

The law that applies to the Contract is the law of [law].

**25.0** Institution whose arbitration procedures shall be used: [name of institution]

**25.0** Arbitration will take place in accordance with [rules and regulations].

**46.0** The currency of the Employer's country is the [name of currency of the Employer's country].

**47.0** The Contract [specify "is" or "is not"] subject to price adjustment<sup>50</sup> in accordance with Clause 47 of the Conditions of Contract, and the following information regarding coefficients [specify "does" or "does not"] apply.

The coefficients for adjustment of prices are:

(a) For currency [type of currency]:

- (i) [percent] percent nonadjustable element (coefficient A).
- (ii) [percent] percent adjustable element (coefficient B).

(b) For currency [type of currency]:

- (i) [percent] percent nonadjustable element (coefficient A).
- (ii) [percent] percent adjustable element (coefficient B).

The Index I for local currency <sup>72</sup> will be *[enter index]*.

**48.0** The Index I for currencies other than the local currency<sup>51</sup> and the specified international currency will be *[enter index]*.

The proportion of payments retained is *[percent]* percent.

**49.0** The liquidated damages for the whole of the Works are *[percentage of the final Contract Price]* per day.<sup>52</sup>

The maximum amount of liquidated damages for the whole of the Works is *[percent]* percent of the final Contract Price.

**50.0** The Bonus for the whole of the Works is *[percent of final Contract Price amount]* per day.<sup>53</sup> The maximum amount of Bonus for the whole of the Works is *[percent]* percent of the final Contract Price.

**52.0** The Advance Payment will be *[insert amount]* and will be paid to the Contractor no later than *[insert date]*.

The Performance Security shall be for the following minimum amounts equivalent as a percentage of the Contract Price:

(a) Bank Guarantee *[insert number]*.

(b) Performance Bond *[insert number]*.

The standard form(s) of Performance Security acceptable to the Employer shall be *[insert either "an Unconditional Bank Guarantee" or "a Conditional Bank Guarantee," or "a Performance Bond," as preferred by the Employer]* of the type presented in Section 8 of the Bidding Documents.

**58.0** The date by which operating and maintenance manuals are required is *[date]*.

The date by which "as built" drawings are required is *[date]*.

The amount to be withheld for failing to produce "as built" drawings and/or operating and maintenance manuals by the date required is *[amount in local currency]*.

**60.0** The percentage to apply to the value of the work not completed,

representing the Employer's additional cost for completing the Works, is  
*[percent]*.

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## **Section VI. Specifications**

### **Notes on Specifications**

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

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

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

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

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

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

## **Section VII. Drawings**

### **Notes on Drawings**

*Insert here a list of Drawings. The actual Drawings, including site plans, should be attached to this section or annexed in a separate folder.*

## Section VIII. Bill of Quantities<sup>14</sup>

### Notes on the Bill of Quantities

#### Objectives

The objectives of the Bill of Quantities are

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

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

#### Daywork Schedule

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

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

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<sup>14</sup> In lump sum contracts, delete "Bill of Quantities" and replace with "Schedule of Activities" throughout this section.

### **Provisional Sums**

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

The estimated cost of specialized work to be carried out, or of special goods to be supplied, by other contractors (refer to Clause 8 of the Conditions of Contract) should be indicated in the relevant part of the Bill of Quantities as a particular provisional sum with an appropriate brief description. A separate procurement procedure is normally carried out by the Employer to select such specialized contractors. To provide an element of competition among the bidders in respect of any facilities, amenities, attendance, etc., to be provided by the successful Bidder as prime Contractor for the use and convenience of the specialist contractors, each related provisional sum should be followed by an item in the Bill of Quantities inviting the Bidder to quote a sum for such amenities, facilities, attendance, etc.

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

## **Section IX. Security Forms**

### **Notes on Forms of Securities**

Samples of acceptable forms of Bid, Performance, and Advance Payment Securities are annexed.<sup>15</sup> Bidders should not complete the Performance and Advance Payment Security forms at this time. Only the successful Bidder will be required to provide Performance and Advance Payment Securities in accordance with one of the forms or in a similar form acceptable to the Employer.

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<sup>15</sup> Employers should state in the Bidding and Contract Data the acceptability of one or more of the alternatives and should include in the bidding documents either Alternative Form 1 or 2 of Performance Bank Guarantee, and/or Alternative 3 of the Performance Bond, according to the Employer's preference.

### **Annex A Form: Bid Security (Bank Guarantee)**

Whereas, *[name of Bidder]* (hereinafter called “the Bidder”) has submitted his Bid dated *[date]* for the construction of *[name of Contract]* (hereinafter called “the Bid”).

Know all people by these presents that We *[name of Bank]* of *[name of country]* having our registered office at *[address]* (hereinafter called “the Bank”) are bound unto name of Employer] (hereinafter called “the Employer”) in the sum of *[amount]*<sup>16</sup> for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors, and assigns by these presents.

Sealed with the Common Seal of the said Bank this *[day]* day of *[month]*, *[year]*.

The conditions of this obligation are:

- (1) If, after Bid opening, the Bidder withdraws his Bid during the period of Bid validity specified in the Form of Bid; or
- (2) If the Bidder having been notified of the acceptance of his Bid by the Employer during the period of Bid validity:
  - (a) fails or refuses to execute the Form of Agreement in accordance with the Instructions to Bidders, if required; or
  - (b) fails or refuses to furnish the Performance Security, in accordance with the Instruction to Bidders; or
  - (c) does not accept the correction of the Bid Price pursuant to Clause 27,

we undertake to pay to the Employer up to the above amount upon receipt of his first written demand, without the Employer’s having to substantiate his demand, provided that in his demand the Employer will note that the amount claimed by him is due to him owing to the occurrence of one or any of the three conditions, specifying the occurred condition or conditions.

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<sup>16</sup> The Bidder should insert the amount of the Guarantee in words and figures denominated in the currency of the Employer’s country or an equivalent amount in a freely convertible currency. This figure should be the same as shown in Clause 16.1 of the Instructions to Bidders.

This Guarantee will remain in force up to and including the date [number] days<sup>17</sup> after the deadline for submission of bids as such deadline is stated in the Instructions to Bidders or as it may be extended by the Employer, notice of which extension(s) to the Bank is hereby waived. Any demand in respect of this Guarantee should reach the Bank not later than the above date.

Date \_\_\_\_\_

Signature of the Bank \_

Witness \_\_\_\_\_

Seal \_\_\_\_

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*[signature, name, and address]*

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<sup>17</sup> Usually 28 days after the end of the validity period of the Bid. The date should be inserted by the Employer before the bidding documents are issued.

## **Annex B Form (Alternative 1): Performance Bank Guarantee (Conditional)**

This form of Performance Guarantee is conditional<sup>18</sup> in that the required conditions of default are not met until an agreement has been reached on the amount of damages payable, or until an award has been made under the applicable settlement of disputes procedures.

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

Whereas

(1) This Agreement is supplemental to a contract (hereinafter called the Contract) made between *[name of Contractor]* of *[address of Contractor]* (hereinafter called the Contractor) of the one part and the Employer of the other part whereby the Contractor agreed and undertook to execute the Works of *[name of Contract and brief description of the Works]* for the sum of *[amount in Contract currency]* being the Contract Price; and

(2) The Guarantor has agreed to guarantee the due performance of the Contract in the manner hereinafter appearing.

Now therefore the Guarantor hereby agrees with the Employer that upon receipt of

- (1) a written notice to the Guarantor from the Contractor, or
- (2) a written notice to the Guarantor from the Adjudicator, or
- (3) a binding arbitration or Court award confirming that the amount of the Guarantee is payable to the Employer,

the Guarantor will indemnify and pay the Employer the sum of *[amount of Guarantee]* *[amount in words]*,<sup>19</sup> such sum being payable in the types and proportions of currencies in which the Contract Price is payable, provided that the Employer or his authorized representative has notified the Guarantor to that effect and has made a claim against the Guarantor not later than the date of issue of the Defects Liability Certificate.

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<sup>18</sup> The triggering of this form of Performance Guarantee is conditional upon the Contractor’s “failing to execute the Contract or committing a breach of his obligations thereunder” and requires a statement by the Employer and/or the Project Manager to that effect, and an exercise of judgment by the Guarantor as to whether the required conditions of default have been fulfilled. Some forms of Guarantee contain further qualifying conditions, and are not triggered until an agreement has been reached on the amount of damages payable, or until an award has been made under the applicable settlement of disputes procedures. The construction industry favors this form of Guarantee over the Unconditional Guarantee whenever it is available. However, not all commercial banks (as Guarantors) are willing to issue Conditional Guarantees, and not all Employers are prepared to accept this form of Performance Security.

<sup>19</sup> An amount is to be inserted by the Guarantor, representing the percentage of the Contract Price specified in the Contract, and denominated either in the currency(ies) of the Contract or in a freely convertible currency acceptable to the Employer.

The Guarantor shall not be discharged or released from his Guarantee by an arrangement between the Contractor and the Employer, with or without the consent of the Guarantor, or by any alteration in the obligations undertaken by the Contractor, or by any forbearance on the part of the Contractor, whether as to the payment, time, performance or otherwise, and any notice to the Guarantor of any such arrangement, alteration, or forbearance is hereby expressly waived.

Given under our hand on the date first mentioned above.

Signed by \_\_\_\_\_  
for and on behalf of the Guarantor in the presence of \_\_\_\_\_

Signed by \_\_\_\_\_  
for and on behalf of the Employer in the presence of \_\_\_\_\_

## **Annex B Form (Alternative 2): Performance Bank Guarantee**

### **(Unconditional)**

The Unconditional (or “On-Demand”) Bank Guarantee has the merit of simplicity and of being universally known and accepted by commercial banks.

To: *[name and address of Employer]*

Whereas *[name and address of Contractor]* (hereinafter called “the Contractor”) has undertaken, in pursuance of Contract No. *[number]* dated *[date]* to execute *[name of Contract and brief description of Works]* (hereinafter called “the Contract”);

And whereas it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a recognized bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

And whereas we have agreed to give the Contractor such a Bank Guarantee;

Now therefore we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of *[amount of Guarantee]* *[amount in words]*,<sup>20</sup> such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of *[amount of Guarantee]*<sup>21</sup> as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with the demand.

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

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<sup>20</sup> An amount is to be inserted by the Guarantor, representing the percentage of the Contract Price specified in the Contract, and denominated either in the currency(ies) of the Contract or in a freely convertible currency acceptable to the Employer.

<sup>21</sup> The Unconditional (or “On-Demand”) Bank Guarantee has the merit of simplicity and of being universally known and accepted by commercial banks. The contracting community, however, strongly objects to this type of Security because the Guarantee can be called (or threatened to be called) by Employers without justification. Employers should recognize the contractual conditions governing nonperformance by the Contractor and should normally act only on the advice of the Project Manager in calling a Performance Guarantee. Any unjustified calling of a Bank Guarantee, or unreasonable pressure exercised by an Employer, would be regarded by the World Bank as contrary to the spirit and basic principles of international procurement. This type of Guarantee is called a “Bond” in a number of countries; however, it should be distinguished from the U.S.-style “Performance Bond” as shown in Annex C.

This Guarantee shall be valid until a date 28 days from the date of issue of the Certificate of Completion.

Signature and seal of the Guarantor \_\_\_\_\_

Name of Bank \_\_\_\_\_

Address

Date

### **Annex B Form (Alternative 3): Performance Bond**

This form of Bond corresponds to the U.S. practice, and should not be interpreted in the context of a “Bond” as known in other countries. As with the Conditional Bank Guarantee, the wording of some bonds may be such that an award under legal proceedings is needed to trigger action by the Surety.

By this Bond, *[name and address of Contractor]* as Principal (hereinafter called “the Contractor”) and *[name, legal title, and address of surety, bonding company, or insurance company]* as Surety (hereinafter called “the Surety”), are held and firmly bound unto *[name and address of Employer]* as Obligee (hereinafter called “the Employer”) in the amount of *[amount of Bond]* *[amount of Bond in words]*,<sup>22</sup> for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas the Contractor has entered into a Contract with the Employer dated<sup>23</sup> the *[day]* day of *[month]*, *[year]* for *[name of Contract]* in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

Now, therefore, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Employer to be, in default under the Contract, the Employer having performed the Employer’s obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- (1) complete the Contract in accordance with its terms and conditions; or
- (2) obtain a Bid or bids from qualified bidders for submission to the Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the lowest responsive Bidder, arrange for a Contract between such Bidder and Employer and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contract Price,” as used in this paragraph, shall mean the total amount payable by the Employer to the Contractor under the Contract, less the amount properly paid by the Employer to the Contractor; or
- (3) pay the Employer the amount required by the Employer to complete the Contract in accordance with its terms and conditions up to a total not exceeding the

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<sup>22</sup> An amount is to be inserted by the Surety, representing the percentage of the Contract Price specified in the Contract Data, and denominated either in the currency(ies) of the Contract or in a freely convertible currency of type and amount acceptable to the Employer.

<sup>23</sup> Date of Letter of Acceptance or Agreement.

amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

Any suit under this Bond must be instituted before the expiration of one year from the date of issuance of the Certificate of Completion.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators, successors, and assigns of the Employer.

In testimony whereof, the Contractor has hereunto set its hand and affixed its seal, and the Surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its legal representative, this *[day]* day of *[month]*, *[year]*.

Signed by \_\_\_\_\_  
on behalf of *[name of Contractor]* in the capacity of \_\_\_\_\_  
In the presence of \_\_\_\_\_  
Date \_\_\_\_\_

Signed by \_\_\_\_\_  
on behalf of *[name of Contractor]* in the capacity of \_\_\_\_\_  
In the presence of \_\_\_\_\_  
Date \_\_\_\_\_

## Annex C Form: Bank Guarantee for Advance Payment

To: *[name and address of Employer]*

*[name of Contract]*

Gentlemen:

In accordance with the provisions of the Conditions of Contract, Clause 51 (“Advance Payment”) of the above-mentioned Contract, *[name and address of Contractor]* (hereinafter called “the Contractor”) shall deposit with *[name of Employer]* a Bank Guarantee to guarantee his proper and faithful performance under the said Clause of the Contract in an amount of *[amount of Guarantee]* *[amount in words]*.<sup>24</sup>

We, the *[Bank or Financial Institution]*, as instructed by the Contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to *[name of Employer]* on his first demand without whatsoever right of objection on our part and without his first claim to the Contractor, in the amount not exceeding *[amount of Guarantee]* *[amount in words]*.<sup>25</sup>

We further agree that no change or addition to or other modification of the terms of the Contract or of Works to be performed thereunder or of any of the Contract documents which may be made between *[name of Employer]* and the Contractor, shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

This Guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until *[name of Employer]* receives full repayment of the same amount from the Contractor.

Yours truly,

Signature and seal: \_\_\_\_

Name of Bank/Financial Institution: \_\_

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

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

1. See also definitions of capitalized terms in Section IV, Conditions of Contract ("the Contract").
2. This amount is usually not less than 2.5 times the estimated annual cash flow for the Contract.
3. Usually the equivalent of the estimated payments flow over 4-6 months at the average (straight line distribution) construction rate. The actual period of reference will depend on the speed with which the Employer will pay the Contractor's monthly certificates.
4. Delete Sub-Clause 4.7 and or 4.8 where not applicable (see Clause 30).

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<sup>24</sup> An amount is to be inserted by the Bank or Financial Institution 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.

<sup>25</sup> An amount is to be inserted by the Bank or Financial Institution 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.

5. In lump sum contracts, delete “Bill of Quantities” and replace with “Activity Schedule”.
6. It may be necessary to extend the deadline for submission of bids if the Employer’s response results in substantial changes to the Bidding Documents. See Clause 10 below.
7. It is therefore important that the Employer maintain a complete and accurate list of recipients of the bidding documents and their addresses.
8. Only English or French should be used in International Competitive Bidding.
9. In lump sum contracts, delete “priced Bill of Quantities” and replace with “priced Activity Schedule”.
10. In lump sum contracts, delete “priced Bill of Quantities” and replace with “priced Activity Schedule”.
11. In lump sum contracts, delete “described in the Bill of Quantities” and replace with “described in the drawings and specifications and listed in the Activity Schedule”.
12. In lump sum contracts, delete “rates, prices, and”.
13. In lump sum contracts, delete “rates and prices” and replace with “lump sum price”.
14. In lump sum contracts, delete “unit rates and prices” and replace with “lump sum price”.
15. Provisional sums are monetary sums specified by the Employer in the Bill of Quantities, to be used at his discretion for nominated subcontractors and other specified purposes.
16. For lump sum contracts, delete “rates and prices” and replace with “Lump Sum”.
17. The period is a realistic time, usually not less than 35 days nor more than 105, allowing for bid evaluation, clarifications, and the World Bank’s “no objection” (where awards of Contract are subject to prior review). The time should be the same as that specified in the Invitation for Bids.
18. The same as quoted in the Invitation for Bids (IFB). It should not exceed 3 percent of the estimated value of the Works. For reasons of confidentiality, a fixed sum should be specified, in preference to a percentage of the Bid price.
19. The receiving address should be an office that is staffed during normal working hours by personnel authorized to certify time and date of receipt and assure safe-keeping until Bid opening. A post office address is not satisfactory. The address must be the same as the receiving address described in the Invitation for Bids.
20. A copy of the minutes should be sent by the Employer to the African Development Bank together with the Bid evaluation report.
21. In lump sum contracts, delete “unit rates” and replace with “the prices in the Activity Schedule”.
22. In lump sum contracts, delete from “as follows” to the end, and replace with the following: “as follows: where there is a discrepancy between the amounts in figures and in words, the amount in words will govern.”
23. In lump sum contracts, delete “Bill of Quantities” and replace with “Activity Schedule”.
24. 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.

25. Employers should not reject bids or annul bidding processes, except as permitted in the Rules of Procurement.
26. A Bank Guarantee can be conditional or unconditional (on demand) (see forms in Section IX). An amount of 5 to 10 percent of the Contract Price is commonly specified for Performance Bank Guarantees.
27. A Performance Bond is an undertaking by a bonding or insurance company (surety) to complete the construction in the event of default by the Contractor, or to pay the amount of the Bond to the Employer. An amount of 30 percent of the Contract Price is commonly used internationally for this type of security (see form in Section IX).
28. This amount is normally 10 to 30 percent of the Contract Price. The amount should be adequate to minimize the needs of the Contractor to borrow for the Contract. This may be particularly important in terms of foreign currency.
29. This section should be filled out by the Employer before issuance of the bidding documents.
30. The insertions should correspond to the information provided in the Invitation for Bids.
31. Delete if prequalification has been conducted.
32. Delete if prequalification has been conducted.
33. Price adjustment is mandatory when the expected completion time exceeds 18 months.
34. In lump sum contracts, delete “Bill of Quantities” and replace with “Activity Schedule”.
35. For smaller contracts, this is usually an institution from the Employer’s country. For larger contracts, and contracts that are likely to be awarded to international contractors, it is recommended that the arbitration procedure of an international institution such as UNCITRAL (the United Nations Commission on International Trade Law), ICSID (the International Centre for Settlement of Investment Disputes) or the ICC (International Chamber of Commerce) be prescribed.
36. The Defects Liability Period is usually limited to 12 months, but could be less in very simple cases.
37. In lump sum contracts, delete “Bill of Quantities” and replace with “Activity Schedule,” and replace Sub-Clauses 37.1 and 37.2, as follows:
  - 37.1 The Contractor shall provide updated Activity Schedules within 14 days of being instructed to by the Project Manager. The activities on the Activity Schedule shall be coordinated with the activities on the Program.
  - 37.2 The Contractor shall show delivery of Materials to the Site separately on the Activity Schedule if payment for Materials on Site shall be made separately.
38. In lump sum contracts, delete “Bill of Quantities” and replace with “Activity Schedule,” and replace entire Clause 38 with new Sub-Clause 38.1, as follows:
  - 38.1 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.
39. In lump sum contracts, add “and Activity Schedules” after “Programs”.
40. In lump sum contracts, delete this paragraph.
41. In lump sum contracts, add “or Activity Schedule” after “Program”.

42. 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.”
43. The sum of the two coefficients  $A_c$  and  $B_c$  should be 1 (one) in the formula for each currency. Normally, both coefficients will 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.
44. The retention amount is usually close to 5 percent and in no case exceeds 10 percent.
45. Usually liquidated damages are set between 0.05 percent and 0.10 percent per day, and the total amount is not to exceed between 5 percent and 10 percent of the Contract Price.
46. If early completion would provide benefits to the Employer, this clause should remain; otherwise delete. The Bonus is usually numerically equal to the liquidated damages.
47. The above insertions should correspond to the information provided in the Invitation for Bids.
48. If different dates are specified for completion of the Works by section (“sectional completion”), these dates should be listed here.
49. If the Site is made available by section, the different dates should be listed here.
50. Price adjustment is mandatory for contracts which provide for time of completion exceeding 18 months.
51. These proxy indices will be proposed by the Contractor, subject to acceptance by the Employer.
52. If Sectional Completion and Damages per Section have been agreed, the latter should be specified here.
53. Insert zero if not applicable. If Sectional Completion and Bonus per Section have been agreed, the latter should be specified here.