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**Ministry of Finance**

Republic of Maldives

**BIDDING DOCUMENT**

**for**

**Design and Build of Proposed School -3 in Hulhumale’ Phase II, under EPC Turnkey Basis- Contractor Finance**

**TES/2020/W-066**

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Issued by: National Tender

Ministry of Finance

Republic of Maldives

Section 1: Instruction to Tenderers (ITT)

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## 1. Scope of Tender

1.1 In connection with the Invitation for Tenders indicated in the Tender Data Sheet (TDS), the Employer, as indicated in the TDS, issues this Tendering Document for the procurement of services as specified in Section 6 (Employer’s Requirements). The name and identification of the International Competitive Tendering (ICB) are provided in the TDS.

1.2 Unless otherwise stated, throughout this Tendering Document definitions and interpretations shall be as prescribed in Section 7 (General Conditions of Contract).

1.3 Throughout this Tendering Document:

(a) the term “in writing” means communicated in written form and delivered against receipt;

(b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and

(c) “day” means calendar day.

## 2. Environmental & Social Compliance

The tenderers agree to;

1. Comply and ensure that its subcontractors, if any, comply with international environmental and labor standards consistent with applicable law and regulations in the country of implementation of the project, including the fundamental conventions of the International labor organization (ILO) and International Environmental treaties.
2. Adopt any environmental and social risk mitigations measures as defined in the environmental and social management plan or the notice of environmental and social impact issued by the employer

## 3. Corrupt Practices

3.1 The Government of Republic of Maldives represented by the Ministry of Finance requires that tenderers, suppliers, and contractors in the Government of Maldives financed contracts; observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Government of Republic of Maldives represented by the Ministry of Finance:

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

(i) “Corrupt practice” means the offering, giving receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;

(ii) “fraudulent practice” means 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) “Coercive practice” means 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;

(iv) “Collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;

(v) “obstructive practice” is

(aa) deliberately destroying falsifying altering or concealing of evidence material to the investigation or making false statement investigators in order top materially impede an 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 investigations or from pursuing the investigation, or,

(bb) acts intended to materially impede the exercise of the Environment’s inspections and audit rights provided for under the Contract.

b. will reject a proposal for award if it determines that the tenderer recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract; and

1. will cancel in whole or in part a contract if it determines at any time that representatives of the tenderer engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract, without the Government having taken timely and appropriate action satisfactory to address such practices when they occur;
2. will suspend the tenderer or individual from participation in public procurement, by declaring it ineligible for a stated period of time, to be awarded a Government funded contract if it at any time determines that the tenderer has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, the contract. The list of suspended firms is available at the electronic address specified in the BDS; and
3. will have the right to require that a provision be included in tender documents and in contracts, requiring Tenderers, suppliers, and contractors and their sub-contractors to permit the Employer to inspect their accounts and records and other documents relating to the Tender submission and contract performance and to have them audited by auditors appointed by the Government.

## 4. Eligible Tenderers

4.1 A Tenderer may be a natural person, private entity, government-owned entity—subject to ITT 4.4 and conditions stated in TDS or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a Joint Venture (JV). In the case of a JV:

a. all partners shall be jointly and severally liable for the execution of the contract in accordance with the contract terms, and

b. the JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the parties of the JV during the tendering process and, in the event the JV is awarded the Contract, during contract execution.

4.2 The Government of Republic of Maldives represented by the Ministry of Finance considers a conflict of interest to be a situation in which a party has interests that could improperly influence that party’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations, and that such conflict of interest may contribute to or constitute a prohibited practice under Maldives’s Anticorruption Policy. In pursuance of Maldives’s Anticorruption Policy’s requirement that tenderers, suppliers, and contractors under Government of Maldives contracts observe the highest standard of ethics. The Government of Republic of Maldives represented by the Ministry of Finance represented by the Government of Maldives will take appropriate actions, which include not financing of the contract, if it determines that a conflict of interest has flawed the integrity of any procurement process. Consequently, all Tenderers found to have a conflict of interest shall be disqualified. A Tenderer may be considered to be in a conflict of interest with one or more parties in this tendering process if, including but not limited to:

a. they have controlling partners in common; or

b. they receive or have received any direct or indirect subsidy from any of them; or

c. they have the same legal representative for purposes of this tender; or

d. they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the tender of another Tenderer, or influence the decisions of the Employer regarding this tendering process; or

e. a Tenderer participates in more than one tender in this tendering process. Participation by a Tenderer in more than one Tender will result in the disqualification of all Tenders in which it is involved. However, this does not limit the inclusion of the same subcontractor, not otherwise participating as a Tenderer, in more than one tender; or

f. a Tenderer or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the plant and services that are the subject of the tender.

4.3 A firm that is under a declaration of ineligibility by the Employer in accordance with ITT 21.8 at the date of the deadline for tender submission or thereafter, shall be disqualified.

4.4 Government-owned entities of the country shall be eligible only if they can establish that they,

(i) are legally and financially autonomous,

(ii) operate under the principles of commercial law, and

(iii) are not dependent agencies of the Employer or the Borrower.

4.5 Tenderers shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.

4.6 Tenderers shall be excluded if by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower’s country prohibits any import of goods or contracting of works or services from that country or any payments to persons or entities in that country.

4.7 In case a prequalification process has been conducted prior to the tendering process, this tendering is open only to prequalified Tenderers.

4.8 A Tenderer shall meet the following criteria to be eligible to participate in public procurement:

(a) have the legal capacity to enter into the contract;

(b) not be insolvent, in receivership, bankrupt or being wound up, its affairs not being administered by a court or a judicial officer, its business activities not being suspended and not the subject of legal proceedings for any of the foregoing;

(c) have fulfilled its obligations to pay taxes.

(d) not have been, and its directors or officers not have been, convicted of any criminal offence related to their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a contract within a period of five years preceding the commencement of the procurement proceedings; and

(e) not have a conflict of interest in relation to the procurement requirement in accordance with Sub-Clause 4.4.

(f) all contractors shall be registered in National Contractors Registry of the Maldives Foreign contractors can only participate in the bid along with a JV with a local contractor and shall provide documentary evidence of contractor’s registry.

4.9 ATenderer, and all parties constituting the Tenderer, shall have the nationality of an eligible country, in accordance with Section V (Eligible Countries). A Tenderer shall be deemed to have the nationality of a country if the Tenderer is a citizen or is constituted, or incorporated, and operates in conformity with the provisions of the rules and regulation of Maldives. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related services.

## 5. Eligible Materials, Equipment and Services

5.1 Restrictions on origin are as follows; goods and services from country under embargo from the United Nations

5.2 The materials, equipment, and services to be supplied under the Contract shall have their origin in eligible source countries as defined in ITT 4.6 above and all expenditures under the Contract will be limited to such materials, equipment, and services. At the Employer’s request, tenderers may be required to provide evidence of the origin of materials, equipment, and services.

5.3 For purposes of ITT 5.2 above, “origin” means the place where the materials and equipment are mined, grown, produced, or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that differs substantially in its basic characteristics or in purpose or utility from its components.

## 6. Sections of Tendering Document

6.1 The Tendering Document consists of Part I, II, III and IV, which include all the Sections indicated below and should be read in conjunction with any Addenda issued in accordance with ITT 8.

*PART I Tendering Procedures*

Section 1 - Instructions to Tenderers (ITT)

Section 2 - Tender Data Sheet (TDS)

Section 3 - Evaluation and Qualification Criteria (EQC)

Section 4A - Tendering Forms (TF) – Letter of Tender and Tender Security

Section 4B - Tendering Forms (TF) – General and Financial Information

Section 4C - Tendering Forms (TF) – Technical Proposal

Section 5 - Eligible Countries

*PART II Requirements*

Section 6 - Employer’s Requirements (ERQ)

*PART III Conditions of Contract and Contract Forms*

Section 7 - General Conditions of Contract (GCC)

Section 8 – Particular Conditions of Contract (PCC)

Section 9 - Forms of Contract

*PART IV Financial Proposal*

Section 10 - Schedule of Activities

6.2 The Invitation for Tenders issued by the Employer is not part of the Tendering Document.

6.3 The Employer is not responsible for the completeness of the Tendering Document and its addenda, if they were not obtained directly from the source stated by the Employer in the Invitation for Tenders.

6.4 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the Tendering Document. Failure to furnish all information or documentation required by the Tendering Document may result in the rejection of the tender.

## 7. Clarification of Tendering Document, Site Visit, Pre-Tender Meeting

7.1 A prospective Tenderer requiring any clarification of the Tendering Document shall contact the Employer in writing at the Employer’s address indicated in the TDS or raise his enquiries during the pre-tender meeting if provided for in accordance with ITT 7.4. The Employer will respond to any request for clarification, provided that such request is received no later than the date stipulated as clarification deadline in the TDS later than twenty-one (21) days prior to the deadline for submission of tenders. Should the Employer deem it necessary to amend the Tendering Document as a result of a request for clarification, it shall do so following the procedure under ITT 8 and ITT 24.2.

7.2 The Tenderer is advised to visit and examine the site where the project is to be built and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the tender and entering into a contract. The costs of visiting the site shall be at the Tenderer’s own expense.

7.3 The Tenderer and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Tenderer, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.

7.4 The Tenderer’s designated representative is invited to attend a pre-tender meeting, if provided for in the TDS. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

7.5 The Tenderer is requested, as far as possible, to submit any questions in writing, to reach the Employer not later than the date mentioned in the TDS.

7.6 Minutes of the pre-tender meeting, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tendering Document as defined under ITT 6. Any modification to the Tendering Document that may become necessary as a result of the pre-tender meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to ITT 8 and not through the minutes of the pre-tender meeting.

7.7 Nonattendance at the pre-tender meeting will not be a cause for disqualification of a Tenderer.

## 8. Amendment of Tendering Document

8.1 At any time prior to the deadline for submission of tenders, the Employer may amend the Tendering Document by issuing addenda.

8.2 Any addendum issued shall be part of the Tendering Document and shall be communicated in writing to all who have obtained the Tendering Document from the Employer as defined under clause ITT 6.

8.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their tenders, the Employer may, at its discretion, extend the deadline for the submission of tenders, pursuant to ITT 24.2

## 9. Cost of Tendering

The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Employer shall not be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

## 10. Language of Tender

The Tender, as well as all correspondence and documents relating to the tender exchanged by the Tenderer and the Employer, shall be written in the English language. Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate translation of the relevant passages into the English language, in which case, for purposes of interpretation of the Tender, such translation shall govern.

## 11. Documents Comprising the Tender

11.1 The Tender shall comprise the following:

* + 1. Letter of Tender;
    2. Tender Security, in accordance with ITT 21
    3. Alternative tenders, if permissible, in accordance with ITT 13;
    4. written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 22.2;
    5. Documentary evidence establishing in accordance with ITT 14 that the Equipment / Machinery and services offered by the Tenderer in its tender or in any alternative tender, if permitted, are eligible;
    6. Documentary evidence in accordance with ITT 15 establishing the Tenderer’s eligibility and qualifications to perform the contract if its tender is accepted;
    7. Documentary evidence establishing in accordance with ITT 16 that the plant and services offered by the Tenderer conform to the tendering document;
    8. Technical Proposal in accordance with ITT 17;
    9. Completed Schedule of Activities, in accordance with ITT 18, or as stipulated in the TDS;
    10. In the case of a tender submitted by a JV, the JV agreement, or letter of intent to enter into a JV including a draft agreement, indicating at least the parts of the work to be executed by the respective partners;
    11. List of subcontractors, in accordance with ITT 17.2; and
    12. Any other document required in the TDS

## 12. Letter of Tender and Schedules

12.1 The Letter of Tender, and the Schedules, and all documents listed under ITT 11 shall be prepared using the relevant forms furnished in Section 4 (Tendering Forms) and Section 10 - Schedule of Activities. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.

## 13. Alternative Tenders

13.1 Unless otherwise indicated in the TDS, alternative tenders shall not be considered. If they are allowed, the TDS will also indicate whether they are permitted in accordance with ITT 13.3, or invited in accordance with ITT13.2 and/or ITT 32.

13.2 When alternatives to the Time Schedule are explicitly invited, a statement to that effect will be included in the TDS, and the method of evaluating different time schedules will be described in Section 3 (Evaluation and Qualification Criteria).

13.3 Except as provided under ITT 13.4 below, Tenderers wishing to offer technical alternatives to the Employer’s requirements as described in the tendering document must also provide:

(i) a price at which they are prepared to offer project construction meeting the Employer’s requirements; and

(ii) all information necessary for a complete evaluation of the alternatives by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed project methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Tenderer conforming to the basic technical requirements shall be considered by the Employer.

13.4 When tenderers are invited in the TDS to submit alternative technical solutions for specified parts of the facilities, such parts shall be described in Section 6 (Employer’s Requirements). Technical alternatives for the specific parts of the facilities that comply with the performance and technical criteria specified for the plant and services shall be considered by the Employer on their own merits, pursuant to ITT 32.

## 14. Documents Establishing the Eligibility of Materials, Equipment And Services

14.1 To establish the eligibility of the services in accordance with ITT Clause 5, Tenderers shall complete the country of origin declarations in the Schedule of Activities Forms, included in Section 10.

## 15. Documents Establishing the Eligibility and Qualifications of the Tenderer

15.1 To establish its eligibility and qualifications to perform the Contract in accordance with Section 3 (Evaluation and Qualification Criteria), the Tenderer shall provide the information requested in the corresponding information sheets included in Section 4 - Tendering Forms

## 16. Documents Establishing the Eligibility oF JV

16.1 If the Tenderer is an existing or intended Joint Venture in accordance with ITT 4.1, submit a copy of the Joint Venture Agreement, or a letter of intent to enter into such agreement. The respective document shall be signed by all legally authorized signatories of all the parties to the existing or intended Joint Venture, as appropriate.

## 17. Documents Comprising the Technical Proposal

17.1 The Tenderer shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section 4C -Technical Proposal, in sufficient detail to demonstrate the adequacy of the Tenderers’ proposal to meet the work requirements and the completion time.

17.2 For major items of plant/work component and services as listed by the Employer in Section 3 (Evaluation and Qualification Criteria), which the Tenderer intends to purchase/construct/install or subcontract, the Tenderer in addition to detailed information required to determine technical competence, financial soundness, experience and capability of sub-contractor in Section 3 (Evaluation and Qualification Criteria) shall also give details of the name and nationality of the proposed Subcontractors, including manufacturers, for each of those items. In addition, the Tenderer shall include in its tender information establishing compliance with the requirements specified by the Employer for these items. Quoted rates and prices will be deemed to apply to whichever Subcontractor is appointed, and no adjustment of the rates and prices will be permitted.

17.3 The Tenderer shall be responsible for ensuring that any Subcontractor proposed complies with the requirements of ITT 3, and that any equipment or services to be provided by the Subcontractor comply with the requirements of ITT 3 and ITT 4.

## 18. Tender Prices and Discounts

18.1 Unless otherwise specified in the TDS and/or Section 6 (Employer’s Requirements), tenderers shall quote for the entire project on a “single responsibility” basis such that the total tender price covers all the Contractor’s obligations mentioned in or to be reasonably inferred from the tendering document in respect of the design, including procurement and subcontracting (if any), delivery, construction, and completion of the project. This includes all requirements under the Contractor’s responsibilities for testing and commissioning of the building (if any) and, where so required by the tendering document, the acquisition of all permits, approvals and licenses, etc. and such other items and services as may be specified in the Tendering Document, all in accordance with the requirements of the General Conditions. Items against which no price is entered by the Tenderer will not be paid for by the Employer when executed and shall be deemed to be covered by the prices for other items.

18.2 Tenderers are required to quote the price for the commercial, contractual and technical obligations outlined in the tendering document. If a Tenderer wishes to make a deviation, such deviation shall be listed in the relevant form in Section 4A - Tendering Forms – Technical Proposal. The Tenderer shall also provide the additional price if any, in the relevant form in Section 10 – Tendering Forms – Price Proposal for withdrawal of the deviation.

18.3 Tenderers shall give a breakdown of the prices in the manner and detail called for in the Schedule of Activities included in Section 10. Where no different Schedule of Activities are included in the Tendering Document, tenderers shall present their prices in the following manner: Separate numbered Schedules included in Section 4 - Tendering Forms shall be used for each of the following elements. The total amount from each Schedule (1 to 5) shall be summarized in a Grand Summary giving the total tender price(s) to be entered in the Tender Form.

SCHEDULE OF ACTIVITY. 01 (PRELIMINARIES)

SCHEDULE OF ACTIVITY. 02 (GROUND WORKS)

SCHEDULE OF ACTIVITY. 03 (CONCRETE WORKS)

SCHEDULE OF ACTIVITY. 04 (MASONRY AND PLASTERING)

SCHEDULE OF ACTIVITY. 05 (METAL WORKS)

SCHEDULE OF ACTIVITY. 06 (WOOD WORKS)

SCHEDULE OF ACTIVITY. 07 (CEILINGS)

SCHEDULE OF ACTIVITY. 08 (DOORS AND WINDOWS)

SCHEDULE OF ACTIVITY. 09 (FLOOR & WALL FINISHING)

SCHEDULE OF ACTIVITY. 10 (PAINTING & DECORATIONS)

SCHEDULE OF ACTIVITY. 11 (STAIRS, WALKWAYS AND BALUSTRADES)

SCHEDULE OF ACTIVITY. 12 (HYDRAULICS AND DRAINAGE)

SCHEDULE OF ACTIVITY. 13 (MECHANICA & ELECTRICAL INSTALLATIONS)

SCHEDULE OF ACTIVITY. 14 (FIRE FIGHTING SYSTEM)

SCHEDULE OF ACTIVITY. 15 (FURNITURES)

SCHEDULE OF ACTIVITY. 16 (FAÇADE, BOUNDARY WALL AND LANDSCAPING)

SCHEDULE OF ACTIVITY. 17 (ADDITION AND OMISSIONS)

18.4 The Tender price shall be inclusive of all taxes, duties, levies and charges payable in the Employer’s country as of twenty-eight (28) days prior to the deadline for submission of tenders.

18.5 Unconditional discounts, if any, and the methodology for their application shall be quoted in the Letter of Tender.

18.6 Unless otherwise provided in the TDS and the Conditions of Contract, the prices quoted by the Tenderer shall be fixed. If the prices quoted by the Tenderer are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract, the tenderer shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data in Section IV (Tendering Forms) and the Employer may require the tenderer to justify its proposed indices and weightings.

## 19. Currencies of Tender and Payment

19.1 The currency(ies) of the tender shall be, as specified in the TDS.

19.2 Tenderers may be required by the Employer to justify, to the Employer’s satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the prices shown in the appropriate form(s) of Section IV, in which case a detailed breakdown of the foreign currency requirements shall be provided by Tenderers.

## 20. Period of Validity of Tenders

20.1 Tenders shall remain valid for the period specified in the TDS after the tender submission deadline date prescribed by the Employer. A tender valid for a shorter period shall be rejected by the Employer as non-responsive.

20.2 In exceptional circumstances, prior to the expiration of the tender validity period, the Employer may request Tenderers to extend the period of validity of their tenders. The request and the responses shall be made in writing. If a tender security is requested in accordance with ITT 21, it shall also be extended for a corresponding period. A Tenderer may refuse the request without forfeiting its tender security. A Tenderer granting the request shall not be required or permitted to modify its tender.

## 21. Tender Security

21.1 Unless otherwise specified in the TDS, the Tenderer shall furnish as part of its tender, in original form, either a Tender Securing Declaration or a tender security as specified in the TDS. In the case of a tender security, the amount shall be as specified in the TDS.

21.2 The tender security shall be a demand guarantee, at the Tenderer’s option, in any of the following forms:

a. an unconditional bank guarantee; or

b. a cashier’s or certified check; or

(c) another security indicated in the BDS.

from a reputable source from an eligible country. If the unconditional guarantee is issued by an insurance company or bonding company located outside the Employer’s Country, it shall have a correspondent financial institution located in the Republic of Maldives. In the case of a bank guarantee, the Tender security shall be submitted either using the Tender Security Form included in Section 4A (Tendering Forms) or in another substantially similar format approved by the Employer prior to Tender submission. In either case, the form must include the complete name of the Tenderer. The Tender security shall be valid for twenty-eight days (28) beyond the original validity period of the Tender, or beyond any period of extension if requested under ITT 20.

21.3 If a tender security is specified, any tender not complying with ITT 21.1 and ITT 21.2, shall be rejected by the Employer as non-responsive.

21.4 If a tender security is specified pursuant to ITT 21.1, the tender security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required performance security.

21.5 If a tender security is specified pursuant to ITT 21.1, the tender security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer’s furnishing of the performance security pursuant to ITT 44.

21.6 The tender security may be forfeited:

(a) if a Tenderer withdraws its tender during the period of tender validity specified by the Tenderer on the Letter of Tender Form, except as provided in ITT 20.2 or

(b) if the successful Tenderer fails to:

i. sign the Contract in accordance with ITT44; or

ii. furnish a performance security in accordance with ITT 45.

21.7 The Tender Security of a JV shall be in the name of the JV that submits the tender. If the JV has not been legally constituted at the time of tendering, the Tender Security shall be in the names of all future partners as named in the letter of intent referred to in ITT 4.

21.8 If a tender securing declaration is executed in accordance with ITT 21.1, the Employer will declare the Tenderer ineligible to be awarded a contract by the Employer for the period of time stated in the Form of Tender-Securing Declaration.

21.9 Any tender not accompanied by an enforceable and substantially compliant Tender security or Tender-Securing Declaration shall be rejected by the Employer as non-responsive.

## 22. Format and Signing of Tender

22.1 The Tenderer shall prepare one original set of the documents comprising the tender as described in ITT 11 and clearly mark it “ORIGINAL TENDER”. Alternative tenders, if permitted in accordance with ITT 13, shall be clearly marked “ALTERNATIVE”. In addition, the Tenderer shall submit copies of the tender, in the number specified in the TDS and clearly mark them “COPY.” In the event of any discrepancy between the original and the copies, the original shall prevail.

22.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the TDS and shall be attached to the tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the tender including where entries or amendments have been made shall be signed or initialed by the person signing the tender.

22.3 A tender submitted by a JV shall be signed so as to be legally binding on all partners.

22.4 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the tender.

## 23. Submission, Sealing and Marking of Tenders

23.1 Tenderers may submit their tenders by mail or by hand. When so specified in the TDS, tenderers shall have the option of submitting their tenders electronically. Procedures for submission, sealing and marking are as follows:

(a) Tenderers submitting tenders by mail or by hand shall enclose the original and each copy of the Tender, including alternative tenders, if permitted in accordance with ITT 13, in separate sealed envelopes, duly marking the envelopes as “ORIGINAL”, “ALTERNATIVE” and “COPY”. These envelopes, containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITT Sub-Clauses 23.2 and 23.3.

(b) Tenderers submitting tenders electronically shall follow the electronic tender submission procedures specified in the TDS.

23.2 The inner and outer envelopes shall:

(a) bear the name and address of the Tenderer;

(b) be addressed to the Employer in accordance with ITT 24.1;

(c) bear the specific identification of this tendering process indicated in the TDS 1.1; and

(d) bear a warning not to open before the time and date for tender opening, in accordance to ITT 27.1.

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

## 24. Deadline for Submission of Tenders

24.1 Tenders must be received by the Employer at the address and no later than the date and time indicated in the TDS.

24.2 The Employer may, at its discretion, extend the deadline for the submission of tenders by amending the Tendering Document in accordance with ITT 8, in which case all rights and obligations of the Employer and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

## 25. Late Tenders

25.1 The Employer shall not consider any tender that arrives after the deadline for submission of tenders, in accordance with ITT 24. Any tender received by the Employer after the deadline for submission of tenders shall be declared late, rejected, and returned unopened to the Tenderer.

## 26. Withdrawal, Substitution, and Modification of Tenders

26.1 A Tenderer may withdraw, substitute, or modify its tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITT 22.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the tender must accompany the respective written notice. All notices must be:

a. prepared and submitted in accordance with ITT 22 and ITT 23 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked “Withdrawal,” “Substitution,” “Modification;” and

b. received by the Employer prior to the deadline prescribed for submission of tenders, in accordance with ITT 25.

26.2 Tenders requested to be withdrawn in accordance with ITT 26.1 shall be returned unopened to the Tenderers.

26.3 No tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the Tenderer on the Letter of Technical Tender or any extension thereof.

## 27. Tender Opening

27.1 The Employer shall conduct the opening of Tenders in the presence of Tenderers` designated representatives who choose to attend and at the address, date and time specified in the TDS. Any specific electronic tender opening procedures required if electronic tendering is permitted in accordance with ITT Sub clause 23.1 shall be as specified in the TDS.

27.2 First, envelopes marked “WITHDRAWAL” shall be opened and read out and the envelope with the corresponding tender shall not be opened but returned to the Tenderer. No tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at tender opening.

27.3 Second, envelopes marked “SUBSTITUTION” shall be opened, read out, recorded, and exchanged the corresponding Tender being substituted, which are to be returned to the tenderer unopened. No envelope shall be substituted unless the corresponding Substitution Notice contains a valid authorization to request the substitution and is read out and recorded at tender opening.

27.4 Next, outer envelopes marked “MODIFICATION” shall be opened, read out, recorded with the corresponding Tender. No Tender Modification shall be permitted unless the corresponding Modification Notice contains a valid authorization to request the modification and is read out and recorded at Tender opening.

27.5 All the other envelopes shall be opened one at a time, and the following read out and recorded:

(a) The name of the Tenderer;

(b) Whether there is a modification or substitution;

(c) The Tender Prices, discounts, and alternative offers;

(d) The presence of a Tender Security, if required; and

(d) Any other details as the Employer may consider appropriate.

Only Tenders and alternative Tenders read out and recorded at tender opening shall be considered for evaluation. No Tenders shall be rejected at the opening except for late tenders, in accordance with ITT Sub-Clause 24.1.

27.6 The Employer shall prepare a record of the Tender opening that shall include, as a minimum: the name of the Tenderer and whether there is a withdrawal, substitution, or modification; the Tender price, any discounts, and alternative proposals if they were permitted; and the presence or absence of a tender security or a tender securing declaration, if one was required. The Tenderers’ representatives who are present shall be requested to sign the record. The omission of a Tenderer’s signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Tenderers who submitted tenders in time and posted online when electronic tendering is permitted.

## 28. Confidentiality

28.1 Information relating to the evaluation of tenders and recommendation of contract award, shall not be disclosed to Tenderers or any other persons not officially concerned with such process until information on Contract award is communicated to all Tenderers.

28.2 Any attempt by a Tenderer to influence the Employer in the evaluation of the tenders or Contract award decisions may result in the rejection of its tender.

28.3 Notwithstanding ITT 28.2, from the time of tender opening to the time of Contract award, if any Tenderer wishes to contact the Employer on any matter related to the tendering process, it should do so in writing.

## 29. Clarification of Tenders

29.1 To assist in the examination, evaluation, comparison and qualification of the Tenders, the Employer may, at its discretion, ask any Tenderer for a clarification of its tender. Any clarification submitted by a Tenderer that is not in response to a request by the Employer shall not be considered. The Employer’s request for clarification and the response shall be in writing. No change in the prices or substance of the tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the tenders, in accordance with ITT 33.

29.2 If a Tenderer does not provide clarifications of its tender by the date and time set in the Employer’s request for clarification, its tender may be rejected.

## 30. Deviations, Reservations, and Omissions

30.1 During the evaluation of tenders, the following definitions apply:

a. “Deviation” is a departure from the requirements specified in the Tendering Document;

b. “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Tendering Document; and

c. “Omission” is the failure to submit part or all of the information or documentation required in the Tendering Document.

## 31. Preliminary Examination of Tenders

31.1 The Employer shall confirm that the following documents and information have been provided in the tender. If any of these documents or information is missing, the offer may be rejected.

* + 1. Letter of tender
    2. written confirmation of authorization to commit the tenderer;
    3. Tender Security, if applicable and
    4. Documentary evidence in accordance with ITT 15 establishing the Tenderer’s eligibility and qualifications to perform the contract if its tender is accepted;
    5. Technical Proposal in accordance with ITT 17.
    6. Completed Schedule of Activities, in accordance with ITT 18, or as stipulated in the TDS;

## 32. Responsiveness of Tender

32.1 The Employer’s determination of a tender’s responsiveness is to be based on the contents of the tender itself, as defined in ITT11.1

32.2 A substantially responsive tender is one that meets the requirements of the Tendering Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,

a. if accepted, would:

i. affects in any substantial way the scope, quality, or performance of the Works specified in the Contract; or

ii. limit in any substantial way, inconsistent with the Tendering Document, the Employer’s rights or the Tenderer’s obligations under the proposed Contract; or

b. if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive tenders.

32.3 The Employer shall examine the overall completeness and compliance of the Tender with the Employer’s Requirements; deviations from the Employer’s Requirements; conformity of the plant and equipment and services offered with specified performance criteria; suitability of the plant and equipment and services offered in relation to the environmental and climatic conditions prevailing at the site; and quality, function and operation of any process control concept included in the tender. The tender that does not meet minimum acceptable standards of completeness, consistency and detail may be rejected for non-responsiveness; technical aspects of the Tender Submitted in accordance with ITT 17, Technical Proposal in particular shall confirm that all requirements of Section 6 (Employer’s Requirements) have been met without any material deviation or reservation.

32.4 If a tender is not substantially responsive to the requirements of the Tendering Document, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

## 33. Nonconformities, Errors, and Omissions

33.1 Provided that a tender is substantially responsive, the Employer may waive any nonconformity in the tender that do not constitute a material deviation, reservation or omission.

33.2 Provided that a Tender is substantially responsive, the Employer may request that the Tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the Tender related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the Price of the Tender. Failure of the Tenderer to comply with the request may result in the rejection of its Tender.

33.3 Provided that a Tender is substantially responsive, the Employer shall rectify nonmaterial nonconformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component. The adjustment shall be made using the method indicated in Section 3 (Evaluation and Qualification Criteria).

## 34. Correction of Arithmetical errors

34.1 Provided the tender is substantially responsive, the Employer shall correct the arithmetical errors on the following basis:

a. if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected.

b. if there is an error in a total corresponding to the addition or subtraction of subtotal, the subtotals shall prevail, and the total shall be corrected.

c. if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetical error, in which case the amount in figures shall prevail subject to (a) and (b) above.

34.2 If the Tenderer that submitted the lowest evaluated tender does not accept the correction of errors, its tender shall be disqualified, and its tender security may be forfeited.

## 35. Conversion to Single Currency

35.1 For evaluation and comparison purposes, the currency(ies) of the tender shall be converted into a single currency as specified in the TDS.

## 36. Margin of Preference

36.1 Unless otherwise specified in the TDS, a margin of preference shall not apply.

## 37. Evaluation of Tenders

37.1 The Employer shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.

37.2 To evaluate a Tender, the Employer shall consider the following:

(a) The tender price, excluding provisional sums and the provision, if any, for contingencies in the Schedule of Activities;

(b) price adjustment for correction of arithmetical errors in accordance with ITT 34.1;

(c) price adjustment due to discounts offered in accordance with ITT 18;

(d) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITT 37; and

(e) the evaluation factors indicated in Section 3 (Evaluation and Qualification Criteria).

37.3 If price adjustment is allowed in accordance with ITT 18.6, the estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in tender evaluation.

37.4 If this Tendering Document allows Tenderers to quote separate prices for different projects, and the award to a single Tenderer of multiple projects, the methodology to determine the lowest evaluated price of the project combinations, including any discounts offered in the Letter of Tender, is specified in Section 3 (Evaluation and Qualification Criteria).

37.5 If the tender, which results in the lowest Evaluated Tender, is seriously unbalanced or front loaded in the opinion of the Employer, the Employer may require the Tenderer to produce detailed price analyses for any or all items of the Schedule of Activities, to demonstrate the internal consistency of those prices with the methods and time schedule proposed. After evaluation of the price analyses, taking into consideration the terms of payments, the Employer may require that the amount of the performance security be increased at the expense of the Tenderer to a level sufficient to protect the Employer against financial loss in the event of default of the successful Tenderer under the Contract.

## 38. Comparison of Tenders

38.1 The Employer shall compare all substantially responsive Tenders to determine the lowest evaluated tender, in accordance with ITT 37.2.

## 39. Qualification of Tenderer

39.1 The Employer shall determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated substantially responsive Tender is qualified to perform the contract satisfactorily.

39.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer’s qualifications submitted by the Tenderer, pursuant to ITT 15.

39.3 An affirmative determination shall be a prerequisite for award of contract. A negative determination shall result in disqualification of the Tender, in which event the Employer shall proceed to the next lowest evaluated tender to make a similar determination of the Tenderer’s capabilities to perform satisfactorily.

## 40. Employer’s Right to Accept Any Tender, and to Reject Any or All Tenders

40.1 The Employer reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to Tenderers. In case of annulment, all tenders submitted and specifically, tender securities, shall be promptly returned to the Tenderers.

## 41. Award Criteria

41.1 The Employer shall award the Contract to the Tenderer whose offer has been determined to be the lowest evaluated tender and is substantially responsive to the Tendering Document, provided further that the Tenderer is determined to be eligible and qualified to perform the Contract satisfactorily.

41.2 The Employer reserves the right to accept any of the deviations submitted in accordance with ITT 18.2 by the lowest evaluated tenderer, at the price shown for the deviation in the tender.

## 42. Notification of Award

42.1 Prior to the expiration of the period of tender validity, the Employer shall notify the successful Tenderer, in writing, that its tender has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the “Letter of Acceptance”) shall specify the sum that the Employer will pay the Contractor in consideration of the execution and completion of the plant and services (hereinafter and in the Conditions of Contract and Contract Forms called “the Contract Price”).

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

42.3 The Employer shall promptly respond in writing to any unsuccessful Tenderer who, after publication of contract award, requests in writing the grounds on which its tender was not selected.

## 43. Signing of Contract

43.1 Promptly after notification, the Employer shall send the successful Tenderer the Contract Agreement.

43.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to the Employer.

## 44. Performance Security

44.1 Within twenty-eight (28) days of the receipt of notification of award from the Employer, the successful Tenderer shall furnish the performance security in accordance with the conditions of contract, using for that purpose the Performance Security Form included in Section 9 (Contract Forms), or another form acceptable to the Employer. If the institution issuing the performance security is located outside the country of the Employer, it shall have a correspondent financial institution located in the country of the Employer to make it enforceable.

45.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security. In that event the Employer may award the Contract to the next lowest evaluated Tenderer whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.

45.3 The above provision shall also apply to the furnishing of a domestic preference security if so required.

## 45. Adjudicator

45.1 The Employer proposes the person named in the TDS to be appointed as Adjudicator under the Contract, at the hourly fee specified in the TDS, plus reimbursable expenses. If the Tenderer disagrees with this proposal, the Tenderer should so state in his Tender. If, in the Letter of Acceptance, the Employer does not agree on the appointment of the Adjudicator, the Employer will request the Appointing Authority designated in the Particular Conditions of Contract (PCC) pursuant to Clause 23.1 of the General Conditions of Contract (GCC), to appoint the Adjudicator.