



**LAGOS STATE GOVERNMENT
LAGOS STATE PUBLIC PROCUREMENT
AGENCY (PPA)**

BIDDING DOCUMENTS

**Procurement of
Non-Consultant Services**

for

**PUBLIC PROCUREMENT IN LAGOS
STATE**

APRIL 2013

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Introduction

Procurement is carried out in accordance with policies and procedures laid down in the *Guidelines*: (hereinafter called *Procurement Guidelines*). To help MDAs to contract the performance of Non-Consultant Services (services that are not classified as Consultant Services) PPA has bidding documents to be used, Non-Consultant Services will hereinafter be referred to simply as “Services”.

The Bidding Documents have been prepared for use by MDAs in the procurement of Services by International Competitive Bidding (ICB). These documents may also be adapted to National Competitive Bidding (NCB) with some changes generally necessary in the Instructions to Bidders and the Conditions of Contract.

These Bidding Documents are intended as model lump sum types of Contract, which are the most common in Services contracting. Lump sum contracts are used in particular for Services which are well defined and are unlikely to change in quantity or specification, and where encountering difficult or unforeseen site conditions are unlikely.¹

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

- (a) All the documents listed in the Table of Contents are normally required for the procurement of Services; however, they should be adapted as necessary to the circumstances of the particular Project.
- (b) Details to be provided by the MDA prior to release of the bidding documents are limited to the Invitation for Bids (User’s Guide), Instructions to Bidders (Section I), Bidding Data Sheet (Section II), and Special Conditions of Contract (Section VII), in addition to Sections V and VIII, which deal with Activity Schedule, Performance Specifications and Drawings, respectively. **Specific details** should be furnished in the spaces indicated by italicized notes inside brackets. Those details not filled in by the MDA are the responsibility of the Bidder.
- (c) These Bidding Documents are intended to serve on a repetitive basis in the MDAs, once agreement between the MDAs and the Agency has been reached. Modifications to address specific Contract needs should be provided only in the Special Conditions of Contract as amendments to the Conditions of

¹ Lump sum contracts should be used for Services that can be defined in their full physical and qualitative characteristics before bids are called, or where the risks of substantial design or performance variations are minimal. In lump sum contracts, the concept of priced “activity schedules” has been introduced, to enable payments to be made as “activities” are completed. Payments can also be made on the basis of percentage completion of each activity.

Contract. If modifications must be made to the bidding procedures, they can be presented in the Bidding Data Sheet.

- (d) The foot-notes and the notes inside boxes with single borders are not part of the text, but rather contain instructions for the user, as do the Preface and this Introduction section. **They should not be incorporated in the bidding documents.** The cover should be modified as required to identify the bidding documents as to the names of the Project, Contract, and MDA, in addition to the date of issue.
- (e) The notes inside boxes with double borders should be retained in the issued bidding documents, since these notes provide important guidance to bidders.
- (f) The standard documents have been prepared for bidding where postqualification applies; adaptations are necessary to ITB Clause 5 and corresponding Bidding Data Sheet, and Forms when prequalification has taken place. The process of prequalification of bidders is not covered in these standard documents.

Summary Description

These Standard Bidding Documents for Procurement of Works and its User's Guide apply either when a prequalification process has taken place before bidding or when a prequalification process has not taken place before bidding (provided alternative documents should be selected as applicable). A brief description of these documents is given below.

SBD for Procurement of Works

Summary

PART 1 – BIDDING PROCEDURES

Section I: Instructions to Bidders (ITB)

This Section provides relevant information to help Bidders prepare their bids. Information is also provided on the submission, opening, and evaluation of bids and on the award of Contracts. **Section I contains provisions that are to be used without modification.**

Section II. Bidding Data Sheet (BDS)

This Section consists of provisions that are specific to each procurement and that supplement the information or requirements included in Section I, Instructions to Bidders.

Section III: Bidding Forms

This Section contains the forms which are to be completed by the Bidder and submitted as part of his Bid.

Section IV. Eligible Countries

This Section contains information regarding eligible countries.

PART 2 – ACTIVITY SCHEDULE

Section V. Activity Schedule

This Section contains the activity schedule.

PART 3 – *CONDITIONS OF CONTRACT AND CONTRACT FORMS*

Section VI. General Conditions of Contract (GCC)

This Section contains the general clauses to be applied in all contracts. **The text of the clauses in this Section shall not be modified.**

Section VII. Special Conditions of Contract (PCC)

The contents of this Section supplement the General Conditions of Contract and shall be prepared by the MDA.

Section VIII. Performance Specifications and Drawings

This section contains Specifications that are intended only as information for the MDA or the person drafting the bidding documents. **They should not be included in the final documents.**

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.

Part I – Bidding Procedures

Section I. Instructions to Bidders

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Instructions to Bidders

A. General

- | | |
|---|---|
| 1. Scope of Bid | <p>1.1 The MDA, as defined in the Bidding Data Sheet (BDS), invites bids for the Services, as described in the Appendix A to the Contract. The name and identification number of the Contract is provided in the BDS.</p> <p>1.2 The successful Bidder will be expected to complete the performance of the Services by the Intended Completion Date provided in the BDS.</p> |
| 2. Source of Funds | <p>2.1 The MDA, as defined in the BDS, intends to apply part its budgetary allocation funds from the State Government, as defined in the BDS, towards the cost of the Project, as defined in the BDS, to cover eligible payments under the Contract for the Services. Payments by the MDA, will be subject in all respects to the terms and conditions of that Agreement.</p> |
| 3. Corrupt or Fraudulent Practices | <p>3.1 It is the Agency’s policy to require that MDAs (including beneficiaries of LSG loans), as well as bidders, suppliers, and contractors and their subcontractors under LSG-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts.² In pursuance of this policy, the LSG:</p> <p>(a) defines, for the purposes of this provision, the terms set forth below as follows:</p> <p style="padding-left: 40px;">(i) “corrupt practice”³ is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;</p> <p style="padding-left: 40px;">(ii) “fraudulent practice”⁴ 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;</p> |

² In this context, any action taken by a bidder, supplier, contractor, or a sub-contractor to influence the procurement process or contract execution for undue advantage is improper.

³ For the purpose of these SBDs, “another party” refers to a public official acting in relation to the procurement process or contract execution]. In this context, “public official” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

⁴ For the purpose of these SBDs, “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

- (iii) “collusive practice”⁵ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) “coercive practice”⁶ is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (v) “obstructive practice” is
 - (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 LSG 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 Agency’s inspection and audit rights provided for under para. 1.14 (e) of the Agency’s Procurement Guidelines.
- (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 fund allocated to a contract if it determines at any time that representatives of the beneficiary of the fund engaged in corrupt, fraudulent, collusive, coercive or obstructive practices during the procurement or the execution of that contract, without the MDA having taken timely and appropriate action satisfactory to the Agency to remedy the situation;
- (d) will sanction a firm or individual, including declaring them ineligible, either indefinitely or for a stated period of time,

⁵ For the purpose of these SBDs, “parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

⁶ For the purpose of these SBDs, “party” refers to a participant in the procurement process or contract execution.

to be awarded a State-financed contract if it at any time determines that they have, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, a LSG-financed contract; and

- (e) will have the right to require that a provision be included in bidding documents and in contracts financed by the budget, requiring bidders, suppliers, contractors and consultants to permit the Agency to inspect their accounts and records and other documents relating to the Bid submission and contract performance and to have them audited by auditors appointed by the Agency.

3.2 Furthermore, Bidders shall be aware of the provision stated in Sub-Clauses 1.7 and 2.6.1 of the General Conditions of Contract.

4. Eligible Bidders

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

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

4.3 Government-owned enterprises may only participate if they are legally and financially autonomous, operate under commercial law, and are not a dependent agency of the MDA.

4.4 Bidders shall not be under a declaration of ineligibility for corrupt and fraudulent practices issued by the LSG in accordance with ITB Sub-Clause 3.1.

5. Qualification of the Bidder

5.1 All bidders shall provide in Section III, Bidding Forms, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.

5.2 In the event that prequalification of potential bidders has been undertaken **as stated in the BDS**, only bids from prequalified

bidders shall be considered for award of Contract, in which case the provisions of sub-clauses 5.3 to 5.6 hereafter shall not apply. These qualified bidders should submit with their bids any information updating their original prequalification applications or, alternatively, confirm in their bids that the originally submitted prequalification information remains essentially correct as of the date of bid submission. The update or confirmation should be provided in Section IV.

5.3 If the MDA has not undertaken prequalification of potential bidders, all bidders shall include the following information and documents with their bids in Section IV, unless otherwise **stated in the BDS**:

- (a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the Bid to commit the Bidder;
- (b) total monetary value of Services performed for each of the last five years;
- (c) experience in Services of a similar nature and size for each of the last five years, and details of Services under way or contractually committed; and names and address of clients who may be contacted for further information on those contracts;
- (d) list of major items of equipment proposed to carry out the Contract;
- (e) qualifications and experience of key site management and technical personnel proposed for the Contract;
- (f) reports on the financial standing of the Bidder, such as profit and loss statements and auditor's reports for the past five years;
- (g) evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
- (h) authority to the MDA to seek references from the Bidder's LSGers;
- (i) information regarding any litigation, current or during the last five years, in which the Bidder is involved, the parties concerned, and disputed amount; and
- (j) proposals for subcontracting components of the Services

amounting to more than 10 percent of the Contract Price.

- 5.4 Bids submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated in the **BDS**:
- (a) the Bid shall include all the information listed in ITB Sub-Clause 5.3 above for each joint venture partner;
 - (b) the Bid shall be signed so as to be legally binding on all partners;
 - (c) the Bid shall include a copy of the agreement entered into by the joint venture partners defining the division of assignments to each partner and establishing that all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms; alternatively, a Letter of Intent to execute a joint venture agreement in the event of a successful bid shall be signed by all partners and submitted with the bid, together with a copy of the proposed agreement;
 - (d) one of the partners shall be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
 - (e) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.
- 5.5 To qualify for award of the Contract, bidders shall meet the following minimum qualifying criteria:
- (a) annual volume of Services of at least the amount **specified in the BDS**;
 - (b) experience as prime contractor in the provision of at least two service contracts of a nature and complexity equivalent to the Services over the last 5 years (to comply with this requirement, Services contracts cited should be at least 70 percent complete) **as specified in the BDS**;
 - (c) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment **listed in the BDS**;
 - (d) a Contract Manager with five years' experience in Services of an equivalent nature and volume, including no less than three years as Manager; and
 - (e) liquid assets and/or credit facilities, net of other

contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than the amount specified in the **BDS**.

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

- 5.6 The figures for each of the partners of a joint venture shall be added together to determine the Bidder's compliance with the minimum qualifying criteria of ITB Sub-Clause 4.4(a), (b) and (e); however, for a joint venture to qualify the partner in charge must meet at least 40 percent of those minimum criteria for an individual Bidder and other partners at least 25% of the criteria. Failure to comply with this requirement will result in rejection of the joint venture's Bid. Subcontractors' experience and resources will not be taken into account in determining the Bidder's compliance with the qualifying criteria, unless otherwise **stated in the BDS**.
- 6. One Bid per Bidder** 6.1 Each Bidder shall submit only one Bid, either individually or as a partner in a joint venture. A Bidder who submits or participates in more than one Bid (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the proposals with the Bidder's participation to be disqualified.
- 7. Cost of Bidding** 7.1 The Bidder shall bear all costs associated with the preparation and submission of his Bid, and the MDA will in no case be responsible or liable for those costs.
- 8. Site Visit** 8.1 The Bidder, at the Bidder's own responsibility and risk, is encouraged to visit and examine the Site of required Services and its surroundings and obtain all information that may be necessary for preparing the Bid and entering into a contract for the Services. The costs of visiting the Site shall be at the Bidder's own expense.

B. Bidding Documents

- 9. Content of Bidding Documents** 9.1 The set of bidding documents comprises the documents listed in the table below and addenda issued in accordance with ITB Clause 11:
- | | |
|------------|-------------------------|
| Section I | Instructions to Bidders |
| Section II | Bidding Data Sheet |

Section III	Bidding Forms
Section IV	Eligible Countries
Section V	Activity Schedule
Section VI	General Conditions of Contract
Section VII	Special Conditions of Contract
Section VIII	Performance Specifications and Drawings (if Applicable)
Section IX	Contract Forms

9.2 The Bidder is expected to examine all instructions, forms, terms, and specifications in the bidding documents. Failure to furnish all information required by the bidding documents or to submit a bid not substantially responsive to the bidding documents in every respect will be at the Bidder's risk and may result in the rejection of its bid. Sections III, V, and IX should be completed and returned with the Bid in the number of copies specified in the **BDS**.

10. Clarification of Bidding Documents

10.1 A prospective Bidder requiring any clarification of the bidding documents may notify the MDA in writing or by cable ("cable" includes telex and facsimile) at the MDA's address indicated in the invitation to bid. The MDA will respond to any request for clarification received earlier than 14 days prior to the deadline for submission of bids. Copies of the MDA's response will be forwarded to all purchasers of the bidding documents, including a description of the inquiry, but without identifying its source.

11. Amendment of Bidding Documents

11.1 Before the deadline for submission of bids, the MDA may modify the bidding documents by issuing addenda.

11.2 Any addendum thus issued shall be part of the bidding documents and shall be communicated in writing or by cable to all purchasers of the bidding documents. Prospective bidders shall acknowledge receipt of each addendum by cable to the MDA.

11.3 To give prospective bidders reasonable time in which to take an addendum into account in preparing their bids, the MDA shall extend, as necessary, the deadline for submission of bids, in accordance with ITB Sub-Clause 21.2 below.

C. Preparation of Bids

12. Language of Bid

12.1 The bid prepared by the Bidder, as well as all correspondence and documents relating to the bid exchanged by the Bidder and

the MDA shall be written in the language **specified in the BDS**. Supporting documents and printed literature furnished by the Bidder may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the Bidding Data Sheet, in which case, for purposes of interpretation of the Bid, the translation shall govern.

**13. Documents
Comprising
the Bid**

13.1 The Bid submitted by the Bidder shall comprise the following:

- (a) The Form of Bid (in the format indicated in Section III);
- (b) Bid Security;
- (c) Priced Activity Schedule;
- (d) Qualification Information Form and Documents;
- (e) Alternative offers where invited;

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

13.2 Bidders bidding for this contract together with other contracts stated in the IFB to form a package will so indicate in the bid together with any discounts offered for the award of more than one contract

14. Bid Prices

14.1 The Contract shall be for the Services, as described in Appendix A to the contract and in the Specifications, Section VIII, based on the priced Activity Schedule, Section V, submitted by the Bidder.

14.2 The Bidder shall fill in rates and prices for all items of the Services described in the in Specifications (or Terms of Reference), Section VIII and listed in the Activity Schedule, Section V. Items for which no rate or price is entered by the Bidder will not be paid for by the MDA when executed and shall be deemed covered by the other rates and prices in the Activity Schedule.

14.3 All duties, taxes, and other levies payable by the Service Provider 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 total Bid price submitted by the Bidder.

14.4 If **provided for in the BDS**, the rates and prices quoted by the Bidder shall be subject to adjustment during the performance of the Contract in accordance with and the provisions of Clause 6.6 of the General Conditions of Contract and/or Special Conditions

of Contract. The Bidder shall submit with the Bid all the information required under the Special Conditions of Contract and of the General Conditions of Contract.

14.5 For the purpose of determining the remuneration due for additional Services, a breakdown of the lump-sum price shall be provided by the Bidder in the form of Appendices D and E to the Contract

15. Currencies of Bid and Payment

15.1 The lump sum price shall be quoted by the Bidder separately in the following currencies:

(a) for those inputs to the Services which the Bidder expects to provide from within the MDA's country, the prices shall be quoted in the currency of the MDA's country, unless otherwise **specified in the BDS**; and

(b) for those inputs to the Services which the Bidder expects to provide from outside the MDA's country, the prices shall be quoted in up to any three currencies of any member country of the LSG.

15.2 Bidders shall indicate details of their expected foreign currency requirements in the Bid.

15.3 Bidders may be required by the MDA to justify their foreign currency requirements and to substantiate that the amounts included in the Lump Sum are reasonable and responsive to ITB Sub-Clause 15.1.

16. Bid Validity

16.1 Bids shall remain valid for the period **specified in the BDS**.

16.2 In exceptional circumstances, the MDA may request that the bidders extend the period of validity for a specified additional period. The request and the bidders' responses shall be made in writing or by cable. A Bidder may refuse the request without forfeiting the Bid Security. A Bidder agreeing to the request will not be required or permitted to otherwise modify the Bid, but will be required to extend the validity of Bid Security for the period of the extension, and in compliance with ITB Clause 17 in all respects.

16.3 In the case of contracts in which the Contract Price is fixed (not subject to price adjustment), if the period of bid validity is extended by more than 60 days, the amounts payable in local and foreign currency to the Bidder selected for award, shall be increased by applying to both the local and the foreign currency component of the payments, respectively, the factors specified in the request for extension, for the period of delay beyond 60

days after the expiry of the initial bid validity, up to the notification of award. Bid evaluation will be based on the Bid prices without taking the above correction into consideration.

17. Bid Security

- 17.1 The Bidder shall furnish, as part of the Bid, a Bid Security or a Bid-Securing Declaration, if required, as **specified in the BDS**.
- 17.2 The Bid Security shall be in the amount **specified in the BDS** and denominated in the currency of the MDA's Country or a freely convertible currency, and shall:
- (a) at the bidder's option, be in the form of either a letter of credit, or a Bank Guarantee from a LSGing institution, or a bond issued by a surety;
 - (b) be issued by a reputable institution selected by the bidder and located in any eligible country. If the institution issuing the bond is located outside the MDA's Country, it shall have a correspondent financial institution located in the MDA's Country to make it enforceable.
 - (c) be substantially in accordance with one of the forms of Bid Security included in Section IX, Contract Forms, or other form approved by the MDA's prior to bid submission;
 - (d) be payable promptly upon written demand by the MDA in case the conditions listed in ITB Sub-Clause 17.5 are invoked;
 - (e) be submitted in its original form; copies will not be accepted;
 - (f) remain valid for a period of 28 days beyond the validity period of the bids, as extended, if applicable, in accordance with ITB Sub-Clause 16.2;
- 17.3 If a Bid Security or a Bid- Securing Declaration is required in accordance with ITB Sub-Clause 17.1, any bid not accompanied by a substantially responsive Bid Security or Bid Securing Declaration in accordance with ITB Sub-Clause 17.1, shall be rejected by the MDA as non-responsive.
- 17.4 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 Clause 35.
- 17.5 The Bid Security may be forfeited or the Bid Securing Declaration executed:

- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Bid Submission Form, except as provided in ITB Sub-Clause 16.2; or
- (b) if the successful Bidder fails to:
 - (i) sign the Contract in accordance with ITB Clause 34;
 - (ii) furnish a Performance Security in accordance with ITB Clause 35.

17.6 The Bid Security or Bid- Securing Declaration of a JV must be in the name of the JV that submits the bid. If the JV has not been legally constituted at the time of bidding, the Bid Security or Bid-Securing Declaration shall be in the names of all future partners as named in the letter of intent to constitute the JV.

18. Alternative Proposals by Bidders

18.1 **Unless otherwise indicated in the BDS**, alternative bids shall not be considered.

18.2 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.

18.3 Except as provided under ITB Sub-Clause 18.4 below, bidders wishing to offer technical alternatives to the requirements of the bidding documents must first submit a Bid that complies with the requirements of the bidding documents, including the scope, basic technical data, graphical documents and specifications. In addition to submitting the basic Bid, the Bidder shall provide all information necessary for a complete evaluation of the alternative by the MDA, including calculations, technical specifications, breakdown of prices, proposed work methods and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the MDA. Alternatives to the specified performance levels shall not be accepted.

18.4 When bidders are **permitted in the BDS** to submit alternative technical solutions for specified parts of the Services, such parts shall be described in the Specifications (or Terms of Reference) and Drawings, Section VIII. In such case, the method for evaluating such alternatives will be as **indicated in the BDS**.

19. Format and Signing of Bid

19.1 The Bidder shall prepare one original of the documents comprising the Bid as described in ITB Clause 11 of these Instructions to Bidders, bound with the volume containing the

Form of Bid, and clearly marked “ORIGINAL.” In addition, the Bidder shall submit copies of the Bid, in the number **specified in the BDS**, and clearly marked as “COPIES.” In the event of discrepancy between them, the original shall prevail.

- 19.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Bidder, pursuant to Sub-Clauses 5.3(a) or 5.4(b), as the case may be. All pages of the Bid where entries or amendments have been made shall be initialed by the person or persons signing the Bid.
- 19.3 The Bid shall contain no alterations or additions, except those to comply with instructions issued by the MDA or as necessary to correct errors made by the Bidder, in which case such corrections shall be initialed by the person or persons signing the Bid.

D. Submission of Bids

20. Sealing and Marking of Bids

- 20.1 The Bidder shall seal the original and all copies of the Bid in two inner envelopes and one outer envelope, duly marking the inner envelopes as “ORIGINAL” and “COPIES”.
- 20.2 The inner and outer envelopes shall
- (a) be addressed to the MDA at the address **provided in the BDS**;
 - (b) bear the name and identification number of the Contract as **defined in the BDS** and Special Conditions of Contract; and
 - (c) provide a warning not to open before the specified time and date for Bid opening as **defined in the BDS**.
- 20.3 In addition to the identification required in ITB Sub-Clause 20.2, the inner envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared late, pursuant to ITB Clause 22.
- 20.4 If the outer envelope is not sealed and marked as above, the MDA will assume no responsibility for the misplacement or premature opening of the Bid.

21. Deadline for Submission of Bids

- 21.1 Bids shall be delivered to the MDA at the address specified above no later than the time and date **specified in the BDS**.

21.2 The MDA may extend the deadline for submission of bids by issuing an amendment in accordance with ITB Clause 11, in which case all rights and obligations of the MDA and the bidders previously subject to the original deadline will then be subject to the new deadline.

22. Late Bids

22.1 Any Bid received by the MDA after the deadline prescribed in ITB Clause 21 will be returned unopened to the Bidder.

**23. Modification
and
Withdrawal of
Bids**

23.1 Bidders may modify or withdraw their bids by giving notice in writing before the deadline prescribed in ITB Clause 21.

23.2 Each Bidder's modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with ITB Clauses 19 and 20, with the outer and inner envelopes additionally marked "MODIFICATION" or "WITHDRAWAL," as appropriate.

23.3 No Bid may be modified after the deadline for submission of Bids.

23.4 Withdrawal of a Bid between the deadline for submission of bids and the expiration of the period of Bid validity specified in the BDS or as extended pursuant to ITB Sub-Clause 16.2 may result in the forfeiture of the Bid Security pursuant to ITB Clause 17.

23.5 Bidders may only offer discounts to, or otherwise modify the prices of their bids by submitting Bid modifications in accordance with this clause, or included in the original Bid submission.

E. Bid Opening and Evaluation

24. Bid Opening

24.1 The MDA will open the bids, including modifications made pursuant to ITB Clause 23, in the presence of the bidders' representatives who choose to attend at the time and in the place **specified in the BDS.**

24.2 Envelopes marked "WITHDRAWAL" shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to ITB Clause 23 shall not be opened.

24.3 The bidders' names, the Bid prices, the total amount of each Bid and of any alternative Bid (if alternatives have been requested or permitted), any discounts, Bid modifications and withdrawals, the presence or absence of Bid Security, and such other details as the MDA may consider appropriate, will be announced by the

MDA at the opening. No bid shall be rejected at bid opening except for the late bids pursuant to ITB Clause 22; Bids, and modifications, sent pursuant to ITB Clause 23 that are not opened and read out at bid opening will not be considered for further evaluation regardless of the circumstances. Late and withdrawn bids will be returned unopened to the bidders.

24.4 The MDA will prepare minutes of the Bid opening, including the information disclosed to those present in accordance with ITB Sub-Clause 24.3.

25. Process to Be Confidential

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

25.2 If, after notification of award, a bidder wishes to ascertain the grounds on which its bid was not selected, it should address its request to the MDA, who will provide written explanation. Any request for explanation from one bidder should relate only to its own bid; information about the bid of competitors will not be addressed.

26. Clarification of Bids

26.1 To assist in the examination, evaluation, and comparison of bids, the MDA may, at the MDA's discretion, ask any Bidder for clarification of the Bidder's Bid, including breakdowns of the prices in the Activity Schedule, and other information that the MDA may require. The request for clarification and the response shall be in writing or by cable, telex, or facsimile, but no change in the price or substance of the Bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the MDA in the evaluation of the bids in accordance with ITB Clause 28.

26.2 Subject to ITB Sub-Clause 26.1, no Bidder shall contact the MDA on any matter relating to its bid from the time of the bid opening to the time the contract is awarded. If the Bidder wishes to bring additional information to the notice of the MDA, he should do so in writing.

26.3 Any effort by the Bidder to influence the MDA in the MDA's bid evaluation or contract award decisions may result in the rejection of the Bidder's bid.

27. Examination of

27.1 Prior to the detailed evaluation of bids, the MDA will determine

- Bids and Determination of Responsiveness** whether each Bid (a) meets the eligibility criteria defined in ITB Clause 4; (b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the bidding documents.
- 27.2 A substantially responsive Bid is one which conforms to all the terms, conditions, and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the Services; (b) which limits in any substantial way, inconsistent with the bidding documents, the MDA's rights or the Bidder's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.
- 27.3 If a Bid is not substantially responsive, it will be rejected by the MDA, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.
- 28. Correction of Errors**
- 28.1 Bids determined to be substantially responsive will be checked by the MDA for any arithmetic errors. Arithmetical errors will be rectified by the MDA on the following basis: if there is a discrepancy between unit prices 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; 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; if there is a discrepancy between the amounts in figures and in words, the amount in words will prevail.
- 28.2 The amount stated in the Bid will be adjusted by the MDA in accordance with the above procedure for the correction of errors and, with the concurrence of the Bidder, shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the Bid will be rejected, and the Bid Security may be forfeited in accordance with ITB Sub-Clause 17.5(b).
- 29. Currency for Bid Evaluation**
- 29.1 The MDA will convert the amounts in various currencies in which the Bid Price, corrected pursuant to ITB Clause 28, is payable (excluding Provisional Sums but including Daywork where priced competitively) to either:
- (a) the currency of the MDA's country at the selling rates established for similar transactions by the authority **specified in the BDS** on the date **stipulated in the BDS**;

or

- (b) a currency widely used in international trade, such as the U.S. dollar, **stipulated in the BDS**, at the selling rate of exchange published in the international press as **stipulated in the BDS** on the date **stipulated in the BDS**, for the amounts payable in foreign currency; and, at the selling exchange rate established for similar transactions by the same authority specified in ITB Sub-Clause 29.1 (a) above on the date **specified in the BDS** for the amount payable in the currency of the MDA's country.

30. Evaluation and Comparison of Bids

30.1 The MDA will evaluate and compare only the bids determined to be substantially responsive in accordance with ITB Clause 27.

30.2 In evaluating the bids, the MDA will determine for each Bid the evaluated Bid price by adjusting the Bid price as follows:

- (a) making any correction for errors pursuant to ITB Clause 28;
- (b) excluding provisional sums and the provision, if any, for contingencies in the Activity Schedule, Section V, but including Day work, when requested in the Specifications (or Terms of Reference) Section VIII;
- (c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with ITB Clause 18; and
- (d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with ITB Sub-Clause 23.5.

30.3 The MDA reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors, which are in excess of the requirements of the bidding documents or otherwise result in unsolicited benefits for the MDA will not be taken into account in Bid evaluation.

30.4 The estimated effect of any price adjustment conditions under Sub-Clause 7.6 of the General Conditions of Contract, during the period of implementation of the Contract, will not be taken into account in Bid evaluation.

31. Preference for Domestic Bidders

31.1 Domestic bidders shall not be eligible for any margin of preference in Bid evaluation.

F. Award of Contract

- 32. Award Criteria**
- 32.1 Subject to ITB Clause 33, the MDA will award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the bidding documents and who has offered the lowest evaluated Bid price, provided that such Bidder has been determined to be (a) eligible in accordance with the provisions of ITB Clause 4, and (b) qualified in accordance with the provisions of ITB Clause 5.
- 32.2 If, pursuant to ITB Sub-Clause 13.2 this contract is being let on a “slice and package” basis, the lowest evaluated Bid Price will be determined when evaluating this contract in conjunction with other contracts to be awarded concurrently. Taking into account any discounts offered by the bidders for the award of more than one contract.
- 33. MDA’s Right to Accept any Bid and to Reject any or all Bids**
- 33.1 Notwithstanding ITB Clause 32, the MDA reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the MDA’s action.
- 34. Notification of Award and Signing of Agreement**
- 34.1 The Bidder whose Bid has been accepted will be notified of the award by the MDA prior to expiration of the Bid validity period by cable, telex, or facsimile confirmed by registered letter from the MDA. This letter (hereinafter and in the Conditions of Contract called the “Letter of Acceptance”) will state the sum that the MDA will pay the Service provider in consideration of the execution, completion, and maintenance of the Services by the Service provider as prescribed by the Contract (hereinafter and in the Contract called the “Contract Price”).
- 34.2 The notification of award will constitute the formation of the Contract.
- 34.3 The Contract, in the form provided in the bidding documents, will incorporate all agreements between the MDA and the successful Bidder. It will be signed by the MDA and sent to the successful Bidder along with the Letter of Acceptance. Within 21 days of receipt of the Contract, the successful bidder shall sign the Contract and return it to the MDA, together with the required performance security pursuant to Clause 35.
- 34.4 Upon fulfillment of ITB Sub-Clause 34.3, the MDA will promptly notify the unsuccessful Bidders the name of the

winning Bidder and that their bid security will be returned as promptly as possible.

34.5 If, after notification of award, a bidder wishes to ascertain the grounds on which its bid was not selected, it should address its request to the MDA. The MDA will promptly respond in writing to the unsuccessful Bidder.

35. Performance Security

35.1 Within 21 days after receipt of the Letter of Acceptance, the successful Bidder shall deliver to the MDA a Performance Security in the amount and in the form (Bank Guarantee and/or Performance Bond) **stipulated in the BDS**, denominated in the type and proportions of currencies in the Letter of Acceptance and in accordance with the General Conditions of Contract.

35.2 If the Performance Security is provided by the successful Bidder in the form of a Bank Guarantee, it shall be issued either (a) at the Bidder's option, by a LSG located in the country of the MDA or a foreign LSG through a correspondent LSG located in the country of the MDA, or (b) with the agreement of the MDA directly by a foreign LSG acceptable to the MDA.

35.3 If the Performance Security is to be provided by the successful Bidder in the form of a Bond, it shall be issued by a surety which the Bidder has determined to be acceptable to the MDA.

35.4 Failure of the successful Bidder to comply with the requirements of ITB Sub-Clause 35.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Bid Security.

36. Advance Payment and Security

36.1 The MDA will provide an Advance Payment on the Contract Price as stipulated in the Conditions of Contract, subject to the amount **stated in the BDS**.

37. Adjudicator

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

Section II. Bidding Data Sheet

Instructions to Bidders Clause Reference

A. General	
1.1	The MDA is _____. The name and identification number of the Contract is _____ _____
1.2	The Intended Completion Date is _____
2.1	The MDA is _____ The Project is _____ The loan/credit number is _____
5.2	Prequalification _____ been undertaken.
5.3	The Qualification Information and Bidding forms to be submitted are as follows: _____
5.4	The information needed for Bids submitted by joint ventures is as follows: _____
5.5	The qualification criteria in Sub-Clause 4.4 are modified as follows: _____ _____
5.5(a)	The minimum required annual volume of Services for the successful Bidder in any of the last ten years shall be _____
5.5(b)	The experience required to be demonstrated by the Bidder should include as a minimum that he has executed during the last 5 years the following: _____
5.5(c)	The essential equipment to be made available for the Contract by the successful Bidder shall be _____.
5.5(e)	The minimum amount of liquid assets and/or credit facilities net of other contractual commitments of the successful Bidder shall be _____ _____
5.5	Subcontractors' experience _____ be taken into account.
B. Bidding Data	

9.2 and 19.1	The number of copies of the Bid to be completed and returned shall be _____
C. Preparation of Bids	
12.1	Language of the bid: _____
13.1	The additional materials required to be completed and submitted are: _____ _____
14.4	The Contract _____ subject to price adjustment in accordance with Clause 6.6 of the Conditions of Contract.
15.1	Local inputs shall be quoted in _____.
16.1	The period of Bid validity shall be _____ days after the deadline for Bid submission specified in the BDS.
17.1	The Bidder shall provide: _____.
17.2	The amount of Bid Security shall be _____ or an equivalent amount in a freely-convertible currency.
18.1	Alternative bids _____ permitted.
18.2	Alternative times for completion _____ permitted. If permitted, the range of acceptable completion time is: _____. If alternative times for completion are permitted, the evaluation method will be as follows: _____.
18.4	Alternative technical solutions shall be permitted for the following parts of the Services: _____. If alternative technical solutions are permitted, the evaluation method will be as follows: _____.
D. Submission of Bids	
20.2	The MDA's address for the purpose of Bid submission is _____. For identification of the bid the envelopes should indicate: Contract: _____ Bid / Contract Number: _____
21.1	The deadline for submission of bids shall be _____.
E. Bid Opening and Evaluation	

24.1	Bids will be opened at _____ of the day _____ at the following address _____.
29.1	<p>Currency chosen for the purpose of converting to a common currency. _____.</p> <p>Source of exchange rate: _____</p> <p>Exchange rate date. _____.</p>
F. Award of Contract	
35.0	The Performance Security acceptable to the MDA shall be the in the Standard Form of _____.
36.1	The Advance Payment shall be of _____ percent of the Contract Price.
37.1	The Adjudicator proposed by the MDA is _____. The hourly fee for this proposed Adjudicator shall be _____. The biographical data of the proposed Adjudicator is as follows: _____.

Section III. Bidding Forms

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Service Provider's Bid

[date]

To: [name and address of MDA]

Having examined the bidding documents including addenda No, we offer to execute the [name and identification number of Contract] in accordance with the Conditions of Contract, specifications, drawings and activity schedule accompanying this Bid for the Contract Price of [amount in numbers], [amount in words] [names of currencies].

The Contract shall be paid in the following currencies:

Currency	Amount payable in currency	Inputs for which foreign currency is required
(a)		
(b)		

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

[or]

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

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

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

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")		

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Bidder: _____

Address: _____

Qualification Information

- 1. Individual Bidders or Individual Members of Joint Ventures**
- 1.1 Constitution or legal status of Bidder: *[attach copy]*
 Place of registration: *[insert]*
 Principal place of business: *[insert]*
 Power of attorney of signatory of Bid: *[attach]*
- 1.2 Total annual volume of Services performed in five years, in the internationally traded currency specified in the BDS: *[insert]*
- 1.3 Services performed as prime Service Provider on the provision of Services of a similar nature and volume over the last five years. The values should be indicated in the same currency used for Item 1.2 above. Also list details of work under way or committed, including expected completion date.

Project name and country	Name of MDA and contact person	Type of Services provided and year of completion	Value of contract
(a)			
(b)			

- 1.4 Major items of Service Provider's Equipment proposed for carrying out the Services. List all information requested below. Refer also to ITB Sub-Clause 5.4(c).

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

- 1.5 Qualifications and experience of key personnel proposed for administration and execution of the Contract. Attach biographical data. Refer also to ITB Sub-Clause 5.4(e) and GCC Clause 9.1.

Position	Name	Years of experience (general)	Years of experience in proposed

position
(a)
(b)

1.6 Proposed subcontracts and firms involved. Refer to GCC Clause 7.

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

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

1.8 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of support documents. We certify/confirm that we comply with eligibility requirements as per ITB Clause 4.

1.9 Name, address, and telephone, telex, and facsimile numbers of LSGs that may provide references if contacted by the MDA.

1.10 Information regarding any litigation, current or within the last five years, in which the Bidder is or has been involved.

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

1.11 Statement of compliance with the requirements of ITB Sub-Clause 4.2.

1.12 Proposed Program (service work method and schedule). Descriptions, drawings, and charts, as necessary, to comply with

the requirements of the bidding documents.

- 2. Joint Ventures**
- 2.1 The information listed in 1.1 - 1.11 above shall be provided for each partner of the joint venture.
 - 2.2 The information in 1.12 above shall be provided for the joint venture.
 - 2.3 Attach the power of attorney of the signatory(ies) of the Bid authorizing signature of the Bid on behalf of the joint venture.
 - 2.4 Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that
 - (a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
 - (b) one of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
 - (c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.
- 3. Additional Requirements**
- 3.1 Bidders should provide any additional information required in the BDS and to fulfill the requirements of ITB Sub-Clause 5.1, if applicable.

Letter of Acceptance

[letterhead paper of the MDA]

[date]

To: *[name and address of the Service provider]*

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

Note: Insert one of the 3 options for the second paragraph. The first option should be used if the Bidder has not objected the name proposed for Adjudicator. The second option if the Bidder has objected the proposed Adjudicator and proposed a name for a substitute, who was accepted by the MDA. And the third option if the Bidder has objected the proposed Adjudicator and proposed a name for a substitute, who was not accepted by the MDA.

We confirm that *[insert name proposed by MDA in the Bidding Data]*,

or

We accept that *[name proposed by bidder]* be appointed as the Adjudicator

or

We do not accept that *[name proposed by bidder]* be appointed as Adjudicator, and by sending a copy of this letter of acceptance to *[insert the name of the Appointing Authority]*, we are hereby requesting *[name]*, the Appointing Authority, to appoint the Adjudicator in accordance with Clause 37.1 of the Instructions to Bidders

You are hereby instructed to proceed with the execution of the said contract for the provision of Services in accordance with the Contract documents.

Please return the attached Contract dully signed

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Agency: _____

Attachment: Contract

Form of Contract

[letterhead paper of the MDA]

LUMP-SUM REMUNERATION

This CONTRACT (hereinafter called the “Contract”) is made the *[day]* day of the month of *[month]*, *[year]*, between, on the one hand, *[name of MDA]* (hereinafter called the “MDA”) and, on the other hand, *[name of Service Provider]* (hereinafter called the “Service Provider”).

[Note: In the text below text in brackets is optional; all notes should be deleted in final text. If the Service Provider consist of more than one entity, the above should be partially amended to read as follows: “...(hereinafter called the “MDA”) and, on the other hand, a joint venture consisting of the following entities, each of which will be jointly and severally liable to the MDA for all the Service Provider’s obligations under this Contract, namely, [name of Service Provider] and [name of Service Provider] (hereinafter called the “Service Provider”).]

WHEREAS

- (a) the MDA has requested the Service Provider to provide certain Services as defined in the General Conditions of Contract attached to this Contract (hereinafter called the “Services”);
- (b) the Service Provider, having represented to the MDA that they have the required professional skills, and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract at a contract price of.....;
- (c) the MDA has received *[or has applied for]* budgetary allocation from the Lagos State Government (hereinafter called the “LSG”) towards the cost of the Services and intends to apply a portion of the proceeds of this allocation to eligible payments under this Contract, it being understood (i) that payments by the LSG will be made only at the request of the MDA and upon approval by the LSG (ii) that such payments will be subject, in all respects, to the terms and conditions of the agreement providing for the fund, and (iii) that no party other than the MDA shall derive any rights from the agreement providing for the fund or have any claim to the fund proceeds;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents shall be deemed to form and be read and construed as part of this Agreement, and the priority of the documents shall be as follows:

- (a) the Letter of Acceptance;
- (b) the Service Provider’s Bid
- (c) the Special Conditions of Contract;
- (d) the General Conditions of Contract;

- (e) the Specifications;
- (f) the Priced Activity Schedule; and
- (g) The following Appendices: [**Note:** *If any of these Appendices are not used, the words "Not Used" should be inserted below next to the title of the Appendix and on the sheet attached hereto carrying the title of that Appendix.*]

Appendix A: Description of the Services

Appendix B: Schedule of Payments

Appendix C: Key Personnel and Subcontractors

Appendix D: Breakdown of Contract Price in Foreign Currency

Appendix E: Breakdown of Contract Price in Local Currency

Appendix F: Services and Facilities Provided by the MDA

Appendix G: Performance Incentive Compensation

2. The mutual rights and obligations of the MDA and the Service Provider shall be as set forth in the Contract, in particular:
 - (a) the Service Provider shall carry out the Services in accordance with the provisions of the Contract; and
 - (b) the MDA shall make payments to the Service Provider in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of *[name of MDA]*

[Authorized Representative]

For and on behalf of *[name of Service Provider]*

[Authorized Representative]

[Note: *If the Service Provider consists of more than one entity, all these entities should appear as signatories, e.g., in the following manner:]*

For and on behalf of each of the Members of the Service Provider

[name of member]

[Authorized Representative]

[name of member]

[Authorized Representative]

Bid Security (Bank Guarantee)

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

Beneficiary: _____

Date: _____

BID GUARANTEE No.: _____

We have been informed that _____ (hereinafter called "the Bidder") has submitted to you its bid dated (hereinafter called "the Bid") for the execution of _____ 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 _____ hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ (_____) 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 Purchaser during the period of bid validity, (i) fails or refuses to execute the Contract Form; or (ii) fails or refuses to furnish the performance security, if required, in accordance with the Instructions to Bidders.

This guarantee will expire: (a) if the Bidder is the successful bidder, upon our receipt of copies of the contract signed by the Bidder and the performance security issued to you upon the instruction of the Bidder; or (b) if the Bidder is not the successful bidder, upon the earlier of (i) our receipt of a copy of 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. 458.

[signature(s)]

Bid Security (Bid Bond)

[The Surety shall fill in this Bid Bond Form in accordance with the instructions indicated.]

BOND NO. _____

BY THIS BOND _____ as Principal (hereinafter called “the Principal”), and _____, **authorized to transact business in** _____, as Surety (hereinafter called “the Surety”), are held and firmly bound unto _____ as Oblige (hereinafter called “the Purchaser”) in the sum of _____⁷ _____, for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has submitted a written Bid to the Purchaser dated the ____ day of _____, 20__, for the construction of _____ (hereinafter called the “Bid”).

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal:

- (a) withdraws its Bid during the period of bid validity specified in the Form of Bid; or
- (b) having been notified of the acceptance of its Bid by the Purchaser during the period of Bid validity; (i) fails or refuses to execute the Contract Form; or (ii) fails or refuses to furnish the Performance Security, if required, in accordance with the Instructions to Bidders.

then the Surety undertakes to immediately pay to the Purchaser up to the above amount upon receipt of the Purchaser’s first written demand, without the Purchaser having to substantiate its demand, provided that in its demand the Purchaser shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

The Surety hereby agrees that its obligation will remain in full force and effect up to and including the date 28 days after the date of expiration of the Bid validity as stated in the Invitation to Bid or extended by the Purchaser at any time prior to this date, notice of which extension(s) to the Surety being hereby waived.

IN TESTIMONY WHEREOF, the Principal and the Surety have caused these presents to be executed in their respective names this ____ day of _____ 20__.

Principal: _____ Surety: _____
 Corporate Seal (where appropriate)

(Signature)
(Printed name and title)

(Signature)
(Printed name and title)

⁷ The amount of the Bond shall be denominated in the currency of the Purchaser’s country or the equivalent amount in a freely convertible currency.

Bid-Securing Declaration

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

Date: _____
 Bid No.: _____
 Alternative No.: _____

To: _____

We, the undersigned, declare that:

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

We accept that we will automatically be suspended from being eligible for bidding in any contract with the Purchaser for the period of time of _____ starting on _____, if we are in breach of our obligation(s) under the bid conditions, because we:

- (a) have withdrawn our Bid during the period of bid validity specified in the Form of Bid; or
- (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract; or (ii) fail or refuse to furnish the Performance Security, if required, in accordance with the ITB.

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

Signed: _____

In the capacity of: _____

Name: _____

Duly authorized to sign the bid for and on behalf of: _____

Dated on _____ day of _____, _____
 Corporate Seal (where appropriate)

Section IV. Eligible Countries

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

1. In accordance with Para 1.8 of the Guidelines: Procurement under IBRD Loans and IDA Credits, dated May 2004, the LSG permits firms and individuals from all countries to offer goods, works and services for LSG-financed projects. As an exception, firms of a Country or goods manufactured in a Country may be excluded if:

Para 1.8 (a) (i): as a matter of law or official regulation, the MDA's Country prohibits commercial relations with that Country, provided that the LSG is satisfied that such exclusion does not preclude effective competition for the supply of the Goods or Works required, or

Para 1.8 (a) (ii): 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 MDA'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 MDAs and bidders, at the present time firms, goods and services from the following countries are excluded from this bidding:

(a) With reference to paragraph 1.8 (a) (i) of the Guidelines:

(b) With reference to paragraph 1.8 (a) (ii) of the Guidelines:

Part II – Activity Schedule

Section V. Activity Schedule

(see User's Guide)

Part III – Conditions of Contract and Contract Forms

Section VI. General Conditions of Contract

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Section V. General Conditions of Contract

A. General Provisions

1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- (a) The Adjudicator is the person appointed jointly by the MDA and the Contractor to resolve disputes in the first instance, as provided for in Sub-Clause 8.2 hereunder.
- (b) “Activity Schedule” is the priced and completed list of items of Services to be performed by the Service Provider forming part of his Bid;
- (c) “LSG” means the Lagos State Government;
- (d) “Completion Date” means the date of completion of the Services by the Service Provider as certified by the MDA
- (e) “Contract” means the Contract signed by the Parties, to which these General Conditions of Contract (GCC) are attached, together with all the documents listed in Clause 1 of such signed Contract;
- (f) “Contract Price” means the price to be paid for the performance of the Services, in accordance with Clause 6;
- (g) “Dayworks” means varied work inputs subject to payment on a time basis for the Service Provider’s employees and equipment, in addition to payments for associated materials and administration.
- (h) “MDA” means the party who employs the Service Provider
- (i) “Foreign Currency” means any currency other than the currency of the country of the MDA;
- (j) “GCC” means these General Conditions of Contract;
- (k) “Government” means the Government of the MDA’s country;
- (l) “Local Currency” means the currency of the country of the MDA;
- (m) “Member,” in case the Service Provider consist of a joint venture of more than one entity, means any of these entities; “Members” means all these entities, and “Member in Charge” means the entity specified in the SC to act on their behalf in exercising all the Service Provider’ rights and obligations

towards the MDA under this Contract;

- (n) “Party” means the MDA or the Service Provider, as the case may be, and “Parties” means both of them;
- (o) “Personnel” means persons hired by the Service Provider or by any Subcontractor as employees and assigned to the performance of the Services or any part thereof;
- (p) “Service Provider” is a person or corporate body whose Bid to provide the Services has been accepted by the MDA;
- (q) “Service Provider’s Bid” means the completed bidding document submitted by the Service Provider to the MDA
- (r) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented;
- (s) “Specifications” means the specifications of the service included in the bidding document submitted by the Service Provider to the MDA
- (t) “Services” means the work to be performed by the Service Provider pursuant to this Contract, as described in Appendix A; and in the Specifications and Schedule of Activities included in the Service Provider’s Bid.
- (u) “Subcontractor” means any entity to which the Service Provider subcontracts any part of the Services in accordance with the provisions of Sub-Clauses 3.5 and 4.

1.2 Applicable Law The Contract shall be interpreted in accordance with the laws of the MDA’s country, unless otherwise **specified in the Special Conditions of Contract (SCC)**.

1.3 Language This Contract has been executed in the language **specified in the SCC**, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

1.4 Notices Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telex, telegram, or facsimile to such Party at the address **specified in the SCC**.

1.5 Location The Services shall be performed at such locations as are specified in Appendix A, in the specifications and, where the location of a particular task is not so specified, at such locations, whether in the

Government's country or elsewhere, as the MDA may approve.

- 1.6 Authorized Representatives** Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the MDA or the Service Provider may be taken or executed by the officials **specified in the SCC**.
- 1.7 Inspection and Audit by the LSG** The Service Provider shall permit the LSG to inspect its accounts and records relating to the performance of the Services and to have them audited by auditors appointed by the LSG, if so required by the LSG.
- 1.8 Taxes and Duties** The Service Provider, Subcontractors, and their Personnel shall pay such taxes, duties, fees, and other impositions as may be levied under the Applicable Law, the amount of which is deemed to have been included in the Contract Price.

2. Commencement, Completion, Modification, and Termination of Contract

- 2.1 Effectiveness of Contract** This Contract shall come into effect on the date the Contract is signed by both parties or such other later date as may be **stated in the SCC**.
- 2.2 Commencement of Services**
- 2.2.1 Program** Before commencement of the Services, the Service Provider shall submit to the MDA for approval a Program showing the general methods, arrangements, order and timing for all activities. The Services shall be carried out in accordance with the approved Program as updated.
- 2.2.2 Starting Date** The Service Provider shall start carrying out the Services thirty (30) days after the date the Contract becomes effective, or at such other date as may be **specified in the SCC**.
- 2.3 Intended Completion Date** Unless terminated earlier pursuant to Sub-Clause 2.6, the Service Provider shall complete the activities by the Intended Completion Date, as is **specified in the SCC**. If the Service Provider does not complete the activities by the Intended Completion Date, it shall be liable to pay liquidated damage as per Sub-Clause 3.8. In this case, the Completion Date will be the date of completion of all activities.
- 2.4 Modification** Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written agreement between the Parties and shall not be effective until the consent of the LSG or of the

Association, as the case may be, has been obtained.

2.5 Force Majeure

2.5.1 Definition

For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party and which makes a Party’s performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

2.5.2 No Breach of Contract

The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

2.5.3 Extension of Time

Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

2.5.4 Payments

During the period of their inability to perform the Services as a result of an event of Force Majeure, the Service Provider shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period.

2.6 Termination

2.6.1 By the MDA

The MDA may terminate this Contract, by not less than thirty (30) days’ written notice of termination to the Service Provider, to be given after the occurrence of any of the events specified in paragraphs (a) through (d) of this Sub-Clause 2.6.1:

- (a) if the Service Provider does not remedy a failure in the performance of its obligations under the Contract, within thirty (30) days after being notified or within any further period as the MDA may have subsequently approved in writing;
- (b) if the Service Provider become insolvent or LSGrupt;
- (c) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a

period of not less than sixty (60) days; or

- (d) if the Service Provider, in the judgment of the MDA has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purposes of this Sub-Clause:

- (i) “corrupt practice”⁸ is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (ii) “fraudulent practice”⁹ 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;
- (iii) “collusive practice”¹⁰ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) “coercive practice”¹¹ is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (v) “obstructive practice” is
- (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 LSG 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

⁸ For the purpose of this Contract, “another party” refers to a public official acting in relation to the procurement process or contract execution. In this context, “public official” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

⁹ For the purpose of this Contract, “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

¹⁰ For the purpose of this Contract, “parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

¹¹ For the purpose of this Contract, “party” refers to a participant in the procurement process or contract execution.

- (bb) acts intended to materially impede the exercise of the LSG's inspection and audit rights provided for under para. 1.14 (e) of the LSG's Procurement Guidelines.

2.6.2 By the Service Provider

The Service Provider may terminate this Contract, by not less than thirty (30) days' written notice to the MDA, such notice to be given after the occurrence of any of the events specified in paragraphs (a) and (b) of this Sub-Clause 2.6.2:

- (a) if the MDA fails to pay any monies due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to Clause 7 within forty-five (45) days after receiving written notice from the Service Provider that such payment is overdue; or
- (b) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

2.6.3 Suspension of Fund

In the event that the LSG suspends the Fund to the MDA, from which part of the payments to the Service Provider are being made:

- (a) The MDA is obligated to notify the Service Provider of such suspension within 7 days of having received the World LSG's suspension notice.
- (b) If the Service Provider has not received sums due to by the due date stated in the SCC in accordance with Sub-Clause 6.5 the Service Provider may immediately issue a 14 day termination notice.

2.6.4 Payment upon Termination

Upon termination of this Contract pursuant to Sub-Clauses 2.6.1 or 2.6.2, the MDA shall make the following payments to the Service Provider:

- (a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;
- (b) except in the case of termination pursuant to paragraphs (a), (b), (d) of Sub-Clause 2.6.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel.

3. Obligations of the Service Provider

3.1 General

The Service Provider shall perform the Services in accordance with

the Specifications and the Activity Schedule, and carry out its obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Service Provider shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the MDA, and shall at all times support and safeguard the MDA's legitimate interests in any dealings with Subcontractors or third parties.

3.2 Conflict of Interests

3.2.1 Service Provider Not to Benefit from Commissions and Discounts.

The remuneration of the Service Provider pursuant to Clause 6 shall constitute the Service Provider's sole remuneration in connection with this Contract or the Services, and the Service Provider shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Service Provider shall use their best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them similarly shall not receive any such additional remuneration.

3.2.2 Service Provider and Affiliates Not to be Otherwise Interested in Project

The Service Provider agree that, during the term of this Contract and after its termination, the Service Provider and its affiliates, as well as any Subcontractor and any of its affiliates, shall be disqualified from providing goods, works, or Services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.

3.2.3 Prohibition of Conflicting Activities

Neither the Service Provider nor its Subcontractors nor the Personnel shall engage, either directly or indirectly, in any of the following activities:

- (a) during the term of this Contract, any business or professional activities in the Government's country which would conflict with the activities assigned to them under this Contract;
- (b) during the term of this Contract, neither the Service Provider nor their Subcontractors shall hire public employees in active duty or on any type of leave, to perform any activity under this Contract;
- (c) after the termination of this Contract, such other activities as may be **specified in the SCC**.

- 3.3 Confidentiality** The Service Provider, its Subcontractors, and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the MDA’s business or operations without the prior written consent of the MDA.
- 3.4 Insurance to be Taken Out by the Service Provider** The Service Provider (a) shall take out and maintain, and shall cause any Subcontractors to take out and maintain, at its (or the Subcontractors’, as the case may be) own cost but on terms and conditions approved by the MDA, insurance against the risks, and for the coverage, as shall be **specified in the SCC**; and (b) at the MDA’s request, shall provide evidence to the MDA showing that such insurance has been taken out and maintained and that the current premiums have been paid.
- 3.5 Service Provider’s Actions Requiring MDA’s Prior Approval** The Service Provider shall obtain the MDA’s prior approval in writing before taking any of the following actions:
- (a) entering into a subcontract for the performance of any part of the Services,
 - (b) appointing such members of the Personnel not listed by name in Appendix C (“Key Personnel and Subcontractors”),
 - (c) changing the Program of activities; and
 - (d) any other action that may be **specified in the SCC**.
- 3.6 Reporting Obligations** The Service Provider shall submit to the MDA the reports and documents specified in Appendix B in the form, in the numbers, and within the periods set forth in the said Appendix.
- 3.7 Documents Prepared by the Service Provider to Be the Property of the MDA** All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Service Provider in accordance with Sub-Clause 3.6 shall become and remain the property of the MDA, and the Service Provider shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the MDA, together with a detailed inventory thereof. The Service Provider may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be **specified in the SCC**.
- 3.8 Liquidated Damages**
- 3.8.1 Payments of Liquidated Damages** The Service Provider shall pay liquidated damages to the MDA at the rate per day **stated in the SCC** 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 SCC**. The MDA may deduct liquidated damages from payments due to the Service Provider. Payment of liquidated damages shall not affect the Service Provider's liabilities.

3.8.2 Correction for Overpayment

If the Intended Completion Date is extended after liquidated damages have been paid, the MDA shall correct any overpayment of liquidated damages by the Service Provider by adjusting the next payment certificate. The Service Provider shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 6.5.

3.8.3 Lack of performance penalty

If the Service Provider has not corrected a Defect within the time specified in the MDA's notice, a penalty for Lack of performance will be paid by the Service Provider. The amount to be paid will be calculated as a percentage of the cost of having the Defect corrected, assessed as described in Sub-Clause 7.2 and **specified in the SCC**.

3.9 Performance Security

The Service Provider shall provide the Performance Security to the MDA no later than the date specified in the Letter of acceptance. The Performance Security shall be issued in an amount and form and by a LSG or surety acceptable to the MDA, 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 Completion Date of the Contract in case of a Bank Guarantee, and until one year from the Completion Date of the Contract in the case of a Performance Bond.

4. Service Provider's Personnel

4.1 Description of Personnel

The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Service Provider's Key Personnel are described in Appendix C. The Key Personnel and Subcontractors listed by title as well as by name in Appendix C are hereby approved by the MDA.

4.2 Removal and/or Replacement of Personnel

- (a) Except as the MDA may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Service Provider, it becomes necessary to replace any of the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.
- (b) If the MDA finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) have reasonable cause to be

dissatisfied with the performance of any of the Personnel, then the Service Provider shall, at the MDA's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the MDA.

- (c) The Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

5. Obligations of the MDA

- 5.1 Assistance and Exemptions** The MDA shall use its best efforts to ensure that the Government shall provide the Service Provider such assistance and exemptions as **specified in the SCC.**
- 5.2 Change in the Applicable Law** If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Service Provider, then the remuneration and reimbursable expenses otherwise payable to the Service Provider under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in Sub-Clauses 6.2 (a) or (b), as the case may be.
- 5.3 Services and Facilities** The MDA shall make available to the Service Provider the Services and Facilities listed under Appendix F.

6. Payments to the Service Provider

- 6.1 Lump-Sum Remuneration** The Service Provider's remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all Subcontractors' costs, and all other costs incurred by the Service Provider in carrying out the Services described in Appendix A. Except as provided in Sub-Clause 5.2, the Contract Price may only be increased above the amounts stated in Sub-Clause 6.2 if the Parties have agreed to additional payments in accordance with Sub-Clauses 2.4 and 6.3.
- 6.2 Contract Price**
- (a) The price payable in local currency is **set forth in the SCC.**
- (b) The price payable in foreign currency is **set forth in the SCC.**
- 6.3 Payment for Additional Services, and Performance Incentive**
- 6.3.1 For the purpose of determining the remuneration due for additional Services as may be agreed under Sub-Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D and E.
- 6.3.2 **If the SCC so specify,** the service provider shall be paid

Compensation performance incentive compensation as set out in the Performance Incentive Compensation appendix.

6.4 Terms and Conditions of Payment Payments will be made to the Service Provider according to the payment schedule **stated in the SCC**. **Unless otherwise stated in the SCC**, the advance payment (Advance for Mobilization, Materials and Supplies) shall be made against the provision by the Service Provider of a Bank Guarantee for the same amount, and shall be valid for the period **stated in the SCC**. Any other payment shall be made after the conditions **listed in the SCC** for such payment have been met, and the Service Provider have submitted an invoice to the MDA specifying the amount due.

6.5 Interest on Delayed Payments If the MDA has delayed payments beyond fifteen (15) days after the due date stated in the SCC, interest shall be paid to the Service Provider for each day of delay at the rate stated in the SCC.

6.6 Price Adjustment 6.6.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC**. If so provided, the amounts certified in each payment certificate, after deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

$$P_c = A_c + B_c \frac{L_{mc}}{L_{oc}} + C_c \frac{I_{mc}}{I_{oc}}$$

Where:

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

A_c , B_c and C_c are coefficients specified in the SCC, representing: A_c the nonadjustable portion; B_c the adjustable portion relative to labor costs and C_c the adjustable portion for other inputs, of the Contract Price payable in that specific currency “c”; and

L_{mc} is the index prevailing at the first day of the month of the corresponding invoice date and L_{oc} is the index prevailing 28 days before Bid opening for labor; both in the specific currency “c”.

I_{mc} is the index prevailing at the first day of the month of the corresponding invoice date and I_{oc} is the index prevailing 28 days before Bid opening for other inputs payable; both in the specific currency “c”.

If a price adjustment factor is applied to payments made in a currency other than the currency of the source of the index for a

particular indexed input, a correction factor Z_o/Z_n will be applied to the respective component factor of pn for the formula of the relevant currency. Z_o is the number of units of currency of the country of the index, equivalent to one unit of the currency payment on the date of the base index, and Z_n is the corresponding number of such currency units on the date of the current index.

6.6.2 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.

6.7 Dayworks

6.7.1 If applicable, the Daywork rates in the Service Provider's Bid shall be used for small additional amounts of Services only when the MDA has given written instructions in advance for additional services to be paid in that way.

6.7.2 All work to be paid for as Dayworks shall be recorded by the Service Provider on forms approved by the MDA. Each completed form shall be verified and signed by the MDA representative as indicated in Sub-Clause 1.6 within two days of the Services being performed.

6.7.3 The Service Provider shall be paid for Dayworks subject to obtaining signed Dayworks forms as indicated in Sub-Clause 6.7.2

7. Quality Control

7.1 Identifying Defects

The principle and modalities of Inspection of the Services by the MDA shall be as **indicated in the SCC**. The MDA shall check the Service Provider's performance and notify him of any Defects that are found. Such checking shall not affect the Service Provider's responsibilities. The MDA may instruct the Service Provider to search for a Defect and to uncover and test any service that the MDA considers may have a Defect. Defect Liability Period is as **defined in the SCC**.

7.2 Correction of Defects, and Lack of Performance Penalty

- (a) The MDA shall give notice to the Service Provider of any Defects before the end of the Contract. The Defects liability period shall be extended for as long as Defects remain to be corrected.
- (b) Every time notice a Defect is given, the Service Provider shall correct the notified Defect within the length of time specified

by the MDA's notice.

- (c) If the Service Provider has not corrected a Defect within the time specified in the MDA's notice, the MDA will assess the cost of having the Defect corrected, the Service Provider will pay this amount, and a Penalty for Lack of Performance calculated as described in Sub-Clause 3.8.

8. Settlement of Disputes

8.1 Amicable Settlement

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

8.2 Dispute Settlement

8.2.1 If any dispute arises between the MDA and the Service Provider in connection with, or arising out of, the Contract or the provision of the Services, whether during carrying out the Services or after their completion, the matter shall be referred to the Adjudicator within 14 days of the notification of disagreement of one party to the other.

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

8.2.3 The Adjudicator shall be paid by the hour at the rate **specified in the BDS and SCC**, together with reimbursable expenses of the types **specified in the SCC**, and the cost shall be divided equally between the MDA and the Service Provider, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

8.2.4 The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place **shown in the SCC**.

8.2.5 Should the Adjudicator resign or die, or should the MDA and the Service Provider agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator will be jointly appointed by the MDA and the Service Provider. In case of disagreement between the MDA and the Service Provider, within 30 days, the Adjudicator shall be designated by the Appointing Authority **designated in the SCC** at the request of either party, within 14 days of receipt of such request.

Section VII. Special Conditions of Contract

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1	The words “in the Government’s country” are amended to read “in [<i>name of country</i>].”
1.1(a)	The Adjudicator is _____
1.1(e)	The contract name is _____.
1.1(h)	The MDA is _____
1.1(m)	The Member in Charge is _____
1.1(p)	The Service Provider is _____
1.2	The Applicable Law is: _____
1.3	The language is _____
1.4	<p>The addresses are:</p> <p>MDA: _____</p> <p>Attention: _____</p> <p>Telex: _____</p> <p>Facsimile: _____</p> <p>Service Provider: _____</p> <p>Attention: _____</p> <p>Telex: _____</p> <p>Facsimile: _____</p>
1.6	<p>The Authorized Representatives are:</p> <p>For the MDA: _____</p> <p>For the Service Provider: _____</p>
2.1	The date on which this Contract shall come into effect is _____.
2.2.2	The Starting Date for the commencement of Services is _____.

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
2.3	The Intended Completion Date is _____.
3.2.3	Activities prohibited after termination of this Contract are: _____ _____
3.4	The risks and coverage by insurance shall be: (i) Third Party motor vehicle _____ (ii) Third Party liability _____ (iii) MDA's liability and workers' compensation _____ (iv) Professional liability _____ (v) Loss or damage to equipment and property _____
3.5(d)	The other actions are _____.]
3.7	Restrictions on the use of documents prepared by the Service Provider are: _____
3.8.1	The liquidated damages rate is _____ per day The maximum amount of liquidated damages for the whole contract is _____ percent of the final Contract Price.
3.8.3	The percentage _____ to be used for the calculation of Lack of performance Penalty(ies) is _____.
5.1	The assistance and exemptions provided to the Service Provider are: _____
6.2(a)	The amount in local currency is _____.
6.2(b)	The amount in foreign currency or currencies is _____.
6.3.2	The performance incentive paid to the Service Provider shall be: _____ _____
6.4	Payments shall be made according to the following schedule: <ul style="list-style-type: none"> • Advance for Mobilization, Materials and Supplies: _____ percent of the Contract Price shall be paid on the commencement date against the submission of a Bank Guarantee for the same. • Progress payments in accordance with the milestones established as

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>follows, subject to certification by the MDA, that the Services have been rendered satisfactorily, pursuant to the performance indicators:</p> <ul style="list-style-type: none"> ➤ _____ (indicate milestone and/or percentage) _____ ➤ _____ (indicate milestone and/or percentage) _____ and ➤ _____ (indicate milestone and/or percentage) _____ <p>Should the certification not be provided, or refused in writing by the MDA within one month of the date of the milestone, or of the date of receipt of the corresponding invoice, the certification will be deemed to have been provided, and the progress payment will be released at such date.</p> <ul style="list-style-type: none"> • The amortization of the Advance mentioned above shall commence when the progress payments have reached 25% of the contract price and be completed when the progress payments have reached 75%. • The Bank Guarantee for the advance payment shall be released when the advance payment has been fully amortized.
6.5	<p>Payment shall be made within _____ days of receipt of the invoice and the relevant documents specified in Sub-Clause 6.4, and within _____ days in the case of the final payment.</p> <p>The interest rate is _____.</p>
6.6.1	<p>Price adjustment is _____ in accordance with Sub-Clause 6.6.</p> <p>The coefficients for adjustment of prices are _____:</p> <p>(a) For local currency:</p> <p style="padding-left: 40px;">A_L is _____</p> <p style="padding-left: 40px;">B_L is _____</p> <p style="padding-left: 40px;">C_L is _____</p> <p style="padding-left: 40px;">L_{mc} and L_{oc} are the index for Labor from _____</p> <p style="padding-left: 40px;">I_{mc} and I_{oc} are the index for _____ from _____</p> <p>(b) For foreign currency</p> <p style="padding-left: 40px;">A_F is _____</p> <p style="padding-left: 40px;">B_F is _____</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>C_F is _____</p> <p>L_{mc} and L_{oc} are the index for Labor from _____</p> <p>I_{mc} and I_{oc} are the index for _____ from _____</p>
7.1	<p>The principle and modalities of inspection of the Services by the MDA are as follows: _____</p> <p>The Defects Liability Period is _____.</p>
8.2.3	<p>The Adjudicator is _____. Who will be paid a rate of _____ per hour of work. The following reimbursable expenses are recognized: _____</p>
8.2.4	<p>The arbitration procedures of _____ will be used</p>
8.2.5	<p>The designated Appointing Authority for a new Adjudicator is _____</p>

Section VIII. Performance Specifications and Drawings

(Describe Outputs and Performances, rather than Inputs, wherever possible)

Section IX. Contract Forms

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Performance Bank Guarantee (Conditional)

This Agreement is made on the _____ day of _____, _____ between _____ of _____ (hereinafter called "the Guarantor") of the one part and _____ of _____ (hereinafter called "the MDA") of the other part.

Whereas

(1) This Agreement is supplemental to a contract (hereinafter called the Contract) made between _____ of _____ (hereinafter called the Service Provider) of the one part and the MDA of the other part whereby the Service Provider agreed and undertook to execute the Services of _____ for the sum of _____ being the Contract Price; and

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

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

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

the Guarantor will indemnify and pay the MDA the sum of _____, _____ such sum being payable in the types and proportions of currencies in which the Contract Price is payable, provided that the MDA or his authorized representative has notified the Guarantor to that effect and has made a claim against the Guarantor not later than the date of issue of the Defects Liability Certificate.

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

Given under our hand on the date first mentioned above.

Signed by _____
for and on behalf of the Guarantor in the presence of _____

Signed by _____
for and on behalf of the MDA in the presence of _____

Performance Bank Guarantee (Unconditional)

To: _____

Whereas _____ (hereinafter called "the Service Provider") has undertaken, in pursuance of Contract No. _____ dated _____ to execute _____ (hereinafter called "the Contract");

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

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

Now therefore we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Service Provider, up to a total of _____, _____, such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of _____/ as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

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

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

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

Signature and seal of the Guarantor _____

Name of LSG _____

Address _____

Date _____

Performance Bond

By this Bond, _____ as Principal (hereinafter called “the Service Provider”) and _____ as Surety (hereinafter called “the Surety”), are held and firmly bound unto _____ as Obligee (hereinafter called “the MDA”) in the amount of _____ / for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Service Provider and the Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas the Service Provider has entered into a Contract with the MDA dated the _____ day of _____, _____ for _____ in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

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

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

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

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

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

In testimony whereof, the Service Provider has hereunto set its hand and affixed its seal, and the Surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its legal representative, this _____ day of _____, _____.

Signed by _____
on behalf of _____
In the capacity of _____
In the presence of _____
Date _____

Signed by _____
on behalf of _____
In the capacity of _____
In the presence of _____
Date _____

Bank Guarantee for Advance Payment

To: _____

Gentlemen:

In accordance with the provisions of the Conditions of Contract, Sub-Clause 6.4 (“Terms and Conditions of Payment”) of the above-mentioned Contract, _____ (hereinafter called “the Service Provider”) shall deposit with _____ a Bank Guarantee to guarantee his proper and faithful performance under the said Clause of the Contract in an amount of _____

We, the _____, as instructed by the Service Provider, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to _____ on his first demand without whatsoever right of objection on our part and without his first claim to the Service Provider, in the amount not exceeding _____

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

This Guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until _____ receives full repayment of the same amount from the Service Provider.

Yours truly,

Signature and seal: _____

Name of LSG/Financial Institution: _____

Address: _____

Date: _____

User's Guide

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Attachment: Invitation for Bids

The Invitation for Bids (see *Procurement Guidelines*, para. 2.8) is normally issued as

- (a) an advertisement in at least one newspaper of national circulation in the MDA's country or in the official gazette, if any; or in electronic portal with free access; and
- (b) an advertisement in dgMarket and in UNDB online.

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

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

Invitation for Bids (IFB)

Date: *[of issue of invitation]*
Contract Identification N°: *[Contract Identification Number]*

1. The *[name of MDA]* has received¹² a loan from the International LSG for Reconstruction and Development¹³ towards the cost of *[name of Project]* and intends to apply part of the funds to cover eligible payments under the Contract for *[name and identification number of Contract, same as the one indicated in the Special Conditions of Contract]*. Bidding is open to all bidders from eligible source countries as defined in the: *Agency Procurement Guidelines*
2. The *[name of MDA and statement of its relationship to the MDA, if different from the MDA]* invites sealed bids from eligible bidders for carrying out the *[brief description of the Services]*.
3. Bidding documents (and additional copies) may be purchased at *[name and address of office]* for a nonrefundable fee of *[amount in local currency]*, or its equivalent in a freely-convertible currency, for each set. Interested bidders may obtain further information at the same address.
4. Bids shall be valid for a period of *[days]* after Bid closing and must be accompanied by security of *[amount in local currency]* or its equivalent in a convertible currency, and shall be delivered to *[name and full address of receiving office]* on or before *[time and date of Bid closing]*, at which time they will be opened in the presence of the bidders who wish to attend.

¹² Substitute “has applied for,” if appropriate.

Section I. Instructions to Bidders

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

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

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

Section II. Bidding Data Sheet

This section should be filled out by the MDA before issuance of the bidding documents. The insertions should correspond to the information provided in the Invitation for Bids

A. General	
1.1	The MDA is <i>[name of MDA and statement of relationship with the MDA, if different from the MDA]</i> The name and identification number of the Contract is <i>[insert the same information included in 1.1 of the Special Conditions of Contract]</i>
1.2	The Intended Completion date is <i>[insert the same date included in 2.3 of the Special Conditions of Contract]</i>
2.1	The MDA is <i>[name of MDA and statement of relationship with the MDA, if different from the MDA]</i>
	The LSG” means <i>[insert Lagos State Government]</i> which, as of the date of issue of the bidding documents <i>[insert “has been solicited” or “has been approved,” as appropriate]</i> by the World LSG.
	The Project is <i>[name and summary description of the Project financed by the LSG]</i> .

4.2	The Qualification Information and Bidding forms to be submitted are as follows: <i>[list any additions or deletions to list in Sub-Clause 4.2; otherwise list "none"]</i> .
4.3	The information needed for Bids submitted by joint ventures is as follows: <i>[list any additions or deletions to list in Sub-Clause 4.3; otherwise list "none"]</i> .
4.4	The qualification criteria in Sub-Clause 4.4 are modified as follows: <i>[list any additions or deletions to list in Sub-Clause 4.4; otherwise list "none"]</i> .
4.4(a)	The minimum required annual volume of Services for the successful Bidder in any of the last ten years shall be <i>[insert figure in international trading currency, This amount is usually not less than 2.5 times the estimated annual cash flow for the Contract]</i> .
4.4(b)	The experience required to be demonstrated by the Bidder should include as a minimum that he has executed during the last 5 years the following: <i>[insert a list of activities required to show the compliance with 4.4(b)]</i>
4.4(c)	The essential equipment to be made available for the Contract by the successful Bidder shall be <i>[insert equipment list]</i> .
4.4(e)	The minimum amount of liquid assets and/or credit facilities net of other contractual commitments of the successful Bidder shall be <i>[insert figure in international trading currency specified in Bidding Data Sheet]</i> .
4.5	Subcontractors' experience <i>[insert "will" or "will not"]</i> be taken into account.
B. Bidding Data	
8.2 and 18.1	The number of copies of the Bid to be completed and returned shall be <i>[insert number, usually two: more if essential]</i> .
C. Preparation of Bids	
11.1	Language of the bid: <i>[insert "English" "French" or "Spanish"]</i>
12.1	The additional materials required to be completed and submitted are: <i>Insert list of other materials required]</i>
13.4	The Contract <i>[specify "is" or "is not"]</i> subject to price adjustment in accordance with Sub-Clause 6.6 of the Conditions of Contract.
14.1	Local inputs shall be quoted in <i>[insert name of local currency or, at MDA's option, any other currency]</i>
15.1	The period of Bid validity shall be <i>[insert number The period should be a realistic time, usually not less than 45 days nor more than 105, allowing for</i>

	<i>bid evaluation, clarifications, and the World LSG's "no objection" (where awards of Contract are subject to prior review). The time should be the same as that specified in the Invitation for Bids] days after the deadline for Bid submission specified in the BDS.</i>
16.1	<p><i>[insert one of the following options:</i></p> <ul style="list-style-type: none"> (a) No Bid Security is required; or (b) Bid shall include a Bid Security (issued by LSG or surety) using the form included in Section III, Bidding Forms; or (c) Bid shall include "Bid Securing Declaration" using the form included in Section III, Bidding Forms]
16.2	<i>The amount of Bid Security shall be [insert amount in local currency, as provided in the Invitation to Bid. An amount in local currency should be indicated, in preference to a percentage of the Bid price. It should not exceed the equivalent of 3 percent of the estimated Contract value] or an equivalent amount in a freely-convertible currency.</i>
17.1	Alternative bids [are/are not] permitted.
17.2	<p>Alternative times for completion [are/are not] permitted. If permitted, the range of acceptable completion time is: <i>[insert range, e.g. between x months and y months]</i></p> <p>If alternative times for completion are permitted, the evaluation method will be as follows: <i>[describe method, i.e. adding to the bid price a penalty of a given amount per month of proposed completion time above the minimum completion time offered]</i></p>
17.4	<p>Alternative technical solutions shall be permitted for the following parts of the Services: _____.</p> <p>If alternative technical solutions are permitted, the evaluation method will be as follows: <i>[describe method]</i>.</p>
D. Submission of Bids	
19.2	<p>The MDA's address for the purpose of Bid submission is <i>[insert the receiving address provided in the Invitation for Bids. The receiving address should be an office that is staffed during normal working hours by personnel authorized to certify time and date of receipt and assure safe-keeping until Bid opening. A post office address is not satisfactory]</i>.</p> <p>For identification of the bid the envelopes should indicate:</p>

	<p>Contract: <i>[insert name of the Contract]</i></p> <p>Bid / Contract Number: <i>[insert Bid or Contract number]</i></p>
20.1	The deadline for submission of bids shall be <i>[insert time and date; the date should be the same and the time, in no event, earlier than that given in the Invitation for Bids, unless subsequently amended pursuant to Sub-Clause 20.2].</i>
E. Bid Opening and Evaluation	
23.1	Bids will be opened at <i>[insert time]</i> of the day <i>[insert date]</i> at the following address <i>[insert address]</i>
28.1	<p>Currency chosen for the purpose of converting to a common currency.</p> <p><i>[Specify either the local currency or a convertible currency, for example, U.S. dollars.]</i></p> <p>Source of exchange rate.</p> <p><i>[If the common currency is other than the local currency, for example, U.S. dollars, indicate the name of an internationally circulated newspaper that lists daily currency exchange rates (e.g., Financial Times), which will be used for converting prices in foreign currencies. For prices in local currency and if the common currency selected above is the local currency, specify either the Central LSG or a commercial LSG in the MDA's country.]</i></p> <p>Exchange rate date.</p> <p><i>[Select a date that shall be no earlier than 28 days prior to the submission of bids, and not later than the original date for expiry of the period of bid validity.]</i></p>
F. Award of Contract	
34.0	The Performance Security acceptable to the MDA shall be the in the Standard Form of <i>[insert "Bank Guarantee" and/or "Performance Bond" A Bank Guarantee can be conditional or unconditional (on demand). A Performance Bond is an undertaking by a bonding or insurance company (surety) to complete the Services required in the contract in the event of default by the Service Provider, or to pay the amount of the Bond to the MDA]</i> and for an amount of <i>[insert amount and currency. An amount of 5 to 10 percent of the Contract Price is commonly specified for Performance Bank Guarantees. An amount of 30 percent of the Contract Price is commonly used internationally for Performance Bond type of security]</i> .
35.1	The Advance Payment shall be of <i>[insert percentage value. The percentage value should be adequate to minimize the needs of the Service Provider to borrow for the Contract and will depend on the type of Services to be provided.</i>

	<i>Recommended when the Services to be provided include field works or preparation of products (like data base) in addition to provision of man-power] percent of the Contract Price.</i>
36.1	The Adjudicator proposed by the MDA is <i>[insert name and address]</i> . The hourly fee for this proposed Adjudicator shall be <i>[insert amount and currency]</i> . The biographical data of the proposed Adjudicator is as follows: <i>[provide relevant information, such as education, experience, age, nationality, and present position; attach additional pages as necessary]</i> .

Section III. Bidding Forms

Notes on Form of Service Provider's Bid

The Bidder shall fill in and submit this Bid form with the Bid. Additional details on the price should be inserted if the Bid is in various currencies. If the Bidder objects to the Adjudicator proposed by the MDA in the bidding documents, he should so state in his Bid, and present an alternative candidate, together with the candidate's daily fees and biographical data, in accordance with Clause 36 of the Instructions to Bidders.

Form of Qualification Information

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

Standard Form of Letter of Acceptance

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

Section IV. Eligible Countries

Input of Information to be completed by MDA

[Insert the policies of the LSG as appropriate and if applicable, regarding eligibility of firms to participate in bidding process financed by the LSG.]

Section V. Activity Schedule

Objectives

The objectives of the Activity Schedule are

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

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

Daywork Schedule

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

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

Provisional Sums

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

contractors, each related provisional sum should be followed by an item in the Activity Schedule inviting the Bidder to quote a sum for such amenities, facilities, attendance, etc.

These Notes for Preparing an Activity Schedule are intended only as information for the MDA or the person drafting the bidding documents. They should not be included in the final documents.

Section VI. General Conditions of Contract

1. This sample contract for the Provision of Services has been prepared by the World LSG for use by its MDAs and their implementing agencies (referred to hereafter as MDA) when they hire firms to provide Services paid on the basis of lump-sum remuneration.
2. Lump-sum contracts are used when definition of the tasks to be performed is clear and unambiguous, when the commercial risk taken by the Service Provider is minimal, and when therefore such Service Provider/s are prepared to perform the assignment for an agreed predetermined lump-sum price. Such price is arrived at on the basis of inputs—including rates—provided by the Service Provider. The MDA agrees to pay the Service Provider according to a schedule of payments linked to the delivery of certain outputs. A major advantage of the lump-sum contract is the simplicity of its administration, the MDA having only to be satisfied with the outputs without monitoring the staff inputs.
3. The Contract includes four parts: the Form of Contract, the General Conditions of Contract, the Special Conditions of Contract, and the Appendices. The MDA using this sample contract should not alter the General Conditions. Any adjustment to meet project features should be made only in the Special Conditions.]

Section VII. Special Conditions of Contract

Clauses in brackets are optional; all notes should be deleted in final text.

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1	The words “in the Government’s country” are amended to read “in [<i>name of country</i>].”
1.1(a)	The Adjudicator is [<i>insert name</i>]
1.1(e)	The contract name is [<i>name of Contract</i>].
1.1(h)	The MDA is [<i>insert name</i>]

1.1(m)	The Member in Charge is <i>[name of Member Leader of the Joint Venture].</i>
1.1(p)	The Service Provider is <i>[insert name]</i>
1.2	<p>The Applicable Law is: <i>[insert name of country]</i></p> <p><i>[Note: LSG-financed contracts usually designate the law of the MDA's country as the law governing the contract. However, if parties wish to designate the law of another country, the LSG will not object. In the former case, this Sub-Clause 1.2 should be deleted; in the latter case, the name of the respective country should be inserted]</i></p>
1.3	The language is <i>[specify English, French, or Spanish].</i>
1.4	<p>The addresses are:</p> <p>MDA: _____</p> <p>Attention: _____</p> <p>Telex: _____</p> <p>Facsimile: _____</p> <p>Service Provider: _____</p> <p>Attention: _____</p> <p>Telex: _____</p> <p>Facsimile: _____</p>
1.6	<p>The Authorized Representatives are:</p> <p>For the MDA: _____</p> <p>For the Service Provider: _____</p>
2.1	<p>The date on which this Contract shall come into effect is <i>[date].</i></p> <p><i>[Note: The date may be specified by reference to conditions of effectiveness of the Contract, such as approval of the Contract by the LSG, effectiveness of LSG Loan/IDA Credit, receipt by Service Provider of advance payment and by MDA of Bank Guarantee (see Sub-Clause 6.4), etc.]</i></p>
2.2.2	The Starting Date for the commencement of Services is <i>[date].</i>
2.3	The Intended Completion Date is <i>[date].</i>

3.2.3	Activities prohibited after termination of this Contract are: _____ _____
3.4	The risks and coverage by insurance shall be: (i) Third Party motor vehicle _____ (ii) Third Party liability _____ (iii) MDA's liability and workers' compensation _____ (iv) Professional liability _____ (v) Loss or damage to equipment and property _____
3.5(d)	<i>[Note: Delete where not applicable].</i> The other actions are _____.]
3.7	Restrictions on the use of documents prepared by the Service Provider are: _____
3.8.1	The liquidated damages rate is <i>[insert percentage of Contract price. Usually liquidated damages are set between 0.05 percent and 0.10 percent per day]</i> per day The maximum amount of liquidated damages for the whole contract is <i>[insert percentage of Contract price. Usually the total amount is not to exceed between 5 percent to 10 percent of the Contract Price]</i> percent of the final Contract Price.
3.8.3	The percentage [of the cost of having a Defect corrected] to be used for the calculation of Lack of performance Penalty/(ies) is <i>[insert percentage]</i> The Defects Liability Period is <i>[insert definition of/end date]</i> .
5.1	The assistance and exemptions provided to the Service Provider are: <i>[Note: List here any assistance or exemptions that the MDA may provide under Sub-Clause 5.1. If there is no such assistance or exemptions, state "not applicable]."</i>
6.2(a)	The amount in local currency is <i>[insert amount and currency]</i> .
6.2(b)	The amount in foreign currency or currencies is <i>[insert amount and currency]</i> .
6.3.2	The performance incentive paid to the Service Provider shall be: <i>[insert</i>

<p>6.4</p>	<p>Payments shall be made according to the following schedule:</p> <p><i>[Note: (a) the following installments are indicative only; (b) if the payment of foreign currency and of local currency does not follow the same schedule, add a separate schedule for payment in local currency; (c) “commencement date” may be replaced with “date of effectiveness;” and (d) if applicable, detail further the nature of the report evidencing performance, as may be required] .</i></p> <ul style="list-style-type: none"> • Advance for Mobilization, Materials and Supplies: _____ percent of the Contract Price shall be paid on the commencement date against the submission of a Bank Guarantee for the same. • Progress payments in accordance with the milestones established as follows, subject to certification by the MDA, that the Services have been rendered satisfactorily, pursuant to the performance indicators: <ul style="list-style-type: none"> ➤ _____(indicate milestone and/or percentage)_____ ➤ _____(indicate milestone and/or percentage)_____ and ➤ _____(indicate milestone and/or percentage)_____ <p>Should the certification not be provided, or refused in writing by the MDA within one month of the date of the milestone, or of the date of receipt of the corresponding invoice, the certification will be deemed to have been provided, and the progress payment will be released at such date.</p> <ul style="list-style-type: none"> • The amortization of the Advance mentioned above shall commence when the progress payments have reached 25% of the contract price and be completed when the progress payments have reached 75%. • The Bank Guarantee for the advance payment shall be released when the advance payment has been fully amortized. <p><i>[Note: This sample clause should be specifically drafted for each contract].</i></p>
<p>6.5</p>	<p>Payment shall be made within <i>[number]</i> days of receipt of the invoice and the relevant documents specified in Sub-Clause 6.4, and within <i>[number]</i> days in the case of the final payment.</p> <p><i>[Note: specify, e.g., “forty-five (45) days,” and, in the case of the last payment, “sixty (60) days.”]</i></p> <p>The interest rate is <i>[rate]</i>.</p>

<p>6.6.1</p>	<p>Price adjustment is <i>[(applied) or {not to be applied}]</i> in accordance with Sub-Clause 6.6.</p> <p>The coefficients for adjustment of prices are <i>[The sum of the two coefficients A_c, B_c and C_c should be 1 (one) in the formula for each currency].:</i></p> <p>(a) For local currency:</p> <p style="padding-left: 40px;">A_L is <i>[insert value]</i></p> <p style="padding-left: 40px;">B_L is <i>[insert value]</i></p> <p style="padding-left: 40px;">C_L is <i>[insert value]</i></p> <p style="padding-left: 40px;">L_{mc} and L_{oc} are the index for Labor from <i>{insert source of Labor index}</i></p> <p style="padding-left: 40px;">I_{mc} and I_{oc} are the index for <i>[insert input]</i> from <i>[insert source]</i></p> <p>(b) For foreign currency</p> <p style="padding-left: 40px;">A_F is <i>[insert value]</i></p> <p style="padding-left: 40px;">B_F is <i>[insert value]</i></p> <p style="padding-left: 40px;">C_F is <i>[insert value]</i></p> <p style="padding-left: 40px;">L_{mc} and L_{oc} are the index for Labor from <i>{insert source of Labor index}</i></p> <p style="padding-left: 40px;">I_{mc} and I_{oc} are the index for <i>[insert input]</i> from <i>[insert source]</i></p>
<p>7.1</p>	<p>The principle and modalities of inspection of the Services by the MDA are as follows: <i>[insert]</i></p> <p>The Defects Liability Period is <i>[insert definition of/end date]</i>.</p>
<p>8.2.3</p>	<p>The Adjudicator is <i>[insert name]</i>. Who will be paid a rate of <i>[insert amount and currency]</i> per hour of work. The following reimbursable expenses are recognized: <i>[list expenses]</i></p> <p>Notes:</p> <p><i>(1) If the Service Provider is a national of the Government's country, this provision should be modified and referred to the Government country's rules for settlement of disputes.</i></p> <p><i>(2) For smaller contracts, the arbitration procedures are usually those of an institution from the MDA's country. For larger contracts, and contracts that are likely to be awarded to international contractors, it is recommended that the arbitration procedure of an international institution such as UNCITRAL (the United Nations Commission on International Trade Law), ICSID (the</i></p>

	<i>International Centre for Settlement of Investment Disputes) or the ICC (International Chamber of Commerce) be prescribed</i> <i>(3) The Appointing Authority should preferably be an independent professional institution or an official of such an institution</i>
8.2.4	The arbitration procedures of [name of Institution] will be used
8.2.5	The designated Appointing Authority for a new Adjudicator is [insert name of Authority]

Appendices

Appendix A—Description of the Services

Give detailed descriptions of the Services to be provided, dates for completion of various tasks, place of performance for different tasks, specific tasks to be approved by MDA, etc.

Appendix B—Schedule of Payments and Reporting Requirements

List all milestones for payments and list the format, frequency, and contents of reports or products to be delivered; persons to receive them; dates of submission; etc. If no reports are to be submitted, state here “Not applicable.”

Appendix C—Key Personnel and Subcontractors

- List under:*
- C-1 Titles [and names, if already available], detailed job descriptions and minimum qualifications of foreign Personnel to be assigned to work in the Government's country, and staff-months for each.*
 - C-2 Same as C-1 for Key foreign Personnel to be assigned to work outside the Government's country.*
 - C-3 List of approved Subcontractors (if already available); same information with respect to their Personnel as in C-1 or C-2.*
 - C-4 Same information as C-1 for Key local Personnel.*

Appendix D—Breakdown of Contract Price in Foreign Currency(ies)

List here the elements of cost used to arrive at the breakdown of the lump-sum price—foreign currency portion:

1. *Rates for Equipment Usage or Rental or for Personnel (Key Personnel and other Personnel).*
2. *Reimbursable expenditures.*

This appendix will exclusively be used for determining remuneration for additional Services.

Appendix E—Breakdown of Contract Price in Local Currency

List here the elements of cost used to arrive at the breakdown of the lump-sum price—local currency portion:

1. *Rates for Equipment Usage or Rental or for Personnel (Key Personnel and other Personnel).*
2. *Reimbursable expenditures.*

This appendix will exclusively be used for determining remuneration for additional Services.

Appendix F—Services and Facilities Provided by the MDA

Appendix G—Performance Incentive Compensation Appendix

Performance Incentive Compensation Appendix Provisions

ARTICLE 1- GENERAL

1.1 Documents Comprising the Performance Incentive Compensation Appendix

The Performance Incentive Compensation Appendix consists of:

- (a) the Performance Incentive Compensation Appendix Provisions;
- (b) Attachment #1 Incentive Compensation Calculation Procedure Notes; and
- (c) Attachment #2 Incentive Compensation Charts 1-[].

ARTICLE 2- THE PERFORMANCE INCENTIVE COMPENSATION

2.1 Performance Incentive Compensation Limits

- (1) The Performance Incentive Compensation paid to the Service Provider shall not exceed the equivalent of \$[] U.S. over the term of the Contact.

- (2) The actual amount paid to the service Provider as Performance Incentive Compensation shall be determined by the extent to which the Service Provider achieves the performance criteria set out in the Incentive Compensation Charts and by the application of the calculations set out in the Incentive Calculation Procedure Notes for the applicable Contact Year.
- (3) If the Service Provider fails to meet the “Excellent” rating set out in the Incentive Compensation Chart, in any Contact Year, the Service Provider will be obliged to make up the shortfall in the subsequent Contact Year, as well as meet the performance targets for that Contract Year.
- (4) Except as the MDA may, in its sole discretion, otherwise determine based on exceptional circumstances, if the Service Provider fails to attain the Maximum Annual Incentive Compensation in any Contract Year, the shortfall will not be available to the Service Provider in the subsequent Contact Years and the equivalent of \$[] U.S. per Contract Year maximum will not be increased.
- (5) For the purpose of calculating the equivalency of \$[] U.S. and \$[] U.S. pursuant to Sections 2.1(1) and 2.1(2) of this Performance Incentive Compensation Appendix, the equivalency shall be calculated as of the date of payment of the Performance Incentive Compensation.

**ATTACHMENT # 1 – APPENDIX G
INCENTIVE COMPENSATION CALCULATION PROCEDURE NOTES**

[SAMPLE: This part is to be designed on a case by case approach]

PART A .THE METHOD FOR CALCULATING PERFORMANCE INCENTIVE COMPENSATION IN EACH CONTRACT YEAR

I. The Performance Incentive Compensation for each Contract Year shall be calculated as follows:

$$\text{Compensation} = \text{Composite Score} \times 0.2 \times \text{Maximum Annual Incentive Compensation}$$

Where:

- (i) The Maximum Annual Incentive Compensation is calculated as set out in Section 2.1 of the Performance Incentive Compensation Appendix Provisions; and
- (ii) The Composite Score is calculated in accordance with “Part B-The Method for Calculating the Composite Score” of these Incentive Compensation Calculation Procedure Notes.

PART B .THE METHOD FOR CALCULATING THE COMPOSITE SCORE

1. The Composite Score for each Contract Year shall be as follows:

Composite Score Total of All Weighted Scores **for the Performance Criteria**

Where:

- (i) The Weighted Score for each Performance Criterion equals Criterion Weight x Criterion Value;
- (ii) The Criterion Value is measured from “Excellent” to “Poor” with corresponding values of 5 (for “Excellent” performance) to 1 (for “Poor” performance) as set out in the Incentive Compensation Charts and evaluated based on the performance of the Service Provider;
- (iii) The Criterion Value which the Operator receives for any Performance Criterion is based upon the technical standards set out in the Incentive Compensation Charts under the headings, “Excellent”, “Very Good”, “Good”, “Fair”, and “Poor” as compared against the Operator’s actual technical standards in each Contract Year; and
- (iv) If the Service Provider’s actual performance in a Contract Year,
 - (a) exceeds the technical standards for an “Excellent” Criterion Value, then the Criterion Value shall be 5;

- (b) is less than the technical standards for a “Poor” Criterion Value, then the Criterion Value shall be zero; or
- (c) is in between the technical standards for two Criterion Values, then the Criterion Value shall be rounded down to the nearest whole number or 0.5 decimal point.

2. For the purpose of clarity, it is noted that there are only ten Criterion Values to be used as follows: 0, 1, 1.5, 2, 2.5, 3, 3.5, 4, 4.5 and 5.

3. Notwithstanding paragraphs 1 and 2 above, with respect to the Performance Criterion relating to institutional improvements in Attachment #2 The Incentive Compensation Charts 1-8,

- (a) if the Service Provider’s actual performance in a Contract Year is less than the technical standard for a “Fair” Criterion Value, then the Criterion Value shall be zero;
- (b) for the purpose of clarity, it is noted that there are only three Criterion Values to be used as follows: 0, 2 and 5; and
- (c) each of the documents or plans listed under the Performance Criterion shall be scored with the appropriate Criterion Value and a mean average score will be taken to calculate the Criterion Value for the Performance Criterion, which shall be rounded down to the nearest whole point or 0.5 decimal point.

4. For ease of reference, the following calculation represents the calculation of the Composite Score for a hypothetical Service Provider for four performance criteria in one Contact Year.

Sample Incentive Compensation Chart

Performance Criterion		Units	Criterion Values				
			Weight				
			Excellent	Very Good	Good	Fair	Poor
1.	e.g. Electricity use [% reduction in kW. hr consumed from Base Year]	0.30	65	55	50	40	30
2.	[Criterion 2] []	0.25	20	19	17	16	15
3.	[Criterion 3] []	0.15	30	25	20	15	10
4.	[C riterion ~] []	0.30	90	85	80	75	70

The following table demonstrates the procedure for the calculation of the “**Composite Score**”, if at the end of the year the achievements of the Service Provider are as follows:

1.	[e.g. Electricity use]	57
2.	[Criterion 2]	22
3.	[Criterion 3]	29
4.	[Criterion 4]	69

Performance Incentive Compensation Appendix -- Review Version I — March 20, 2007

Chart 1
Performance Incentive Obligations
Year [1]

Services			Criterion Values					
Apndx. Ref.	Performance Criterion	Units	Weight	Excellent 5	Very Good 4	Good 3	Fair 2	Poor 1
	[Development of Plans and Programs ¹]	Quality and Timeliness	[0.45]	Completed on time with no need for revision to the substance of the document	N/A	N/A	Completed on time but requires revision to the substance of the document	N/A
	[Energy Management]	% reduction of kilowatt hours of electricity per unit produced from Base Year	[0.25]	4	3.5	3	2.5	2
	[Computerized Billing and Collection System]	number of days after the Starting Date until the computerized billing and collection system is in place	[0.30]	140	150	160	170	180

[Note: The chart is a sample only.]

(1) In respect of the Plans and Programs each plan or program listed in Section [•] shall be given a score of either 5 (Excellent), 2 (Fair) or (0) and the average score for all plans and programs shall be multiplied by the Criteria Weight. The average score shall be rounded to the nearest .5 decimal.

Section VIII. Performance Specifications and Drawings

(Describe Outputs and Performances, rather than Inputs, wherever possible)

VI (a) Notes on Specifications

A set of precise and clear specifications is a prerequisite for bidders to respond realistically and competitively to the requirements of the MDA without qualifying or conditioning their bids. In the context of international competitive bidding, the specifications must be drafted to permit the widest possible competition and, at the same time, present a clear statement of the required standards of workmanship, materials, and performance of the goods and services to be procured. Only if this is done will the objectives of economy, efficiency,

and fairness in procurement be realized, responsiveness of bids be ensured, and the subsequent task of Bid evaluation facilitated. The specifications should require that all goods and materials to be incorporated in the Services be new, unused, of the most recent or current models, and incorporate all recent improvements in design and materials unless provided otherwise in the Contract.

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

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

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

Sample Clause: Equivalency of Standards and Codes

Wherever reference is made in the Contract to specific standards and codes to be met by the goods and materials to be furnished, and Services or work performed or tested, the provisions of the latest current edition or revision of the relevant standards and codes in effect shall apply, unless otherwise expressly stated in the Contract. Where such standards and codes are national, or relate to a particular country or region, other authoritative standards that ensure a substantially equal or higher quality than the standards and codes specified will be accepted subject to the Project Manager's prior review and written consent. Differences between the standards specified and the proposed alternative standards shall be fully described in writing by the Service Provider and submitted to the Project Manager at least 28 days prior to the date when the Service Provider desires the Project Manager's consent. In the event the Project Manager determines that such proposed deviations do not ensure substantially equal or higher quality, the Service Provider shall comply with the standards specified in the documents.

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

VI (b) Notes on Drawings

Insert here a list of Drawings. The actual Drawings, including performance diagrams or curves, etc. and site plans, geographical areas covered, should be attached to this section or annexed in a separate folder.

Section IX. Contract Forms

Notes on Forms of Securities

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

Performance Bank Guarantee (Conditional)

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

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

This Agreement is made on the *[day]* day of *[month]*, *[year]* between *[name of LSG]* of *[address of LSG]* (hereinafter called "the Guarantor") of the one part and *[name of MDA]* of *[address of MDA]* (hereinafter called "the MDA") of the other part.

Whereas

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

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

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

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

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

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

Given under our hand on the date first mentioned above.

Signed by _____
for and on behalf of the Guarantor in the presence of _____

Signed by _____
for and on behalf of the MDA in the presence of _____

Performance Bank Guarantee (Unconditional)

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

To: *[name and address of MDA]*

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

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

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

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

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

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

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

Signature and seal of the Guarantor _____

Name of LSG _____
 Address _____
 Date _____

Performance Bond

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

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

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

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

- (1) complete the Contract in accordance with its terms and conditions; or
- (2) obtain a Bid or bids from qualified bidders for submission to the MDA for completing the Contract in accordance with its terms and conditions, and upon determination by the MDA and the Surety of the lowest responsive Bidder, arrange for a Contract between such Bidder and MDA and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth

in the first paragraph hereof. The term "Balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by the MDA to the Service Provider under the Contract, less the amount properly paid by the MDA to the Service Provider; or

- (3) pay the MDA the amount required by the MDA to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

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

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

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

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

Signed by _____
 on behalf of *[name of Service Provider]* in the capacity of _____
 In the presence of _____
 Date _____

Signed by _____
 on behalf of *[name of Service Provider]* in the capacity of _____
 In the presence of _____
 Date _____

Bank Guarantee for Advance Payment

To: *[name and address of MDA]*

[name of Contract]

Gentlemen:

In accordance with the provisions of the Conditions of Contract, Sub-Clause 6.4 (“Terms and Conditions of Payment”) of the above-mentioned Contract, *[name and address of Service Provider]* (hereinafter called “the Service Provider”) shall deposit with *[name of MDA]* a Bank Guarantee to guarantee his proper and faithful performance under the said Clause of the Contract in an amount of *[amount of Guarantee] [amount in words]*

We, the *[LSG or Financial Institution]*, as instructed by the Service Provider, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to *[name of MDA]* on his first demand without whatsoever right of objection on our part and without his first claim to the Service Provider, in the amount not exceeding *[amount of Guarantee] [amount in words]*

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

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

Yours truly,

Signature and seal: _____

Name of LSG/Financial Institution: _____

Address: _____

Date: _____