



BIDDING DOCUMENT FOR PROCUREMENT OF WORKS

FOR THE PROPOSED

**PROCUREMENT FOR CIVIL WORKS CONTRACTOR FOR ALTERATIONS AND UPGRADES AT AGRICULTURE
& FOOD AUTHORITY - HORTICULTURAL CROPS DIRECTORATE (HCD) PACK HOUSE, KIBWEZI, MAKUENI
COUNTY**

TENDER NO: PRQ20241414

**(BIDDING PROCEDURES, FINANCIER'S REQUIREMENTS AND CONDITIONS OF CONTRACT &
CONTRACT FORMS)**

FINANCED AND PROCURED BY

TRADEMARK AFRICA



APRIL 2025

STANDARD BIDDING DOCUMENT

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INVITATION FOR BID (IFB)

TENDER TITLE:

PROCUREMENT FOR CIVIL WORKS CONTRACTOR FOR ALTERATIONS AND UPGRADES AT AGRICULTURE & FOOD AUTHORITY - HORTICULTURAL CROPS DIRECTORATE (HCD) PACK HOUSE, KIBWEZI, MAKUENI COUNTY

TENDER No.: PRQ20241414

The Agriculture & Food Authority - HORTICULTURAL Crops Directorate (HCD) ("Client") has been allocated grant funds (the "Grant") from TradeMark Africa's EU-funded Business Environment and Export Enhancement Programme (BEEP) which are administered by TradeMark Africa (the "Financier") and executed by "client/beneficiary". The Financier intends to apply the funds to eligible direct payments under the contract for which this Invitation for Bid is issued.

1. TradeMark Africa now invites sealed bids ("Bids") from eligible entities ("Bidders") to implement **PROCUREMENT FOR CIVIL WORKS CONTRACTOR FOR ALTERATIONS AND UPGRADES WORKS AT AGRICULTURE & FOOD AUTHORITY - HORTICULTURAL CROPS DIRECTORATE (HCD) PACK HOUSE, KIBWEZI, MAKUENI COUNTY** referenced above (the "Works"). A Bidder will be selected under the competitive bidding procedures described in the bidding documents associated with this IFB (the "Bidding Documents"). Bidders are advised that these procedures are governed by TradeMark Africa Procurement Guidelines as contained in TMA procurement. It is Bidder's responsibility to fully understand TMA procurement procedures and guidelines to ensure compliance.
2. Eligible bidders may obtain further information from TradeMark Africa ONLY via <https://www.trademarkafrica.com/procurement/>.
3. A pre-bid meeting and site visit will be held on **Thursday 8th May 2025 at 1100 hours (Kenya Time) at Kibwezi HCD grounds**, please check the details in the Bid Data Sheet.
4. Eligible bidders will be required to submit a separate **Technical** and **Financial** bid for the works. First, the technical evaluation shall be conducted and only those bidders who substantially meet the minimum acceptable qualification criteria shall have their financial bids opened and subsequently evaluated in line with this tender document.
5. Both Technical and Financial bids in **separate sealed** envelopes clearly marked "Technical Bid" and "Financial Bid" must be delivered to the address provided in ITB 22.1 on the bid data sheet on **Monday 26th May 2025 at 1100 Hours (Kenya Time)**. The Technical Bids will be opened on the same day in the presence of the Bidders' representatives who choose to attend at the same address at **1130 hours (Kenya time)**. Late bids shall be rejected and returned unopened.
6. Late bids shall be rejected and returned unopened.
7. The Technical and Financial bids shall remain valid for 120 days after bid opening date prescribed above.
8. The bid must be accompanied by a bid security of **USD Ten Thousand only (USD 10,000)** only issued directly by a reputable commercial bank, in the form provided in the bidding documents. The bid security is not a percentage of estimated value of Civil works costs in any way. The bid security must be valid through **31st October 2025**.

9. Bids submitted must be type written in Calibri Font 11 with all pages numbered and a clear table of contents.
10. World Health Organisation (WHO) measures and the respective Countries Ministry of Health guideline on COVID-19 to be followed during tendering and implementation of this project.
11. All documents in the bid are confidential and shall remain property of TradeMark Africa and shall not, in any way, be shared, copied, transferred, and/or duplicated without prior written consent of TradeMark Africa.
12. The Bidding Documents consist of the following: -

Part I – Bidding Procedures

Section I – Instructions to Bidders (ITB)

Section II – Bid Data Sheet (BDS)

Section III – Evaluation and Qualification Criteria

Section IV – Bidding Forms

Part II – Conditions of Contract

Section V – General Conditions of Contract (GCC)

Section VI – Specific Conditions of the Contract (SCC)

Section VII – Forms of Agreement and Security

Part III – Works Requirements

Section VIII – Schedule of Prices

Section IX – Fair Price declaration

Section X – Drawings

Part IV

Section XI – Confidentiality Agreement and Intellectual Property

13. Please inform us in writing at the following address upon receipt/access though this is not a mandatory requirement for bidding): -
 - a) That you received/ accessed this IFB; and
 - b) Whether you will submit a Bid.

TradeMark Africa

Head of Procurement

procurement@trademarkafrica.com

NOTE TO THE BIDDERS: -

- Bidders must read the instructions to bidders (ITB) together with the bid data sheet (**BDS**). The **BDS** complements, supplements, or amends the provisions in the Instructions to Bidders (ITB). Whenever there is a conflict, the provisions in the Bid Data Sheet (**BDS**) shall prevail over those in the ITB.

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Section I - Instructions to Bidders**General**

- 1. Scope of Bid** 1.1 The Financier, as indicated in the BDS, issues this Bidding Document for the procurement of the Works as specified in Section 6 (Financier's Requirements). The name, identification, and number of contracts of this bidding are provided in the BDS.
- Throughout this Bidding Document:
1. the term "in writing" means communicated in written form and delivered against receipt;
 2. except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and
 3. "day" means calendar day.
 4. "Applicable Guidelines" means the policies of TRADEMARK AFRICA as contained in **TMA's Procurement** that **shall** govern the selection and Contract award process as set forth in this invitation for Bid and the **Data Sheet**.
 5. "Applicable Law" means the laws and any other instruments having the force of law in the Client's country, or in such other country as may be specified in the **Data Sheet**, as they may be issued and in force from time to time.
 6. "Financier" means TRADEMARK AFRICA (TMA).
 7. "Recipient" means the Government, Government agency or other entity that signs the Financing Agreement with the TMA.
 8. Beneficiary" means the implementing agency.
 9. "Client" means the implementing agency that signs the Contract for the Services with the selected Consultant.
 10. "Data Sheet" means an integral part of the Instructions to bidders (ITB) Section 2 that is used to reflect specific conditions to supplement or amend the provisions of the ITC.
 11. "Government" means the government of the Client's country.
 12. "Joint Venture (JV)" means an association with or without a legal personality distinct from that of its members, of more than one bidder where one member has the authority to conduct all business for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Client for the performance of the Contract.
 - 13. "Procuring entity" means the institution making a procurement to which these Guidelines applies as indicated in the **Data sheet**.**

- 14. “Allocated”** means Funds set aside in the Financer’s budget specifically towards payment directly to the service provider/s against particular service/s or goods or works to the beneficiary or client procured by the Financer
- 2 Source of Funds**
- 2.1 The beneficiary indicated in the BDS has been allocated financing (hereinafter called “funds”) from the TRADEMARK AFRICA (hereinafter called “TMA”) towards the cost of the project named in the BDS.
- 2.2 Payments by the TMA shall be made directly to the contractor only at the request of the Beneficiary and upon approval by TMA in accordance with the terms and conditions of the financing agreement between the Beneficiary and the TMA (hereinafter called the Funding Agreement), and will be subject in all respects to the terms and conditions. No party other than the Beneficiary shall derive any rights from the Funding Agreement or have any claim to the funds.
- 3 Fraud and Corruption**
- 3.1 It is the TMA’s policy to require that beneficiaries of TMA Funding, as well as bidders, suppliers, and contractors and their agents (whether declared or not), personnel, subcontractors, sub-consultants, service providers and suppliers, under TMA-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts.¹ In pursuance of this policy, the TMA:
- (a) defines, for the purposes of this provision, the terms set forth below as follows:
- (i) “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party²;
- (ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation³;
- (iii) “collusive practice” is an arrangement between two or more parties⁴ designed to achieve an improper purpose, including to influence improperly the actions of another party
- (iv) “misleading/ False information” this refers details (information) submitted by bidders under this tendering process that is established to the a reasonable extent to be inaccurate
- (v) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any
-

party or the property of the party to influence improperly the actions of a party⁵;

(vi) "obstructive practice" is

(aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a TMA investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

(bb) acts intended to materially impede the exercise of the TMA's inspection and audit rights provided for under sub-clause 3.1 (e) below.

(b) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;

(c) will cancel the portion of the Funding allocated to a contract if it determines at any time that representatives of the Beneficiary or of a beneficiary of the Funding engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract, without the Beneficiary having taken timely and appropriate action satisfactory to the TMA to remedy the situation; and

(d) will sanction a firm or an individual, at any time, in accordance with prevailing TMA's sanctions procedures^a, including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a TMA-financed contract; and (ii) to be a nominated^b sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a TMA-financed contract

3.2 In further pursuance of this policy, Bidders shall permit the TMA to inspect any accounts and records and other documents relating to the Bid submission and contract performance, and to have them audited by auditors appointed by the TMA.

3.3 Furthermore, bidders shall be aware of the provision stated in GCC Sub-Clauses 22.2 and 56.2 (h).

4 Eligible Bidders

4.1 A Bidder may be a private entity, or government-owned entity—subject to ITB 4.6—or any combination of them in the form of a joint venture, under an existing agreement, or with the intent to constitute a legally-enforceable joint venture.

- 4.2 Unless otherwise stated in the BDS, all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms.
- 4.3 A Bidder, and all parties constituting the Bidder, shall have the nationality of an eligible country, in accordance with Section 5 (Eligible Countries). A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, or incorporated, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related services.
- 4.4 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be automatically disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:
 - 4.4.1 they have a controlling partner in common; or
 - 4.4.2 they receive or have received any direct or indirect subsidy from any of them; or
 - 4.4.3 they have the same legal representative for purposes of this bid; or
 - 4.4.4 they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Bid of another Bidder, or influence the decisions of the Financier regarding this bidding process; or
 - 4.4.5 a Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which the party is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or
 - 4.4.6 a Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the Bid; or
 - 4.4.7 a Bidder, or any of its affiliates has been hired (or is proposed to be hired) by the Financier or Beneficiary as Engineer for the contract.
- 4.5 A Bidder that has been sanctioned by the TMA in accordance with the above ITB 3.1 (d), or in accordance with the TMA's Guidelines on Preventing and Combating Corruption in Projects, shall be ineligible to be awarded a TMA-financed contract, or benefit from a TMA-financed contract, financially or otherwise, during such period of time as the TMA shall determine
- 4.6 Government-owned enterprises in the Financier's country shall be eligible only if they can establish and demonstrate that they are legally and financially autonomous and operate under commercial law, and that they are not a dependent agency of the Recipient.

- 4.7 Bidders shall provide such evidence of their continued eligibility satisfactory to the **Financier** reasonable request.
- 4.8 This bidding is open to all eligible Bidders.

Firms shall be excluded if:

- 4.8.1 as a matter of law or official regulation, the Beneficiary's country prohibits commercial relations with that country, provided that the TMA is satisfied that such exclusion does not preclude effective competition for the supply of goods or related services required; or
- 4.8.2 by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Beneficiary's country prohibits any import of goods or contracting of works or services from that country or any payments to persons or entities in that country.
- 4.8.3 By debarment by act of Public Procurement and Disposal Act, Kenya, World Bank, TMA development funders or is under demonstrable litigation by a court of law.

5 Eligible Materials, Equipment and Services

- 5.1 The materials, equipment and services to be supplied under the Contract shall have their origin in eligible source countries as defined in ITB 4.3 above and all expenditures under the Contract will be limited to such materials, equipment, and services. At the Financier's request, Bidders may be required to provide evidence of the origin of materials, equipment and services.
- 5.2 For purposes of ITB 5.1 above, "origin" means the place where the materials and equipment are mined, grown, produced or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that differs substantially in its basic characteristics or in purpose or utility from its components.

Contents of Bidding Document

6 Sections of Bidding Document

- 6.1 The Bidding Document consist of Parts 1, 2,3 and 4, which include all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITB 8.

Part I – Bidding Procedures

Section I – Instructions to Bidders (ITB)

Section II – Bid Data Sheet (BDS)

Section III – Evaluation and Qualification Criteria

Section IV – Bidding Forms

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Section VIII – Schedule of Prices

Section IX – Fair Price declaration

Section X – Drawings

Part IV

Section XI – Confidentiality Agreement and Intellectual Property

- 6.2 The Invitation for Bids issued by the Financier is part of the Bidding Document.
- 6.3 The Financier is not responsible for the completeness of the Bidding Document and their Addenda, if they were not obtained directly from the source stated by the Financier in the Invitation for Bids.
- 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document. Failure to furnish all information or documentation required by the Bidding Document may result in the bid being declared unresponsive or bid rejection.
- 7 Clarification of Bidding Document, Site Visit, Pre-Bid Meeting**
- 7.1 A prospective Bidder requiring any clarification of the Bidding Document shall contact the Financier in writing at the Financier's address indicated in the BDS or raise his inquiries during the pre-bid meeting if provided for in accordance with ITB 7.4. The Financier will respond in writing to any request for clarification, provided that such request is received prior to the deadline for submission of bids, within a period given in the BDS. The Financier shall forward copies of its response to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. Should the Financier deem it necessary to amend the Bidding Document as a result of a request for clarification, it shall do so following the procedure under ITB 8 and ITB 22.2.
- 7.2 The Bidder is encouraged to visit and examine the Site of Works and its surroundings and obtain for itself, on its own risk and responsibility, all information that may be necessary for preparing the bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense.
- 7.3 The Bidder and any of its personnel or agents will be granted permission by the Financier to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Financier and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
- 7.4 The Bidder's designated representative is invited to attend a pre-bid meeting, if provided for in the BDS. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

- 7.5 The Bidder is requested, as far as possible, to submit any questions in writing, to reach the Financier not later than five calendar days before the meeting.
- 7.6 Minutes of the pre-bid meeting, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3. Any modification to the Bidding Document that may become necessary as a result of the pre-bid meeting shall be made by the Financier exclusively through the issue of an addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting.
- 7.7 Non-attendance at the pre-bid meeting **will not** be a cause for disqualification of a Bidder.
- 8 **Amendment of Bidding Document**
- 8.1 At any time prior to the deadline for submission of bids, the Financier may amend the Bidding Document by issuing addenda.
- 8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document from the Financier in accordance with ITB 6.3.
- 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Financier may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB 22.2

Preparation of Bids

- 9 **Cost of Bidding**
- 9.1 The Bidder shall bear **all costs** associated with the preparation and submission of its Bid, and the Financier shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- 10 **Language of Bid**
- 10.1 The Bid, as well as **all correspondence and documents relating to the bid exchanged by the Bidder and the Financier, shall be written in the language specified in the BDS**. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the BDS, in which case, for purposes of interpretation of the Bid, such translation shall govern.
- 11 **Documents Comprising the Bid**
- 11.1 Bidders are required to prepare and submit separate **Qualification/Technical** and **Financial bids**. The bid submission method shall be a **one stage two envelope method**. The one stage two envelope submission method requires a Bidder to submit a single envelope containing two separately sealed envelopes, labelled Qualification/ Technical bid and Financial bid which are opened on different dates at separate bid openings. Bidders shall complete all forms provided in Section IV. False declaration and/or lack of declaration shall lead to automatic disqualification pursuant to ITB 3.19(a)(iv)

- 11.2 The Qualification/Technical Bid comprises the Qualification Criteria as set out in the completed Forms including documents as set out in Section IV and a Technical Proposal which comprises of the details on the completed Forms and Documentation contained within Section IV.
 - 11.3 In addition to the requirements under ITB 11.2, bids submitted by a JVA shall include a copy of the Joint Venture Agreement entered into by all partners Or a letter of intent to form a joint venture.
 - 11.4 The Financial Bid shall comprise:
 - (a) The Letter of Financial Bid;
 - (b) Full Bill of Quantities prepared using the relevant forms furnished in Section IV. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITB 20.2. All blank spaces shall be filled in with the information requested.
- 12 Letter of bid (Qualification Technical & Financial)**
- 12.1 A Qualification letter shall be included in the Qualification / Technical bid Submission.
 - 12.2 The Letter of Financial Bid shall accompany the Financial Bid in a separate sealed envelope.
- 13 Alternative Bids**
- 13.1 Unless otherwise indicated in the BDS, alternative bids shall not be considered.
 - 13.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the BDS, as will the method of evaluating different times for completion.
 - 13.3 When specified in the BDS pursuant to ITB 13.1, and subject to ITB 13.4 below, Bidders wishing to offer technical alternatives to the requirements of the Bidding Document must first price the Financier's design as described in the Bidding Document and shall further provide all information necessary for a complete evaluation of the alternative by the Financier, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Financier.
 - 13.4 When specified in the BDS, Bidders are permitted to submit alternative technical solutions for specified parts of the Works. Such parts will be identified in the BDS and described in Section VI (Financier's Requirements). The method for their evaluation will be stipulated in Section III (Evaluation and Qualification Criteria).
- 14 Bid Prices and Discounts**
- 14.1 The prices and discounts quoted by the Bidder in the Letter of Financial Bid and in the Bill of Quantities shall conform to the requirements specified below.
 - 14.2 The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Bidder will not be paid for by the Financier

when executed and shall be deemed covered by the rates for other items and prices in the Bill of Quantities.

- 14.3 The price to be quoted in the Letter of Financial Bid, in accordance with ITB 12.2, shall be the total price of the Bid, excluding any discounts offered.
 - 14.4 The Bidder shall quote any unconditional discounts and the methodology for their application in the Letter of Financial Bid, in accordance with ITB 12.2.
 - 14.5 Unless otherwise provided in the BDS and the Contract, the rates and prices quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract. In such a case, the Bidder shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data and the Financier may require the Bidder to justify its proposed indices and weightings.
 - 14.6 Unless otherwise provided in the BDS and the Conditions of Contract, the prices quoted by the Bidder shall be fixed. If the prices quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract, the Bidder shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data in Section IV (Bidding Forms) and the Financier may require the Bidder to justify its proposed indices and weightings.
 - 14.7 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the rates and prices and the total bid price submitted by the Bidder.
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- 15 **Currencies of Bid and Payment**
 - 15.1 The currency(ies) of the bid shall be as specified in the BDS.
 - 15.2 Bidders may be required by the Financier to justify, to the Financier's satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the prices shown in the appropriate form(s) of Section IV, in which case a detailed breakdown of the foreign currency requirements shall be provided by Bidders.
 - 16 **Documents Comprising the Qualification /Technical & Financial Proposal**
 - 16.1 The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section IV, in sufficient detail to demonstrate the adequacy of the Bidders' proposal to meet the work requirements and the completion time.
 - 16.2 The Financial Proposal must be prepared using the information provided in the Bill of quantities. Bidders shall list all costs associated with the assignment.
 - 17 **Documents Establishing**
 - 17.1 To establish its qualifications to perform the Contract in accordance with Section III (Evaluation and Qualification Criteria)

<p>the Qualifications of the Bidder</p>	<p>the Bidder shall provide the information requested in the corresponding information sheets included in Section IV (Bidding Forms).</p>
<p>18 Period of Validity of Bids</p>	<p>18.1 Bids shall remain valid for the period specified in the BDS after the bid submission deadline date prescribed by the Financier. A bid valid for a shorter period shall be rejected by the Financier as nonresponsive.</p> <p>18.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Financier may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITB 19, it shall also be extended for a corresponding period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid.</p> <p>18.3 In the case of fixed price contracts, if the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial bid validity, the Contract price shall be determined as follows:</p> <p>a) In the case of fixed price contracts, the Contract price shall be the bid price adjusted by the factor specified in the BDS.</p> <p>b) In the case of adjustable price contracts, to determine the Contract price, the fixed portion of the bid price shall be adjusted by the factor specified in the BDS.</p> <p>c) In any case, bid evaluation shall be based on the bid price without taking into consideration the applicable correction from those indicated above.</p>
<p>19 Bid Security</p>	<p>19.1 Unless otherwise specified in the BDS, the Bidder shall furnish as part of its bid, in original form, either a Bid Securing Declaration or a bid security as specified in the BDS. In the case of a bid security, the amount shall be as specified in the BDS</p> <p>19.2 A bid securing declaration shall use the form included in section IV (bidding forms)</p> <p>19.3 If a bid security is specified pursuant to ITB 19.1, the bid security shall be in the form of an unconditional guarantee issued by a reputable bank from an eligible country. The bid security shall be submitted using the Bid Security Form included in Section IV (Bidding Forms) and the form must include the complete name of the Bidder. The bid security shall be valid for twenty-eight days (28) beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 18.2.</p> <p>19.4 Any bid not accompanied by an enforceable and substantially compliant bid security or Bid Securing Declaration, if required in accordance with ITB 19.1, shall be rejected by the Financier as nonresponsive.</p>

- 19.5 If a bid security is specified pursuant to ITB 19.1, the bid security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's furnishing of the performance security pursuant to ITB 41.
- 19.6 If a bid security is specified pursuant to ITB 19.1, the bid security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required performance security.
- 19.7 The bid security may be forfeited or the Bid Securing Declaration executed:
- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Financial Bid, except as provided in ITB 18.2 or
 - (b) if the successful Bidder fails to:
 - (i) Sign the Contract in accordance with ITB 40; or
 - (ii) Furnish a performance security in accordance with ITB 41.
- 19.8 The Bid Security or the Bid Securing Declaration of a JV shall be in the name of the JV that submits the bid. If the JV has not been constituted into a legally-enforceable JV, at the time of bidding, the Bid Security or the Bid Securing Declaration shall be in the names of all future partners as named in the letter of intent mentioned in ITB 4.1.
- 20 Format and Signing of Bid**
- 20.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB 11 and clearly mark it "ORIGINAL". Alternative bids, if permitted in accordance with ITB 13, shall be clearly marked "ALTERNATIVE". In addition, the Bidder shall submit copies of the bid in the number specified in the BDS, and clearly mark each of them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.
- 20.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the BDS and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature.
- 20.3 Any amendments such as interlineations, erasures, or overwriting shall be valid only if they are signed or initialled by the person signing the bid.
- Submission and Opening of Bids**
- 21 Sealing and Marking of Bids**
- 21.1 The original and all copies of the technical bid shall be placed in a sealed envelope clearly marked "**Qualification/Technical Bid**," and the original and all copies of the Financial Bid in a separate sealed envelope clearly marked "**Financial Bid**". The envelopes

- shall be securely sealed in such a manner that opening and resealing cannot be achieved undetected.
- 21.2 Additionally, a CD ROM containing an electronic version of the contents of the Technical Bid contained in each envelope shall be placed in the respective Technical Bid envelope.
- 21.3 A separate CD ROM containing an electronic version of the contents of the Financial Bid contained in each envelope shall be placed in the respective Financial Bid envelope.
- 21.4 Bidders submitting bids by mail or by hand shall enclose the original and each copy of the Bid, including alternative bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as "Original", "Alternative" and "Copy." These envelopes containing the original and the copies shall then be enclosed in one single envelope.
- 21.5 The envelopes containing the Qualification/Technical and Financial Bids shall:
- (a) bear the name and address of the Bidder;
 - (b) be addressed to the Financier in accordance with ITB 22.1; and
 - (c) Bear the Procurement Reference Number of this bidding process.
- 21.6 The Financial Bid shall also bear a warning "Do Not Open with the Technical Bid".
- 21.7 The two envelopes shall be placed in an outer envelope which shall be securely sealed in such a manner that opening and resealing cannot be achieved undetected.
- 21.8 If all envelopes are not sealed and marked as required, the Financier will assume no responsibility for the misplacement or premature opening of the bid.
- 21.9 The outer envelope shall:
- a) bear the name and address of the Bidder;
 - b) be addressed to the Financier in accordance with ITB 22.1;
 - c) bear the Procurement Reference number of this bidding process; and
 - d) Bear a warning not to open before the time and date for bid opening, in accordance with ITB 25.1.
- 21.10** The Bidder shall enclose the original and all copies of the bid, including alternative bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as "Original", "Alternative" and "Copy." These envelopes containing the original and the copies shall then be enclosed in their respective envelopes for "Qualification/ Technical Bid" and "Financial Bid".
- 21.11 If all envelopes are not sealed and marked as required, the Financier will assume no responsibility for the misplacement or premature opening of the bid.

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| 22 | Deadline for Submission of Bids | <p>22.1 Bids must be received by the Financier at the address and no later than the date and time indicated in the BDS.</p> <p>22.2 The Financier may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Document in accordance with ITB 8, in which case all rights and obligations of the Financier and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.</p> |
| 23 | Late Bids | <p>23.1 The Financier shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB 22. Any bid received by the Financier after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.</p> |
| 24 | Withdrawal, Substitution, and Modification of Bids | <p>24.1 A Bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 20.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:</p> <p style="padding-left: 40px;">(a) Prepared and submitted in accordance with ITB 20 and ITB 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," "MODIFICATION;" and</p> <p style="padding-left: 40px;">(b) Received by the Financier prior to the deadline prescribed for submission of bids, in accordance with ITB 22.</p> <p>24.2 Bids requested to be withdrawn in accordance with ITB 24.1 shall be returned unopened to the Bidders.</p> <p>24.3 No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Financial Bid or any extension thereof.</p> |
| 25 | Technical Bid Opening | <p>25.1 The Financier shall open the bids in public at the address, date and time specified in the BDS in the presence of Bidders' designated representatives and anyone who choose to attend. All Financial Bids will remain sealed at this stage. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 21.1, shall be as specified in the BDS.</p> <p>25.2 First, envelopes marked "Withdrawal" shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked "Substitution" shall be opened and read out and exchanged with the corresponding bid being substituted, and the substituted bid shall not be opened, but returned to the Bidder. No bid substitution shall be permitted unless the corresponding substitution notice contains a valid</p> |

authorization to request the substitution and is read out at bid opening. Envelopes marked "Modification" shall be opened and read out with the corresponding bid. No bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at bid opening. Only envelopes that are opened and read out at bid opening shall be considered further.

25.3 All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; and any other details as the Financier may consider appropriate. No bid shall be rejected at bid opening except for late bids, in accordance with ITB 23.1.

25.4 The Financier shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder, country of registration and whether there is a withdrawal, substitution, or modification and the presence or absence of a bid security (including issuing bank and bid security amount), if one was required. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders.

26 Financial Bid Opening

26.1 After the Qualifying/Technical evaluation is completed, the Financier shall notify those Bidders, whose bids will not pass to the financial comparison, indicating that their Financial Bids will be returned unopened after completing the evaluation process. The Financier shall simultaneously notify the Bidder(s) whose bids will proceed to the financial comparison indicating the date and time set for opening the Financial Bid(s). The opening date shall not be sooner than one week after the Qualifying/ Technical evaluation outcome notification date. The notification will be sent by email.

26.2 The Financial Bid(s) shall be opened in the presence of the Bidders' representatives who choose to attend. The name of the Bidder and the bid price shall be read aloud and recorded when the financial bid(s) are opened. If so requested by the Financier in the BDS, the Letter of Financial Bid and the Bill of Quantities are to be initialled by representatives of the Financier attending bid opening in the manner indicated in the BDS. The Financier shall prepare minutes of the public opening and share with all bidders who participated in the tender process.

Evaluation and Comparison of Bids

27 Confidentiality

27.1 Information relating to the examination, evaluation, comparison, and post-qualification of bids and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on Contract award is communicated to all Bidders.

- 27.2 Any attempt by a Bidder to influence the Financier in the evaluation of the bids or Contract award decisions may result in the rejection of its bid.
- 27.3 Notwithstanding ITB 26.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the **Financier** on any matter related to the bidding process, it may do so in writing.
- 28 **Clarification of Bids**
- 28.1 To assist in the examination, evaluation, and comparison of the bids, and qualification of the Bidders, the **Financier** may, at its discretion, ask any Bidder for a clarification of its bid. Any clarification submitted by a Bidder that is not in response to a request by the **Financier** shall not be considered. The **Financier's** request for clarification and the response shall be in writing. No change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the **Financier** in the evaluation of the bids, in accordance with ITB 32.
- 28.2 If a Bidder does not provide clarifications of its bid by the date and time set in the **Financier's** request for clarification, its bid may be rejected.
- 29 **Deviations, Reservations, and Omissions**
- 29.1 During the evaluation of bids, the following definitions apply:
- (a) "Deviation" is a departure from the requirements specified in the Bidding Document;
 - (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and
 - (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Document.
- 30 **Determination of Responsiveness**
- 30.1 The Financier's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB11.
- 30.2 A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,
- (a) if accepted, would: -
 - (i) Affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or
 - (ii) Limit in any substantial way, inconsistent with the Bidding Document, the Financier's rights or the Bidder's obligations under the proposed Contract; or
 - (b) If rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.

- 30.3 The Financier shall examine the technical aspects of the bid submitted in accordance with ITB 16, Technical Proposal, in particular, to confirm that all requirements of Section 6 (Financier's Requirements) have been met without any material deviation, reservation or omission.
- 30.4 If a bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Financier and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
- 31 Non-conformities, Errors, and Omissions**
- 31.1 Provided that a bid is substantially responsive, the Financier may waive any non-conformity in the bid.
- 31.2 Provided that a bid is substantially responsive, the Financier may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the bid. Failure of the Bidder to comply with the request may result in the rejection of its bid.
- 31.3 Provided that a bid is substantially responsive, the Financier shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price may be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component. The adjustment shall be made using the methods indicated in Section III (Evaluation and Qualification Criteria).
- 31.4 In the event that any tenderer(s) mistakenly omits to include in their bid, supporting documentary evidence (such as letters, certificates) or erroneously fails to include the correct number of copies of, USB sticks or CD-ROMs, TMA reserves the right to allow tenderer(s) to submit such omitted material within 24 hours from the time the omission is discovered.
- 32 Correction of Arithmetical Errors**
- 32.1 Provided that the bid is substantially responsive, the Financier shall correct arithmetical errors on the following basis:
- (a) only for unit price contracts, if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Financier there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;
 - (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected;
 - (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount

expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

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| | 32.2 | If the Bidder that submitted the lowest evaluated bid does not accept the correction of errors, its bid shall be declared non-responsive. |
| 33 | Conversion to Single Currency | 33.1 For evaluation and comparison purposes, the currency (ies) of the bid shall be converted into a single currency as specified in the BDS. |
| 34 | Margin of Preference | <p>34.1 A margin of preference shall not apply, unless otherwise specified in the BDS.</p> <p>34.2 Domestic bidders 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. They should:</p> <ul style="list-style-type: none"> (a) be registered within the country of the Financier's country; (b) have majority ownership by nationals of the Financier's country (c) Not subcontract more than 10 percent of the Contract Price, excluding provisional sums, to foreign contractors. <p>34.3 The following procedure shall be used to apply the margin of preference:</p> <ul style="list-style-type: none"> (a) Responsive bids shall be classified into the following groups: <ul style="list-style-type: none"> (i) Group A: bids offered by domestic bidders and joint ventures meeting the criteria of ITB Sub-Clause 34.2; 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 ITB Sub-Clause 34.2 shall be added to all bids classified in Group B. |
| 35 | Qualification/ Technical Evaluation of Bids | <p>35.1 The Financier shall check that the bidder and all companies forming a JV do not contravene the Eligible Countries requirement given in Section V. A bid failing to meet the requirements shall be rejected.</p> <p>35.2 The Financier shall determine whether the Bidder is qualified to perform the Contract satisfactorily. The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB Clause 11, to clarifications in accordance with ITB Clause 28 and the qualification criteria indicated in Section III, Evaluation Methodology, and Criteria. A bid shall be rejected at this stage if it does not meet the specified technical/ qualifying criteria.</p> |

- 35.3 The Financier will carry out a detailed evaluation of the technical aspects on the basis of the Bidder's responsiveness to the Financier's Requirements, applying the evaluation criteria, sub-criteria, and methodology specified in Section III, Evaluation Methodology, and Criteria. A bid shall be rejected at this stage if it does not respond to important aspects of the Financier's Requirements or if it fails to achieve the minimum technical requirements indicated in Section III, Evaluation Methodology and Criteria. A bid shall be rejected at this stage if it does not meet the specified Technical criteria.
- 35.4 Bidders planning to subcontract any of the key activities indicated in Section III, Qualification/Technical Criteria, shall specify the activities or parts of the works to be subcontracted in the Bid Submission Form. Applicants shall clearly identify the proposed specialist subcontractors in Forms ELI-1.2 and EXP (experience)-4.2(b) in Section IV, Bidding Form. Such proposed specialist subcontractor(s) shall meet the corresponding qualification requirements specified in Section III, Qualification/Technical Criteria and Requirements.
- 35.5 At this time, the Financier does not intend to execute certain specific parts of the Works by subcontractors selected in advance by the Financier (Nominated Subcontractors) unless otherwise stated in the BDS.
- 35.6 Only those bids meeting the Technical/ Qualification Criteria and have an acceptable Technical Evaluation will proceed to the Financial Evaluation.
- 35.7 A bid whose Qualification/ Technical proposal/ bid contains any financial proposal/ bid information shall be automatically rejected and be declared nonresponsive. It shall not be subjected to further evaluation.
- 36 Evaluation of Financial Bids**
- 36.1 The Financier shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.
- 36.2 To evaluate a bid, the Financier shall consider the following:
- a) the bid price (including costs associated to Environmental and Social Management Plan (ESMP) implementation), excluding Provisional Sums and the provision, if any, for contingencies in the Summary Bill of Quantities, but including Daywork items, where priced competitively;
 - b) any percentage mark ups of Provisional Sums and all Provisional Items;
 - c) price adjustment for correction of arithmetic errors in accordance with ITB 32.1;
 - d) price adjustment due to discounts offered in accordance with ITB 14.4;
 - e) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 33;
 - f) price adjustment indices is within the ranges prescribed by the Financier;

- g) adjustment for nonconformities in accordance with ITB 31.1;
- 36.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.
- 36.4 If these Bidding Documents allow Bidders to quote separate prices for different lots (contracts), and the award to a single Bidder of multiple lots (contracts), the methodology to determine the lowest evaluated price of the lot (contract) combinations, including any discounts offered in the Letter of Financial Bid Form, is specified in Section III, Evaluation and Qualification/Technical Criteria.
- 36.5 If the bid, which results in the lowest Evaluated Bid Price, is seriously unbalanced or front loaded in the opinion of the Financier, the Financier may require the Bidder to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the Financier may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Financier against financial loss in the event of default of the successful Bidder under the Contract.
- 36.6 Activities and items described in the Qualification/ Technical Proposal but not priced in the Financial Proposal, shall be assumed to be included in the prices of other activities or items, and no corrections are made to the Financial Proposal.
- 37 **Comparison of Bids**
- 37.1 The Financier shall compare all substantially responsive bids to determine the lowest evaluated bid, in accordance with ITB 36.
- 38 **Financier's Right to Accept Any Bid, and to Reject Any or All Bids**
- 38.1 The **Financier** reserves the right to accept or reject any bid, and to annul the bidding process entirely and reject all bids at any time prior to contract award without thereby incurring any liability whatsoever to Bidders. In case of annulment, the financier shall notify all bidders about the same and bidders shall be required to collect their bids submitted and specifically, bid securities, at a location to be made known to bidders.

Award of Contract

- 39 **Award Criteria**
- 39.1 Subject to ITB 37.1, the Financier shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.
- 40 **Notification of Award**
- 40.1 Prior to the expiration of the period of bid validity and subject to provisions of ITB 39, the Financier shall notify the successful

- Bidder, in writing, via the Letter of Acceptance included in the Contract Forms, that its bid has been accepted. At the same time, the Financier shall also notify all other Bidders of the results of the bidding.
- 40.2 Until a formal contract is prepared and executed, the notification of award shall not constitute a binding Contract.
- 40.3 The Financier shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 39.1, requests in writing the grounds on which its bid was not selected.
- 41 Signing of Contract**
- 41.1 On expiration of no-action period after notification date; the financier having responded to request as per ITB 40.3 shall send the successful bidder the letter of acceptance.
- 41.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Financier.
- 42 Performance Security**
- 42.1 Within twenty-eight (28) days of the receipt of notification of award from the Financier, the successful Bidder shall furnish the performance security and if required in the BDS, Environmental and Social (ES) Performance Security in accordance with the conditions of contract, subject to GCC 49.1 using for that purpose the Performance Security Form and ES Performance Security Forms included in Section IX (Contract Forms), or another form acceptable to the Financier. If the performance security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Bidder to be acceptable to the Financier. A foreign institution providing a bond shall have a correspondent financial institution located in the Financier's Country.
- 42.2 Failure of the successful Bidder to submit the above-mentioned Performance Security and if required in the BDS, the Environmental and Social (ES) Performance Security or to sign the Contract Agreement shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security. In that event the Financier may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Financier to be qualified to perform the Contract satisfactorily.
- 42.3 The above provision shall also apply to the furnishing of a domestic preference security if so required.
- 43 Adjudicator**
- 43.1 The Financier proposes the person named in the BDS to be appointed as Adjudicator under the Contract, at the hourly fee specified in the BDS, plus reimbursable expenses. If the Bidder disagrees with this proposal, the Bidder should so state in his Bid. If, in the Letter of Acceptance, the Financier does not agree on the appointment of the Adjudicator, the Financier will request the Appointing Authority designated in the Particular Conditions of

Contract (PCC) pursuant to Clause 23.1 of the General Conditions of Contract (GCC), to appoint the Adjudicator

44 Training

- 44.1 The Contractor shall in their submission have a provision for the job training/learning.

Section II - Bid Data Sheets

A. Introduction

ITB 1 (d)	<p>The name of the bidding process is: Invitation to Tender (ITT) using TradeMark Africa Procurement Guidelines</p> <p>The identification number of the bidding process and identification of works comprising this bidding process is: PRQ20241414</p> <p>PROCUREMENT FOR CIVIL WORKS CONTRACTOR FOR ALTERATIONS AND UPGRADES AT AGRICULTURE & FOOD AUTHORITY - HORTICULTURAL CROPS DIRECTORATE (HCD) PACK HOUSE, KIBWEZI, MAKUENI COUNTY</p>
ITB 1 (e)	Applicable law: Kenya
ITB 1 (f)	The Financier is: TradeMark Africa
ITB 1 (i)	The Employer/Client/Beneficiary is: Agriculture & Food Authority - Horticultural Crops Directorate (HCD)
ITB 1 (m)	The Procurement Entity: TradeMark Africa
ITB 1.4	Environmental and social (including Sexual Exploitation and Abuse (SEA), and Sexual Harassment (SH)) MUST be adhered to. Failure to comply shall trigger clause GCC 49.1
ITB 2.1	The Beneficiary is: Government of Kenya through the Agriculture & Food Authority - Horticultural Crops Directorate (HCD) at Kibwezi packhouse.
ITB 2.1	The name of the Project is: PROCUREMENT FOR CIVIL WORKS CONTRACTOR FOR ALTERATIONS AND UPGRADE WORKS AT AGRICULTURE & FOOD AUTHORITY - HORTICULTURAL CROPS DIRECTORATE (HCD) PACK HOUSE, KIBWEZI, MAKUENI COUNTY
ITB 3.1 (a) (vi)	False declaration or lack of declaration shall lead to automatic disqualification
ITB 4.1	<p>The tender is open to all <u>Eligible bidders</u>. The individuals or firms in a JV shall be jointly and severally liable.</p> <p>The bidder shall be disqualified if established its debarred by any below TradeMark Africa; World Bank; Government Procurement Body. African Development Bank. European Union Any of United Nation bodies</p> <p>Bidders shall also be required to sign and adhere to the TMA SUPPLIER CODE OF</p>

	CONDUCT annexed in this tender document.
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B. Bidding Documents

ITB 7.1	<p>For clarification purposes only, the Financier's address is: Attention: Head of Procurement Street Address: TradeMark Africa, Fidelity Insurance Centre, 2nd Floor-Waiyaki Way. City: Nairobi ZIP Code: +254 Country: Kenya Telephone: +254 20 423 5000 Electronic mail address: procurement@trademarkafrica.com</p> <p>TMA shall receive clarifications from bidders not later than Monday 19th May 2025.</p>
ITB 7.4	<p>A Pre-Bid and site visit meetings will take place at the following dates, time and places:</p> <p><u>KIBWEZI, HCD PACK HOUSE:</u></p> <p>Date: Thursday 8th May 2025 Kenya Time: 1100 Hours.</p> <p>Place: Bidders shall congregate at Project site at HCD PACK HOUSE</p> <p>A site visit conducted by the Financier and the Employer "will be" organized and shall be part of the pre-bid meeting.</p>

C. Preparation of Bids

ITB 10.1	<p>The language of the bid is: English.</p> <p>English translation for all non-English certificates and other supporting documents MUST be provided.</p>
ITB 11.2	<p>The Bidder shall submit with its bid the following additional document: -</p> <ul style="list-style-type: none"> a) Stamped valid bid security from a reputable commercial bank. b) JV agreement or intention to sign one (for JV) (if applicable); and, c) Signed and stamped Power of Attorney which must be witnessed by a commissioner for oaths or similar authentication where applicable. d) Signed Supplier Code of Conduct. e) Code of Conduct for Contractor's Personnel (ES) <p>The Bidder shall submit its Code of Conduct that will apply to Contractor's Personnel (as defined in Sub-Clause 1.1.17 of the General Conditions of Contract), to ensure compliance with the Contractor's Environmental and Social (ES) obligations under the Contract. The Bidder shall use for this</p>

	<p>purpose the Code of Conduct form provided in Section IV. No substantial modifications shall be made to this form, except that the Bidder may introduce additional requirements, including as necessary to take into account specific Contract issues/risks.</p> <p>f) Management Strategies and Implementation Plans (MSIP) to manage the (ES) risks</p>
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The Bidder shall submit Management Strategies and Implementation Plans (MSIPs) to manage the following key Environmental and Social (ES) risks:
[Note: Any additional plan and specific risk/s informed by the relevant environmental and social assessment];

- [e.g. Sexual Exploitation and Abuse (SEA) prevention and response action plan]
- [e.g., Traffic Management Plan to ensure safety of local communities from construction traffic];

Note: Item a -d above Must be contained in the Technical Proposal Documents above are mandatory and failure to provide them SHALL lead to automatic disqualification of your submission.

The successful bidder shall be required to submit tax compliance certificate (or proof of similar registration in the bidder's home country) and incorporation for all entities that shall be part of the project implementation after completion of the evaluation process and upon notification of award, failure by the successful bidder to submit the documents within specified time after the no-action period shall invalidate the award notification and the 2nd best evaluated bidder shall be automatically contracted upon fulfilling the requirements.

An independent due diligence will be undertaken on the successful bidder before contracting for authentication of the bidder's experience and qualifications. Submission of unauthentic documents will lead to disqualification and the next lowest bidder will be considered for award subject to the due diligence outcome.

The Bidder shall submit with its bid the following additional documents:

- Form of Bid Security: Required
- Qualification/Technical Bid Submission Sheet: Required
- Bidder Information Form ELI -1: Required
- Bidder's Party Information Form ELI -1.2: Required
- Historical Contract Non-Performance Form CON – 2: Required
- Financial Situation Form FIN – 3.1: Required
- Average Annual Construction Turnover –Form FIN - 3.2: Required
- Financial Resources Form FIN – 3.3: Required
- Available Tender Capacity Part 1 Form ATC – 5.1(a): Required
- Available Tender Capacity Part 2 Form ATC 5.1(b): required
- General Construction Experience –Form EXP - 4.1: Required
- Similar Construction Experience –Form EXP - 4.2(a): Required
- Construction Experience in Key Activities –Form EXP - 4.2(b): Required
- List of employers in the past 5 years: Required
- References from these employers indicating or confirming commitments or undertakings by the bidder; Required
- Where a Joint Venture is proposed a copy of the Joint Venture Agreement entered into by all partners or a letter of intent to form a joint venture: Required

	<p>a) Bidder must have undertaken similar work in a similar environment (Lake Victoria). Documentary evidence e.g. purchase orders, contract extract, completion certificate must be provided (Mandatory).</p> <p>b) Method of statement on how Building, Civil, Mechanical, Electrical works will be undertaken.</p> <p>c) Safety and safeguards measures to be undertaken during planning and execution phase.</p> <p>d) Training and technology transfer plan</p> <p>e) Any other relevant document</p> <p>Details of proposed method statement:</p> <p>a) Site Organisation Structure and assigned roles;</p> <p>b) Method Statement;</p> <p>c) Construction Schedule;</p> <p>d) Quality Assurance System;</p> <p>e) Availability of Equipment (owned or leased);</p> <p>f) Health and Safety Aspects;</p> <p>g) Method statement and commitment to comply with Environment and Socialsafeguards requirements of TMA</p> <p>h) Method statement and commitment to follow and implement ISO 26000 related to Corporate Social Responsibility</p> <p>i) Availability of Personnel; and</p> <p>j) Any other relevant detail.</p> <p>The evaluation process shall be conducted as follows:-</p> <p>f) Stage 1: Assessment of Qualification as stipulated in section III (Qualification and Evaluation Criteria) sub-section 2;</p> <p>g) Stage 2: Assessment of Technical Bid as stipulated in section III (Qualification and Evaluation Criteria) sub-section 3; and</p> <p>h) Stage 3: Assessment of Financial Bid.</p> <p>N/B: Failure of a bid to meet the minimum qualification requirements at any of the 3 stages above shall prevent its further consideration on subsequent stages and the bid shall therefore be declared nonresponsive.</p>
ITB 11.4 (b)	The following schedules shall be submitted with the bid: PRICED BILL OF QUANTITIES: REFER TO ANNEX 3
ITB 13.1	Alternative bids “shall not be” permitted.
ITB 13.2	Alternative times for completion “ shall not be ” permitted. The Intended Completion Date for the whole of the Works, excluding the defects Liability period shall be: 6 months including time for mobilization and site hand Over. Defects Liability period shall be 12 months after successful construction completion.
ITB 13.4	Alternative technical solutions shall NOT be permitted
ITB 14.6	The prices quoted by the Bidder “ shall not be ” subject to adjustment during the performance of the Contract.

ITB 15.1	The prices shall be quoted by the bidder in: United States Dollars USD
ITB 18.1	The bid validity period shall be: 120 days from bid opening date. Bids shall be valid through to 30th August 2025 .
ITB 19.1	<p>The Bidder shall furnish a bid security in the amount of:</p> <ul style="list-style-type: none"> - Ten thousand USD (10,000) for the works. <p>In the form of a bank guarantee from a reputable commercial bank in the format provided in Section IV – Bidding Forms. Any other form of Bid security shall not be accepted and will lead the bid being declared unresponsive.</p>
ITB 19.3	Bid Security Validity: 30th September 2025 , that is 30 days after the expiration of the bid validity period.
ITB 20.1	<p>In addition to one (1) original bid, the tenderer shall be required to provide 3 copies and 1 soft copy in a flash disk. The Flash disks should be put in the respective technical and financial bid envelopes. The submission shall be as follows.</p> <ul style="list-style-type: none"> -1 original technical proposal and three copies plus a soft copy in a flash disk – these shall altogether be placed in an envelope marked Technical Bid. - 1 original Financial proposal and three copies plus a soft copy of the same in a flash disk (The soft copy financial proposal must be all placed together in an envelope marked Financial Bid. <p>Failure to submit as required shall lead to automatic disqualification) -</p>
ITB 20.2	<p>The written confirmation of authorization to sign on behalf of the Bidder shall indicate: -</p> <ul style="list-style-type: none"> (a) A Power of Attorney which must be witnessed by a commissioner for oaths or similar authentication where applicable; and (b) In the case of Bids submitted by an existing or intended JV, an undertaking signed by all parties (i) stating that all parties shall be jointly and severally liable, if so required in accordance with ITB 4.1(a), and (ii) nominating a Representative who shall have the authority to conduct all businesses for and on behalf of any and all the parties of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution. (c) The Power of Attorney and JV Agreement or intention to sign one MUST be submitted with the technical bid.

D. Submission and Opening of Bids

ITB 21.1	Bidders “shall not” have the option of submitting their bids electronically.
ITB 21.2	Additionally, a Flash Disk containing an electronic version of the contents of the Technical Bid contained in each envelope shall be placed in the respective Technical Bid envelope.
ITB 21.3	A separate Flash Disk containing an electronic version of the contents of the Financial Bid contained in each envelope shall be placed in the respective Financial Bid envelope.
ITB 22.1	<p>For bid submission purposes only, the Financier’s address is:</p> <p>TradeMark Africa, P O Box 313-00606, 2nd Floor, Fidelity Insurance Centre Waiyaki Way, Westlands Nairobi – Kenya.</p> <p>Attention: Head of Procurement Street Address: Waiyaki Way, Westlands Office Building/Floor: 2nd Floor, Fidelity Insurance Centre City: Nairobi Country: Kenya</p> <p>The deadline for bid submission is:</p> <p>Date: Monday 26th May 2025 Time: 1100 Hours (Kenya Time)</p>
ITB 25.1	<p>The Technical/ Qualification bid opening shall take place at: (Include address)</p> <p>Street Address: Waiyaki Way, Westlands Office Building/Floor: 2nd Floor, Fidelity Insurance Centre City: Nairobi Country: Kenya</p> <p>Date: Monday 26th May 2025 Time: 1130 Hours (Kenya Time)</p>
ITB 26	<p>The Financial proposal</p> <p>This will be for bidders who are found to be technically qualified.</p> <p>Venue: same as in ITB 25.1</p> <p>Date: same as in ITB 25.1</p> <p>Time: same as in ITB 25.1</p>

E. Evaluation and Comparison of Bids

ITB 33.1	<p>The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is: United States Dollars (USD \$)</p> <p>The source of exchange rate shall be: Central Bank of Kenya</p> <p>Rate: Average exchange rate</p> <p>The date for the exchange rate shall be: The date for the exchange rate shall be 28 days prior to bid submission deadline.</p>
ITB 34.1	A margin of preference “SHALL NOT” apply.
ITB 39.2	<p>The contract award shall be subject to the following conditions: -</p> <p>No-action - This is a period that gives bidders an opportunity to seek feedback on the entire selection process. Further information on this are available in the Financer’s procurement guidelines.</p> <p>Due diligence - At the end of the no-action period, the Financer may decide to conduct due diligence (DD) on the MEAT bidder so as to ascertain the information evaluated in the bid submitted. A positive DD outcome shall be followed by pre-contract clarification and contracting thereafter upon agreement. A negative DD outcome shall lead to award notification being withdrawn by the Financer without liability whatsoever and the second (2nd) ranked bidder being approached for a DD and subsequent contracting if successful. DD will include an independent verification of the information contained in the bid submission for the successful bidder and will cover authentication of the stated experience, financial reports, academic and qualifications certificates among others.</p>
ITB 42.1 and 42.2	<p>The successful Bidder shall be required to submit an Environmental and Social (ES) Performance Security.</p> <p>[Note: The ES Performance Security shall normally be required where ES risks are high.]</p>
ITB 43.1	<p>The Adjudicator proposed by the Financier is: To be proposed at a later stage.</p> <p>The hourly fee for this proposed Adjudicator shall be: To be proposed at a later stage.</p> <p>The biographical data of the proposed Adjudicator is as follows: To be proposed at a later stage.</p>
ITB 44.1	The contractor shall have a provision for on job training /learning for two engines to enhance their capacity/experience in Construction works.
	The text Employer in the ITB has been changed to Financier since TMA is the financier and AFA-HCD the employer.

Section III - Evaluation and Qualification Criteria

This section contains all the criteria that the Financier shall use to evaluate bids and qualify Bidders if the bidding was not preceded by a prequalification exercise and post-qualification is applied. In accordance with ITB 35 and ITB 36, no other methods, criteria and factors shall be used. The Bidder shall provide all the information requested in the forms included in Section 4 (Bidding Forms).

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- 1.2 Multiple Contracts.....
- 1.3 Completion Time
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- 2.1 Eligibility
- 2.2 Historical Contract Non-Performance
- 2.3 Financial Situation
- 2.4 Experience

3.Assessment of Technical Bid

- 3.1 Personnel
- 3.2 Equipment
- 3.3 sustainability

1. Evaluation

The evaluation shall be conducted in three sequential stages:

- a. Assessment of Qualification as stipulated in section III sub-section 2;
- b. Assessment of Technical Bid as stipulated in section III sub-section 3; and
- c. Assessment of Financial Bid.

N/ B: Failure of a bid at any stage shall prevent its further consideration.

In addition to the criteria listed in **ITB 35** the following criteria shall apply:

1.1 Adequacy of Technical Proposal

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

1.3 Completion Time

An alternative Completion Time, if permitted under ITB 13.2, will be evaluated as follows: **N/A**.

1.4 Technical Alternatives

Technical alternatives, if permitted under ITB 13.4, will be evaluated as follows: **Not Applicable**

1.5 MARGIN OF PREFERENCE – NOT APPLICABLE

If a margin of preference shall apply under ITB 34.1, the procedure will be as follows as:

- a. Responsive bids shall be classified into the following groups:
 - i. Group A: bids offered by domestic bidders and joint ventures meeting the criteria of ITB Sub-Clause 34.2; 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 ITB Sub-Clause 34.2 shall be added to all bids classified in Group B.

Prices are NOT permitted in the Technical Bid and disclosure of prices in the technical bid will lead to automatic disqualification and the bid shall be declared unresponsive. All prices information including alternative bid price/s shall only be presented in the Financial Bid.

2. Qualification

Factor	2.1 Eligibility					
Sub-Factor	Criteria					Documentation Required
	Requirement	Single Entity	Bidder			
			Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.1.1 Nationality	Nationality in accordance with ITB 4.2.	Must meet requirement	Existing or intended JV must meet requirement	Must meet requirement	N / A	Form ELI –1.1 and 1.2, with attachments
2.1.2 Conflict of Interest	No- conflicts of interests as described in ITB 4.3.	Must meet requirement	Existing or intended JV must meet requirement	Must meet requirement	N / A	Letter of Bid
2.1.3 TMA Ineligibility	Not having been declared ineligible by the World Bank as described in ITB 4.4.	Must meet requirement	Existing JV must meet requirement	Must meet requirement	N / A	Letter of Bid
2.1.4 Government Owned Entity	Compliance with conditions of ITB 4.5	Must meet requirement	Must meet requirement	Must meet requirement	N / A	Form ELI –1.1 and 1.2, with attachments

Factor	2.1 Eligibility					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.1.5 Ineligibility based on a United Nations resolution or Borrower’s country law	Not having been excluded as a result of the Borrower’s country laws or official regulations, or by an act of compliance with UN Security Council resolution, in accordance with ITB 4.8	Must meet requirement	Existing JV must meet requirement	Must meet requirement	N / A	Letter of Bid

Factor	2.2 Historical Contract Non-Performance					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.2.1 History of non-performing contracts	Non-performance of a contract did not occur within the last three (3) years (2022, 2023 and 2024) prior to the deadline for application submission, based on all information on fully settled disputes or litigation. A fully settled dispute or litigation is one that has been resolved in accordance with the Dispute Resolution Mechanism under the respective contract, and where all appeal instances available to the bidder has been exhausted.	Must meet requirement by itself or as partner to past or existing JV	N / A	Must meet requirement by itself or as partner to past or existing JV	N / A	Form CON - 2

Factor	2.2 Historical Contract Non-Performance					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.2.2 Pending Litigation	All pending litigation shall in total not represent more than Ten Percent (10%) of the Bidder’s net worth and shall be treated as resolved against the Bidder.	Must meet requirement by itself or as partner to past or existing JV	N / A	Must meet requirement by itself or as partner to past or existing JV	N / A	Form CON – 2
2.2.3 Declaration: Environmental and Social (ES) past performance	Declare any civil and builders work contracts that have been suspended or terminated and/or performance security called by a financier for reason of breach of environmental, or social (including Sexual Exploitation and Abuse) contractual obligations in the past five years. ⁶	Must make the declaration. Where there are Specialized Sub-contractor/s, the Specialized Sub-contractor/s must also make the declaration.	N/A	Each must make the declaration. Where there are Specialized Sub-contractor/s, the Specialized Sub-contractor/s must also make the declaration.	N/A	Form CON-3 ES Performance Declaration

⁶ The Financier may use this information to seek further information or clarifications in carrying out its due diligence.

Factor	2.3 Financial Situation					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.3.1 Historical Financial Performance	Submission of audited financial statements for the last three [3] years to demonstrate the current soundness of the bidder’s financial position and its prospective long-term profitability. a) Year 2022 b) Year 2023 c) Year 2024	Must meet requirement	N / A	Must meet requirement	N / A	Form FIN – 3.1 with attachments
2.3.2. Average Annual Turnover	Minimum average annual turnover of USD 1 million calculated as total certified payments received for contracts in progress or completed, for Three (3) years within the last five (5) years.	Must meet requirement	Must meet requirement	Must meet thirty percent (30 %) of the requirement	Must meet Sixty percent (60 %) of the requirement	Form FIN –3.2

Factor	2.3 Financial Situation					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.2.4 World Bank’s SEA and/or SH Disqualification	(a) At the time of Contract Award, not subject to disqualification by the WorldBank for non-compliance with SEA/ SH obligations	Must meet requirement	N/A	Must meet requirement (including each sub-contractor proposed by the Bidder)	N/A	Letter of Bid, Form CON-4
	(b) If the Bidder had been subject to disqualification by the Bank for non-compliance with SEA/ SH obligations, the Bidder shall either (i) provide evidence of an arbitral award on the disqualification made in its favour; or (ii) demonstrate that it has adequate capacity and commitment to comply with SEA/SH prevention and response obligations; or (iii) provide evidence that it has already demonstrated such	(including each subcontractor proposed by the Bidder)	N/A	Must meet requirement	N/A	Letter of Bid

Factor	2.3 Financial Situation					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
	capacity and commitment on another Bank financed works contract.					
2.3.3. Financial Resources	The Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, confirmed lines of credit without any incumbrances, and other financial means, other than any contractual advance payments to meet: (i) the following cash-flowrequirement: (USD 500,000) requirement and (ii) The overall cash flow requirements for this	Must meet requirement	Must meet requirement	Must meet thirty percent (30 %) of the requirement	Must meet Sixty percent (60 %) of the requirement	Form FIN –3.3

Factor	2.3 Financial Situation					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
	contract and its concurrent commitments.					

Factor	2.4 Experience					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.4.1 General Experience	Experience under contracts in the role of contractor, subcontractor, or management contractor for at least Three (3) years within the last five (5) years prior to the applications submission deadline, and with activity in at least six (6) months in each year.	Must meet requirement	Must meet requirement	Must meet requirement	N / A	Form EXP-4.1
2.4.2 Specific Experience	(a) Participation as main contractor in at least Two (2) contracts within the last five (5) years, each with a value of at least USD 500,000 for the works) that have been successfully andsubstantially completed and that are similar to the proposedWorks. The similarity shall be based on the physical size,	Must meet requirement	Must meet requirements for all characteristics	N / A	Must meet requirement for one characteristic	Form EXP 2.4.2(a) (Attach completion certificates of the two contracts)

Factor	2.4 Experience					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
	complexity, methods/technology or other characteristics as described in Section VI, Financier’s Requirements.	Must meet requirements	Must meet requirments	N/A	N/A	
2.4.3 Specific Experience in managing ES aspects	For the contracts in 4.2 (a) above and/or any other contracts [substantially completed and under implementation] as prime contractor, joint venture member, or Subcontractor between 1st January [2019] and Application submission deadline, experience in managing ES risksand impacts in the following aspects: Preparation and Implementation of a					2.4.3 Specific Experience in managing ES aspects

Factor	2.4 Experience					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
	Construction Phase Environmental and Social Management Plan					

The Tenders that are “Passed” in the examination of the eligibility and completeness of Tenders will proceed to the evaluation on the minimum requirements for experience, technical capability (personnel and equipment capabilities) and financial capability of the Tenderers at the Tendering stage. The evaluation will be done to meet the minimum requirements stated in the Tender Documents, in accordance with the evaluation criteria listed in the tables below.

Experience requirement criteria

No.	Description	Minimum Requirements			Documentation required	Evaluation (Pass or Fail)
		Single Applicant or Total of JV	Lead Partner of JV	Each of other Partner of JV		
(1)	(2)	(3)	(4)	(5)		(6)
1.	<p>Particular Experience:</p> <p>For the above or other contracts executed during the period stipulated in 2.4.2(a) above, a minimum experience in the following key activities:</p> <ul style="list-style-type: none"> a) Bidder must have undertaken similar work on builders works for renovations/alteration s/upgrades in a similar environment. Documentary evidence e.g. purchase orders, contract extract, completion certificate, recommendation letter must be provided. b) Must provide detailed method of statement on how the works will be carried out in a working facility. c) Detailed method of how the works will be carried out without 	Must meet requirements	Must meet requirements	N/A	Must meet requirements for characteristic a), b), c), and e)	Form EXP-2.4.2(b) (Attach completion certificates)

	interfering with other elements of building.					
	d) Compliance with technical specifications and standards including safety safeguards. See details in the next section.					
Evaluation outcome						(Pass or Fail)

Notes: -

Columns (4) and (5) above will be evaluated in the case that the Tenderer is on a JV basis.

***: From 2021 – 2024**

Each minimum requirement items listed on Table (experience requirement') above will be evaluated. Tenderer's experience that meets the minimum requirements shall be evaluated as "Passed", whilst tenderers that fail to satisfy the minimum requirements shall be evaluated as Failed

3. Assessment of Technical Bid

Evaluation of bidder's Technical Bid/s will include assessment of the Bids with respect to the following:

-

- a) Site Organisation Structure and assigned roles.
- b) Method Statement.
- c) Construction Schedule.
- d) Quality Assurance System.
- e) Availability of Equipment (owned or leased);
- f) Environmental, Health and Safety Aspects.
- g) Method statement and commitment to comply with Environmental and Social safeguards requirements of TMA
- h) Method statement and commitment to follow and implement ISO 26000 related to Corporate Social Responsibility
- i) Availability of Personnel; and
- j) Mobilization schedule for personnel and equipment.

Note: - Bidders shall be required to provide substantive responses on point a-j above. Only substantially responsive bids will be declared technically responsive and shall be subjected to a financial evaluation as guided by this tender document.

3.1 Personnel

The Bidder must demonstrate that it will have the personnel for the key positions that meet the requirements starting the next page:

No.	Position	Qualifications / Position	No.	Experience
1	Site Agent / Project Manager	Have bachelor's degree in civil/Structural engineer or relevant disciplines. Professional registration with the relevant body.	1	At least 15 years in oversight role in design / supervision / Project Management of building renovations / improvements / new build construction works. Experience in project management of related building services in mechanical (mechanical ventilation, cooling, plumbing and drainage) and electrical works of power reticulation and control is key for this role.
2	Site Engineer	Must possess at least a bachelor's degree in Electrical/civil/mechanical Engineering Registered as a Professional Engineer with Engineers Board of Kenya or equivalent	1	At least 10 years in design and supervision of building works, electrical and mechanical works, drainage works and civil works for new construction or upgrade works.

3	Senior Foreman	Must possess at least Higher National Diploma (HND) in Civil engineering	1	At least 15 years' experience as a site foreman and 10 years specific in similar projects directing works and supervising different teams from masonry, concreting and services provisions and installations. He must be experienced in supervising electrical and mechanical teams leaders in achieving their scope as per design. Must be able to make reports of site progress to site agent and keep site works program running without deviations from design.
4	Environmental and Social Safeguards Specialist	Have bachelor's degree in Environmental Planning / Engineering / Environmental Sciences or relevant disciplines	1	At least 7 years appropriate experience in conducting ESIA studies. Relevant experience in similar size of project in preparing and supervision the implementation of Environmental Management plans by carrying out noise management, dust control, waste disposal management, etc and making regular reports to client and project sponsors.
5	Health and Safety Officer	Diploma in health and safety	1	At least (10) years' experience in conducting social impact assessments, development and implementation of grievance mechanisms, and stakeholder engagement. Knowledge and experience in World Bank's ESF is desirable. Knowledge of local language is desirable.

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

Bidders shall be required to indicate a schedule showing how the key design and construction team personnel will be available and engaged during the entire contract period. Bidders should engage at least 80% of the key staff from Kenyan nationals and at least 90% of the unskilled staff from the site environs.

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

Note: -

- i. The Bidder shall provide details of the proposed personnel, and their experience records in the relevant Forms included in Section IV, Bidding Forms. Detailed **CVs** and **copies of certificates** MUST be attached.
- ii. Each of the minimum requirement's items shall be evaluated; a bidder MUST meet all the personnel requirements for the bid to get a '**PASS**'. Failure by a bidder to fully comply with this provision for Key staff shall lead to the bid being declared nonresponsive and shall therefore not be considered for financial evaluation.

3.2 Equipment

The Bidder shall own, or have guaranteed access (through hire, lease, purchase agreement, other commercial means, or approved subcontracting) to key items of equipment, in full working order at minimum, as listed hereunder and must demonstrate that, based on known commitments, they will be available for timely use in the proposed contract.

The Bidder may also list alternative types of equipment that it would propose for use on the contract, together with an explanation of the proposal.

The Bidder shall provide further details of proposed items of equipment using the relevant Form in Section IV. Include copies of logbooks or signed lease agreement

Item No.	Equipment Details	Minimum Number Required for the Contract Execution	No of Equipment Owned by the Bidder	No. of equipment to be hired/purchased by the Bidder	No. of equipment to be made available for the Contract by the Bidder
	A) General Plant				
1	Mobile crane (At least one with capacity to reach roof of 3 floor building over 12m height).	2 set			
2	Normal tools for excavation and pipe laying. (e.g. hand tools, welding machines, wheelbarrows, spades etc	1 set			
3	Concrete mixer of 0.5m3	2 No.			
4	Poker vibrator of 40mm poker size or bigger.	2 No.			
5	Fabrication Equipment Including press, Lathe Equipment, Welding Machines and Lifting Equipment	1 set			
6	Electrical tools and equipment including power logging meters, digital test meters Solar Panel Hange, measuring tools, drills and bits, power cable rolls, conduit bender, etc	1 set			
7	Lorry/tipper Minimum 5 tonnes	2			
8	Transport vehicles to various sites (Pick-ups among others)	2			

Note: -

- 1) The Bidder shall provide further details of proposed items of equipment above using the relevant Forms in Section IV including providing **proof of ownership** or **lease agreement** for the contract duration/ period.

- 2) Failure by a bidder to indicate proof of **ownership, lease or hire** of the above equipment **SHALL** invalidate the proposed equipment and therefore lead to the bidder being declared non-responsive on equipment compliance and shall lead to the bid being declared non-responsive.
- 3) Bidder are required to provide legible copies of log book or proof of ownership documents.

3.3 Sustainability

Form for Sustainability statement and approach

The Bidder shall provide adequate information to demonstrate clearly that it will deliver the project sustainably through use of renewable energy sources (options) including minimizing waste through proper quantification, reuse, and recycling of materials where applicable and by having power saving mechanisms/ features among other approaches/ methodologies.

Sustainability methodology	Implementation approach

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Bid Submission Forms**Qualification/ Technical Bid Submission Form**

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

Name of Tender:

Tender number submission is referring to:

To: The Financier/Recipient
 Address

Dear Sir/ Madam:

We, the undersigned, declare that:

1. We have examined and we have no reservations to the Bidding Documents, including addenda thereto issued in accordance with the Instructions to Bidders.
2. In accordance with the Conditions of Contract, Financier's Requirements, Drawings, and Schedules of Prices and Addenda Nos. **[Insert Addenda/ Clarification Nos.]** For the execution of the above-named Works, we offer to implement/ construct these Works and remedy any defects therein in conformity with the Conditions of Contract, Financier's Requirements, Drawings, and Addenda.
3. We undertake, if our Bid is accepted, to obtain a Performance Security in accordance with the Bidding Documents and commence the Works as soon as is reasonably possible after the receipt of the Engineer's notice to commence, and to complete the whole of the Works comprised in the Contract.
4. We agree to abide by this Bid until the date specified in ITB Clause 18, **[Insert date]**, and it shall remain binding upon us and may be accepted at any time before that date.
5. Unless and until a formal Contract is prepared and executed, this Bid, together with your written acceptance thereof, shall NOT constitute a binding contract between us.
6. We certify that we, including any subcontractors and suppliers for any part of the Contract have or will have nationalities from eligible countries in accordance with ITB 4.2.

7. We certify that we and any subcontractors and suppliers for any part of the Contract comply with the requirements of ITB Clauses 3 and 4 of the Bidding Documents. By that, we mean that we, including any subcontractors or suppliers for any part of the Contract, do not have any conflict of interest in accordance with ITB 4.3; have not been declared ineligible as described in ITB 4.6 and ITB 3.1(c); and have not been excluded as a result of the Laws of Kenya or official regulations, or by an act of compliance with a decision of the United Nations Security Council in accordance with ITB 4.7.
8. We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in bribery.
9. **Sexual Exploitation and Abuse (SEA) and/or Sexual Harassment (SH):** select the appropriate option from (i) to (v) below and delete the others].
- We [where JV, insert: “including any of our JV members”], and any of our subcontractors:
- (i) [have not been subject to disqualification by any procuring entity (including the World Bank) for non-compliance with SEA/ SH obligations.]
 - (ii) [are subject to disqualification by any procuring entity (including the World Bank) for non-compliance with SEA/ SH obligations.]
 - (iii) [had been subject to disqualification by any procuring entity (including the World Bank) for non-compliance with SEA/ SH obligations. An arbitral award on the disqualification case has been made in our favour.]
 - (iv) [had been subject to disqualification by any procuring entity (including the World Bank) for non-compliance with SEA/ SH obligations for a period of two years. We have subsequently provided and demonstrated that we have adequate capacity and commitment to comply with SEA and SH prevention and response obligations.]
 - (v) [had been subject to disqualification by any procuring entity (including the World Bank) for non-compliance with SEA/ SH obligations for a period of two years. We have attached documents demonstrating that we have adequate capacity and commitment to comply with SEA and SH prevention and response obligations.]

Dated this _____ day of _____ 20 _____

Signature _____ In the capacity of _____

Duly authorized to sign Bids for and on behalf of _____

Official Stamp _____

[in block capitals or typed]

Address: _____

Witness: _____

Address: _____

Occupation: _____

Financial Bid Submission Form

Name of Contract:

Tender reference of this tender/ bid:

To: The Financier
 Address

Dear Sir/ Madam:

We, the undersigned, declare that:

- a. We have examined and we have no reservations to the Bidding Documents, including addenda thereto issued in accordance with the Instructions to Bidders.
- b. In accordance with the Conditions of Contract, Financier's Requirements, Drawings, and Schedules of Prices and Addenda Nos. **[insert Addenda/ Clarifications Nos.]** for the execution of the above-named Works, we offer to design, construct and install such Works and remedy any defects therein in conformity with the Conditions of Contract, Financier's Requirements, Drawings, Schedules of Prices, and Addenda for the sum of **[insert amount in numbers and words]** as specified in the bidding documents or such other sums as may be ascertained in accordance with the conditions.
- c. We undertake, if our Bid is accepted, to obtain a Performance Security in accordance with the Bidding Documents and commence the Works as soon as is reasonably possible after the receipt of the Engineer's notice to commence, and to complete the whole of the Works comprised in the Contract within the time agreed with the financier.
- d. We agree to abide by this Bid until the date specified in ITB Clause 18, **[Insert detail]**, and it shall remain binding upon us and may be accepted at any time before that date.
- e. Unless and until a formal Contract is prepared and executed, this Bid, together with your written acceptance thereof, shall NOT constitute a binding contract between us.
- f. We understand that you are not bound to accept the lowest or any Bid you may receive.
- g. Commissions or gratuities, if any, paid or to be paid by us to agents relating to this Bid, and to Contract execution if we are awarded the Contract, are listed below:

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

(if none, state "none")

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

Dated this _____ day of _____ 20 _____

Signature _____ In the capacity of _____

Duly authorized to sign Bids for and on behalf of _____

Official Stamp _____

[In block capitals or typed]

Address: _____

Witness: _____

Address: _____

Occupation _____

Financial proposal form

Schedules

Introduction

1. Contract

The Conditions of Contract applicable are the “Conditions of Contract”, published by TradeMark Africa, V2 2013-3-14.

2. Rates and Prices

The rates and prices shall be inclusive of all the work components as described by SMM. There shall be no further payment to the contractor due to failure to observe these rules.

3. Value Added Tax and Withholding Tax

The Tenderer shall insert a sum in part E of the Bill of Quantities as provided. Payments of VAT shall be in accordance with the relevant authorities in force at the time. The contractor shall allow for withholding tax in his rates in accordance with the relevant authorities in force at the time.

6. Ordering of Materials

Materials shall not be ordered on the basis of Bill of Quantities. They shall be ordered on the basis of working drawings or as measured and determined on site with the approval of the Project Manager.

7. Site Inspection

The Contractor is deemed to have inspected the site prior to tendering and gain an intimate knowledge and understanding of the site and the scope of the works, including assessment of the following:

- i. Examined all the information made available by the Client for the purpose of tendering including the drawings, Specification, Bill of Quantities, Conditions of Tendering, diagrams, Contract conditions, and the like;
- ii. Examined all information relevant to the risks, contingencies and other circumstances which could affect its bid, and which is obtainable by making reasonable inquiries;
- iii. Examined the site and its surroundings, all visible existing conditions on and adjacent to the site and any condition relating to or relevant to the site, which could be determined by diligent inquiry;
- iv. Conditions of access to, in and around the site;
- v. Location of all existing services on the site and adjacent to the site;

- vi. Informed itself as far as practicable of all relevant physical conditions on the site, and the climatic conditions at or near the site;
- vii. The nature and requirements of the work to be done;
- viii. Terminal operational matters which could affect working conditions on the site;
- ix. Satisfied itself as to the correctness and sufficiency of its bid for the Works under the Contract;
- x. Satisfied itself that the rates and prices stated therein cover the cost of performing all its obligations under the Contract, and
- xi. The Contract Sum is deemed to have taken into account (without limitation) the above considerations.

No variations to the Contract will be approved as a result of a Contractor's claim based upon conditions on or affecting the site or the Works, which could have been assessed during the tender period.

Bill of Quantities: Works Items

[Refer to Volume III attached with this Document]

Form of Bid Security (Bank Guarantee)

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

Beneficiary: _____ [Name and Address of Financier]

Date: _____

BID GUARANTEE No.: _____

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

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

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

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Form of Bid; or
- (b) having been notified of the acceptance of its Bid by the Financier during the period of bid validity, (i) fails or refuses to execute the Contract Form, if required, or (ii) fails or refuses to furnish the performance security, in accordance with the ITB.

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

Consequently, any demand for payment under this guarantee must be received by us at the office on or before that date. This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758.

[signature(s)]

FAIR PRICE DECLARATION FORM

[Instructions: to be submitted alongside the Financial Bid Submission]

We/I [insert name of the consultant or consultancy firm] hereby declare that the price quoted in our financial proposal are in line with the market rates and/or the approved professional charges, are economical and that there is no collusion in submission of this bid. We/I hereby give TradeMark Africa authority to terminate the contract without further communication should they discover that we/I [insert name of consultant or consultancy firm] are in contravention of this declaration.

Name:

Designation:

Signature:

Date:

Technical Proposal

Technical Proposal Forms

Personnel

Equipment

Site Organization

Method Statement

Sustainability statement and approach

Mobilization Schedule

Construction Schedule

Others

Forms for Personnel

Form PER – 1: Proposed Personnel

Bidders should provide the names of suitably qualified personnel to meet the specified requirements for each of the positions listed in Section III (Evaluation and Qualification Criteria). The data on their experience should be supplied using the Form below for each candidate.

1.	Title of position
	Name
2.	Title of position
	Name
3.	Title of position
	Name
4.	Title of position
	Name
5.	Title of position
	Name
6.	Title of position
	Name
etc.	Title of position
	Name

Note: the proposed personnel must sign against this form as well as the power of attorney

Proposed personnelsign & date

Power of attorney sign & date

Forms for Equipment

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

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

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

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

Form for Sustainability statement and approach

The Bidder shall provide adequate information to demonstrate clearly that it will deliver the project sustainably through use of renewable energy sources and by having rain water harvesting mechanisms/ features among other approaches/ methodologies.

Sustainability methodology	Implementation approach

Bidder's Qualification

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

Form ELI 1.1
Bidder Information Sheet

Date: _____

Bidding No.: _____

Invitation for Bid No.: _____

Page _____ of _____ pages

1. Bidder's Legal Name
2. In case of JV, legal name of each party:
3. Bidder's actual or intended Country of Registration:
4. Bidder's Year of Registration:
5. Bidder's Legal Address in Country of Registration:
6. Bidder's Authorized Representative Information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: <input type="checkbox"/> Articles of Incorporation or Registration of firm named in 1, above, in accordance with ITB Sub-Clauses 4.1 and 4.2. <input type="checkbox"/> In case of JV, letter of intent to form JV including a draft agreement, or JV agreement, in accordance with ITB Sub-Clauses 4.1 <input type="checkbox"/> In case of government owned entity from the Financier's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law, in accordance with ITB Sub-Clause 4.5.

Form ELI 1.2
Party to JV Information Sheet

Date: _____

Bidding No.: _____

Invitation for Bid No.: _____

Page _____ of _____ pages

1. Bidder's Legal Name:
2. JV's Party legal name:
3. JV's Party Country of Registration:
4. JV's Party Year of Registration:
5. JV's Party Legal Address in Country of Registration:
6. JV's Party Authorized Representative Information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: Y Articles of Incorporation or Registration of firm named in 1, above, in accordance with ITB Sub-Clauses 4.1 and 4.2. Y In case of government owned entity from the Purchaser's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law, in accordance with ITB Sub-Clause 4.5.

Form CON – 2**Historical Contract Non-Performance**

Bidder's Legal Name: _____

Date: _____

JV Partner Legal Name: _____

Bidding No.: _____

Page _____ of _____ pages

Non-Performing Contracts in accordance with (Evaluation and Qualification Criteria)			
<input checked="" type="checkbox"/> Contract non-performance did not occur during the stipulated period, in accordance with Sub-Factor 2.2.1 of Section III (Evaluation and Qualification Criteria)			
<input checked="" type="checkbox"/> Contract non-performance during the stipulated period, in accordance with Sub-Factor 2.2.1 of Section III (Evaluation and Qualification Criteria).			
Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount (current value, US\$ equivalent)
_____	_____	Contract Identification: Name of Financier: Address of Financier: Matter in dispute:	_____
Pending Litigation, in accordance with Section III (Evaluation and Qualification Criteria)			
<input checked="" type="checkbox"/> No pending litigation in accordance with Sub-Factor 2.2.2 of Section III (Evaluation and Qualification Criteria)			
<input type="checkbox"/> Pending litigation in accordance with Sub-Factor 2.2.2 of Section III (Evaluation and Qualification Criteria), as indicated below			
Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount (current value, US\$ equivalent)
_____	_____	Contract Identification: Name of Financier: Address of Financier: Matter in dispute:	_____
_____	_____	Contract Identification: Name of Financier: Address of Financier: Matter in dispute:	_____

Form CON – 3**Environmental and Social (ES) Performance Declaration**

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

Bidder's Name: [insert full name]

Date: [insert day, month, year]

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

ICB No. and title: [insert ICB number and title]

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

Environmental and Social (ES) Performance Declaration in accordance with Section III, Qualification Criteria and Requirements of the Prequalification document			
<input type="checkbox"/> No suspension or termination of contract: An employer has not suspended or terminated a contract and/or called the performance security for a contract for reasons related to Environmental and Social (ES) performance since the date specified in Section III, Qualification Criteria and Requirements, Sub-Factor 2.5.			
<input type="checkbox"/> Declaration of suspension or termination of contract: The following contract(s) has/have been suspended or terminated and/or Performance Security called by an employer (s) for reasons related to Environmental and Social (ES) performance since the date specified in Section III, Qualification Criteria and Requirements, Sub-Factor 2.5. Details are described below:			
Year	Suspended or terminated portion of contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and US\$ equivalent)
[insert year]	[insert amount and percentage]	Contract Identification: [indicate complete contract name/number, and any other identification] Name of Employer: [insert full name] Address of Employer: [insert street/city/country] Reason(s) for suspension or termination: [indicate main reason(s) e.g. gender-based violence; sexual exploitation or sexual abuse breaches]	[insert amount]
[insert year]	[insert amount and percentage]	Contract Identification: [indicate complete contract name/number, and any other identification] Name of Employer: [insert full name]	[insert amount]

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

Form CON – 4**Sexual Exploitation and Abuse (SEA) and/or Sexual Harassment Performance Declaration**

[This form should be used only if the information submitted at the time of prequalification requires updating. The following table shall be filled in for the Bidder, each member of a Joint Venture and each Subcontractor]

Bidder's Name: [insert full name]

Date: [insert day, month, year]

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

ICB No. and title: [insert ICB number and title]

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

SEA and/or SH Declaration in accordance with Section III, Qualification Criteria, and Requirements
<p>We:</p> <p><input type="checkbox"/> (a) have not been subject to disqualification by the World Bank for non-compliance with SEA/ SH obligations</p> <p><input type="checkbox"/> (b) are subject to disqualification by the World Bank for non-compliance with SEA/ SH obligations</p> <p><input type="checkbox"/> (c) had been subject to disqualification by the World Bank for non-compliance with SEA/ SH obligations. An arbitral award on the disqualification case has been made in our favor.</p> <p><input type="checkbox"/> (d) had been subject to disqualification by the World Bank for non-compliance with SEA/ SH obligations for a period of two years. We have subsequently demonstrated that we have adequate capacity and commitment to comply with SEA/ SH obligations.</p> <p><input type="checkbox"/> (e) had been subject to disqualification by the World Bank for non-compliance with SEA/ SH obligations for a period of two years. We have attached evidence demonstrating that we have adequate capacity and commitment to comply with SEA/ SH obligations.</p>
[If (c) above is applicable, attach evidence of an arbitral award reversing the findings on the issues underlying the disqualification.]
[If (d) or (e) above are applicable, provide the following information:]
Period of disqualification: From: _____ To: _____
If previously provided on another Bank financed works contract, details of evidence that demonstrated adequate capacity and commitment to comply with SEA/ SH obligations (as per (d) above)

Name of Employer: _____

Name of Project: _____

Contract description: _____

Brief summary of evidence provided: _____

Contact Information: (Tel, email, name of contact person): _____

As an alternative to the evidence under (d), other evidence demonstrating adequate capacity and commitment to comply with SEA/ SH obligations (**as per (e) above**) [attach details as appropriate].

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

The Contractor shall apply the Code of Conduct Form below that will apply to the Consultant's Key Experts, Non-Key Experts, and relevant technical and administrative support staff for this assignment, to ensure compliance with good Environmental, Social, Health and Safety (ESHS) practice as may be more fully described in the Terms of Reference. No substantial modifications shall be made to this Form, except that the Consultant may introduce additional requirements, including as necessary to take into account specific contract issues/risks.

The Consultant shall submit an outline of how the Code of Conduct will be implemented

Code of Conduct for Consultant's Personnel (ES) Form

Note to the Bidder:

The minimum content of the Code of Conduct form as set out by the Financier/Employer shall not be substantially modified. However, the Bidder may add requirements as appropriate, including to take into account Contract-specific issues/risks.

The Bidder shall initial and submit the Code of Conduct form as part of its bid.

CODE OF CONDUCT FOR CONTRACTOR'S PERSONNEL

We are the Contractor, [enter name of Contractor]. We have signed a contract with [enter name of Employer] for [enter description of the works]. This Works will be carried out at [enter the Site and other locations where the Works will be carried out]. Our contract requires us to implement measures to address environmental and social risks related to the execution of the works, including the risks of sexual exploitation, sexual abuse and sexual harassment.

This Code of Conduct is part of our measures to deal with environmental and social risks related to the Works. It applies to all our Key Experts, Non-Key Experts, relevant technical and administrative support staff for this assignment and other employees at the Works Site or other places where the Works is being carried out. It also applies to the personnel of each sub-contractor and any other personnel assisting us in the execution of the Works. All such persons are referred to as **"Contractor's Personnel"** and are subject to this Code of Conduct.

This Code of Conduct identifies the behaviour that we require from all Contractor's Personnel.

Our workplace is an environment where unsafe, offensive, abusive or violent behaviour will not be tolerated and where all persons should feel comfortable raising issues or concerns without fear of retaliation.

REQUIRED CONDUCT

Contractor's Personnel shall:

1. carry out his/her duties competently and diligently;
2. comply with this Code of Conduct and all applicable laws, regulations and other requirements, including requirements to protect the health, safety and well-being of other Contractor's Personnel and any other person;
3. maintain a safe working environment including by:
 - a. ensuring that workplaces, machinery, equipment and processes under each person's control are safe and without risk to health;

- b. wearing required personal protective equipment;
 - c. using appropriate measures relating to chemical, physical and biological substances and agents; and
 - d. following applicable emergency operating procedures.
4. report work situations that he/she believes are not safe or healthy and remove himself/herself from a work situation which he/she reasonably believes presents an imminent and serious danger to his/her life or health;
5. treat other people with respect, and not discriminate against specific groups such as women, people with disabilities, migrant workers or children;
6. not engage in Sexual Harassment, which means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature with other Consultant's or Financier's Personnel;
7. not engage in Sexual Exploitation, which means any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another;
8. not engage in Sexual Abuse, which means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions;
9. not engage in any form of sexual activity with individuals under the age of 18 (or specified legal age of the country), except in case of pre-existing marriage;
10. complete relevant training courses that will be provided related to the environmental and social aspects of the Contract, including on health and safety matters, Sexual Exploitation and Abuse (SEA), and Sexual Harassment (SH);
11. report to the relevant authority violations of this Code of Conduct; and
12. not retaliate against any person who reports violations of this Code of Conduct, whether to us or the Financier, or who makes use of the grievance mechanism for Consultant's and Contractor's Personnel or the project's Grievance Redress Mechanism.

RAISING CONCERNS

If any person observes behavior that he/she believes may represent a violation of this Code of Conduct, or that otherwise concerns him/her, he/she should raise the issue promptly. This can be done in either of the following ways:

1. Contact [enter name of the Contractor's Social Expert with relevant experience in handling sexual exploitation, sexual abuse and sexual harassment cases, or if such person is not required under the Contract, another individual designated by the Contractor to handle these matters] in writing at this address [] or by telephone at [] or in person at []; or
2. Call [] to reach the Contractor's hotline (if any) and leave a message.

The person's identity will be kept confidential, unless reporting of allegations is mandated by the country law. Anonymous complaints or allegations may also be submitted and will be given all due and appropriate consideration. We take seriously all reports of possible misconduct and will investigate and take appropriate action. We will provide warm referrals to service providers that may help support the person who experienced the alleged incident, as appropriate.

CONSEQUENCES OF VIOLATING THE CODE OF CONDUCT

Any violation of this Code of Conduct by the Contractor's Personnel may result in serious consequences, up to and including termination and possible referral to legal authorities.

FOR CONTRACTOR'S PERSONNEL:

I have received a copy of this Code of Conduct written in a language that I comprehend. I understand that if I have any questions about this Code of Conduct, I can contact [enter name of Contractor's contact person(s) with relevant experience)] requesting an explanation.

Name of Contractor's Personnel: [insert name]

Signature: _____

Date: (day month year): _____

Countersignature of authorized representative of the Contractor:

Signature: _____

Date: (day month year): _____

ATTACHMENT 1: Behaviours constituting Sexual Exploitation and Abuse (SEA) and behaviours constituting Sexual Harassment (SH)**ATTACHMENT 1 TO THE CODE OF CONDUCT FORM****BEHAVIORS CONSTITUTING SEXUAL EXPLOITATION AND ABUSE (SEA) AND BEHAVIORS CONSTITUTING SEXUAL HARASSMENT (SH)**

The following non-exhaustive list is intended to illustrate types of prohibited behaviours.

(1) Examples of sexual exploitation and abuse include, but are not limited to:

- A Contractor's Personnel tells a member of the community that he/she can get them jobs related to the work site (e.g. cooking and cleaning) in exchange for sex.
- A Contractor's Personnel that is connecting electricity input to households says that he can connect women headed households to the grid in exchange for sex.
- A Contractor's Personnel rapes, or otherwise sexually assaults a member of the community.
- A Contractor's Personnel denies a person access to the Site unless he/she performs a sexual favour.
- A Contractor's Personnel tells a person applying for employment under the Contract that he/she will only hire him/her if he/she has sex with him/her.

(2) Examples of sexual harassment in a work context

- Contractor's Personnel comment on the appearance of another Contractor's Personnel (either positive or negative) and sexual desirability.
- When a Contractor's Personnel complains about comments made by another Contractor's Personnel on his/her appearance, the other Contractor's Personnel comments that he/she is "asking for it" because of how he/she dresses.
- Unwelcome touching of a Consultant's, Contractor's or Financier's Personnel by another Contractor's Personnel.

A Contractor's Personnel tells another Contractor's or Consultant's Personnel that he/she will get him/her a salary raise, or promotion if he/she sends him/her naked photographs of himself/herself.

Form CCC**Current Contract Commitments / Works in Progress**

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

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

Financial Situation Form FIN – 3.1

Historical Financial Performance

Bidder’s Legal Name: _____
JV Partner Legal Name: _____

Date: _____
Bidding No.: _____
Page _____ of _____ pages

To be completed by the Bidder and, if JV, by each partner

Financial information in US\$ equivalent	Historic information for previous _____ () years (US\$ equivalent in 000s)						
	Year 1	Year 2	Year 3	Year ...	Year n	Avg.	Avg. Ratio
Information from Balance Sheet							
Total Assets (TA)							
Total Liabilities (TL)							
Net Worth (NW)							
Current Assets (CA)							
Current Liabilities (CL)							
Information from Income Statement							
Total Revenue (TR)							
Profits Before Taxes (PBT)							

I Attached are copies of financial statements (balance sheets, including all related notes, and income statements) for the years required above complying with the following conditions:

- Must reflect the financial situation of the Bidder or partner to a JV, and not sister or parent companies
- Historic financial statements must be audited by a certified accountant
- Historic financial statements must be complete, including all notes to the financial statements
- Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted)

Form FIN – 3.2
Average Annual Turnover

Bidder’s Legal Name: _____
JV Partner Legal Name: _____

Date: _____
Bidding No.: _____
Page _____ of _____ pages

Annual turnover data (construction only)		
Year	Amount and Currency	US\$ equivalent
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
*Average Annual Construction Turnover	_____	_____

*Average annual turnover calculated as total certified payments received for work in progress or completed over the number of years specified in Section III (Evaluation and Qualification Criteria), Sub-Factor 2.3.2, divided by that same number of years.

Attach signed financial and income statements

Form FIN3.3
Financial Resources

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

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

Note: The following documents MUST be provided:

- i. Line of Credit;
- ii. Extracts from Financial Statement highlighting liquid assets/ unencumbered real assets;

The line of credit MUST be provided by an independent financial entity such as bank but not self

Available Tender Capacity Part 1 Form ATC – 5.1(a)

Available Tender Capacity Part 1

Tenderers should provide the information indicated in forms ATC – 5.1(a) & (b) below:

Form ATC – 5.1(a)

Item	2022	2023	2024
Annual Construction Turnoverfor Civil Engineering Works over the last five years (Updated to 2013 prices)			

b. The value of each project executed in the last five years

I/No.	Year	Name of Project	Client's Name, Physical address, Postal address, telephone number, Fax and Email,	Value of Contract (equivalent USD)	Value of Outstanding work (equivalent USD)	Evidence (Attach Payment Certificates)
1	2022					
		Total				
2	2023					
		Total				
3	2024					
		Total				

EXPERIENCE

Form EXP – 4.1

General Experience

Bidder's Legal Name: _____

Date: _____

JV Partner Legal Name: _____

Bidding No.: _____

Page _____ of _____ pages

Starting Month / Year	Ending Month / Year	Years*	Contract Identification	Role of Bidder
_____	_____		Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:	_____
_____	_____		Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:	_____
_____	_____		Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:	_____
_____	_____		Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:	_____
_____	_____		Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:	_____
_____	_____		Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:	_____

*List calendar year for years with contracts with at least Four (4) months activity per year starting with the earliest year

Form EXP – 4.2(a)
Specific/ similar Experience

Bidder's Legal Name: _____

Date: _____

JV Partner Legal Name: _____

Bidding No.: _____

Page _____ of _____ pages

Similar Contract Number: _____[insert specific number] of _____[insert total number of contracts required].	Information		
Contract Identification	_____		
Award date	_____		
Completion date	_____		
Role in Contract	<input type="checkbox"/> Contractor	<input type="checkbox"/> Management Contractor	<input type="checkbox"/> Subcontractor
Total contract amount	_____		US\$ _____ —
If partner in a JV or subcontractor, specify participation of total contract amount	_____ %	_____	US\$ _____
Financier's Name:	_____		
Address:	_____		
Telephone/fax number:	_____		
E-mail:	_____		

Form EXP – 4.2 (a) (cont.)
Specific/ similar Experience (cont.)

Bidder’s Legal Name: _____

Page _____ of _____ pages

JV Partner Legal Name: _____

Similar Contract No._[insert specific number] of_[insert total number of contracts] required	Information
Description of the similarity in accordance with Sub-Factor 2.4.2a) of Section III (Evaluation and Qualification Criteria):	
Amount	_____
Physical size	_____
Complexity	_____
Methods/Technology	_____
Physical Production Rate	_____

Form EXP – 4.2(b)**Specific Experience in Key Activities**

Bidder's Legal Name: _____

Date: _____

JV Partner Legal Name: _____

Bidding No.: _____

Subcontractor's Legal Name: _____

Page _____ of _____ pages

	Information		
Contract Identification	_____		
Award date	_____		
Completion date	_____		
Role in Contract	<input type="checkbox"/> Contractor	<input type="checkbox"/> Management Contractor	<input type="checkbox"/> Subcontractor
Total contract amount	_____		US\$ _____
If partner in a JV or subcontractor, specify participation of total contract amount	_____ %	_____	US\$ _____
Employer's Name:	_____		
Address:	_____ _____ _____		
Telephone/fax number:	_____ _____		
E-mail:	_____		

Form EXP – 4.2 (b) (cont.)
Specific Experience in Key Activities (cont.)

Bidder’s Legal Name: _____ Page _____ of _____ pages
JV Partner Legal Name: _____
Subcontractor’s Legal Name: _____

	Information
Description of the key activities in accordance with Sub-Factor 2.4.2b) of Section III (Evaluation and Qualification Criteria):	

Section V - Eligible Countries

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

1. In accordance with TMA Guidelines for Procurement, TMA permits firms and individuals from all countries to offer goods, works and services for TMA-financed projects. As an exception, firms of a Country or goods manufactured in a Country may be excluded if:
 - a) As a matter of law or official regulation, the Beneficiary’s Country prohibits commercial relations with that Country, provided that TMA is satisfied that such exclusion does not preclude effective competition for the supply of the Goods or Works required, or
 - b) By an Act of Compliance with a Decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Beneficiary’s Country prohibits any import of goods from that Country or any payments to persons or entities in that Country.
2. For the information of Beneficiaries and bidders, at the present time firms, goods and services from the countries under UN Security Council Chapter VII are excluded from this bidding.
3. Bidders debarred by the World Bank and/ or under the public procurement and disposal act (PPDA) of the Government of Kenya or any of TradeMark Africa donors or any other international donor agency are barred from bidding.

Protection of the Environment and People

The assigned contractor must implement all the ESIA and ESCP recommendations, and any applicable project consent/permit conditions. In addition, they will submit regular reports on the implementation status of the ESCP. The metrics for regular reports is presented the succeeding page

The contractor must therefore take reasonable steps to protect the environment and people (both on and off the site). The contractor must comply with the World Bank’s Environment and Social Framework (ESF 2016) and comply with the Environment and Social Standards (ESSs) outlined therein.

The consultant will ensure the following: no child labour; no forced labour; adequate health and safety and environment standards; safeguards against pollution; and adequate stakeholder consultation and due legal process in the event of compulsory purchase of land or removal of residents.

If TMA finds that the environmental or social impacts of any of its proposed projects are not likely to be adequately addressed, it may opt to stop proceeding with the project.

The World Bank ESF can be found on:

<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTSAFEPOL/0,,menuPK:584441~pagePK:64168427~piPK:64168435~theSitePK:584435,00.html>

Metrics for Environmental and Social (ES) Progress Reports

[Note to Financier: the following metrics may be amended to reflect the specifics of the Contract. The metrics that are required should be determined by the ES risks and impacts of the Works and not necessarily by the size of the Contract]

Metrics for regular reporting:

- a. environmental incidents or non-compliances with contract requirements, including contamination, pollution or damage to ground or water supplies;
- b. health and safety incidents, accidents, injuries that require treatment and all fatalities;
- c. interactions with regulators: identify agency, dates, subjects, outcomes (report the negative if none);
- d. status of all permits and agreements:
 - i. work permits: number required, number received, actions taken for those not received;
 - ii. status of permits and consents:
 - list areas/facilities with permits required (quarries, asphalt & batch plants), dates of application, dates issued (actions to follow up if not issued), dates submitted to resident engineer (or equivalent), status of area (waiting for permits, working, abandoned without reclamation, decommissioning plan being implemented, etc.);
 - list areas with landowner agreements required (borrow and spoil areas, camp sites), dates of agreements, dates submitted to resident engineer (or equivalent);
 - identify major activities undertaken in each area in the reporting period and highlights of environmental and social protection (land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation);

- for quarries: status of relocation and compensation (completed, or details of activities and current status in the reporting period).
- e. health and safety supervision:
 - i. safety officer: number days worked, number of full inspections & partial inspections, reports to construction/project management;
 - ii. number of workers, work hours, metric of PPE use (percentage of workers with full personal protection equipment (PPE), partial, etc.), worker violations observed (by type of violation, PPE or otherwise), warnings given, repeat warnings given, follow-up actions taken (if any);
- f. worker accommodations:
 - i. number of expats housed in accommodations, number of locals;
 - ii. date of last inspection, and highlights of inspection including status of accommodations' compliance with national and local law and good practice, including sanitation, space, etc.;
 - iii. actions taken to recommend/require improved conditions, or to improve conditions.
- g. Health services: provider of health services, information and/or training, location of clinic, number of non-safety disease or illness treatments and diagnoses (no names to be provided);
- h. gender (for expats and locals separately): number of female workers, percentage of workforce, gender issues raised and dealt with (cross-reference grievances or other sections as needed);
- i. training:
 - i. number of new workers, number receiving induction training, dates of induction training;
 - ii. number and dates of toolbox talks, number of workers receiving Occupational Health and Safety (OHS), environmental and social training;
 - iii. number and dates of communicable diseases (including STDs) sensitization and/or training, no. workers receiving training (in the reporting period and in the past); same questions for gender sensitization, flag person training.
 - iv. number and date of SEA and SH prevention, sensitization and/or training events, including number of workers receiving training on Code of Conduct for Contractor's Personnel (in the reporting period and in the past), etc.
- j. environmental and social supervision:
 - i. environmentalist: days worked, areas inspected and numbers of inspections of each (road section, work camp, accommodations, quarries, borrow areas, spoil areas, swamps, forest crossings, etc.), highlights of activities/findings (including violations of environmental and/or social best practices, actions taken), reports to environmental and/or social specialist/construction/site management;
 - ii. sociologist: days worked, number of partial and full site inspections (by area: road section, work camp, accommodations, quarries, borrow areas, spoil areas, clinic, HIV/AIDS center, community centers, etc.), highlights of activities (including violations of environmental and/or social requirements observed, actions taken), reports to environmental and/or social specialist/construction/site management; and
 - iii. community liaison person(s): days worked (hours community center open), number of people met, highlights of activities (issues raised, etc.), reports to environmental and/or social specialist /construction/site management.
- k. Grievances: list new grievances (e.g. number of allegations of SEA and SH) received in the reporting period and number of unresolved past grievances by date received, complainant's age and sex, how received, to whom referred to for action, resolution and date (if completed), data resolution reported to complainant, any required follow-up (Cross-reference other sections as needed):
 - i. Worker grievances;
 - ii. Community grievances
- l. Traffic, road safety and vehicles/equipment:

- i. traffic and road safety incidents and accidents involving project vehicles & equipment: provide date, location, damage, cause, follow-up;
 - ii. traffic and road safety incidents and accidents involving non-project vehicles or property (also reported under immediate metrics): provide date, location, damage, cause, follow-up;
 - iii. overall condition of vehicles/equipment (subjective judgment by environmentalist); non-routine repairs and maintenance needed to improve safety and/or environmental performance (to control smoke, etc.).
- m. Environmental mitigations and issues (what has been done):
- i. dust: number of working bowsters, number of waterings/day, number of complaints, warnings given by environmentalist, actions taken to resolve; highlights of quarry dust control (covers, sprays, operational status); % of rock/ spoil lorries with covers, actions taken for uncovered vehicles;
 - ii. erosion control: controls implemented by location, status of water crossings, environmentalist inspections and results, actions taken to resolve issues, emergency repairs needed to control erosion/sedimentation;
 - iii. quarries, borrow areas, spoil areas, asphalt plants, batch plants: identify major activities undertaken in the reporting period at each, and highlights of environmental and social protection: land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation;
 - iv. blasting: number of blasts (and locations), status of implementation of blasting plan (including notices, evacuations, etc.), incidents of off-site damage or complaints (cross-reference other sections as needed);
 - v. spill clean-ups, if any: material spilled, location, amount, actions taken, material disposal (report all spills that result in water or soil contamination);
 - vi. waste management: types and quantities generated and managed, including amount taken offsite (and by whom) or reused/recycled/disposed on-site;
 - vii. details of tree plantings and other mitigations required undertaken in the reporting period;
 - viii. details of water and swamp protection mitigations required undertaken in the reporting period.
- n. compliance:
- compliance status for conditions of all relevant consents/permits, for the Work, including quarries, etc.):
- statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance;
- i. compliance status of C-ESMP/ESIP requirements: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
 - ii. compliance status of SEA and SH prevention and response action plan: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
 - iii. compliance status of Health and Safety Management Plan re: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
- other unresolved issues from previous reporting periods related to environmental and social: continued violations, continued failure of equipment, continued lack of vehicle covers, spills not dealt with, continued compensation or blasting issues, etc. Cross-reference other sections as needed.

Section VI - Employer’s Requirements

Table of Contents

Annex 1 – Detailed Design Drawings (attached volume II to this document)

Annex 2 - Technical Specifications (attached volume IV to this document)

Annex 3. - Price Definition and Bill of Quantities (attached volume III to this document)

Detailed Design Drawings

Please refer to Volume II.

Technical Specifications

Please refer to Volume IV

Price Definition and Bill of Quantities

Please refer to Volume III

PART 3 – Conditions of Contract and Contract Forms

Section VII - General Conditions of Contract

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

These General Conditions of Contract have been developed on the basis of considerable international experience in the drafting and management of contracts, bearing in mind a trend in the construction industry towards simpler, more straightforward language and **FIDIC Standards (particularly, the Red Book)**. The Conditions of Contract, General Conditions, shall be those forming the “Conditions of Contract for Building and Engineering works Designed by the Financier, First Edition 2006”, prepared by the Federation Internationale des Ingenieurs – Conseils (FIDIC). Where there is a conflict between these GCC and PCC and FIDIC, the FIDIC Standards shall take precedence.

The GCC can be used for both smaller admeasurement contracts and lump sum contracts.

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General Conditions of Contract

A. General

1. Definitions

1.1 Boldface type is used to identify defined terms.

- (a) The Accepted Contract Amount means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.
- (b) The Activity Schedule is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works in a lump sum contract. It includes a lump sum price for each activity, which is used for valuations and for assessing the effects of Variations and Compensation Events.
- (c) The Adjudicator is the person appointed jointly by the Financier and the Contractor to resolve disputes in the first instance, as provided for in GCC 23.
- (d) TMA means the financing institution **named in the PCC**.
- (e) Bill of Quantities means the priced and completed Bill of Quantities forming part of the Bid.
- (f) Compensation Events are those defined in GCC Clause 41 hereunder.
- (g) The Completion Date is the date of completion of the Works as certified by the Project Manager, in accordance with GCC Sub-Clause 52.1.
- (h) The Contract is the Contract between the Financier and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in GCC Sub-Clause 2.3 below.
- (i) The Contractor is the party whose Bid to carry out the Works has been accepted by the Financier.
- (j) The Contractor's Bid is the completed bidding document submitted by the Contractor to the Financier.
- (k) The Contract Price is the Accepted Contract Amount stated in the Letter of Acceptance and thereafter as adjusted in accordance with the Contract.
- (l) Days are calendar days; months are calendar months.

- (m) Day works are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.
- (n) A Defect is any part of the Works not completed in accordance with the Contract.
- (o) The Defects Liability Certificate is the certificate issued by Project Manager upon correction of defects by the Contractor.
- (p) The Defects Liability Period is the period **named in the PCC** pursuant to Sub-Clause 33.1 and calculated from the Completion Date.
- (q) Adjudicator means the single person appointed under Clause 23.
- (r) Drawings means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Financier in accordance with the Contract, include calculations and other information provided or approved by the Project Manager for the execution of the Contract.
- (s) The Financier is the party who employs the Contractor to carry out the Works, **as specified in the PCC**.
- (t) Equipment is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
- (u) "In writing" or "written" means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- (v) The Initial Contract Price is the Contract Price listed in the Financier's Letter of Acceptance.
- (w) The Intended Completion Date is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is **specified in the PCC**. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.
- (x) Materials are all supplies, including consumables, used by the Contractor for incorporation in the Works.

- (y) Plant is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
- (z) The Project Manager is the person **named in the PCC** (or any other competent person appointed by the Financier 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.

(aa) PCC means Particular Conditions of Contract (bb)

The Site is the area **defined as such in the PCC**.

- (cc) 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.
- (dd) Specification means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.
- (ee) The Start Date is **given in the PCC**. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.
- (ff) 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.
- (gg) Temporary Works are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
- (hh) A Variation is an instruction given by the Project Manager which varies the Works.
- (ii) The Works are what the Contract requires the Contractor to construct, install, and turn over to the Financier, **as defined in the PCC**.

2. Interpretation

- 2.1 In interpreting these GCC, words indicating one gender include all genders. Words indicating the singular also include the plural and words indicating the plural also include the singular. Headings have no significance. Words have their normal meaning under the language of

the Contract unless specifically defined. The Project Manager shall provide instructions clarifying queries about these GCC.

2.2 If sectional completion is **specified in the PCC**, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).

2.3 The documents forming the Contract shall be interpreted in the following order of priority:

- (a) Agreement,
- (b) Letter of Acceptance,
- (c) Contractor's Bid (including the pre-qualification bid submitted and accepted),
- (d) Particular Conditions of Contract,
- (e) General Conditions of Contract,
- (f) Specifications,
- (g) Drawings,
- (h) Bill of Quantities as per the Letter of Financial Bid,⁷ and
- (i) Any other document **listed in the PCC** as forming part of the Contract.

3. **Language and Law**

3.1 The language of the Contract and the law governing the Contract are **stated in the PCC**.

4. **Project Manager's Decisions**

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

5. **Delegation**

5.1 Otherwise specified in the PCC, the Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may revoke any delegation after notifying the Contractor.

⁷ In lump sum contracts, delete "Bill of Quantities" and replace with "Activity Schedule."

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 Financier 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 Financier between the dates given in the Schedule of Other Contractors, as **referred to in the PCC**. The Contractor shall also provide facilities and services for them as described in the Schedule. The Financier may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.
9. **Personnel and Equipment** 9.1 The Contractor shall employ the key personnel and use the equipment identified in its Bid, to carry out the Works or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.
- 9.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.
10. **Financier's and Contractor's Risks** 10.1 The Financier carries the risks which this Contract states are Financier's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.
11. **Financier's Risks** 11.1 From the Start Date until the Defects Liability Certificate has been issued, the following are Financier'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 Financier 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 Financier or in the Financier's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.
- 11.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Financier'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 Financier's risk, or
 - (c) the activities of the Contractor on the Site after the Completion Date.
- 12. **Contractor's Risks**
 - 12.1 From the Starting Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Financier's risks are Contractor's risks.
- 13. **Insurance**
 - 13.1 The Contractor shall provide, in the joint names of the Financier and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles **stated in the PCC** for the following events which are due to the Contractor's risks:
 - (a) loss of or damage to the Works, Plant, and Materials;
 - (b) loss of or damage to Equipment;
 - (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
 - (d) personal injury or death.
 - 13.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for

compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

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

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

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

14. Site Data

14.1 The Contractor shall be deemed to have examined any Site Data referred to in the PCC, supplemented by any information available to the Contractor.

15. Contractor to Construct the Works

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

16. The Works to Be Completed by the Intended Completion Date

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

17. Approval by the Project Manager

17.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, for his approval.

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

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

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

17.5

All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.

18. Safety

18.1

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

19. **Discoveries** 19.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Financier. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.
20. **Possession of the Site** 20.1 The Financier shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date **stated in the PCC**, the Financier shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.
21. **Access to the Site** 21.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.
22. **Instructions, Inspections and Audits** 22.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.
- 22.2 The Contractor shall permit, and shall cause its Subcontractors and sub-consultants to permit, the TMA and/or persons appointed by the TMA to inspect the Site and/or the accounts and records of the Contractor and its sub-contractors relating to the performance of the Contract and the submission of the bid, and to have such accounts and records audited by auditors appointed by the TMA if requested by the TMA. The Contractor's and its Subcontractors' and sub-consultants' attention is drawn to Sub-Clause 57.1 which provides, inter alia, that acts intended to materially impede the exercise of the TMA's inspection and audit rights provided for under Sub-Clause 22.2 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the TMA's prevailing sanctions procedures).
23. **Appointment of the Adjudicator** 23.1 The Adjudicator shall be appointed jointly by the Financier and the Contractor, at the time of the Financier's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Financier does not agree on the appointment of the Adjudicator, the Financier will request the Appointing Authority **designated in the PCC**, to appoint the Adjudicator within 14 days of receipt of such request.
- 23.2 Should the Adjudicator resign or die, or should the Financier and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator shall be jointly
- 23.3 appointed by the Financier and the Contractor. In case of disagreement between the Financier and the Contractor, within 30 days, the

Adjudicator shall be designated by the Appointing Authority **designated in the PCC** at the request of either party, within 14 days of receipt of such request.

24. Procedure for Disputes

- 24.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision.
- 24.2 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.
- 24.3 The Adjudicator shall be paid by the hour at the **rate specified in the PCC**, together with reimbursable expenses of the types **specified in the PCC**, and the cost shall be divided equally between the Financier and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision shall be final and binding.
- 24.4** The arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and in the place specified **in the PCC**.

B. Time Control

25. Program

- 25.1 Within the time **stated in the PCC**, after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works. In the case of a lump sum contract, the activities in the Program shall be consistent with those in the Activity Schedule.
- 25.2 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.
- 25.3** The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period **stated in the PCC**. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount **stated in the**

PCC from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted. In the case of a lump sum contract, the Contractor shall provide an updated Activity Schedule within 14 days of being instructed to by the Project Manager.

25.4 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.

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

26.1 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.

26.2 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.

27. Acceleration

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

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

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

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

**29. Management
Meetings**

29.1 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.

29.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Financier. 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.

30. **Early Warning**

30.1 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.

30.2 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

31. **Identifying Defects**

31.1 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.

32. **Tests**

32.1 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 no compensation.

33. **Correction of Defects**

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

33.2 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.

34. Uncorrected Defects

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

D. Cost Control

35. Contract Price

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

35.2 In the case of a lump sum contract, the Activity Schedule shall contain the priced activities for the Works to be performed by the Contractor. The Activity Schedule is used to monitor and control the performance of activities on which basis the Contractor will be paid. If payment for Materials on Site shall be made separately, the Contractor shall show delivery of Materials to the Site separately on the Activity Schedule.

36. Changes in the Contract Price

36.1 In the case of an admeasurement contract:

- (a) 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.
- (b) 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 Financier.
- (c) 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.

36.2 In the case of a lump sum contract, 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.

37. Variations

- 37.1 All Variations shall be included in updated Programs, and, in the case of a lump sum contract, also in the Activity Schedule, produced by the Contractor.
- 37.2 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.
- 37.3 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.
- 37.4 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.
- 37.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
- 37.6 In the case of an admeasurement contract, if the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in Sub-Clause 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.

**38. Cash Flow
Forecasts**

- 38.1 When the Program, or, in the case of a lump sum contract, the Activity Schedule, 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.

**39. Payment
Certificates**

39.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously. This will be accompanied with contractor's confirmation of payment of previous month(s) staff salaries.

39.2 The Project Manager shall check the Contractor's monthly statement as well as verify that staff salaries of previous months have been paid and certify the amount to be paid to the Contractor.

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

39.4 The value of work executed shall comprise:

- (a) In the case of an admeasurement contract, the value of the quantities of work in the Bill of Quantities that have been completed; or
- (b) In the case of a lump sum contract, the value of work executed shall comprise the value of completed activities in the Activity Schedule.

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

39.6 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.

40. Payments

40.1 Payments shall be adjusted for deductions for advance payments and retention. The Financier shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate. If the Financier 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.

40.2 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.

40.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.

40.4 Items of the Works for which no rate or price has been entered in shall not be paid for by the Financier and shall be deemed covered by other rates and prices in the Contract.

**41. Compensation
Events**

41.1 The following shall be Compensation Events:

- (a) The Financier does not give access to a part of the Site by the Site Possession Date pursuant to GCC Sub-Clause 20.1.
- (b) The Financier 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 Financier, or additional work required for safety or other reasons.
- (h) Other contractors, public authorities, utilities, or the Financier 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 Financier's Risks.
- (k) The Project Manager unreasonably delays issuing a Certificate of Completion.

41.2 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.

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

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

42. Tax

42.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC Clause 44.

43. Currencies

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

44. Price Adjustment

44.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the PCC**. If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the

payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

$$P_c = A_c + B_c I_{mc}/I_{oc}$$

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 coefficients⁸ **specified in the PCC**, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency “c;” and

I_{mc} is the index prevailing at the end of the month being invoiced and I_{oc} is the index prevailing 28 days before Bid opening for inputs payable; both in the specific currency “c.”

44.2 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.

45. **Retention**

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

45.2 Upon the issue of a Certificate of Completion of the Works by the Project Manager, in accordance with GCC 51.1, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected. The Contractor may substitute retention money with an “on demand” bank guarantee.

46. **Liquidated Damages**

46.1 The Contractor shall pay liquidated damages to the Financier at the rate per day **stated in the PCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the PCC**. The Financier may deduct liquidated damages from payments due to

⁸ The sum of the two coefficients A_c and B_c should be 1 (one) in the formula for each currency. Normally, both coefficients shall be the same in the formulae for all currencies, since coefficient A_c , 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. [To be transferred to the User Guide]

the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

- 46.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC Sub-Clause 40.1.

47. **Bonus**

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

48. **Advance
Payment**

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

48.2 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.

48.3 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.

49. **Securities**

49.1 The Performance Security shall be provided to the Financier no later than the date specified in the Letter of Acceptance and shall be issued in an amount **specified in the PCC**, by a bank or surety acceptable to the Financier, 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.

50. **Dayworks**

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

50.2 If 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.

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

51. **Cost of Repairs**

51.1 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

52. **Completion**

52.1 The Contractor shall request the Project Manager to issue a Certificate of Completion of the Works, and the Project Manager shall do so upon

deciding that the whole of the Works is completed.

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

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.

55. Operating and Maintenance Manuals

55.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates **stated in the PCC**.

55.2 If the Contractor does not supply the Drawings and/or manuals by the dates **stated in the PCC** pursuant to GCC Sub-Clause 55.1, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount **stated in the PCC** from payments due to the Contractor.

56. Termination

56.1 The Financier or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

56.2 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 Financier 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 Financier 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;

- 56.3 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under GCC Sub-Clause 56.2 above, the Project Manager shall decide whether the breach is fundamental or not.
- 56.4 Notwithstanding the above, the Financier may terminate the Contract for convenience.
- 56.5 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.
- 57. Fraud and Corruption**
- 57.1 If the Financier determines that the Contractor and/or any of its personnel, or its agents, or its Subcontractors, sub consultants, services providers, suppliers and/or their employees has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Financier may, after giving 14 days notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site, and the provisions of Clause 56 shall apply as if such expulsion had been made under Sub-Clause 56.5 [Termination by Financier].
- 57.2 Should any employee of the Contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the Works, then that employee shall be removed in accordance with Clause 9.
- 57.3 For the purposes of this Sub-Clause:
- (i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party⁹;
 - (ii) "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation¹⁰;

⁹ "Another party" refers to a public official acting in relation to the procurement process or contract execution]. In this context, "public official" includes TMA staff and employees of other organizations taking or reviewing procurement decisions.

¹⁰ "Party" refers to a public official; the terms "benefit" and "obligation" relate to the procurement processor contract execution; and the "act or omission" is intended to influence the procurement process or contract execution.

- (iii) “collusive practice” is an arrangement between two or more parties¹¹ designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party¹²;
- (v) “obstructive practice” is
 - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a TMA investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - (bb) acts intended to materially impede the exercise of the TMA’s inspection and audit rights provided for under Sub-Clause 22.2.

58. Payment upon Termination

58.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as **indicated in the PCC**. Additional Liquidated Damages shall not apply. If the total amount due to the Financier exceeds any payment due to the Contractor, the difference shall be a debt payable to the Financier.

58.2 If the Contract is terminated for the Financier’s convenience or because of a fundamental breach of Contract by the Financier, 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.

¹¹ “Parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non-competitive levels.

¹² “Party” refers to a participant in the procurement process or contract execution.

- 59. Property** 59.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Financier if the Contract is terminated because of the Contractor's default.
- 60. Release from Performance** 60.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Financier or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.
- 61. Suspension of Funding or Credit** 61.1 In the event that the TMA suspends the Funding or Credit to the **TMA** Financier, from which part of the payments to the Contractor are being made:
- (a) The Financier is obligated to notify the Contractor of such suspension within 7 days of having received the TMA's suspension notice.
 - (b) If the Contractor has not received sums due it within the 28 days for payment provided for in Sub-Clause 40.1, the Contractor may immediately issue a 14-day termination notice.

Section VIII - Particular Conditions of Contract

Except where otherwise indicated, all PCC should be filled in by the Financier prior to issuance of the Bidding Documents. Schedules and reports to be provided by the Financier should be annexed.

A. General	
GCC 1.1 (d)	The financing institution is: TradeMark Africa
GCC 1.1 (s)	The Employer/Beneficiary/ Client is: AGRICULTURE & FOOD AUTHORITY - HORTICULTURAL CROPS DIRECTORATE (HCD) The Financier is: TradeMark Africa (TMA)
GCC 1.1 (v)	The Intended Completion Date for the whole of the Works, excluding the defects Liability period shall be: 12 months including time for mobilization. The time for completion will not be extended as the funding is expiring in June 2026.
GCC 1.1 (y)	The Project Manager is: HCD – HOD Technical Advisory Services, TradeMark Africa to play a proactive role directly and through appointed consultants for efficient project management to makesure that works are completed within contractual timelines
GCC 1.1 (aa)	The Site is located in Makueni County, Kibwezi Town.
GCC 1.1 (ee)	The Start Date shall be: The start date will be communicated in writing through a commencement letter issued by the Project manager.
GCC 1.1 (hh)	The Works consist of: Tender document See Volume II(Drawings) , Volume III (TechnicalSpecifications and Volume IV (Bills of Quantities).
GCC 2.2	Sectional Completions are: No
GCC 2.3(i)	The following documents also form part of the Contract: a) Agreement; b) Letter of Acceptance; c) Contractor's Bid; d) Performance bond; e) Advance payment guarantee; f) Pre-contract clarification meeting minutes; g) Particular Conditions of Contract; h) General Conditions of Contract; i) Specifications; j) Drawings;

	<p>k) Bill of Quantities;</p> <p>l) <i>Environmental and Social Impact Assessment, and the conditions set therein</i></p> <p>m) Any other document listed by the financier in the course of the tendering process.</p>
GCC 3.1	<p>The language of the contract is: English</p> <p>The law that applies to the Contract is the law of: Kenya</p>
GCC 5.1	The Project manager may delegate any of his duties and responsibilities.
GCC 8.1	Schedule of other contractors: Not applicable
GCC 13.1	<p>The minimum insurance amounts and deductibles shall be:</p> <p>(a) For loss or damage to the Works, Plant and Materials: 100% of contract value</p> <p>(b) For loss or damage to Equipment: Full replacement cost.</p> <p>(c) For loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract: Full replacement cost.</p> <p>(d) For personal injury or death:</p> <p>(i) of the Contractor's employees: as per Workmen Compensation Ordinance</p> <p>(ii) Of other people: USD 100,000 per occurrence with number of occurrences unlimited.</p>
GCC 14.1	Site Data are: Design documents in volume II
GCC 20.1	The Site Possession Date(s) shall be: 7 days after signing of contract.
GCC 23.1 & GCC 23.2	Appointing Authority for the Arbitration: Chartered Institute of Arbitrators Kenya
GCC 24.3	Hourly rate and types of reimbursable expenses to be paid to the Adjudicator: to be negotiated.
GCC 24.4	<p>"United Nations Commission on International Trade Law (UNCITRAL)</p> <p>Arbitration Rules: Any dispute, controversy, or claim arising out of or relating to this Contract, or breach, termination, or invalidity thereof, shall be settled by</p>

	<p>arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.”</p> <p>The place of arbitration shall be: Nairobi, Kenya.</p>
B. Time Control	
GCC 25.1	The Contractor shall submit for approval a Program for the Works within 7 working days from the date of the Letter of Acceptance.
GCC 25.3	<p>The period between Program updates is 21 working days.</p> <p>The amount to be withheld for late submission of an updated Program is 10% of the payment certificate value.</p>
C. Quality Control	
GCC 33.1	The Defects Liability Period is: 365 days or 1 calendar year whichever is longer.
D. Cost Control	
GCC 43.1	The currency of the Financier’s country is: United States Dollars (USD \$)
GCC 44.1	<p>The Contract “is not” subject to price adjustment in accordance with GCC Clause 44, and the following information regarding coefficients “does not” apply.</p> <p>The coefficients for adjustment of prices are: Not Applicable.</p> <p>(a) For currency [insert name of currency]:</p> <p>(i) [Insert percentage] percent non-adjustable élément (coefficient A).</p> <p>(ii) [Insert percentage] percent adjustable element (coefficient B).</p> <p>(b) For currency [insert name of currency]:</p> <p>(i) [Insert percentage] percent non-adjustable element (coefficient A).</p> <p>(ii) [Insert percentage] percent adjustable element (coefficient</p> <p>B).The Index I for local currency shall be [insert index]. Not Applicable.</p> <p>The Index I for the specified international currency shall be [insert index].</p> <p>[These proxy indices shall be proposed by the Contractor, subject to acceptance by the Financier]</p>

	<p>The Index I for currencies other than the local currency and the specified international currency shall be [insert index].</p> <p>[These proxy indices shall be proposed by the Contractor, subject to acceptance by the Financier.]</p>
GCC 45.1	The proportion of payments retained is: 10%
GCC 46.1	<p>The liquidated damages for the whole of the Works are one percent (1%) of the final Contract Price per day. The maximum amount of liquidated damages for the whole of the Works is Ten (10 %) percentage of the final Contract Price.</p> <p>Addition to the original text of the GCC 46.1: The Liquidated damages is also applicable to the delayed activities on the critical path before the elapse of the time for completion mentioned in GCC 1.1 (v).</p>
GCC 47.1	The Bonus for the whole of the Works is zero (0%) percentage of final Contract Price per day. The maximum amount of Bonus for the whole of the Works is zero (0%) percentage of the final Contract Price.
GCC 48.1	<p>The Advance Payments shall be: twenty (20%) and shall be paid to the Contractor no later than 45 days from submission date.</p> <p>A bank guarantee for the advance payment shall be provided by the successful bidder and acceptable to the Financing institution</p>
GCC 49.1	<p>The Performance Security amount is 10% of contract value and will be in form of:</p> <p>(a) Bank Guarantee from a reputable commercial bank tier one confirmed via SWIFT system to TMA's bank, NCBA Nairobi.</p> <p>(b) Addition to the original text of the GCC 49.1: bank performance guarantee of 3% of the total contract amount from a reputable commercial bank tier one confirmed via SWIFT system to TMA's bank, NCBA Nairobi is required for the compliance with Environmental and Social Safeguards, namely timely payment of salaries and suppliers; compliance with OSHA (Occupational, Safety and health Administration) at site and compliance with environmental management on site.</p>
E. Finishing the Contract	
GCC 55.1	<p>The date by which operating, and maintenance manuals are required shall be on completion of works</p> <p>The date by which "as built" drawings are required: 15 calendar days from practical completion.</p>
GCC 55.2	The amount to be withheld for failing to produce "as built" drawings and/or operating and maintenance manuals by the date required in GCC 58.1 is five percent (5%) of contract price.

GCC 56.2 (g)	The maximum number of days is: 28 days
GCC 56.2	<u>Addition to the original text of the GCC 56.2:</u> The fundamental breaches of contract shall include, but not be limited to the following: (i) <u>The contractor fails to mobilise the required equipment as per the work program and the contract minimum requirements within 30 days from the receipt of the advance payment.</u>

GCC 58.1	The percentage to apply to the value of the work not completed, representing the Financier's additional cost for completing the Works, is ten (10%) percentage .
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Section IX - Contract Forms

This Section contains forms which, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful Bidder after contract award.

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Environmental and Social (ES) Performance Security

Letter of Award

[on letterhead paper of the Employer]

..... [date]

To: [name and address of the Contractor]

Subject: [Notification of Award Contract No].

This is to notify you that your Bid dated . . . [insert date] for execution of the .[insert name of the contract and identification number, as given in the Appendix to Bid]for the Accepted Contract Amount of the equivalent of [insert amount in numbers and words and name of currency], as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose the of the Performance Security Form included in Section IX (Contract Forms) of the Bidding Document.

[Choose one of the following statements:]

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

[or]

We do not accept that _____ [insert the name of the Adjudicator proposed by the Bidder] be appointed as the Adjudicator, and by sending a copy of this Letter of Acceptance to _____ [insert name of the Appointing Authority], the Appointing Authority, we are hereby requesting such Authority to appoint the Adjudicator in accordance with ITB 42.1 and GCC 23.1.

Authorized Signature:

Name and Title of Signatory:

Name of Agency:

Attachment: Contract Agreement

Contract Agreement

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

WHEREAS the Financier desires that the Works known as **.[insert name of the contract and identification number, as given in the Appendix to Bid]** should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein,

The Financier and the Contractor agree as follows:

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

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

- (a) the Letter of Acceptance
- (b) the Bid submitted and accepted
- (c) the Addenda/ clarifications Nos **[insert addenda numbers if any]**.
- (d) the Particular Conditions
- (e) the General Conditions;
- (f) the Specification
- (g) the Drawings; and
- (h) the completed Schedules,

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

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

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

Signed by:

for and on behalf of the Financier

Signed by:

for and on behalf the Contractor

in the
presence of:

Witness, Name, Signature, Address, Date

in the
presence of:

Witness, Name, Signature, Address, Date

Performance Security

Instructions for Issuance of Bank Guarantee via SWIFT

(The Bank Guarantee is to be issued by Contractor/Vendor's bank through SWIFT, and advised to Trademark Africa [TMA] nominated banker)

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

Beneficiary:**[Name and Address of Financier]**

Date:

Performance Guarantee No.:

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

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

At the request of the Contractor, we **[name of the Bank]**hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of..... **[name of the currency and amount in figures]** ¹. (. . . . **[amount in words]**) such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

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

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

.....
[Seal of Bank and Signature(s)]

Note –

All italicized text is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.

¹ The Guarantor shall insert an amount representing the percentage of the Contract Price specified in the Contract and denominated either in the currency (ies) of the Contract or a freely convertible currency acceptable to the Financier.

² Insert the date twenty-eight days after the expected completion date. The Financier should note that in the event of an extension of the time for completion of the Contract, the Financier would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Financier might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Financier's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

Advance Payment Security**Instructions for Issuance of Bank Guarantee via SWIFT**

(The Bank Guarantee is to be issued by Contractor/Vendor's bank through SWIFT, and advised to Trademark Africa [TMA] nominated banker)

Date: [insert date (as day, month, and year)]

Contractor/Vendor Name:

Contract Reference No: [insert Procurement Reference Number]

Contract Title:

Contract Value and Currency:

Bank Guarantee Value and Currency:

Bank Guarantee Validity: [insert date (as day, month, and year)]

Guarantee Type: [Advance Payment Security/Performance Guarantee/Bid Security]

ISSUE BANK GUARANTEE TO:

Beneficiary: Trademark Africa

Beneficiary's Bank: NCBA Bank Kenya PLC

Beneficiary's Bank SWIFT address: CBAFKENX

Environmental and Social (ES) Performance Security**ES Demand Guarantee**

[Guarantor letterhead or SWIFT identifier code]

Beneficiary: [insert name and Address of Financier]

Date: _ [Insert date of issue]

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

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

We have been informed that _____ (hereinafter called "the Applicant") has entered into Contract No. _____ dated _____ with the Beneficiary, for the execution of _____ (hereinafter called "the Contract").

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

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ (_____), 1 such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its Environmental and/or Social, (ES) obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

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

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

[signature(s)]

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



TRADEMARK AFRICA

SUPPLIER CODE OF CONDUCT

Control Version	2.0
Date Published	08.02.2023
Sections changed	
Signed	

DEFINITIONS

The following definitions have been adopted throughout this TMA Supplier Code of Conduct:

- a. A “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.
- b. A “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.
- c. A “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.
- d. A “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.
- e. An “obstructive practice” is deliberately destroying, falsifying, altering or concealing of evidence which is material to a TMA investigation or making false statements to investigators in order to materially impede a TMA investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to an investigation or from pursuing an investigation, or acts intended to materially impede the exercise of TMA’s contractual rights of audit or access to information.
- f. “ESS” – Environmental and Social Safeguards.
- g. “ESIA” – Environmental and Social Impact Assessment.
- h. “ESSMP” – Environmental and Social Safeguards Management Plan.
- i. “Gender mainstreaming” is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making humankind concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that both genders benefit equally, and inequality is not perpetuated. The ultimate goal is to achieve gender equality.
- j. “Gift” is a tangible item presented to a party to impress, appreciate, solicit or manage a relationship.
- k. “GRM” – Grievance Redress Mechanism, is a system of policy and processes designed to receive and manage, on a confidential basis, any and all grievances received in connection with a contract for the provision of services or works.
- l. “Hospitality” is an intangible item presented to a party to impress, appreciate, solicit or manage a relationship.
- m. “PAP” – Project Affected Persons are individuals and/or communities living and/or working at or close to a project site who may be affected either directly or indirectly by the activities at the project site.

- n. “Recipient” is any individual, firm, organisation, Non-Governmental Organisation, Private Sector Organisation or Civil Society Organisation or any partner that works with TMA and/or receives TMA funding either through a contract or a grant.
- o. “Supplier” shall include contractors and subcontractors.
- p. “Terrorism” is any criminal act, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the public or in a group of persons or particular persons, intimidate a population or compel a government or an international organisation to do or to abstain from doing any act.
- q. “Value for Money” is defined by TMA as achieving economy, efficiency, effectiveness, and equity in the use of its resources.
- r. “Whistleblowing” is an act of reporting an activity deemed to be illegal or unethical.

Preamble

TradeMark Africa (TMA), formerly TradeMark East Africa), is an Aid-for-Trade organisation that was established in 2010, with the aim of growing prosperity through increased trade. TMA operates on a not-for-profit basis and is funded by: Belgium, the Bill and Melinda Gates Foundation, Canada, Denmark, the European Union, Finland, France, Ireland, the Netherlands, Norway, the United Kingdom and the United States of America. TMA works closely with regional intergovernmental organisations, including the African Union (AU), the African Continental Free Trade Area (AfCFTA) Secretariat, the East Africa Community (EAC), the Intergovernmental Authority on Development (IGAD), the Common Market for East and Southern Africa (COMESA), the Southern Africa Customs Union (SACU), national Governments, the private sector and civil society organisations.

The first two strategic periods of TMA (2010-2023) have contributed to substantial gains for trade and regional integration in East Africa and the Horn of Africa in terms of decreased cargo transit times (reduction of 16.5% on the Northern Corridor from Mombasa to Bujumbura), improved border efficiency (the time to cross targeted one stop border posts has been reduced by an average of 70%), and reduced barriers to trade. The continental-wide shift and rebrand to TMA was officially launched in West Africa in January 2023, with Ghana being the first country of operations in the region. While continuing to leverage our core expertise in trade facilitation, we will evolve our focus to harness the potential of digitalisation, support African exporters to pioneer low carbon trade, address the core trade factors behind food security and promote inclusive trade. By increasing trade volumes, and enhancing the sustainability and inclusiveness of trade, we aim to deliver large-scale job creation, poverty reduction and enhanced economic growth.

In 2022, TMA set up a catalytic finance fund, Trade Catalyst Africa (TCA), that will pilot commercially viable projects for creating trade infrastructure (both physical and digital) as well as increasing access to Trade Finance for Small and Medium Enterprises (SMEs). TMA's headquarters are in Nairobi, Kenya. Operations and offices are in: EAC Secretariat - Arusha, Burundi, the Democratic Republic of Congo, Djibouti, Ethiopia, Ghana, Malawi, Mozambique, Rwanda, Somaliland, South Sudan, Tanzania, Uganda, and Zambia. For more information, please visit www.trademarkafrica.com

Overview

- i. TMA's success depends on its reputation, integrity, openness, and respect for others. The trust and confidence of those with whom we deal is therefore essential. We treat our stakeholders with respect, honesty and fairness. We recognise our obligations to all those with whom we have a direct relationship such as donors, staff, service providers, contractors and suppliers, the private sector in general, governments, civil society and the wider community.
- ii. This TMA Supplier Code of Conduct ("the Code") sets out the minimum requirements and standards expected from all suppliers, tenderers, and sub-contractors, when delivering projects and programmes. The Code covers areas that are central to a procurement and supply process such as value for money and governance, ethical behaviour and transparency, delivery chain management, observance of human rights, environmental and social safeguarding, organized crime, and security. It also covers employment of forced and/or child

labour, fraud and corruption, gifts and hospitality. The Code replaces the previous Code of Ethics, Fair Price declaration, the Anti-Terrorism and Anti-Organised Crime declarations that all TMA suppliers were required to sign.

- iii. Furthermore, the Code sets out the overarching principles for tenderers, suppliers and sub-contractors when doing business with TMA requiring them to:
 - Act responsibly and with integrity;
 - Be transparent and accountable;
 - Seek to improve value for money; and
 - Demonstrate commitment to poverty reduction and TMA priorities.
- iv. TMA requires that all tenderers, suppliers and sub-contractors, along with their respective staff, comply with the requirements and standards contained in the Code as applicable.
- v. Failure by a tenderer, supplier and/or their sub-contractors to comply with the provisions of the Code may disqualify and/or debar the supplier and/or sub-contractor from being eligible for TMA contracts and may result in a contract being terminated.
- vi. For each separate procurement process, each tenderer must initial each page and sign the final page of the Code to signify that they have read, understood, will comply with, and will put into practice the content of the Code.
- vii. In signing the Code, tenderers and suppliers accept that TMA or its appointed agents may undertake any checks it deems fit to ensure all reasonable measures have been taken to achieve compliance with the Code.
- viii. TMA aims to create a culture in which it is normal for suppliers to 'do the right thing' and to voice genuinely held concerns about behaviour or decisions that they perceive to be unethical. Any concerns should be directed to TMA's independent whistleblowing channels as described in this document, and/or to the whistleblowing mechanisms of any of TMA's donors, the contact details of which can be found on their respective official websites.

Code of Conduct

3.1 Value for Money and Compliance

TMA suppliers shall,

- a) Propose a price for the goods, works, or services which is fair, economical, and in line with market rates.
- b) Work with TMA in a transparent manner to enable scrutiny of value for money throughout the life of the contract.

- c) Undertake the contract in strict adherence to and compliance with all relevant national and international anti-fraud, anti-bribery and corruption legislation.
- d) Undertake the contract in strict adherence to and compliance with all relevant national and international tax legislation. TMA suppliers/contractors and subcontractors shall not engage in tax evasion schemes.
- e) Permit TMA the right to inspect company financial and other records pertaining to the delivery of the TMA-financed contract to ensure adherence to the Code.

3.2 Ethical Behaviour and Transparency

TMA suppliers shall,

- a) Maintain the confidentiality of all TMA tender and contract related information coming into their possession.
- b) Take all appropriate measures to prevent corrupt, fraudulent, collusive, coercive and obstructive practices in connection with the use of TMA funds, including, but not limited to:
 - i. Adopting appropriate fiduciary and administrative practices and institutional arrangements to ensure that the funds are used only for the purposes for which they were intended, and
 - ii. Ensuring that all its representatives involved in the project, and all recipients of funds with which it enters into an agreement related to the project, receive a copy of this document and are made aware of its contents.
- c) Immediately, and in any case within 24 hours, report to TMA any suspicions or allegations of fraud, corruption, bribery, or harassment, and cooperate fully with representatives of TMA or its appointed agent in any investigation into those suspicions or allegations.
- d) Acknowledge and accept that if TMA determines that any person or entity receiving its funds has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, it may suspend further funding/disbursement/payment and pursue appropriate legal action against the person or entity engaging in such activity.
- e) Acknowledge and accept that TMA reserves the right to demand a refund and may immediately terminate any contract in place and may also hand over any reports from any investigations to the Police and/or criminal investigation body to proceed with prosecution.
- f) Acknowledge and accept that TMA shall reject a proposal or shall terminate a contract and/or not make any payments under the contract if it determines that representatives of the supplier, sub-contractor and/or beneficiary engaged in corrupt, fraudulent, collusive, coercive or obstructive practices during either the procurement or the execution of that contract.

- g) Acknowledge and accept that if TMA is satisfied that a supplier has misrepresented information in their bid, receives confirmation from a referee that an assignment was not undertaken satisfactorily, or becomes aware of litigation that was not disclosed in the submitted bid, TMA shall reject the bid or terminate the contract immediately at any point without incurring any liability whatsoever.
- h) Acknowledge and accept that TMA, at its own discretion, may decide to debar a supplier from current and future tendering opportunities in line with the TMA debarment policy, where there is demonstrable evidence of: (i) The supplier undertaking unethical, illegal, corrupt, or fraudulent activities in connection with a TMA contract or a TMA-funded contract; (ii) Persistent poor performance by the supplier under a TMA contract or a TMA-funded contract in terms of quality of work or goods delivered, including consistently late delivery; (iii) Poor quality adherence and/or delivery of Environmental and Social Safeguards measures; or (iv) Debarment of a supplier by a TMA donor, the World Bank, or a Government with whom TMA has a Memorandum of Understanding.

3.3 Gifts and Hospitality

TMA suppliers shall,

- a) Not offer any member of staff of TMA, Board of Directors, or Council member any gifts, gratuities, or hospitality worth more than \$50.
- b) Acknowledge and accept that if an offer of gifts, gratuities or hospitality worth more than \$50 is made by a supplier, TMA may reject the bid or terminate the contract immediately at any point without incurring any liability whatsoever.

3.4 Whistleblowing

TMA suppliers shall,

- a) Acknowledge and accept that TMA has zero tolerance of fraud, corruption, misconduct (including harassment) and has implemented a fraud prevention policy.
- b) Acknowledge and accept that if they have concerns about unethical behaviour at TMA, have been asked for a bribe in connection with TMA business, or have suspicions about the theft of TMA resources or any form of misconduct including harassment, they shall submit a report to the confidential TMA whistle-blower line by calling or emailing one of the following:

1. Telephone:

- Kenya: 0800 722 770 (toll-free), +27 12 567 8381
- Uganda: +27 12 567 8383
- Tanzania: +27 12 567 8440
- Rwanda, Burundi, DRC - +27 12 567 8432
- Ethiopia, Somaliland - +27 12 567 8433
- Djibouti; Zambia, Malawi, Mozambique, and South Sudan: +27 12 567 8455

2. Email: hotline@kpmg.co.za

3. Web-portal: <http://www.thornhill.co.za/kpmgfaircallreport>

If a whistle-blower is concerned about the adequacy of TMA's response to their report, they may also submit their concern through the whistle-blowing mechanisms of any of TMA's donors, the contact details of which can be found on their respective official websites.

For TMA's USAID funded projects, reports may be made directly to the USAID office of Inspector General:

P.O Box 657 Washington DC 20044-0657

Phone: 1-800-230-6539 or 202-712-1023

Email: ig.hotline@usaid.gov

Web Portal: <https://oig.usaid.gov/contractor-reporting-form>

- c) Acknowledge and confirm that all tenderers, suppliers, sub-contractors along with their respective staff are aware of TMA's zero tolerance of fraud, corruption, misconduct, and harassment, and that each staff member engaged on the contract has been provided with the above whistleblowing procedures, telephone number, website and email address and understand how to report suspicions of malpractice involving TMA resources and/or staff.

3.5 Confidentiality

TMA suppliers shall,

- a) Acknowledge that TMA may provide certain information that is and must be kept confidential by suppliers. To ensure the protection of such information, and to preserve any confidentiality necessary under patent and/or trade secret laws, TMA suppliers shall not disclose the confidential information obtained from TMA to anyone unless required to do so by law, in which TMA would be informed of such disclosure.
- b) Acknowledge that the confidential information not to be disclosed can be described as and includes the following regardless of whether such information is designated as "confidential information" at the time of its disclosure:

- i. Invention description(s), technical and business information relating to proprietary ideas and inventions;
 - ii. Ideas, patentable ideas, trade secrets, drawings and/or illustrations, patent searches, existing and/or contemplated products and services; and
 - iii. Research and development, production, costs, profit and margin information, finances and financial projections, customers, clients, marketing, and current or future business plans and models.
- c) Not, without the written consent of TMA, divulge to any third party any documents, data or other information furnished directly or indirectly by TMA, whether such information has been furnished prior to, during or following termination of any binding engagement. Notwithstanding the above, the supplier may furnish to its subcontractor(s) such documents, data and other information it receives from TMA to the extent required for the subcontractor(s) to perform its work under any contract, in which event the supplier shall obtain from such subcontractor(s) an undertaking of confidentiality similar to that imposed on the supplier under this paragraph.
- d) Not use documents, data and other information received from the TMA for any purpose other than such work and services as are required for the performance of the contract.
- e) Acknowledge that the obligation of the supplier under the above paragraphs, however, shall not apply to information which:
 - i. had entered the public domain through no fault of the supplier;
 - ii. can be proven to have been possessed by the supplier at the time of disclosure; or
 - iii. otherwise lawfully became available to the supplier from a third party that has no obligation of confidentiality.

3.6 Intellectual Property (IP)

TMA suppliers shall,

- a) Acknowledge that the copyright in all drawings, documents and other materials containing data and information furnished to TMA by the supplier shall remain vested in the supplier or, if they are furnished to TMA directly or through the supplier by any third party, including subcontractors of materials, the copyright in such materials shall remain vested in such third party.
- b) Acknowledge that any studies, reports or other material, graphic, software or otherwise, prepared by the supplier for TMA under any contract shall belong to and remain the property of TMA.

- c) Agree that, where intellectual property rights in all material produced by the supplier or the supplier's personnel pursuant to the performance of the services ("the material") are the property of the supplier, the supplier shall grant to TMA a worldwide, non-exclusive, irrevocable, royalty free license to use all the material. "Use" shall mean, without limitation, the reproduction, publication, and sub-licence of all the material and the intellectual property rights therein, including the reproduction and sale of the material and products incorporating the same for use by any person or for sale or other dealing anywhere in the world.

3.7 Conflict of Interest

TMA suppliers shall,

- a) Not try to gain improper advantage or improperly impact any TMA employee's ability to make sound, impartial, and objective decisions on behalf of TMA.
- b) Disclose any situation that appears to conflict, or could potentially conflict, in any way, with the interests of TMA. This includes situations where a TMA employee has an interest in or non-arm's length relationship to the suppliers' business. TMA recognises that it is not possible to define all the circumstances which may lead to a potential conflict of interest. It is therefore the responsibility of a supplier to declare any matters which they feel may present actual or potential conflicts, or the perception of such conflicts.
- c) Use the Bidders Conflict of Interest Form (Annex 1) of this document to declare a Conflict of Interest or Potential/Perceived Conflict of Interest.

3.8 Delivery Chain Management

TMA suppliers shall,

- a) Acknowledge and confirm they are aware of every sub-contractor(s) that contributes to the delivery of the TMA funded contract and warrant that this Code, including the whistleblowing procedures, has been communicated to every sub-contractor's member of staff, and is understood by them.
- b) Acknowledge and confirm that all of the sub-contractor(s) that contribute to the delivery of the TMA funded contract are risk-profiled on an annual basis and managed by the primary supplier themselves and any significant risks identified are acted upon and managed, including the risk of funding terrorism and /or organised crime and their support groups or the risk of fraud and misappropriation of TMA funding.

3.9 Environmental and Social Safeguards

TMA suppliers shall,

- a) Acknowledge that TMA has adopted the following Standards, based on the World Bank's Environmental and Social Framework (ESF).

ESS1: Assessment and Management of Environmental and Social Risks and Impact

Environmental Risks

TMA's suppliers shall,

- a) Have an effective environment policy in place.
- b) Comply with national legislation and regulations regarding the protection of the environment.
- c) Where significant environmental and social risks are identified by TMA in the implementation of a specific assignment or project, develop a detailed environment and social impact assessment and management plan, including an analysis of climate risk. The supplier will be required to show progress on the implementation of the plan during the execution of the project.

Social Risks

TMA's suppliers shall:

- a) Take all reasonable measures to eliminate poor human rights practices, exploitive forms of forced labour, sexual exploitation, abuse, harassment, and harmful child labour and abuse.
- b) Take all reasonable measures to prohibit their employees and/or other sub-contractors or person engaged by them, from engaging in sexual exploitation and abuse, including but not limited to the prohibition of:
 - i) engaging in any sexual activity with any person under the age of 18, regardless of any laws of majority or consent; and
 - ii) engaging in any sexual activity that is exploitive or degrading to any person.
- c) Confirm the existence and application of an Environmental and Social Safeguarding policy in their organisation and ensure that it is communicated regularly to all staff and that all staff receive regular training on the same.
- d) Ensure that requisite clauses and measures are included in the contracts of any sub-contractors and are adequate to protect the community from adverse impacts of labour influx, including

sexual exploitation and abuse, sexually transmitted diseases, gender-based violence and other social challenges.

ESS2: Labour and Working Conditions

Healthy and safe working environment

TMA's suppliers shall:

- a) Ensure all reasonable risk mitigation measures relating to occupational health and safety (at the workplace) are put in place and applied.
- b) Ensure the workplaces, machinery, equipment and processes under their control are safe and without risk to health to any person.
- c) Ensure the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken.
- d) Ensure where necessary, adequate protective clothing and protective equipment are provided to and used by staff to prevent, so far as is reasonably practicable, risk of accidents or adverse effects to health.
- e) For employees, ensure that adequate occupational safety training is provided and identifies, assesses and controls potential exposure to safety hazards and that training records are maintained in personnel files.
- f) Ensure thorough documenting, investigating, and reporting of all occupational accidents, incidents and diseases.
- g) Ensure the existence of and periodic testing of emergency prevention, preparedness, and response arrangements to emergency situations and this testing is documented.
- h) Ensure there are clearly explained remedies (including compensation) for adverse impacts such as occupational injuries, deaths, disability, and disease.
- h) Ensure compliance with national and local laws, regulations, systems and processes on occupational health and safety.

Non-discrimination and equal opportunity

TMA's suppliers shall:

- a) Ensure all employment relationships are based on the principles of respect, equal opportunity, and fair treatment, and do not discriminate with respect to any aspects such as race, gender, age, religion, sexuality, culture, minority groups, disability, or any other protected characteristic.

Wages and Working Hours

TMA's suppliers shall:

- a) Not permit or require any person or employee whose work relates to a TMA-funded contract to work more than the maximum hours in any one work week permitted by applicable law or regulation unless such employees are paid overtime at rate specified by applicable law or regulation.
- b) Ensure that wages for persons or employees whose work relates to a TMA-funded contract comply with the statutory minimum wage requirements.
- c) Ensure, where the applicable national laws or regulations **do not** prescribe the minimum wage and/or maximum hours of work and/or overtime remuneration, that the prevailing International Labour Organisation standards are applied.

Harassment and Bullying

TMA suppliers shall:

- a) Create and maintain an environment that treats all employees and other persons with dignity and respect, and is free from threats of physical violence, bullying, psychological or verbal harassment and/or sexual exploitation and abuse, perpetrated by employees and/or other contractors or persons engaged by them.

Forced or Compulsory Labour

TMA's suppliers shall:

- a) Not employ forced or compulsory labour in any and all of its forms which consists of any work or service not voluntarily performed that is extracted from an individual under threat of force or penalty.

Child Labour

TMA's suppliers shall:

- a) Not employ children below 18 years of age or, if lower than that age, the minimum age of employment permitted by the law of the country or countries where the performance, in whole or in part, of a contract takes place; and
- b) Not employ persons under the age of 18 for work, that, by its nature or the circumstances in which it is carried out, is hazardous, is likely to harm the health, safety or morals of such persons.

Gender Mainstreaming

TMA suppliers shall:

- a) Ensure that there is a gender balance in terms of participation and decision making at all levels. Where it is not possible, the supplier should demonstrate that the delivery/impact of the service remains gender responsive.
- b) Demonstrate clear senior management commitment to gender mainstreaming, and allocation of human capital and finance, for the successful translation of the concept into practice and to institutionalise gender equality in the organisation.

Grievance Redress Mechanism.

TMA suppliers shall:

- a) Ensure an effective Grievance Redress Mechanism is established and operates for the raising of grievances from their staff and/or the community located near the project.

ESS3: Resource Efficiency and Pollution Prevention and Management

Pollution Prevention, Energy and Resource Efficiency

TMA suppliers shall:

- a) Ensure that deterioration in the quality of human health, environmental wellbeing, and/or loss of biodiversity is avoided.
- b) Utilise strategies to deliver products or services that as far as possible, minimise emissions and discharge of pollutants and the generation of waste.
- c) Ensure that there are demonstrable measures in place to prevent waste generation and, where this is impossible, to significantly reduce its hazardousness to human health and the environment, by strictly applying the waste management hierarchy of: avoid waste, reuse, recycle, recovery and dispose.
- d) Ensure that there are demonstrable measures in place to tackle noise emissions and noise nuisances and ensure that the project is designed, constructed, and operated in a way that avoids, prevents or significantly reduces harmful noise effects of the project, on both the environment and humans.
- e) Aim for the most efficient use of energy and resources.
- f) Ensure that there is a demonstrable and tested plan in place to respond to any process upsets, accidental and emergency situations that includes implementing and testing control measures to prevent major accidental hazards.

- g) Ensure adequate mitigation measures are put in place to protect TMA projects from the impacts of climate variability and extreme weather events while at the same time minimising the projects contribution to increased Greenhouse Gas (GHG) emissions and environmental degradation.
- h) Obtain, maintain, and keep current all relevant environmental permits, approvals and registrations.

ESS4: Community Health and Safety

TMA's suppliers shall:

- a) Take all preventative measures to ensure communities are protected from exposure to adverse project related risks to and impacts on their daily lives.
- b) Ensure that the design, construction, operation, and decommissioning of structural elements of projects are in accordance with national legal requirements, the ESIA and ESMP for the project and take into consideration safety risks to third parties and affected communities.
- c) Ensure that the risks and likelihood of emergency events are identified, and measures implemented to address them, including training of community personnel on emergency response initiatives and emergency redress equipment handling.
- d) Ensure that deliberate measures are put in place to avoid or minimize the potential for community exposure to diseases that are water-borne, water-based, and water-related, as well as those diseases that are either communicable or non-communicable, that could result from project activities, taking into consideration differentiated exposure to, and higher sensitivity of vulnerable groups.

ESS5: Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

TMA's suppliers shall:

- a) Ensure that, to the maximum extent possible, project affected persons (PAPs) are fully protected from adverse impacts related to involuntary resettlement and that a mitigation hierarchy that puts in place measures to ensure that, where land acquisition results in economic displacement, the project affected persons are treated in a most humane manner, and that No Harm is visited upon them by project activities.
- b) Ensure that forced eviction is prohibited under any circumstances.

- c) Ensure that, to the maximum extent possible, contracts are delivered in a manner that respects the culture, dignity and human rights of indigenous peoples, and ensure that they access project benefits in a culturally appropriate manner.

ESS6: Biodiversity Conservation and Sustainable Management of Living Natural Resources

TMA's suppliers shall:

- a) Endeavour to ensure the maintenance of the integrity of areas of important biodiversity and the ecosystem functions and services and their resilience through the application of the mitigation hierarchy of anticipate, avoid, minimise, mitigate, and compensate for Environmental and Social impacts.
- b) Identify and mitigate any risks of conversion or degradation of critical habitats such as critical forest areas, natural areas of cultural or religious value, areas that are legally protected (or officially proposed for protection), or areas of high conservation or biodiversity value.

ESS7: Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities

TMA's suppliers shall:

- a) Undertake an assessment of the nature and extent of the expected direct and indirect economic, social and cultural and environmental impacts on indigenous peoples and Sub-Saharan African Historically Underserved Traditional Local Communities.
- b) In consultation with the indigenous peoples, develop a strategy to ensure the indigenous people's rights and interests are protected and that they have an opportunity to participate and benefit from the project (as appropriate).
- c) Incorporate the implementation plan of the strategy as part of the overall project implementation plan and include a component of this in regular reporting to TMA.
- d) Where directed by TMA, the supplier shall be expected to have specialised personnel for instance, an Anthropologist or Sociologist to support engagement with the communities.

ESS8: Cultural Heritage

TMA's suppliers shall:

- a) Ensure that the importance of cultural heritage is recognised and to the maximum extent possible seek to ensure it is protected from harm by the project/contract, and is preserved, regardless of whether it has been legally protected or previously disturbed.
- b) Ensure that, where there is a high chance of finding physical cultural resources, a recovery plan is prepared, in line with national procedures and rules and that the cultural heritage is protected from harm.

ESS9: Stakeholder Engagement and Information Disclosure

TMA's suppliers shall:

- a) Through the ESIA (if applicable), and in reference to the TMA stakeholder engagement guidelines, systematically identify all project related stakeholders and their level of interest and/or impact they may have on the overall project at the earliest opportunity in the project design and or implementation.
- b) Develop a methodical and appropriate approach to engage all stakeholders where stakeholders are able to raise concerns and where the supplier is able to provide updates and respond to the concerns raised.
- c) Commit to respond to all issues raised by stakeholders in a timely and responsible way by establishing a project grievance redress mechanism and communicating the same to all stakeholders.
- d) Document all engagement processes, communication and engagement between the supplier and stakeholders. Evidence of this may be requested periodically by TMA.

3.7 Terrorism, Organised Crime and Security

TMA suppliers shall:

- a) Acknowledge that, for purposes of the Code, organised criminal activities include, but are not limited to, money laundering, human trafficking and smuggling, animal trafficking, drug dealing, purchase of illegal arms, cyber-crimes, child labour, kidnapping, and extortion.
- b) Acknowledge that the United Nations Security Council defines terrorism as "criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act."

- c) Adopt comprehensive and proportionate policies and procedures and take action to prevent, to the maximum extent reasonably possible, TMA's resources from diversion to unintended purposes including exploitation by terrorist organisations and/or organised crime activities and/or their support networks and involvement with politically exposed persons.
- d) Acknowledge and accept that TMA shall conduct a reasonable search of publicly available information to determine whether the supplier is suspected of any activity relating to terrorism, including terrorist financing, or organised crime.
- e) Acknowledge and accept that TMA shall seek confirmation that the supplier does not appear on any country of operation lists of designated terrorist-related individuals, entities, or organisations, pursuant to national obligations arising from United Nations Security Council Resolution 1373.
- f) Confirm that they are not involved and/or linked, including their employees, in any way and are not listed in their country of operation or any other as financiers of or participants in organised criminal activities whether as individuals, entities, or organisations, pursuant to national obligations arising from General Assembly resolution 55/25 of 15 November 2000 United Nations Convention against Transnational Organised Crime.
- e) Acknowledge and accept that they will not deal with any individuals, entities, or groups known to the partner to support terrorism or to have violated any known anti-terrorism sanctions, nor organised crime and / or their support networks.
- f) Acknowledge and confirm that the supplier has taken all reasonable steps to ensure that TMA resources provided are neither distributed to terrorists or their support networks nor used for activities that support terrorism or terrorist organisations, nor organised crime and / or their support networks.
- g) Adopt comprehensive and proportionate policy and procedures, and take action to ensure, to the extent reasonably possible, all suppliers, TMA and customers' electronic data is secured and protected from intrusion, hacking, capture, theft and sale, for any and all illicit purposes, and adopt international standards of data security.
- h) Acknowledge and agree not to disclose the confidential information obtained from the discloser to anyone unless required to do so by law.
- i) Acknowledge that TMA or its appointed agents will perform routine, on-site audits of partners to the extent reasonable (consistent with the size of the resource, the cost of the audit, and the risks of diversion or abuse of resources). The purpose of the audit will be to

confirm that the supplier has taken adequate measures to protect its/ TMA resources from diversion or abuse.

Declaration Statement

I, _____ (insert name), on behalf of

_____ (insert name of Party), hereby confirm that I have read and wholly understood the TMA Supplier Code of Conduct, that

_____ (insert name of Party) intends to comply with the Code, and that its contents have been communicated to our staff or will be communicated to staff if I win the tender and the staff of our subcontractors who are or who will be involved in the delivery of our contract with TMA.

I acknowledge that should TMA establish that this declaration is in any way inaccurate, action may be taken against _____ (insert name of Party and Self) which could include terminating the contract and/or debarring _____ (insert name of Party) from future tendering opportunities with TMA.

On behalf of Party: -

Organisation's/ consultant/ firm/ company/ JV name: _____

Title of Signatory: _____

Signature: _____

Date: _____

Stamp/ seal: _____

Annex 1: Bidders Conflict of Interest Form

Tender Number:

Tender Title:

TMA operates procurement processes which are fair, transparent, and able to withstand probity. In view of this, TMA requires that any potential bidder who participates in its procurement processes declares any actual or potential conflicts of interest. Bidders who do not declare relevant conflicts of interest and do not sign this form will not be permitted to participate in TMA's procurement processes.

I. Conflict of interest declaration

Potential conflicts of interest can include the following (but the list is **not** exhaustive):-

1. Relationship/ Association with TMA staff members and/or representatives.
2. Relationship/Association with TMA Board Members and/or office bearers
3. Where applicable; if the bidder was involved in earlier phases of the project for which bids/proposals are now being sought.
4. Knowledge of TMA's terms of reference or any bidding documents before they were officially published.

If you are in any doubt about whether something is a potential conflict of interest, you are advised to declare it below.

Either:

A) I wish to declare the following conflict(s) of interest:-

1.
2.
3.

or

B) I have no conflicts of interest to declare.

Please note that TMA reserves the right to disqualify a bidder if an actual or potential conflict of interest that was not declared, is later discovered.

On behalf of vendor:

Organisation's name: _____

Title of Signatory: _____

Signature: _____

Date:
